

SB 593: NC's State Review Officer and Due Process Hearings

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Our story



NC's due process for
special education cases

Due process appeals

When parents and school districts are in disagreement:

- Request for a due process hearing before an ALJ
- ALJ makes his/her decision
- Losing party has right to appeal

Appeals process: Single-tier states

In most states, the losing party at a due process hearing appeals directly to either state or federal court. These are “Single-Tier States.”

Appeals process: Two-tier states

A few states are known as two-tiered, meaning that the losing party at a due process hearing *appeals to a state hearing officer first.*

Appeals process: Two-tier states

Kansas,

Ohio,

New York,

Oklahoma,

North Carolina

South Carolina

Appeals process: Two-tier states

After an adverse state level review decision is issued by the RO / SRO, the losing party at the review level can then appeal directly to either state or federal court.

In N.C., appeals go to federal court.

NC's State Review Officer was selected by the sch board

§ 115C-109.9. Review by review officer; appeals. [Repealed] (a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. **The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section.** The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record and the Office of Administrative Hearings. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section.

Qualifications

(b) **A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education.** No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

The pathway to change

2015: Meeting with Jeremy Adams

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

Short Title: Technical Corrections/Education

Sponsors:

Referred to:

A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS AND OTHER CONFORMING CHANGES TO THE GENERAL STATUTES CONCERNING EDUCATION

The General Assembly of North Carolina Enacts:

Section 1. G.S. § 115C-109.6(f) reads as rewritten:

(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 contain findings of fact and conclusions of law. Notwithstanding Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and is not subject to further review unless appealed to the Review Officer a civil action is commenced under G.S. 115C-109.9.

Section 2. G.S. § 115C-109.6(g) reads as rewritten:

(g) A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitation period for appealing limits for commencing a civil action in state or federal courts set forth in G.S. 115C-109.9.

Section 3. G.S. § 115C-109.9 reads as rewritten:

(a) Any party aggrieved by the findings and decision of a hearing officer under G.S. 115C-109.6 or G.S. 115C-109.8 may appeal the findings and decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the person designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State Board, through the Exceptional Children Division, shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. The Review Officer shall conduct an impartial review of the findings and decision appealed under this section. The Review Officer conducting this review shall make an independent decision upon completion of the review. The decision of the Review Officer becomes final unless an aggrieved party brings a civil action under subsection (d) of this section. A copy of the decision shall be served upon each party, and a copy shall be furnished to the attorneys of record and the Office of Administrative Hearings. The written

notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitation period for filing a civil action under subsection (d) of this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1414j.

(b) A Review Officer shall be an educator or other professional who is knowledgeable about special education and who possesses other qualifications as may be established by the State Board of Education. No person may be appointed as a Review Officer if that person is an employee of the State Board of Education, the Department of Public Instruction, or the local educational agency that has been involved in the education or care of the child whose parents have filed the petition.

(e)(b) The State Board may enforce the final decision of the administrative law judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of the Review Officer, by ordering a local educational agency:

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

(d) Any party that does not have the right to appeal under this Part and any party who is aggrieved by the decision of the Review Officer under this section may institute a civil action in State court within 30 days after receipt of the notice of the decision or in federal court as provided in 20 U.S.C. § 1414j.

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

Section 4. This act is effective when it becomes law.



Fall 2019: Chris Stock





August 10, 2020: Meet the Candidates





September 25, 2020



April 2021

NC Senate Bill 593 filed

May 6, 2021



May 21, 2021

**SB 593 passes
floor vote in Senate**

November 2021

Budget bill passes NC Gen Assembly



@NCCAPITOL

State overhauls appeals system for parents of disabled students

School systems worry the wrong change was made, but a key state lawmaker, attorneys and a family say the old system wasn't fair.

Posted 6:00 a.m. Dec 19 — Updated 9:09 a.m. Dec 19

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A few notes ...

This bill had the support of Disability Rights NC and the administrative law judges in NC.

This would not have been possible without Sen. Brent Jackson pushing this through.

Our experience still indicates so much needs to change ...

- Our case dragged out on scattered days over six months.
- The entire process from start to case settling took over four years.
- Our full tab had run up to \$300,000 in legal fees and in ABA therapy for our son
- I worked multiple jobs to try to chip away at the indebtedness while we waited for this case to resolve. We also had an attorney who floated much of this debt until the case wrapped up.
- Families cannot afford to go to this expense. Often, they just give in and give up.

“You would have a kid who has a good case, but you can’t get any resolution for years because they’ve got all these roadblocks in place to slow parents and kids down from getting help,” Adams said.

Adams said he had one case take eight years, from start to finish.

“That kid’s 22,” Adams said. “He’s never getting help.”

“I’ve gotten to the point I don’t take older kids as clients in these cases because there’s no way I can help them,” he said. “I think we’ve got a system that lets the clock run out.”

But perhaps change is on the horizon in NC ...

“We are already making changes at OAH to expedite these cases and this year will start formal rule making to facilitate that.

Your advocacy has been a blessing to so many children in NC.”

– Administrative Law Judge Stacey Bawtinhimer, email, Dec. 19, 2021