

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

4

SENATE BILL 1615
Second Edition Engrossed 7/6/90
House Committee Substitute Favorable 7/19/90
Fourth Edition Engrossed 7/26/90

Short Title: Panel/Due Process Hearings.

(Public)

Sponsors:

Referred to:

July 5, 1990

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S APPEALS PROCESS,
TO PRESERVE FEDERAL FUNDS, AND TO SAVE THE STATE
REPLACEMENT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116 reads as rewritten:

"§ 115C-116. Notice of decisions; mediation, administrative review, and judicial review of disagreements.

(a) Prior Notice. – The parent, guardian, or surrogate parent of a child shall be notified promptly when the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child as a child with special needs. The written notice shall contain a full explanation of all the procedural safeguards available to the parent, guardian, or surrogate parent including the right to review the proposed decision, and a statement offering the parent, guardian, or surrogate parent the opportunity for mediation. The local educational agency shall document that all required notices have been sent to and received by parents, guardians, or surrogate parents.

(b) Mediation. – Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the

1 request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or
2 associate superintendent to meet, with the parent, guardian, or surrogate parent to
3 attempt to resolve the dispute or disagreement. The meeting shall be informal and the
4 General Assembly intends that the meeting shall be nonadversarial, as required by G.S.
5 150B-22.

6 (c) Right of Review. – The parent, guardian, or surrogate parent may obtain
7 review of proposed decisions on the following grounds:

- 8 (1) The child has not been identified or has been incorrectly identified as a
9 child with special needs;
- 10 (2) The child's individualized education plan is not appropriate to meet his
11 needs;
- 12 (3) The child's individualized education plan is not being implemented; or
- 13 (4) The child is otherwise being denied a free, appropriate education.

14 In addition, a local educational agency may obtain review as provided by this section if
15 a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child
16 for the purpose of determining whether the child is a child with special needs or for the
17 purpose of developing a free appropriate educational program for the child.

18 (d) Administrative Review. – Except as otherwise provided in this section, the
19 administrative review shall be initiated and conducted in accordance with Article 3 of
20 Chapter 150B of the General Statutes, the Administrative Procedure Act.

21 (e) Scope of Review. – ~~Notwithstanding the provisions of G.S. 150B-23(a) and G.S.~~
22 ~~150B-33(b)(9), the~~ The issues for review shall be limited to those set forth in subsection
23 (c).

24 (f) Venue of Hearing. – ~~Notwithstanding the provisions of G.S. 150B-24, the~~ The
25 hearing shall be conducted in the county where the child attends school or is entitled to
26 enroll pursuant to G.S. 115C-366.

27 (g) Hearing Closed. – ~~Notwithstanding the provisions of G.S. 150B-23(e), the~~ The
28 hearing shall be closed to the public unless the parent, guardian, or surrogate parent,
29 ~~prior to the beginning of the hearing,~~ requests in writing that the hearing be open to the
30 public.

31 (h) ~~Recommended Decision. – Following the hearing, the administrative law~~
32 ~~judge shall make a recommended decision to the State Board of Education. The~~
33 ~~recommended decision shall conform to and be prepared in accordance with G.S. 150B-~~
34 ~~34. –~~ Decision of the Administration Law Judge. – Following the hearing, the
35 administrative law judge shall make a decision regarding the issues set forth in
36 subsection (c). The decision shall contain findings of fact and conclusions of law.
37 Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of
38 the administrative law judge becomes final and not subject to further review unless
39 appealed to the Review Officer as provided in subsection (i). A copy of the
40 administrative law judge's decision shall be served upon each party and a copy shall be
41 furnished to the attorneys of record. The written notice shall contain a statement
42 informing the parties of the availability of appeal and the 30-day limitations period for
43 appeal as set forth in subsection (i).

1 (i) ~~Final Decision by the State Board of Education.~~—The final decision shall be
2 made by the State Board of Education in accordance with G.S. 150B-36. In its
3 discretion, the State Board may appoint a panel of at least two members of the Board to
4 make the final decision for and on its behalf in accordance with G.S. 150B-36, and if
5 the Board elects to exercise its discretion the decision of the panel shall be the final
6 decision. Review by Review Officer. – Any party aggrieved by the decision of the
7 administrative law judge may appeal that decision within 30 days after receipt of notice
8 of the decision by filing a written notice of appeal with the Superintendent of Public
9 Instruction. The State Superintendent of Public Instruction shall appoint a Review
10 Officer from a pool of review officers approved by the State Board of Education. A
11 Review Officer must be an educator or other professional who is knowledgeable about
12 special education and who possesses such other qualifications as may be established by
13 the State Board of Education.

14 No person may be appointed as a Review Officer if that person is an employee of an
15 agency that has been involved in the education or care of the child whose parents have
16 filed the petition (including an employee or official of the State Department of
17 Education or the State Board of Education) or if the person is or has been employed by
18 the local Board of Education responsible for the education or care of the child whose
19 parents have filed the petition. The decision of the Review Officer shall contain
20 findings of fact and conclusions of law and becomes final unless an aggrieved party
21 brings a civil action pursuant to subsection (k). A copy of the decision shall be served
22 upon each party and a copy shall be furnished to the attorneys of record. The written
23 notice shall contain a statement informing the parties of the right to file a civil action
24 and the 30-day limitations period for filing a civil action pursuant to subsection (k).

25 (j) Power to Enforce Final Decision. – The State Board shall have the power to
26 enforce ~~its~~ the final decision of the administrative law judge, if not appealed pursuant to
27 subsection (i), or the final decision of the Review Officer, by ordering a local
28 educational agency:

- 29 (1) To provide a child with ~~an~~ appropriate education;
- 30 (2) To place a child in a private school that is approved to provide special
31 education and that can provide the child an appropriate education; or
- 32 (3) To reimburse parents for reasonable private school placement costs in
33 accordance with the provisions of G.S. 115C-115 ~~in the event it~~
34 ~~determines when it is determined~~ that the local educational agency did
35 not offer or provide the child with ~~an~~ appropriate education and the
36 private school in which the parent, guardian, or surrogate parent placed
37 the child was an approved school and did provide the child an
38 appropriate education.

39 (k) Judicial Review-Right to File Civil Action. – Any party aggrieved by the
40 ~~State Board's decision may seek judicial review in the State courts as provided in~~
41 ~~Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20~~
42 ~~U.S.C. § 1415.~~ decision of the Review Officer may institute a civil action in State or
43 federal court as provided in 20 U.S.C. § 1415 within 30 days after receipt of notice of
44 the decision.

1 (1) Change in Placement. – Upon the filing of a petition, no change may be made
2 in the child's status or program by school officials during the period of the
3 administrative review or subsequent judicial review, unless the parent, guardian, or
4 surrogate parent gives written consent."

5 Sec. 2. This act shall become effective October 1, 1990, and shall apply to all
6 petitions filed on or after that date.