

Chapter 739

(House Bill 850)

AN ACT concerning

**Schools, Prekindergarten Programs, and County Boards of Education –
Discrimination**

FOR the purpose of prohibiting county boards of education and certain schools and prekindergarten programs from taking certain discriminatory actions because of a person’s race, ethnicity, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability; authorizing a person alleging discrimination under this Act to file a complaint with the State Superintendent of Schools; requiring the State Superintendent, on receipt of a complaint, to take certain actions including providing notice of the complaint to certain parties, attempting to mediate an agreement, and issuing a decision if a mediation agreement is not reached; providing for the reopening of a complaint and for an appeal to the Office of Administrative Hearings; authorizing the State Superintendent to require the Comptroller to withhold funding from a program or school in certain circumstances; requiring certain schools and programs to publish a certain statement as the policy of the State in student handbooks; and generally relating to discrimination by schools, prekindergarten programs, and county boards of education.

BY repealing and reenacting, with amendments,
Article – Education
Section 2–303(b) and 4–108
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

BY adding to
Article – Education
Section 26–701 through 26–705 to be under the new subtitle “Subtitle 7.
Discrimination in Education”
Annotated Code of Maryland
(2018 Replacement Volume and 2021 Supplement)

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

Article – Education

2–303.

(b) (1) The State Superintendent shall enforce the provisions of:

- (i) This article that are within his jurisdiction; and
- (ii) The bylaws, rules, and regulations of the State Board.

(2) If an educational institution [or], A county board, **OR A NONPUBLIC PREKINDERGARTEN PROGRAM, OR NONPUBLIC SCHOOL SUBJECT TO THE REQUIREMENTS OF § 26-704 OF THIS ARTICLE** violates any of these provisions, the State Superintendent, by written notice, may require the State Comptroller to withhold from that institution [or], board, **PROGRAM, OR SCHOOL**:

- (i) All or any part of an appropriation made by the General Assembly; and
- (ii) All or any part of any other payment from funds budgeted by the State.

4-108.

Each county board shall:

(1) To the best of its ability carry out the applicable provisions of this article and the bylaws, rules, regulations, and policies of the State Board;

(2) Maintain throughout its county a reasonably uniform system of public schools that is designed to provide quality education and equal educational opportunity for all children;

(3) Subject to this article and to the applicable bylaws, rules, and regulations of the State Board, determine, with the advice of the county superintendent, the educational policies of the county school system; [and]

(4) Adopt, codify, and make available to the public bylaws, rules, and regulations not inconsistent with State law, for the conduct and management of the county public schools; **AND**

(5) ADOPT AND MAINTAIN A WRITTEN ANTIDISCRIMINATION POLICY FOR THE COUNTY SCHOOL SYSTEM THAT, IN ACCORDANCE WITH TITLE 26, SUBTITLE 7 OF THIS ARTICLE, PROHIBITS A SCHOOL FROM:

(I) DISCRIMINATING AGAINST ANY PERSON BECAUSE OF THE INDIVIDUAL'S RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY;

(II) REFUSING ENROLLMENT OF A PROSPECTIVE STUDENT, EXPELLING A CURRENT STUDENT, OR WITHHOLDING PRIVILEGES FROM ANY

INDIVIDUAL BECAUSE OF AN INDIVIDUAL’S RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY; AND

(iii) DISCIPLINING, INVOKING A PENALTY AGAINST, OR TAKING ANY OTHER RETALIATORY ACTION AGAINST A STUDENT OR PARENT OR GUARDIAN OF A STUDENT WHO FILES A COMPLAINT ALLEGING THAT THE SCHOOL DISCRIMINATED AGAINST THE STUDENT, REGARDLESS OF THE OUTCOME OF THE COMPLAINT.

SUBTITLE 7. DISCRIMINATION IN EDUCATION.

26-701.

IN THIS SUBTITLE, “RACE” HAS THE MEANING STATED IN § 20-101 OF THE STATE GOVERNMENT ARTICLE.

26-702.

THIS SUBTITLE DOES NOT APPLY TO:

(1) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX, A PREKINDERGARTEN PROGRAM OR SCHOOL THAT LIMITS, ~~AND CONTINUALLY SINCE THE TIME OF ITS ESTABLISHMENT HAS LIMITED,~~ ADMISSION TO STUDENTS OF ONLY ONE SEX;

(2) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF RELIGION, A NONPUBLIC PREKINDERGARTEN PROGRAM OR NONPUBLIC SCHOOL THAT IS AFFILIATED WITH A RELIGIOUS INSTITUTION ~~DECLINING TO INSTRUCT STUDENTS IN THE TENETS OF A RELIGION THAT IS DIFFERENT FROM THE RELIGION WITH WHICH THE PROGRAM OR SCHOOL IS AFFILIATED;~~

(I) PROVIDING INSTRUCTION ON THE RELIGIOUS BELIEFS OF THE RELIGION WITH WHICH THE PROGRAM OR SCHOOL IS AFFILIATED;

(II) DECLINING TO PROVIDE INSTRUCTION IN BELIEFS THAT ARE DIFFERENT FROM THE RELIGION WITH WHICH THE PROGRAM OR SCHOOL IS AFFILIATED;

(III) REQUIRING STUDENT ATTENDANCE AT RELIGIOUS EVENTS INHERENT TO THE RELIGION WITH WHICH THE PROGRAM OR SCHOOL IS AFFILIATED;

(IV) LIMITING ADMISSIONS TO OR HAVING A PREFERENCE IN ADMISSIONS FOR A STUDENT OF CERTAIN RELIGIOUS BELIEFS OR A STUDENT WHO

IS A MEMBER OR IS PART OF A FAMILY THAT IS A MEMBER OF THE RELIGIOUS INSTITUTION AFFILIATED WITH THE PROGRAM OR SCHOOL, IF THE PROGRAM OR SCHOOL HAS HAD THE LIMITATION OR PREFERENCE CONTINUALLY SINCE THE DATE ON WHICH THE PROGRAM OR SCHOOL WAS ESTABLISHED; OR

(V) GRANTING TUITION DISCOUNTS FOR A STUDENT OF CERTAIN RELIGIOUS BELIEFS OR WHO IS A MEMBER OR IS PART OF A FAMILY THAT IS A MEMBER OF THE RELIGIOUS INSTITUTION AFFILIATED WITH THE PROGRAM OR SCHOOL IF THE PRACTICE OF GRANTING THE DISCOUNTS WAS ESTABLISHED THE LATER OF BEFORE JULY 1, 2022, OR SINCE THE DATE ON WHICH THE PROGRAM OR SCHOOL WAS ESTABLISHED; AND

(3) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF DISABILITY, A NONPUBLIC PREKINDERGARTEN PROGRAM OR NONPUBLIC SCHOOL THAT ~~PROVIDES A STUDENT WITH A REASONABLE ACCOMMODATION UNDER FEDERAL LAW~~ IS IN COMPLIANCE WITH § 504 OF THE FEDERAL REHABILITATION ACT OF 1973 OR THE FEDERAL AMERICANS WITH DISABILITIES ACT, AS APPLICABLE.

26-703.

THIS SUBTITLE DOES NOT REQUIRE A NONPUBLIC PREKINDERGARTEN PROGRAM OR NONPUBLIC SCHOOL THAT IS RELIGIOUSLY AFFILIATED TO ENROLL, RETAIN, OR EXTEND PRIVILEGES TO A STUDENT OR PROSPECTIVE STUDENT WHO DOES NOT MEET THE USUAL AND REGULAR QUALIFICATIONS, REQUIREMENTS, AND STANDARDS OF THE PROGRAM OR SCHOOL OR TO ADOPT ANY RULE, REGULATION, OR POLICY THAT CONFLICTS WITH THE PROGRAM OR SCHOOL'S RELIGIOUS OR MORAL TEACHINGS, PROVIDED THAT THE DENIAL, RULE, REGULATION, OR POLICY IS NOT BASED ON DISCRIMINATION ON THE GROUNDS OF RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.

26-704.

(A) THIS SECTION APPLIES TO:

- (1) A COUNTY BOARD;
- (2) A PUBLIC PREKINDERGARTEN PROGRAM;
- (3) A PUBLIC PRIMARY OR SECONDARY SCHOOL;

(4) A NONPUBLIC PREKINDERGARTEN PROGRAM THAT RECEIVES STATE FUNDS; AND

(5) A NONPUBLIC PRIMARY OR SECONDARY SCHOOL THAT RECEIVES STATE FUNDS.

(B) AN ENTITY LISTED UNDER SUBSECTION (A) OF THIS SECTION MAY NOT:

(1) DISCRIMINATE AGAINST A CURRENT STUDENT, A PROSPECTIVE STUDENT, OR THE PARENT OR GUARDIAN OF A CURRENT OR PROSPECTIVE STUDENT ON THE BASIS OF RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY;

(2) REFUSE ENROLLMENT OF A PROSPECTIVE STUDENT, EXPEL A CURRENT STUDENT, OR WITHHOLD PRIVILEGES FROM A CURRENT STUDENT, A PROSPECTIVE STUDENT, OR THE PARENT OR GUARDIAN OF A CURRENT OR PROSPECTIVE STUDENT BECAUSE OF AN INDIVIDUAL'S RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY; OR

(3) DISCIPLINE, INVOKE A PENALTY AGAINST, OR TAKE ANY OTHER RETALIATORY ACTION AGAINST A STUDENT OR PARENT OR GUARDIAN OF A STUDENT WHO FILES A COMPLAINT ALLEGING THAT THE PROGRAM OR SCHOOL DISCRIMINATED AGAINST THE STUDENT, REGARDLESS OF THE OUTCOME OF THE COMPLAINT.

(C) AN ENTITY LISTED UNDER SUBSECTION (A) OF THIS SECTION SHALL PRINT IN ITS STUDENT HANDBOOK THE FOLLOWING STATEMENT:

“IT IS THE POLICY OF THE STATE OF MARYLAND THAT ALL PUBLIC AND PUBLICLY FUNDED SCHOOLS AND SCHOOL PROGRAMS OPERATE IN COMPLIANCE WITH:

(1) TITLE VI OF THE FEDERAL CIVIL RIGHTS ACT OF 1964; AND

(2) TITLE 26, SUBTITLE 7 OF THE EDUCATION ARTICLE OF THE MARYLAND CODE, WHICH STATES THAT PUBLIC AND PUBLICLY FUNDED SCHOOLS AND PROGRAMS MAY NOT:

(I) DISCRIMINATE AGAINST A CURRENT STUDENT, A PROSPECTIVE STUDENT, OR THE PARENT OR GUARDIAN OF A CURRENT OR PROSPECTIVE STUDENT ON THE BASIS OF RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY;

(II) REFUSE ENROLLMENT OF A PROSPECTIVE STUDENT, EXPEL A CURRENT STUDENT, OR WITHHOLD PRIVILEGES FROM A CURRENT STUDENT, A PROSPECTIVE STUDENT, OR THE PARENT OR GUARDIAN OF A CURRENT OR PROSPECTIVE STUDENT BECAUSE OF AN INDIVIDUAL'S RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN, MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY; OR

(III) DISCIPLINE, INVOKE A PENALTY AGAINST, OR TAKE ANY OTHER RETALIATORY ACTION AGAINST A STUDENT OR PARENT OR GUARDIAN OF A STUDENT WHO FILES A COMPLAINT ALLEGING THAT THE PROGRAM OR SCHOOL DISCRIMINATED AGAINST THE STUDENT, REGARDLESS OF THE OUTCOME OF THE COMPLAINT.”.

26-705.

(A) (1) A PERSON ALLEGING DISCRIMINATION IN VIOLATION OF § 26-704 OF THIS SUBTITLE MAY FILE A COMPLAINT WITH THE STATE SUPERINTENDENT.

(2) A COMPLAINT FILED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL SPECIFY THE RELIEF OR REMEDY REQUESTED.

(3) A PARENT OR GUARDIAN OF A MINOR ALLEGING DISCRIMINATION MAY SUBMIT A COMPLAINT UNDER THIS SUBSECTION ON BEHALF OF THE MINOR.

(B) ON RECEIPT OF A COMPLAINT UNDER SUBSECTION (A) OF THIS SECTION, THE STATE SUPERINTENDENT SHALL PROVIDE NOTICE OF THE COMPLAINT TO:

(1) THE PROGRAM OR SCHOOL THAT IS THE SUBJECT OF THE COMPLAINT; AND

(2) THE COUNTY BOARD FOR THE COUNTY IN WHICH THE PUBLIC PREKINDERGARTEN PROGRAM OR PUBLIC PRIMARY OR SECONDARY SCHOOL IS LOCATED.

(C) WITHIN 30 DAYS OF RECEIVING A NOTICE UNDER SUBSECTION (B) OF THIS SECTION, THE PROGRAM OR SCHOOL AND, IF APPROPRIATE, COUNTY BOARD SHALL SUBMIT A RESPONSE TO THE STATE SUPERINTENDENT.

(D) (1) (i) THE STATE SUPERINTENDENT SHALL ATTEMPT TO MEDIATE AN AGREEMENT BETWEEN THE COMPLAINANT AND RESPONDENT TO REMEDY AND ELIMINATE THE DISCRIMINATION.

(II) IF MEDIATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH RESULTS IN AN AGREEMENT BETWEEN THE PARTIES, THE STATE SUPERINTENDENT SHALL ISSUE TO BOTH PARTIES A WRITTEN STATEMENT OF THE MEDIATION FINDINGS AND AGREEMENT, INCLUDING THE TIMELINE WITHIN WHICH ANY AGREED ACTIONS MUST BE TAKEN.

(2) (I) IF A MEDIATION AGREEMENT IS NOT REACHED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN 60 DAYS AFTER THE COMPLAINT IS FILED, THE STATE SUPERINTENDENT SHALL ISSUE A DECISION ON THE COMPLAINT TO BOTH PARTIES.

(II) A DECISION ISSUED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:

- 1. BE IN WRITING;**
- 2. CONTAIN ANY FINDINGS OF FACT DETERMINED BY THE STATE SUPERINTENDENT; AND**
- 3. SPECIFY ANY ACTIONS NECESSARY TO REMEDY OR ELIMINATE THE DISCRIMINATION, INCLUDING THE TIMELINE WITHIN WHICH THE ACTIONS MUST BE TAKEN.**

(III) IF THE STATE SUPERINTENDENT FINDS THAT A COUNTY BOARD, PROGRAM, OR SCHOOL VIOLATED § 26-704 OF THIS SUBTITLE, A DECISION ISSUED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY REQUIRE THE COMPTROLLER TO WITHHOLD FUNDING FROM THE PROGRAM OR SCHOOL IN AN AMOUNT DETERMINED BY THE STATE SUPERINTENDENT IN ACCORDANCE WITH § 2-303(B) OF THIS ARTICLE.

(E) (1) A COMPLAINANT ALLEGING THAT A COUNTY BOARD, PROGRAM, OR SCHOOL DID NOT REMEDY OR ELIMINATE THE DISCRIMINATION AS AGREED OR REQUIRED UNDER SUBSECTION (D) OF THIS SECTION MAY REOPEN A COMPLAINT MADE UNDER THIS SECTION WITHOUT:

(I) FILING A NEW COMPLAINT UNDER SUBSECTION (A) OF THIS SECTION; OR

(II) ENGAGING IN MEDIATION UNDER SUBSECTION (D)(1) OF THIS SECTION.

(2) IF THE STATE SUPERINTENDENT FINDS THAT A COUNTY BOARD, PROGRAM, OR SCHOOL DID NOT REMEDY OR ELIMINATE THE DISCRIMINATION AS

AGREED OR REQUIRED UNDER SUBSECTION (D) OF THIS SECTION, THE STATE SUPERINTENDENT SHALL ISSUE AN UPDATED WRITTEN DECISION TO BOTH PARTIES REQUIRING THE COMPTROLLER TO WITHHOLD FUNDING FROM THE PROGRAM OR SCHOOL IN AN AMOUNT DETERMINED BY THE STATE SUPERINTENDENT IN ACCORDANCE WITH § 2-303(B) OF THIS ARTICLE.

(F) A COMPLAINANT OR RESPONDENT MAY APPEAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS:

(1) WITHIN 10 DAYS AFTER RECEIVING A DECISION ISSUED BY THE STATE SUPERINTENDENT UNDER SUBSECTION (D)(2) OF THIS SECTION; OR

(2) IF THE STATE SUPERINTENDENT DOES NOT ISSUE A DECISION AS REQUIRED UNDER SUBSECTION (D)(2) OF THIS SECTION, WITHIN 10 DAYS AFTER THE DATE BY WHICH THE DECISION SHOULD HAVE BEEN ISSUED.

(G) (1) AN APPEAL HEARING SHALL BE HELD IN THE COUNTY WHERE THE ALLEGED DISCRIMINATORY ACT OCCURRED.

(2) IF, AFTER REVIEWING ALL OF THE EVIDENCE, THE ADMINISTRATIVE LAW JUDGE FINDS THAT THE RESPONDENT HAS ENGAGED IN DISCRIMINATION, THE ADMINISTRATIVE LAW JUDGE SHALL:

(I) ISSUE A DECISION AND ORDER STATING THE JUDGE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW; AND

(II) ISSUE AND CAUSE TO BE SERVED ON THE RESPONDENT AN ORDER REQUIRING THE RESPONDENT TO:

1. CEASE AND DESIST FROM ENGAGING IN THE DISCRIMINATION; AND

2. TAKE AFFIRMATIVE ACTION TO EFFECTUATE THE PURPOSES OF THIS SUBTITLE.

(H) THE STATE BOARD, IN CONSULTATION WITH THE STATE SUPERINTENDENT, SHALL ADOPT REGULATIONS TO ESTABLISH PROCEDURES FOR COMPLAINT PROCESSING, MEDIATION, AND ENFORCEMENT AND OTHERWISE CARRY OUT THE REQUIREMENTS OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.