



# SENATE BILL 593: Special Education Due Process Hearings.

2021-2022 General Assembly

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<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	May 5, 2021
<b>Introduced by:</b>	Sens. B. Jackson, Ballard, Lee	<b>Prepared by:</b>	Brian Gwyn
<b>Analysis of:</b>	Second Edition		Staff Attorney

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**OVERVIEW:** *Senate Bill 593 would allow parties to seek immediate judicial review of administrative law judge (ALJ) decisions in special education due process hearings.*

## CURRENT LAW:

### Federal Law

The federal Individuals with Disabilities Education Action (IDEA) allows parents to file a complaint with respect to the "identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child..." 20 U.S.C. 1415(b)(6). The parties involved are then entitled to an impartial due process hearing "which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency." 20 U.S.C. 1415(f)(1)(A). The local education agency (LEA) has 30 days to resolve the complaint informally, and after that point, additional timelines apply.

IDEA requires that the impartial hearing officer:

- Not be an employee of the State educational agency (SEA) or LEA involved in the education or care of the child.
- Not be a person having a personal or professional interest that conflicts with the person's objectivity.
- Possess knowledge of, and the ability to understand, IDEA and related federal and state regulations and rules, and other legal interpretations by federal and state courts.
- Possess knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

20 U.S.C. 1415(f)(3)(A).

If the impartial hearing is conducted by the SEA, then either party can appeal that decision to State or federal court. This is considered a "one-tier" system.

If the impartial hearing is conducted by an LEA, either party can appeal to the SEA. The SEA can then make an independent decision after reviewing the findings and decision appealed. 20 U.S.C. 1415(g). This is considered a "two-tier" system. If either party disagrees with the decision made by the SEA, they have the right to file suit in State or federal court. 20 U.S.C. 1415(i).

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## State Law

Under G.S. 115C-109.6, a parent can file a request with the Office of Administrative Hearings (OAH) for an impartial hearing. The hearing must be conducted in the county where the child attends school, unless the parties mutually agree to a different location. The State Board of Education (State Board) and OAH must enter into a binding memorandum of understanding (MOU) to ensure compliance with IDEA in the conduct of the hearings.

Under G.S. 115C-109.9, either party can appeal the administrative law judge's (ALJ) decision to the State Board. The State Board must then appoint a State Review Officer (SRO) from a pool of individuals approved by the State Board. The SRO completes an independent review of the ALJ's decision and makes a determination. The SRO's decision is final unless an action is filed in State or federal court.

The SRO must 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." G.S. 115C-109.9.

Under G.S. 115C-109.9(c), the State Board may enforce the final decision of the ALJ if not appealed, or the final decision of the SRO.

**BILL ANALYSIS:** Senate Bill 593 would allow the parties to immediately seek judicial review of the ALJ's decision in a special education due process hearing by removing the step where the decision would first have to be appealed to the State Board. Therefore, any party aggrieved by the ALJ's decision would be able to institute an action in State or federal court.

Additionally, the bill would require the State Board to enforce the final decision of the ALJ.

**EFFECTIVE DATE:** The bill would be effective when it becomes law.