

HOUSE BILL 140

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9lr0921

By: **Delegate Luedtke**

Introduced and read first time: January 21, 2019

Assigned to: Ways and Means

A BILL ENTITLED

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

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

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

22 **Article – Education**

23 8–413.

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

25 (2) “Administrative law judge” means an individual serving in the role of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 an impartial hearing officer as required under the federal Individuals with Disabilities
2 Education Act.

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

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

10 (5) “Parent” means:

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

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

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

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

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

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

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

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

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

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

3 (5) Mediation shall be conducted in accordance with departmental
4 regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) The provisions of the Family Educational Rights and Privacy Act and
25 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

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

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

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

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

7 (ii) Open the hearing to the public.

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

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

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

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

18 (iii) Caused a deprivation of educational benefits.

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

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

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

28 2. THE SETTLEMENT OFFER IS NOT ACCEPTED WITHIN
29 10 DAYS; AND

30 3. THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE

1 SETTLEMENT OFFER WAS MORE FAVORABLE TO THE PARENT THAN THE FINAL
2 RELIEF OBTAINED BY THE PARENT IN A PROCEEDING UNDER THIS SECTION.

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

6 (4) AN ADMINISTRATIVE LAW JUDGE MAY AWARD REASONABLE
7 EXPERT WITNESS FEES TO A PREVAILING PARTY WHO IS THE PARENT OF A CHILD
8 WITH A DISABILITY.

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

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

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

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

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

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

35 (L) IN ANY JUDICIAL ACTION TAKEN UNDER THIS SECTION, THE COURT MAY
36 AWARD REASONABLE ATTORNEY'S FEES AND RELATED COSTS AND EXPERT WITNESS
37 FEES IN ACCORDANCE WITH SUBSECTION (G)(3) AND (4) OF THIS SECTION.

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