

# HOUSE BILL 668

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By: **Delegates McConkey, Gaines, Gutierrez, Kipke, Pena–Melnyk, Proctor, Sophocleus, and Tarlau**

Introduced and read first time: February 12, 2015

Assigned to: Ways and Means

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## A BILL ENTITLED

1 AN ACT concerning

2 **Education – Due Process Hearings for Children With Disabilities – Attorney’s**  
3 **Fees**

4 FOR the purpose of requiring an administrative law judge or a court to award reasonable  
5 attorney’s fees to a prevailing parent in certain due process hearings relating to the  
6 provision of a free appropriate public education to children with disabilities; and  
7 generally relating to due process hearings for children with disabilities and the  
8 award of attorney’s fees.

9 BY repealing and reenacting, with amendments,  
10 Article – Education  
11 Section 8–413  
12 Annotated Code of Maryland  
13 (2014 Replacement Volume and 2014 Supplement)

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

16 **Article – Education**

17 8–413.

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

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

22 (3) “Due process complaint” means a written request for a due process  
23 hearing filed by the parent of a child with a disability, as defined in § 8–412 of this subtitle,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or a public agency, to resolve a dispute over the identification, evaluation, educational  
2 placement, or the provision of free appropriate public education, in accordance with federal  
3 law.

4 (4) "Federal law" means the Individuals with Disabilities Education Act  
5 and regulations adopted under that Act.

6 (5) "Parent" means:

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

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

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

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

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

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

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

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

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

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

33 (5) Mediation shall be conducted in accordance with departmental  
34 regulations.

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

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:

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

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

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

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

4           (e) (1) The administrative law judge appointed under subsection (d) of this  
5 section shall conduct the hearing in accordance with federal law, Title 10 of the State  
6 Government Article, and the Office of Administrative Hearings Rules of Administrative  
7 Procedure, and may:

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

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

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

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

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

19           (2) The provisions of the Family Educational Rights and Privacy Act and  
20 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

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

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

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

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

3 (ii) Open the hearing to the public.

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

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

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

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

14 (iii) Caused a deprivation of educational benefits.

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

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

24 (j) Within 120 calendar days of the issuance of the hearing decision, any party to  
25 the hearing may file an appeal from a final decision of the Office of Administrative Hearings  
26 to the federal District Court for Maryland or to the circuit court for the county in which the  
27 child resides.

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

32 (2) If the parent of a child with a disability, who previously received special  
33 education and related services under the authority of a public agency, enrolls the child in  
34 a nonpublic school or facility without the consent of or referral by the public agency, an  
35 administrative law judge or a court may require the public agency to reimburse the parent

1 for the costs of the placement enrollment if the administrative law judge or court  
2 determines that the public agency had not made a free appropriate public education  
3 available to the child in a timely manner prior to that enrollment.

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

6 **(L) AN ADMINISTRATIVE LAW JUDGE OR A COURT SHALL AWARD**  
7 **REASONABLE ATTORNEY'S FEES TO A PREVAILING PARENT IN A DUE PROCESS**  
8 **PROCEEDING CONDUCTED UNDER THIS SECTION.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2015.