

Chapter 715

(House Bill 1240)

AN ACT concerning

**Individualized Education Programs – ~~Burden of Proof in Due Process Hearings~~
and Studies**

FOR the purpose of ~~requiring certain complaining parties to bear a certain burden of proof in due process hearings that are held to resolve a dispute relating to the provision of a free appropriate public education to children with disabilities; providing a certain exception that if a parent or guardian files a due process complaint against a public agency concerning a dispute over the delivery of certain services or certain changes at a certain meeting, the public agency is required to bear a certain burden of proof; providing a certain exception that requires a parent or guardian seeking tuition reimbursement for a unilateral placement of a student by the parent or guardian to bear a certain burden of proof; authorizing a certain administrative law judge to shift a certain burden of proof under certain circumstances;~~ requiring the State Department of Education, in consultation with each local school system, to study and make recommendations regarding certain matters; requiring the Department to report its findings and recommendations to the General Assembly on or before a certain date; requiring the Department to contract with a public or private entity to conduct a certain study of the individualized education program process in the State and to make certain recommendations regarding the process; requiring the Governor to include sufficient funds in the State budget for certain fiscal years to cover the costs of a certain study; requiring the Department to report the findings and recommendations of a certain study to the General Assembly on or before a certain date; ~~providing for a delayed effective date for a certain provision of this Act;~~ providing for the termination of ~~certain provisions~~ of this Act; and generally relating to ~~the burden of proof in due process hearings and~~ the study of the individualized education program process.

~~BY repealing and reenacting, with amendments,~~
~~Article – Education~~
~~Section 8-413~~
~~Annotated Code of Maryland~~
~~(2014 Replacement Volume and 2016 Supplement)~~

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

~~Article – Education~~~~§ 413.~~

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

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

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

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

~~(5) “Parent” means:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(8) (i) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS SUBPARAGRAPH (II) AND (III) OF THIS PARAGRAPH AND PARAGRAPH (9) OF THIS SUBSECTION, THE COMPLAINING PARTY SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.~~

~~(ii) IF A PARENT OR GUARDIAN FILES A DUE PROCESS COMPLAINT AGAINST A PUBLIC AGENCY CONCERNING A DISPUTE OVER THE DELIVERY OF SERVICES UNDER THE CHILD'S CURRENT INDIVIDUALIZED EDUCATION PROGRAM, THE A PUBLIC AGENCY SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION IF A PARENT OR GUARDIAN FILES A DUE PROCESS COMPLAINT AGAINST A PUBLIC AGENCY CONCERNING:~~

~~1. A DISPUTE OVER THE DELIVERY OF SERVICES UNDER THE CHILD'S EXISTING INDIVIDUALIZED EDUCATION PROGRAM; OR~~

~~2. A DISPUTE OVER PROPOSED CHANGES TO THE CHILD'S EXISTING INDIVIDUALIZED EDUCATION PROGRAM AT THE ANNUAL REVIEW MEETING.~~

~~(iii) A PARENT OR GUARDIAN SEEKING TUITION REIMBURSEMENT FOR A UNILATERAL PLACEMENT OF A STUDENT BY THE PARENT SHALL HAVE THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION.~~

~~(9) UNDER EXTENUATING CIRCUMSTANCES, THE ADMINISTRATIVE LAW JUDGE APPOINTED UNDER THIS SUBSECTION MAY SHIFT THE BURDEN OF~~

~~PROOF TO CONFORM WITH THE REQUIREMENTS OF LAW AND JUSTICE IN INDIVIDUAL CASES UNDER UNIQUE CIRCUMSTANCES AS DETERMINED BY THE ADMINISTRATIVE LAW JUDGE.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(i) Have the child who is the subject of the hearing present; and~~
- ~~(ii) Open the hearing to the public.~~

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

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

- ~~(i) Impeded the child's right to a free appropriate public education;~~
- ~~(ii) Significantly impeded the parents' opportunity to participate in the educational decision making process regarding the provision of a free appropriate public education to the parents' child; or~~
- ~~(iii) Caused a deprivation of educational benefits.~~

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

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

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

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

~~(2) If the parent of a child with a disability, who previously received special education and related services under the authority of a public agency, enrolls the child in~~

~~a nonpublic school or facility without the consent of or referral by the public agency, an administrative law judge or a court may require the public agency to reimburse the parent for the costs of the placement enrollment if the administrative law judge or court determines that the public agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.~~

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

~~SECTION 2. AND BE IT FURTHER ENACTED, That:~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That:

(a) The State Department of Education, in consultation with each local school system, shall:

(1) review and assess the current allocation of State Department of Education staff, local school system staff, and other State agency staff and supporting resources that are available to assist the parents and guardians of children with disabilities to participate in the individualized education program (IEP) process, including all procedures relating to the identification, evaluation, and educational placement of a child, the provision of a free and appropriate education, and the dispute resolution procedures provided under § 8-413 of the Education Article;

(2) review and assess the current population density of children with IEPs in each local school system and in geographical regions in the State;

(3) review and assess the current population density of special education teachers in each local school system and in geographical regions in the State; and

~~(3)~~ (4) make recommendations for reallocating public agency staff and resources on the basis of geographical region so that public agencies may more effectively assist the parents and guardians of children with disabilities to participate in the IEP process and more timely and cost effectively resolve disputes concerning a child’s special education services or program.

(b) On or before December 31, 2018, the State Department of Education shall report its findings and recommendations, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That:

(a) (1) On or before ~~December 31, 2017~~ July 1, 2018, the State Department of Education, in consultation with the Department of Budget and Management and the Department of Legislative Services, shall contract with a public or private entity to conduct

~~an independent~~ study of the individualized education program (IEP) process in the State, including the procedures relating to the identification, evaluation, and educational placement of a child, the provision of a free and appropriate education, and the dispute resolution procedures provided under § 8–413 of the Education Article.

(2) The entity that conducts the study shall seek input from special education teachers, special education advocates, and special education organizations.

(b) At a minimum, the study shall:

~~(1) review and assess how the State Department of Education staff, local school system staff, and other State agency staff comply with State and federal law governing the IEP process;~~

~~(2) review and assess how~~ local school systems spend their special education funds and allocate their teaching and family support services staff;

~~(3) (2)~~ review and assess the effectiveness of special education family support services provided by local school system staff members;

~~(4) (3)~~ review and assess how the State Department of Education can provide local school systems utilize technical assistance provided by the State Department of Education to local school systems to assist parents in understanding their rights and responsibilities in the IEP process;

(4) identify best practices for retaining special education teachers;

(5) identify and highlight the best practices currently utilized by the State Department of Education staff, local system staff, and other State agency staff as part of the IEP process in the State; and

(6) make recommendations for:

(i) ensuring that special education funds are being spent cost effectively;

(ii) ensuring that local school systems are effectively allocating their teaching and family support services staff to improve the education achievement of special education students;

(iii) clarifying and simplifying the IEP process to enable parents and guardians to more easily understand their rights and responsibilities in the process; and

(iv) modifying the administrative goals, objectives, and strategies of teachers and IEP teams to make them more efficient and cost effective in their delivery of

services to special education students, including potential reductions in caseloads and recordkeeping.

(c) The Governor shall include sufficient funds in the State budget for the appropriate fiscal years for the State Department of Education to cover the costs of conducting the study.

(d) On or before ~~December 31, 2018~~ July 1, 2019, the State Department of Education shall report the findings and recommendations of the study, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

~~SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2020.~~

~~SECTION 5. 3. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect June 1, 2017. Sections 2 and 3 of this Act It Sections 2 and 3 of this Act shall take effect June 1, 2017. They shall remain effective for a period of ~~2~~ 3 years and, at the end of May 31, ~~2019~~ 2020, with no further action required by the General Assembly, Sections 2 and 3 of this Act shall be abrogated and of no further force and effect.~~

~~SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect July 1, 2020.~~

Approved by the Governor, May 25, 2017.