

Bill No.: _____
Requested: _____
Committee: _____

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By: **Delegate Kaiser**

A BILL ENTITLED

1 AN ACT concerning

2 **Individualized Education Programs – Burden of Proof in Due Process Hearings**
3 **and Studies**

4 FOR the purpose of requiring certain complaining parties to bear a certain burden of proof
5 in due process hearings that are held to resolve a dispute relating to the provision of
6 a free appropriate public education to children with disabilities; providing a certain
7 exception that requires a parent or guardian filing a due process complaint against
8 a public agency concerning a dispute over the provision of certain services to bear a
9 certain burden of proof; providing a certain exception that requires a parent or
10 guardian seeking tuition reimbursement for a unilateral placement of a student by
11 the parent or guardian to bear a certain burden of proof; authorizing a certain
12 administrative law judge to shift a certain burden of proof under certain
13 circumstances; requiring the State Department of Education to study and make
14 recommendations regarding certain matters; requiring the Department to report its
15 findings and recommendations to the General Assembly on or before a certain date;
16 requiring the Department to contract with a public or private entity to conduct a
17 certain study of the individualized education program process in the State and to
18 make certain recommendations regarding the process; requiring the Governor to
19 include sufficient funds in the State budget for certain fiscal years to cover the costs
20 of a certain study; requiring the Department to report the findings and
21 recommendations of a certain study to the General Assembly on or before a certain
22 date; providing for the effective dates of this Act; providing for the termination of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain provisions of this Act; and generally relating to the burden of proof in due
2 process hearings and the study of the individualized education program process.

3 BY repealing and reenacting, with amendments,
4 Article – Education
5 Section 8–413
6 Annotated Code of Maryland
7 (2014 Replacement Volume and 2016 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Education**

11 8–413.

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) “Administrative law judge” means an individual serving in the role of
14 an impartial hearing officer as required under the federal Individuals with Disabilities
15 Education Act.

16 (3) “Due process complaint” means a written request for a due process
17 hearing filed by the parent of a child with a disability, as defined in § 8–412 of this subtitle,
18 or a public agency, to resolve a dispute over the identification, evaluation, educational
19 placement, or the provision of free appropriate public education, in accordance with federal
20 law.

21 (4) “Federal law” means the Individuals with Disabilities Education Act
22 and regulations adopted under that Act.

23 (5) “Parent” means:

24 (i) A child’s natural or adoptive parents, a guardian, or a person
25 acting as a parent of a child, such as a relative or a stepparent with whom the child lives;

1 (ii) A foster parent with whom a child lives if the foster parent has
2 been granted limited guardianship for educational decision making purposes by the court
3 that placed the child in foster care;

4 (iii) Another individual who is legally responsible for the child's
5 welfare; or

6 (iv) A parent surrogate appointed in accordance with § 8-412 of this
7 subtitle.

8 (6) "Public agency" means the State Department of Education, a local
9 school system, or any State agency responsible for providing education to students with
10 disabilities, including the Maryland School for the Blind and the Maryland School for the
11 Deaf.

12 (7) "Resolution session" means a preliminary meeting the public agency
13 shall convene with the child's parent in accordance with federal law.

14 (b) (1) The parent of a child with a disability or a public agency may formally
15 request mediation at any time to resolve any disagreement between the parties regarding
16 the child's special education services or program.

17 (2) If a parent files a due process complaint against a public agency
18 concerning the identification, evaluation, or educational placement of a student or the
19 provision of a free appropriate public education, any party shall be given the opportunity
20 to request mediation of those aspects of the decision subject to dispute.

21 (3) The request for mediation may not be used to deny or delay the parent's
22 rights under federal law or this section.

23 (4) Any party to the mediation has the right to be accompanied and advised
24 by counsel.

25 (5) Mediation shall be conducted in accordance with departmental
26 regulations.

27 (6) A mediation agreement shall be in writing and is enforceable in a court
28 of competent jurisdiction in accordance with federal law.

1 (7) The Department shall make a staff member available to assist a parent
2 in understanding the mediation process.

3 (c) (1) Before conducting a due process hearing in accordance with subsection
4 (d) of this section, the public agency shall provide the parent with an opportunity to resolve
5 the due process complaint at a resolution session in accordance with federal law.

6 (2) A resolution session agreement shall be in writing and enforceable in a
7 court of competent jurisdiction in accordance with federal law.

8 (3) A written resolution agreement may be voided by the parties within 3
9 business days of execution in accordance with federal law.

10 (d) (1) A parent of a child with disabilities shall file a due process complaint
11 with the Office of Administrative Hearings and the public agency.

12 (2) A public agency shall file a due process complaint with the Office of
13 Administrative Hearings and the parent.

14 (3) Except as provided in paragraph (4) of this subsection, the complaining
15 party shall file a due process complaint within 2 years of the date the party knew or should
16 have known about the action that forms the basis of the due process complaint.

17 (4) The statute of limitations described under paragraph (3) of this
18 subsection does not apply to a parent who is prevented from requesting a due process
19 hearing due to:

20 (i) Specific misrepresentations made by the public agency that it
21 had resolved the problem that formed the basis of the due process complaint; or

22 (ii) The public agency's withholding of information that the public
23 agency was required to provide to the parent.

24 (5) In order to conduct a hearing, the Office of Administrative Hearings
25 shall appoint an administrative law judge who:

1 (i) Is an administrative law judge in the Office of Administrative
2 Hearings; and

3 (ii) Meets the requirements of a due process hearing officer in
4 accordance with federal law.

5 (6) Unless the parent and the public agency otherwise agree, during the
6 course of any administrative or judicial proceeding, the child must remain in the last
7 approved placement in accordance with federal law.

8 (7) If the hearing concerns the initial admission of a child into a public
9 school, the child with the consent of the parent must be placed in the public school program
10 until the proceedings have been completed.

11 **(8) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (II)**
12 **AND (III) OF THIS PARAGRAPH AND PARAGRAPH (9) OF THIS SUBSECTION, THE**
13 **COMPLAINING PARTY SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS**
14 **PROCEEDING CONDUCTED UNDER THIS SECTION.**

15 **(II) IF A PARENT OR GUARDIAN FILES A DUE PROCESS**
16 **COMPLAINT AGAINST A PUBLIC AGENCY CONCERNING A DISPUTE OVER THE**
17 **PROVISION OF SERVICES UNDER THE CHILD'S INDIVIDUALIZED EDUCATION**
18 **PROGRAM, THE PUBLIC AGENCY SHALL HAVE THE BURDEN OF PROOF IN A DUE**
19 **PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.**

20 **(III) A PARENT OR GUARDIAN SEEKING TUITION**
21 **REIMBURSEMENT FOR A UNILATERAL PLACEMENT OF A STUDENT BY THE PARENT**
22 **SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED**
23 **UNDER THIS SECTION.**

24 **(9) UNDER EXTENUATING CIRCUMSTANCES, THE ADMINISTRATIVE**
25 **LAW JUDGE APPOINTED UNDER THIS SUBSECTION MAY SHIFT THE BURDEN OF**
26 **PROOF TO CONFORM WITH THE REQUIREMENTS OF LAW AND JUSTICE IN**
27 **INDIVIDUAL CASES UNDER UNIQUE CIRCUMSTANCES AS DETERMINED BY THE**
28 **ADMINISTRATIVE LAW JUDGE.**

29 (e) (1) The administrative law judge appointed under subsection (d) of this
30 section shall conduct the hearing in accordance with federal law, Title 10 of the State

1 Government Article, and the Office of Administrative Hearings Rules of Administrative
2 Procedure, and may:

3 (i) After review of the educational records of the child, dismiss any
4 request for review which does not relate to a matter described in subsection (d)(1) of this
5 section;

6 (ii) Require the parties to attend a prehearing conference prior to the
7 due process hearing;

8 (iii) Hear any testimony that it considers relevant;

9 (iv) Require an independent evaluation or call an impartial expert
10 witness in the diagnosis or education of students with disabilities whose testimony shall be
11 on the record and whose costs shall be paid by the State Education Agency; and

12 (v) Administer oaths to witnesses at the hearing on request of a
13 party.

14 (2) The provisions of the Family Educational Rights and Privacy Act and
15 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

16 (3) If the parties cannot agree on an impartial expert witness, each party
17 shall be given the opportunity to submit a list of possible experts, and the administrative
18 law judge shall decide which impartial expert witness to call.

19 (f) (1) Any party to the hearing has the right to:

20 (i) Be accompanied and be advised by counsel and individuals with
21 special knowledge or training with respect to the problems of children with disabilities;

22 (ii) Present evidence and confront, cross-examine, and compel the
23 attendance of witnesses;

24 (iii) Prohibit the introduction of any evidence at the hearing which
25 has not been disclosed to all parties at least 5 days before the hearing;

26 (iv) Obtain a written or electronic verbatim record of the hearing; and

1 (v) Obtain written findings of fact and decisions.

2 (2) Parents involved in the hearings must be given the right to:

3 (i) Have the child who is the subject of the hearing present; and

4 (ii) Open the hearing to the public.

5 (g) (1) The decision of the administrative law judge shall be made on
6 substantive grounds based on the determination of whether the child received a free
7 appropriate public education.

8 (2) In matters alleging a procedural violation, an administrative law judge
9 may find that the child did not receive a free appropriate public education only if the
10 procedural inadequacies:

11 (i) Impeded the child's right to a free appropriate public education;

12 (ii) Significantly impeded the parents' opportunity to participate in
13 the educational decision making process regarding the provision of a free appropriate public
14 education to the parents' child; or

15 (iii) Caused a deprivation of educational benefits.

16 (h) The hearing shall be held and a written decision shall be issued within the
17 time periods established by federal law. The administrative law judge may grant a specific
18 extension of time at the request of either party.

19 (i) If, at the time of the due process complaint, the child who is the subject of the
20 hearing is not enrolled and attending an approved educational program or, if the due
21 process complaint is over the placement or manifestation determination of a child, due to a
22 violation of the rules of conduct, an expedited hearing shall occur within 20 school days of
23 the date the hearing is requested and shall result in a decision within 10 school days of the
24 hearing.

25 (j) Within 120 calendar days of the issuance of the hearing decision, any party to
26 the hearing may file an appeal from a final decision of the Office of Administrative Hearings

1 to the federal District Court for Maryland or to the circuit court for the county in which the
2 child resides.

3 (k) (1) A public agency is not required to pay for the cost of education,
4 including special education and related services, for a child with a disability at a private or
5 nonpublic school if the public agency made a free appropriate public education available to
6 the child and the parent of the child elected to place the child in such a school or facility.

7 (2) If the parent of a child with a disability, who previously received special
8 education and related services under the authority of a public agency, enrolls the child in
9 a nonpublic school or facility without the consent of or referral by the public agency, an
10 administrative law judge or a court may require the public agency to reimburse the parent
11 for the costs of the placement enrollment if the administrative law judge or court
12 determines that the public agency had not made a free appropriate public education
13 available to the child in a timely manner prior to that enrollment.

14 (3) Reimbursement may be reduced or denied by the administrative law
15 judge or court in accordance with federal law.

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (a) The State Department of Education shall:

18 (1) review and assess the current allocation of State Department of
19 Education staff, local school system staff, and other State agency staff and supporting
20 resources that are available to assist the parents and guardians of children with disabilities
21 to participate in the individualized education program (IEP) process, including all
22 procedures relating to the identification, evaluation, and educational placement of a child,
23 the provision of a free and appropriate education, and the dispute resolution procedures
24 provided under § 8-413 of the Education Article;

25 (2) review and assess the current population density of children with IEPs
26 in each local school system and in geographical regions in the State; and

27 (3) make recommendations for reallocating public agency staff and
28 resources on the basis of geographical region so that public agencies may more effectively
29 assist the parents and guardians of children with disabilities to participate in the IEP

1 process and more timely and cost effectively resolve disputes concerning a child's special
2 education services or program.

3 (b) On or before December 31, 2018, the State Department of Education shall
4 report its findings and recommendations, in accordance with § 2-1246 of the State
5 Government Article, to the General Assembly.

6 SECTION 3. AND BE IT FURTHER ENACTED, That:

7 (a) On or before December 31, 2017, the State Department of Education, in
8 consultation with the Department of Budget and Management and the Department of
9 Legislative Services, shall contract with a public or private entity to conduct a study of the
10 individualized education program (IEP) process in the State, including the procedures
11 relating to the identification, evaluation, and educational placement of a child, the
12 provision of a free and appropriate education, and the dispute resolution procedures
13 provided under § 8-413 of the Education Article.

14 (b) At a minimum, the study shall:

15 (1) review and assess how the State Department of Education staff, local
16 school system staff, and other State agency staff comply with State and federal law
17 governing the IEP process;

18 (2) review and assess how local school systems spend their special
19 education funds and allocate their teaching and family support services staff;

20 (3) review and assess the effectiveness of special education family support
21 services provided by local school system staff members; and

22 (4) make recommendations for:

23 (i) ensuring that special education funds are being spent cost
24 effectively;

25 (ii) ensuring that local school systems are effectively allocating their
26 teaching and family support staff to improve the education achievement of special
27 education students;

1 (iii) clarifying and simplifying the IEP process to enable parents and
2 guardians to more easily understand their rights and responsibilities in the process; and

3 (iv) modifying the administrative goals, objectives, and strategies of
4 teachers and IEP teams to make them more efficient and cost effective in their delivery of
5 services to special education students, including potential reductions in caseloads and
6 recordkeeping.

7 (c) The Governor shall include sufficient funds in the State budget for the
8 appropriate fiscal years for the State Department of Education to cover the costs of
9 conducting the study.

10 (d) On or before December 31, 2018, the State Department of Education shall
11 report the findings and recommendations of the study, in accordance with § 2-1246 of the
12 State Government Article, to the General Assembly.

13 SECTION 4. AND BE IT FURTHER ENACTED, That Sections 2 and 3 of this Act
14 shall take effect June 1, 2017. They shall remain effective for a period of 2 years and, at the
15 end of May 31, 2019, with no further action required by the General Assembly, Sections 2
16 and 3 of this Act shall be abrogated and of no further force and effect.

17 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section
18 4 of this Act, this Act shall take effect July 1, 2017.