

# HOUSE BILL 405

F5, D1

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HB 184/20 – W&M & JUD

(PRE-FILED)

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By: **Delegate Lopez**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Ways and Means and Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Special Education – Judicial Actions – Attorney’s Fees and Related Costs**

3 FOR the purpose of authorizing a court to award attorney’s fees and related costs to the  
4 parent of a child with a disability who is the prevailing party in a certain special  
5 education proceeding; prohibiting a court from awarding attorney’s fees and related  
6 costs to certain parents in a certain proceeding under certain circumstances;  
7 authorizing an award of attorney’s fees and related costs to a parent of a child with  
8 a disability who is a prevailing party under certain circumstances; and generally  
9 relating to attorney’s fees and related costs in special education proceedings.

10 BY repealing and reenacting, with amendments,  
11 Article – Education  
12 Section 8–413  
13 Annotated Code of Maryland  
14 (2018 Replacement Volume and 2020 Supplement)

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

17 **Article – Education**

18 8–413.

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

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

23 (3) “Due process complaint” means a written request for a due process

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 hearing filed by the parent of a child with a disability, as defined in § 8–412 of this subtitle,  
2 or a public agency, to resolve a dispute over the identification, evaluation, educational  
3 placement, or the provision of free appropriate public education, in accordance with federal  
4 law.

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

7 (5) “Parent” means:

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

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

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

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

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

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

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

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

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

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

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

1 regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2) The provisions of the Family Educational Rights and Privacy Act and  
23 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

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

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

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

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

5 (ii) Open the hearing to the public.

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

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

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

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

16 (iii) Caused a deprivation of educational benefits.

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

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

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

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

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

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

10 **(L) (1) THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES AND**  
11 **RELATED COSTS, INCLUDING EXPERT WITNESS FEES AND COSTS TO THE PARENT OF**  
12 **A CHILD WITH A DISABILITY WHO IS A PREVAILING PARTY IN ACCORDANCE WITH**  
13 **THIS SUBSECTION.**

14 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, ATTORNEY'S**  
15 **FEES MAY NOT BE AWARDED AND RELATED COSTS MAY NOT BE REIMBURSED FOR**  
16 **SERVICES PERFORMED AFTER THE DATE A WRITTEN OFFER OF SETTLEMENT IS**  
17 **MADE TO A PARENT IF:**

18 **(I) THE SETTLEMENT OFFER IS MADE MORE THAN 14 DAYS**  
19 **BEFORE THE START OF THE PROCEEDING;**

20 **(II) THE SETTLEMENT OFFER IS NOT ACCEPTED WITHIN 14**  
21 **DAYS; AND**

22 **(III) THE COURT FINDS THAT THE RELIEF FINALLY OBTAINED BY**  
23 **THE PARENT IS NOT MORE FAVORABLE TO THE PARENT THAN THE SETTLEMENT**  
24 **OFFER.**

25 **(3) AN AWARD OF ATTORNEY'S FEES AND RELATED COSTS,**  
26 **INCLUDING EXPERT WITNESS FEES AND COSTS, MAY BE MADE TO A PARENT WHO IS**  
27 **THE PREVAILING PARTY AND WHO WAS SUBSTANTIALLY JUSTIFIED IN REJECTING A**  
28 **SETTLEMENT OFFER.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
30 1, 2021.