

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 1615  
Second Edition Engrossed 7/6/90

Short Title: Panel/Due Process Hearings.

(Public)

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Sponsors: Senator Marvin.

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Referred to: Appropriations.

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July 5, 1990

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S APPEALS PROCESS,  
3 TO PRESERVE FEDERAL FUNDS, AND TO SAVE THE STATE  
4 REPLACEMENT FUNDS.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 115C-116. Notice of decisions; mediation, administrative review, and judicial**  
8 **review of disagreements.**

9 (a) Notice. – The parent, guardian, or surrogate parent of a child shall be notified  
10 promptly when:

11 (1) The local educational agency proposes to initiate or change, or refuses  
12 to initiate or change, the identification of a child as a child with special  
13 needs; or

14 (2) The local educational agency proposes to initiate or change, or refuses  
15 to initiate or change, the child's individualized education program.

16 The notice shall be in writing and shall contain a statement advising the parent,  
17 guardian, or surrogate parent of the right to review the proposed decision; a statement  
18 offering the parent, guardian, or surrogate parent the opportunity for mediation; and a  
19 copy of this statute and G.S. 150B-23 through 150B-37 or an explanation of the rights  
20 afforded by these statutes. It shall be hand-delivered to the parent, guardian, or  
21 surrogate parent or forwarded by certified or registered mail, return receipt requested.

22 (b) Mediation. – Mediation of disputes or disagreements regarding the  
23 identification of children with special needs and the provision of special education for

1 children with special needs prior to formal administrative review is encouraged. If a  
2 request for formal administrative review has not been filed, the superintendent, upon the  
3 request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or  
4 associate superintendent to meet, with the parent, guardian, or surrogate parent to  
5 attempt to resolve the dispute or disagreement. The meeting shall be informal and the  
6 General Assembly intends that the meeting shall be nonadversarial, as required by G.S.  
7 150B-22.

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

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

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

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

23 (e) Scope of Review. – ~~Notwithstanding the provisions of G.S. 150B-23(a) and G.S.~~  
24 ~~150B-33(b)(9), the~~ The issues for review shall be limited to those set forth in subsection  
25 (c).

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

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

33 (h) ~~Recommended Decision.~~ – ~~Following the hearing, the administrative law~~  
34 ~~judge shall make a recommended decision to the State Board of Education. The~~  
35 ~~recommended decision shall conform to and be prepared in accordance with G.S. 150B-~~  
36 ~~34. Panel. –~~

- 37 (1) Hearings shall be conducted by panels of three persons. The presiding  
38 officer of each panel shall be an administrative law judge designated  
39 by the Chief Administrative Law Judge in accordance with G.S. 150B-  
40 32, and the other two members shall be educators or other  
41 professionals selected by the State Superintendent of Public Instruction  
42 from a pool of hearing officers appointed by the State Board of  
43 Education. Persons appointed to the pool of hearing officers will be  
44 knowledgeable about special education and possess such other

1                   qualifications as may be established by the State Board. The State  
2                   Superintendent may not appoint a person as hearing officer if that  
3                   person is an employee of an agency that has been involved in the  
4                   education or care of the child whose parents have filed the petition  
5                   (including an employee or official of the State Department of  
6                   Education or the State Board of Education) or if the person is or has  
7                   been employed by the local board of education responsible for the  
8                   education or care of the child whose parents have filed the petition.

9                   (2)   The administrative law judge shall preside over the hearing and shall  
10                  exercise those powers conferred by G.S. 150B-33(a) and (b)(1)  
11                  through (8) for and on behalf of the panel and independently of the  
12                  other panel members. The administrative law judge and hearing  
13                  officers shall jointly decide the issues set forth in subsection (c).

14                  (i)   ~~Final Decision by the State Board of Education. — The final decision shall be~~  
15                  ~~made by the State Board of Education in accordance with G.S. 150B-36. — In its~~  
16                  ~~discretion, the State Board may appoint a panel of at least two members of the Board to~~  
17                  ~~make the final decision for and on its behalf in accordance with G.S. 150B-36, and if~~  
18                  ~~the Board elects to exercise its discretion the decision of the panel shall be the final~~  
19                  ~~decision. — The decision of the panel shall constitute the final administrative decision.~~

20                  (j)   ~~Power to Enforce Final Decision. — The State Board Panel shall have the~~  
21                  power to enforce its final decision by ordering a local educational agency:

22                   (1)   To provide a child with ~~an~~ appropriate education;

23                   (2)   To place a child in a private school that is approved to provide special  
24                   education and that can provide the child an appropriate education; or

25                   (3)   To reimburse parents for reasonable private school placement costs in  
26                   accordance with the provisions of G.S. 115C-115 in the event it  
27                   determines that the local educational agency did not offer or provide  
28                   the child with ~~an~~ appropriate education and the private school in which  
29                   the parent, guardian, or surrogate parent placed the child was an  
30                   approved school and did provide the child an appropriate education.

31                  (k)   Judicial Review. — Any party aggrieved by the ~~State Board's Panel's~~ decision  
32                  may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of  
33                  the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.

34                  (l)   Change in Placement. — Upon the filing of a petition, no change may be made  
35                  in the child's status or program by school officials during the period of the  
36                  administrative review or subsequent judicial review, unless the parent, guardian, or  
37                  surrogate parent gives written consent."

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