

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 593

Short Title: Special Education Due Process Hearings. (Public)

Sponsors: Senators B. Jackson, Ballard, and Lee (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 7, 2021

A BILL TO BE ENTITLED

AN ACT TO ALLOW PARTIES TO SEEK IMMEDIATE JUDICIAL REVIEW OF
ADMINISTRATIVE LAW JUDGE DECISIONS IN SPECIAL EDUCATION DUE
PROCESS HEARINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-106.3(5) reads as rewritten:

"(5) Hearing officers. – ~~Include administrative~~ Administrative law judges as defined in ~~G.S. 150B-2(1) and hearing review officers.~~ G.S. 150B-2(1)."

SECTION 2. G.S. 115C-109.6 reads as rewritten:

"§ 115C-109.6. Impartial due process hearings.

(a) Any party may file with the Office of Administrative Hearings a petition to request an impartial hearing with respect to any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination. The party filing the petition must notify the other party and the person designated under G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

(b) Notwithstanding any other law, the party shall file a petition under subsection (a) of this section that includes the information required under IDEA and that sets forth an alleged violation that occurred not more than one year before the party knew or reasonably should have known about the alleged action that forms the basis of the petition. The issues for review under this section are limited to those set forth in subsection (a) of this section. The party requesting the hearing may not raise issues that were not raised in the petition unless the other party agrees otherwise.

(c) The one-year restriction in subsection (b) of this section shall not apply to a parent if the parent was prevented from requesting the hearing due to (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the petition, or (ii) the local educational agency's withholding of information from the parent that was required under State or federal law to be provided to the parent.

(d) The hearing shall be conducted in the county where the child attends school or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a different venue.

(e) The hearing shall be closed to the public unless the parent requests in writing that the hearing be open to the public.

(f) Subject to G.S. 115C-109.7, the decision of the administrative law judge shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. Following the hearing, the administrative law judge shall issue a written decision regarding the issues set forth in subsection (a) of this section. The decision shall



1 contain findings of fact and conclusions of law. ~~Notwithstanding Chapter 150B of the General~~
2 ~~Statutes, the~~ The decision of the administrative law judge becomes final and is not subject to
3 further review unless ~~appealed to the Review Officer~~ an aggrieved party brings a civil action
4 under G.S. 115C-109.9 subsection (h2) of this section.

5 (g) A copy of the administrative law judge's decision shall be served upon each party and
6 a copy shall be furnished to the attorneys of record. The written notice shall contain a statement
7 informing the parties of the ~~availability of appeal and the 30-day limitation period for appeal as~~
8 ~~set forth in G.S. 115C-109.9~~ right to file a civil action and the 30-day limitation period for filing
9 a civil action under subsection (h2) of this section.

10 (h) In addition to the petition, the parties shall simultaneously serve a copy of all
11 pleadings, agreements, and motions under this Part with the person designated by the State Board
12 under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall simultaneously serve
13 a copy of all orders and decisions under this Part with the person designated by the State Board
14 under G.S. 115C-107.2(b)(9).

15 (h1) The State Board may enforce the final decision of the administrative law judge under
16 G.S. 115C-109.6 by ordering a local educational agency to comply with one or more of the
17 following:

- 18 (1) To provide a child with appropriate education.
- 19 (2) To place a child in a private school that is approved to provide special
20 education and that can provide the child an appropriate education.
- 21 (3) To reimburse parents for reasonable private school placement costs in
22 accordance with this Article and IDEA when it is determined that the local
23 educational agency did not offer or provide the child with appropriate
24 education and the private school in which the parent placed the child was an
25 approved school and did provide the child an appropriate education.

26 (h2) Any party who is aggrieved by the findings and decision of a hearing officer under
27 this Part may institute a civil action in State court within 30 days after receipt of the notice of the
28 decision or in federal court as provided in 20 U.S.C. § 1415.

29 (h3) Except as provided under IDEA, upon the filing of a petition under G.S. 115C-109.6
30 and during the pendency of any proceedings under this Part, the child must remain in the child's
31 then-current educational placement or, if applying for initial admission to a public school, the
32 child must be placed in the public school. Notwithstanding this subsection, the parties may agree
33 in writing to a different educational placement for the child during the pendency of any
34 proceedings under this section.

35 (i) Nothing in this section shall be construed to preclude a parent from filing a separate
36 due process petition on an issue separate from a petition already filed.

37 (j) The State Board, through the Exceptional Children Division, and the State Office of
38 Administrative Hearings shall develop and enter into a binding memorandum of understanding
39 to ensure compliance with the statutory and regulatory procedures and timelines applicable under
40 IDEA to due process hearings and to hearing officers' decisions, and to ensure the parties' due
41 process rights to a fair and impartial hearing. This memorandum of understanding shall be
42 amended if subsequent changes to IDEA are made. The procedures and timelines shall be made
43 part of the Board's procedural safeguards that are made available to parents and the public under
44 G.S. 115C-109.1 and G.S. 115C-109.5."

45 **SECTION 3.** G.S. 115C-109.9 is repealed.

46 **SECTION 4.** This act is effective when it becomes law.