

HOUSE BILL 381

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3lr1725

By: **Delegates Attar and Guyton**

Introduced and read first time: January 26, 2023

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City and Baltimore County – Due Process Proceedings for Children**
3 **With Disabilities – Burden of Proof**

4 FOR the purpose of requiring the Baltimore City Board of School Commissioners or the
5 Baltimore County Board of Education, as applicable, to bear the burden of proof in
6 due process proceedings that initiate from a due process complaint regarding the
7 provision of special education services or a program for a child with disabilities in
8 Baltimore City or Baltimore County except under certain circumstances; and
9 generally relating to the burden of proof in due process proceedings and the
10 Baltimore City Board of School Commissioners and the Baltimore County Board of
11 Education.

12 BY repealing and reenacting, with amendments,

13 Article – Education

14 Section 8-413

15 Annotated Code of Maryland

16 (2022 Replacement Volume)

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

19 **Article – Education**

20 8-413.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



6 (4) "Federal law" means the Individuals with Disabilities Education Act
7 and regulations adopted under that Act.

8 (5) "Parent" means:

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

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

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

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

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

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

10 (2) A resolution session agreement shall be in writing and enforceable in a
11 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.

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

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

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

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

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

32 (ii) Meets the requirements of a due process hearing officer in
33 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.

22 (IV) NOTHING IN THIS PARAGRAPH IS INTENDED TO CHANGE
23 THE FOLLOWING UNDER FEDERAL OR STATE LAW:

24 1. RECORD-KEEPING REQUIREMENTS; OR

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

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

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

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

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

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

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

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

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

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

25 (ii) Open the hearing to the public.

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

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

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

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

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
33 1, 2023. It shall remain effective for a period of 3 years and, at the end of June 30, 2026,
34 this Act, with no further action required by the General Assembly, shall be abrogated and
35 of no further force and effect.