

# HOUSE BILL 1198

F1, F5

4lr0737  
CF SB 779

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By: Delegates Braveboy, Bates, Carr, Frush, Hixson, Ivey, Kach, A. Kelly, McMillan, A. Miller, W. Miller, Mizeur, B. Robinson, Schulz, Valderrama, Vaughn, and A. Washington

Introduced and read first time: February 7, 2014

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 28, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Education – ~~Due Process Hearings for Children With Disabilities – Burden of~~**  
3 **Proof Due Process Hearings**

4 FOR the purpose of ~~requiring certain public agencies to bear a certain burden of proof~~  
5 ~~in due process hearings that are held to resolve a dispute relating to the~~  
6 ~~provision of a free appropriate public education to children with disabilities;~~  
7 ~~establishing that a certain provision of law is not intended to change certain~~  
8 ~~record keeping requirements or what constitutes a free appropriate public~~  
9 ~~education under federal law; and generally relating to the burden of proof in~~  
10 ~~certain due process hearings~~ stating the intent goal of the General Assembly  
11 that a certain parent of a child with a disability and certain public agencies  
12 mediate certain issues before filing a certain due process complaint with the  
13 Office of Administrative Hearings; requiring certain public agencies to provide a  
14 parent of a child with a disability with certain information relating to  
15 requesting certain documents under certain circumstances; altering the duties  
16 of the Commission on Special Education Access and Equity; requiring the  
17 Commission to report certain findings and recommendations to the Governor  
18 and the General Assembly on or before a certain date; extending the  
19 termination date of the Commission; requiring the State Department of  
20 Education to make a certain report to the General Assembly on or before a  
21 certain date; and generally relating to due process hearings for children with  
22 disabilities.

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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.



1 BY repealing and reenacting, with amendments,  
2 Article – Education  
3 Section 8–413  
4 Annotated Code of Maryland  
5 (2008 Replacement Volume and 2013 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Chapter 671 of the Acts of the General Assembly of 2013  
8 Section 1(f) and (g) and 2

9 BY adding to  
10 Chapter 671 of the Acts of the General Assembly of 2013  
11 Section 1(g)

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

14 **Article – Education**

15 8–413.

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

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

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

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

27 (5) “Parent” means:

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

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

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

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

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

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

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

14 **(2) IT IS THE ~~INTENT~~ GOAL OF THE GENERAL ASSEMBLY THAT A**  
15 **PARENT OR A PUBLIC AGENCY REQUEST MEDIATION BEFORE FILING A DUE**  
16 **PROCESS COMPLAINT IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.**

17 ~~(2)~~ **(3)** 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  
20 opportunity to request mediation of those aspects of the decision subject to dispute.

21 ~~(3)~~ **(4)** The request for mediation may not be used to deny or delay the  
22 parent's rights under federal law or this section.

23 ~~(4)~~ **(5)** Any party to the mediation has the right to be accompanied and  
24 advised by counsel.

25 ~~(5)~~ **(6)** Mediation shall be conducted in accordance with departmental  
26 regulations.

27 ~~(6)~~ **(7)** A mediation agreement shall be in writing and is enforceable in  
28 a court of competent jurisdiction in accordance with federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (8) ~~(I) A PUBLIC AGENCY SHALL HAVE THE BURDEN OF PROOF~~  
31 ~~IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.~~

32 ~~(II) NOTHING IN THIS PARAGRAPH IS INTENDED TO CHANGE~~  
33 ~~THE FOLLOWING UNDER FEDERAL LAW:~~

1 ~~1. RECORD KEEPING REQUIREMENTS; OR~~

2 ~~2. WHAT CONSTITUTES A FREE APPROPRIATE~~  
3 ~~PUBLIC EDUCATION WITHIN 2 DAYS AFTER FILING A DUE PROCESS COMPLAINT~~  
4 ~~OR RECEIVING NOTICE THAT A PARENT HAS FILED A DUE PROCESS COMPLAINT,~~  
5 ~~A PUBLIC AGENCY SHALL PROVIDE TO THE PARENT A WRITTEN DOCUMENT~~  
6 ~~THAT:~~

7 (I) INFORMS THE PARENT OF THE PARENT'S RIGHT TO  
8 REQUEST ALL DOCUMENTS RELATING TO THE SUBJECT MATTER OF THE  
9 COMPLAINT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE OFFICE OF  
10 ADMINISTRATIVE HEARINGS; AND

11 (II) DESCRIBES HOW THE PARENT CAN REQUEST THE  
12 DOCUMENTS SPECIFIED UNDER ITEM (I) OF THIS PARAGRAPH.

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

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

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

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

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

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

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

32 (3) If the parties cannot agree on an impartial expert witness, each  
33 party shall be given the opportunity to submit a list of possible experts, and the  
34 administrative 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  
3 with special knowledge or training with respect to the problems of children with  
4 disabilities;

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

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

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

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

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

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

14 (ii) Open the hearing to the public.

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

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

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

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

26 (iii) Caused a deprivation of educational benefits.

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

30 (i) If, at the time of the due process complaint, the child who is the subject of  
31 the hearing is not enrolled and attending an approved educational program or, if the

1 due process complaint is over the placement or manifestation determination of a child,  
2 due to a violation of the rules of conduct, an expedited hearing shall occur within 20  
3 school days of the date the hearing is requested and shall result in a decision within  
4 10 school days of the hearing.

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

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

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

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

23 **Chapter 671 of the Acts of 2013**

24 **SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF**  
25 **MARYLAND, That:**

26 (f) The Commission shall study:

27 (1) the extent to which parents and guardians of students with  
28 disabilities are made aware of their rights under the Individuals with Disabilities  
29 Education Act (20 U.S.C. § 1400 et seq.) and State law and regulations relating to  
30 children with disabilities and potential ways to improve the awareness of these rights;

31 (2) disparities and potential methods for eliminating any disparities  
32 based on race, national origin, and limited English proficiency in the following areas:

33 (i) knowledge of and access to special education services;

34 (ii) rights under the Individuals with Disabilities Education Act;

1 (iii) access to and participation in Individualized Education  
2 Program mediation and appeals; and

3 (iv) access to participation in free and reduced price meals;

4 (3) effects of workload, caseload, and paperwork requirements related  
5 to the special education process on the ability of educators to provide a free and  
6 appropriate public education as guaranteed under federal law, and potential methods  
7 for mitigating these factors;

8 (4) concerns about equity between the parties in special education due  
9 process hearings, and potential methods for improving the process, INCLUDING  
10 ARGUMENTS FOR AND AGAINST SHIFTING THE BURDEN OF PROOF IN A DUE  
11 PROCESS HEARING BROUGHT UNDER § 8-413 OF THE EDUCATION ARTICLE  
12 FROM A PARTY SEEKING RELIEF TO A PUBLIC AGENCY;

13 (5) THE IMPLICATIONS OF SHIFTING THE BURDEN OF PROOF IN A  
14 DUE PROCESS HEARING FROM A PARTY SEEKING RELIEF TO A PUBLIC AGENCY  
15 ON A PUBLIC AGENCY'S WORKLOAD, RESOURCES, STAFF, AND ABILITY TO  
16 DELIVER APPROPRIATE SERVICES TO ALL STUDENTS;

17 (6) THE BEST PRACTICES OF NEW YORK, NEW JERSEY, AND  
18 CONNECTICUT REGARDING METHODS OF SHIFTING THE BURDEN OF PROOF IN A  
19 DUE PROCESS HEARING RELATING TO SPECIAL EDUCATION SERVICES FOR  
20 CHILDREN WITH DISABILITIES FROM A PARTY SEEKING RELIEF TO A PUBLIC  
21 AGENCY;

22 [(5)] (7) the State and local costs of all proposals considered or  
23 recommended by the Commission; and

24 [(6)] (8) any other issues related to access and equity in the provision  
25 of special education services under federal and State law identified by the  
26 Commission.

27 (G) THE COMMISSION SHALL HOLD AT LEAST:

28 (1) TWO COMMISSION MEETINGS DEVOTED TO DISCUSSING THE  
29 STUDY ITEMS SPECIFIED IN SUBSECTION (F)(4) THROUGH (6) OF THIS SECTION;  
30 AND

31 (2) ONE PUBLIC HEARING ON ISSUES RELATING TO THE BURDEN  
32 OF PROOF IN A DUE PROCESS HEARING BROUGHT UNDER § 8-413 OF THE  
33 EDUCATION ARTICLE.



1            ~~[(g)]~~ **(H)**     **(1)**    On or before June 30, 2014, the Commission shall report its  
2 findings and recommendations on these issues relating to [access and equity in the  
3 provision of special education services under federal and State law] SUBSECTION  
4 **(F)(1), (2), (3), (7), AND (8)** to the Governor and, in accordance with § 2-1246 of the  
5 State Government Article, the Senate Education, Health, and Environmental Affairs  
6 Committee and the House Ways and Means Committee.

7            **(2)**    ON OR BEFORE OCTOBER 31, 2014, THE COMMISSION SHALL  
8 REPORT ITS FINDINGS AND RECOMMENDATIONS ON SUBSECTION **(F)(4)**  
9 THROUGH **(6)** AND **(8)** OF THIS SECTION TO THE GOVERNOR AND, IN  
10 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE  
11 SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE  
12 AND THE HOUSE WAYS AND MEANS COMMITTEE.

13            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 June 1, 2013. It shall remain effective for a period of 1 year and [1 month] **6 MONTHS**  
15 and, at the end of [June] **NOVEMBER 30**, 2014, with no further action required by the  
16 General Assembly, this Act shall be abrogated and of no further force and effect.

17            SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,  
18 2016, the State Department of Education shall report to the Senate Education, Health,  
19 and Environmental Affairs Committee and the House Ways and Means Committee, in  
20 accordance with § 2-1246 of the State Government Article, on:

21            (1)    The per pupil cost of educating a special education student as  
22 opposed to a general education student for each county in the State;

23            (2)    The adequacy of State funding for special education to meet the  
24 differential per pupil cost needs of special education students as opposed to general  
25 education students;

26            (3)    The average workload, caseload, and paperwork requirements  
27 related to the special education process of educators in providing a free and  
28 appropriate public education as guaranteed under federal law; and

29            (4)    The best practices of other jurisdictions in assisting special  
30 education teachers to meet the needs of their caseload while having adequate time for  
31 planning, teaching, and grading.

32            SECTION ~~2~~ **3**. AND BE IT FURTHER ENACTED, That this Act shall take  
33 effect ~~July~~ June 1, 2014.