

SENATE BILL 98

D5, F5, F1

(PRE-FILED)

1lr1146
CF HB 155

By: **Senator McCray**

Requested: October 26, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **County Boards and Public and Nonpublic Prekindergarten Programs and**
3 **Schools – Discrimination – Prohibition**

4 FOR the purpose of prohibiting a county board, public prekindergarten program, nonpublic
5 prekindergarten program that receives State funds, public primary or secondary
6 school, or nonpublic primary or secondary school that receives State funds from
7 discriminating against a person because of certain factors, refusing enrollment of,
8 expelling, or withholding privileges from any student or prospective student because
9 of certain factors, and from taking certain retaliatory actions against a student or
10 parent or guardian of a student who files a complaint alleging certain discrimination;
11 authorizing a certain person to file a certain complaint with the State
12 Superintendent of Schools; requiring the complaint to specify certain information;
13 authorizing a certain parent or guardian to file a certain complaint on behalf of a
14 minor; requiring the State Superintendent, on receipt of a certain complaint, to
15 provide notice of the complaint to certain parties; requiring the parties to submit a
16 certain response within a certain period of time; requiring the State Superintendent
17 to attempt to mediate a certain agreement; requiring the State Superintendent to
18 issue a certain statement of the mediation findings and agreement in a certain
19 manner under certain circumstances; requiring the State Superintendent to issue a
20 certain decision within a certain period of time under certain circumstances;
21 requiring the decision to be in writing and contain certain information; authorizing
22 the State Superintendent to impose a certain remedy under certain circumstances;
23 authorizing a complainant to reopen a certain complaint under certain
24 circumstances without taking certain actions; requiring the State Superintendent to
25 impose a certain remedy under certain circumstances; authorizing a complainant or
26 respondent to appeal to the Office of Administrative Hearings within a certain period
27 of time; requiring an appeal hearing to be held in a certain county; requiring an
28 administrative law judge in a certain appeal to issue a certain decision and order
29 under certain circumstances; requiring the State Board of Education, in consultation
30 with the State Superintendent, to adopt certain regulations; authorizing the State

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Superintendent to enforce certain provisions of law in a certain manner; requiring each county board of education and certain nonpublic prekindergarten programs and nonpublic primary and secondary schools to develop and maintain a certain antidiscrimination policy; defining a certain term; providing for the application of certain provisions of this Act; and generally relating to discrimination by county boards and in prekindergarten programs and schools.

BY repealing and reenacting, with amendments,
Article – Education
Section 2–303(b) and 4–108
Annotated Code of Maryland
(2018 Replacement Volume and 2020 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 2020 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 § 26–703 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, EXPELLING, OR WITHHOLDING PRIVILEGES FROM ANY STUDENT OR PROSPECTIVE STUDENT BECAUSE OF THE 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.

THIS SUBTITLE DOES NOT APPLY TO:

(1) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX, A NONPUBLIC PREKINDERGARTEN PROGRAM OR NONPUBLIC SCHOOL THAT LIMITS,

1 AND CONTINUALLY SINCE THE TIME OF ITS ESTABLISHMENT HAS LIMITED,
2 ADMISSION TO STUDENTS OF ONLY ONE SEX;

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

8 (3) WITH RESPECT TO DISCRIMINATION ON THE BASIS OF
9 DISABILITY, A NONPUBLIC PREKINDERGARTEN PROGRAM OR NONPUBLIC SCHOOL
10 THAT PROVIDES A STUDENT WITH A REASONABLE ACCOMMODATION UNDER
11 FEDERAL LAW.

12 **26-702.**

13 (A) IN THIS SECTION, "RACE" HAS THE MEANING STATED IN § 20-101 OF
14 THE STATE GOVERNMENT ARTICLE.

15 (B) THIS SUBTITLE DOES NOT REQUIRE A NONPUBLIC PREKINDERGARTEN
16 PROGRAM OR NONPUBLIC SCHOOL TO ENROLL, RETAIN, OR EXTEND PRIVILEGES TO
17 A STUDENT OR PROSPECTIVE STUDENT WHO DOES NOT MEET THE USUAL AND
18 REGULAR QUALIFICATIONS, REQUIREMENTS, AND STANDARDS OF THE PROGRAM OR
19 SCHOOL, PROVIDED THAT THE DENIAL IS NOT BASED ON DISCRIMINATION ON THE
20 GROUNDS OF RACE, ETHNICITY, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN,
21 MARITAL STATUS, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.

22 **26-703.**

23 (A) THIS SECTION APPLIES TO:

24 (1) A COUNTY BOARD;

25 (2) A PUBLIC PREKINDERGARTEN PROGRAM;

26 (3) A PUBLIC PRIMARY OR SECONDARY SCHOOL;

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

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

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

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

(2) REFUSE ENROLLMENT OF, EXPEL, OR WITHHOLD PRIVILEGES FROM ANY STUDENT OR PROSPECTIVE STUDENT BECAUSE OF THE 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.

26-704.

(A) (1) A PERSON ALLEGING DISCRIMINATION IN VIOLATION OF § 26-703 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 § 26-703 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.

26-705.

1 **EACH NONPUBLIC PREKINDERGARTEN PROGRAM THAT RECEIVES STATE**
2 **FUNDS AND NONPUBLIC PRIMARY OR SECONDARY SCHOOL THAT RECEIVES STATE**
3 **FUNDS SHALL DEVELOP AND MAINTAIN A WRITTEN ANTIDISCRIMINATION POLICY**
4 **THAT PROHIBITS DISCRIMINATION AS DESCRIBED UNDER § 26-703 OF THIS**
5 **SUBTITLE.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
7 1, 2021.