

# SENATE BILL 926

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CF HB 294

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By: **Senator A. Washington**

Introduced and read first time: February 16, 2023

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **County Boards of Education – Due Process Proceedings for Children With**  
3 **Disabilities – Burden of Proof**

4 FOR the purpose of requiring a county board of education to bear the burden of proof in due  
5 process proceedings that initiate from a due process complaint regarding the  
6 provision of special education services or a program for a child with disabilities in  
7 the county in which the county board is located, except under certain circumstances;  
8 and generally relating to the burden of proof in due process proceedings for children  
9 with disabilities and county boards of education.

10 BY repealing and reenacting, with amendments,  
11 Article – Education  
12 Section 8–413  
13 Annotated Code of Maryland  
14 (2022 Replacement Volume)

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  
24 hearing filed by the parent of a child with a disability, as defined in § 8–412 of this subtitle,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or a public agency, to resolve a dispute over the identification, evaluation, educational  
2 placement, or the provision of free appropriate public education, in accordance with federal  
3 law.

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

6 (5) "Parent" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30                   (ii) Meets the requirements of a due process hearing officer in  
31 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 (8) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
8 PARAGRAPH, A COUNTY BOARD OF EDUCATION SHALL HAVE THE BURDEN OF PROOF  
9 IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS SECTION THAT INITIATES  
10 FROM A DUE PROCESS COMPLAINT REGARDING THE PROVISION OF SPECIAL  
11 EDUCATION SERVICES OR A PROGRAM FOR A CHILD WITH DISABILITIES IN THE  
12 COUNTY IN WHICH THE COUNTY BOARD IS LOCATED.

13 (II) IF A STUDENT OTHERWISE WOULD BE REQUIRED TO  
14 ENROLL IN A PUBLIC SCHOOL IN A COUNTY BUT A PARENT MADE A UNILATERAL  
15 PLACEMENT OF A STUDENT IN A NONPUBLIC SCHOOL, A PARENT SEEKING  
16 REIMBURSEMENT FOR THE STUDENT'S NONPUBLIC SCHOOL TUITION SHALL HAVE  
17 THE BURDEN OF PROOF IN A DUE PROCESS PROCEEDING CONDUCTED UNDER THIS  
18 SECTION.

19 (III) NOTHING IN THIS PARAGRAPH IS INTENDED TO CHANGE  
20 THE FOLLOWING UNDER FEDERAL OR STATE LAW:

21 1. RECORD-KEEPING REQUIREMENTS; AND

22 2. WHAT CONSTITUTES A FREE APPROPRIATE PUBLIC  
23 EDUCATION.

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

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

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

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

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

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

6 (2) The provisions of the Family Educational Rights and Privacy Act and  
7 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

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

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

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

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

22 (ii) Open the hearing to the public.

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

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

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

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

4 (iii) Caused a deprivation of educational benefits.

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

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

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

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

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

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

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