

HOUSE BILL 140

F1

9lr0921

By: **Delegate Luedtke**

Introduced and read first time: January 21, 2019

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 26, 2019

CHAPTER _____

1 AN ACT concerning

2 **Special Education – Administrative Proceedings and Judicial Actions –**
3 **Attorney’s and Expert Witness Fees and Related Costs**

4 FOR the purpose of authorizing ~~an administrative law judge~~ a court to award certain
5 attorney’s fees and related costs to the parent of a child with a disability who is the
6 prevailing party in a special education proceeding; prohibiting ~~an administrative law~~
7 ~~judge~~ a court from awarding attorney’s fees and certain related costs to a certain
8 parent in a certain proceeding under certain circumstances; authorizing ~~an~~
9 ~~administrative law judge~~ a court to award reasonable expert witness fees to the
10 parent of a child with a disability who is the prevailing party in a certain special
11 education proceeding; ~~authorizing a court, in a certain judicial action, to award~~
12 ~~certain attorney’s fees and related costs and expert witness fees in accordance with~~
13 ~~certain provisions of law;~~ and generally relating to attorney’s and expert witness fees
14 and related costs in special education administrative proceedings and judicial
15 actions.

16 BY repealing and reenacting, with amendments,
17 Article – Education
18 Section 8–413
19 Annotated Code of Maryland
20 (2018 Replacement Volume and 2018 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Education

1
2 8–413.

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

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

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

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

14 (5) “Parent” means:

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

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

20 (iii) Another individual who is legally responsible for the child’s
21 welfare; or

22 (iv) A parent surrogate appointed in accordance with § 8–412 of this
23 subtitle.

24 (6) “Public agency” means the State Department of Education, a local
25 school system, or any State agency responsible for providing education to students with
26 disabilities, including the Maryland School for the Blind and the Maryland School for the
27 Deaf.

28 (7) “Resolution session” means a preliminary meeting the public agency
29 shall convene with the child’s parent in accordance with federal law.

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

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

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

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

9 (5) Mediation shall be conducted in accordance with departmental
10 regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) The provisions of the Family Educational Rights and Privacy Act and
31 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

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

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

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

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

12 (ii) Open the hearing to the public.

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

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

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

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

23 (iii) Caused a deprivation of educational benefits.

24 ~~(3) (I) AN ADMINISTRATIVE LAW JUDGE MAY AWARD REASONABLE~~
25 ~~ATTORNEY'S FEES AND RELATED COSTS TO A PREVAILING PARTY WHO IS THE~~
26 ~~PARENT OF A CHILD WITH A DISABILITY.~~

27 ~~(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH,~~
28 ~~ATTORNEY'S FEES MAY NOT BE AWARDED AND RELATED COSTS MAY NOT BE~~
29 ~~REIMBURSED FOR SERVICES PERFORMED AFTER THE DATE A WRITTEN OFFER OF~~
30 ~~SETTLEMENT IS MADE TO A PARENT, IF:~~

1 ~~1. THE SETTLEMENT OFFER IS MADE TO THE PARENT~~
2 ~~MORE THAN 10 DAYS BEFORE THE START OF A PROCEEDING UNDER THIS SECTION;~~

3 ~~2. THE SETTLEMENT OFFER IS NOT ACCEPTED WITHIN~~
4 ~~10 DAYS; AND~~

5 ~~3. THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE~~
6 ~~SETTLEMENT OFFER WAS MORE FAVORABLE TO THE PARENT THAN THE FINAL~~
7 ~~RELIEF OBTAINED BY THE PARENT IN A PROCEEDING UNDER THIS SECTION.~~

8 ~~(H) AN AWARD OF ATTORNEY'S FEES AND RELATED COSTS MAY~~
9 ~~BE MADE TO A PARENT WHO IS THE PREVAILING PARTY AND WHO WAS~~
10 ~~SUBSTANTIALLY JUSTIFIED IN REJECTING A SETTLEMENT OFFER.~~

11 ~~(4) AN ADMINISTRATIVE LAW JUDGE MAY AWARD REASONABLE~~
12 ~~EXPERT WITNESS FEES TO A PREVAILING PARTY WHO IS THE PARENT OF A CHILD~~
13 ~~WITH A DISABILITY.~~

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

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

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

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

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

1 determines that the public agency had not made a free appropriate public education
2 available to the child in a timely manner prior to that enrollment.

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

5 ~~(L) IN ANY JUDICIAL ACTION TAKEN UNDER THIS SECTION, THE (1) THE~~
6 ~~COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND RELATED COSTS AND~~
7 ~~EXPERT WITNESS FEES IN ACCORDANCE WITH THIS SUBSECTION (C)(3) AND (4) OF~~
8 ~~THIS SECTION.~~

9 (2) (I) THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES
10 AND RELATED COSTS TO A PREVAILING PARTY WHO IS THE PARENT OF A CHILD WITH
11 A DISABILITY.

12 (II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH,
13 ATTORNEY'S FEES MAY NOT BE AWARDED AND RELATED COSTS MAY NOT BE
14 REIMBURSED FOR SERVICES PERFORMED AFTER THE DATE A WRITTEN OFFER OF
15 SETTLEMENT IS MADE TO A PARENT, IF:

16 1. THE SETTLEMENT OFFER IS MADE TO THE PARENT
17 MORE THAN 10 DAYS BEFORE THE START OF A PROCEEDING UNDER THIS SECTION;

18 2. THE SETTLEMENT OFFER IS NOT ACCEPTED WITHIN
19 10 DAYS; AND

20 3. THE COURT FINDS THAT THE SETTLEMENT OFFER
21 WAS MORE FAVORABLE TO THE PARENT THAN THE FINAL RELIEF OBTAINED BY THE
22 PARENT IN A PROCEEDING UNDER THIS SECTION.

23 (III) AN AWARD OF ATTORNEY'S FEES AND RELATED COSTS MAY
24 BE MADE TO A PARENT WHO IS THE PREVAILING PARTY AND WHO WAS
25 SUBSTANTIALLY JUSTIFIED IN REJECTING A SETTLEMENT OFFER.

26 (3) A COURT MAY AWARD REASONABLE EXPERT WITNESS FEES TO A
27 PREVAILING PARTY WHO IS THE PARENT OF A CHILD WITH A DISABILITY.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
29 1, 2019.