

HOUSE BILL 1139

Unofficial Copy
F1

1998 Regular Session
(8lr6168)

ENROLLED BILL

-- Ways and Means/Economic and Environmental Affairs --

Introduced by **Chairman, Ways and Means Committee (Departmental - Education)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Education of Children with Disabilities**

3 FOR the purpose of altering certain provisions of law relating to the education of
4 children with disabilities to be in conformance with certain provisions of federal
5 law; ensuring that the identification, evaluation, development of an
6 individualized education program, placement, and discipline of a child with a
7 disability is conducted in conformance with the 1997 Amendments to the
8 Individuals with Disabilities Education Act; repealing certain obsolete
9 provisions; defining certain terms related to the education of children with
10 disabilities consistent with federal law; revising certain terminology consistent
11 with federal law; ~~altering~~ *clarifying* a certain funding level requirement; making
12 certain technical alterations; and generally relating to the education of children
13 with disabilities.

14 BY repealing and reenacting, with amendments,
15 Article - Education

1 Section 7-305, 8-307, 8-312, 8-401, 8-402, 8-403, 8-404, 8-405, 8-406, 8-407,
2 8-410, 8-411, ~~and 8-412, and 8-414~~
3 Annotated Code of Maryland
4 (1997 Replacement Volume and 1997 Supplement)

5 BY repealing
6 Article - Education
7 Section 8-408, ~~and 8-409, and 8-414~~
8 Annotated Code of Maryland
9 (1997 Replacement Volume and 1997 Supplement)

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

12 **Article - Education**

13 7-305.

14 (a) (1) In accordance with the rules and regulations of the county board,
15 each principal of a public school may suspend for cause, for not more than 10 school
16 days, any student in the school who is under the direction of the principal.

17 (2) The student or his parent or guardian promptly shall be given a
18 conference with the principal and any other appropriate personnel during the
19 suspension period.

20 (b) At the request of a principal, a county superintendent may suspend a
21 student for more than 10 school days or expel him.

22 (c) (1) If a principal finds that a suspension of more than 10 school days or
23 expulsion is warranted, he immediately shall report the matter in writing to the
24 county superintendent.

25 (2) The county superintendent or his designated representative promptly
26 shall make a thorough investigation of the matter.

27 (3) If after the investigation the county superintendent finds that a
28 longer suspension or expulsion is warranted, he or his designated representative
29 promptly shall arrange a conference with the student and his parent or guardian.

30 (4) If after the conference the county superintendent or his designated
31 representative finds that a suspension of more than 10 school days or expulsion is
32 warranted, the student or his parent or guardian may:

33 (i) Appeal to the county board within 10 days after the
34 determination;

1 (ii) Be heard before the county board, its designated committee, or
2 a hearing examiner, in accordance with the procedures established under § 6-203 of
3 this article; and

4 (iii) Bring counsel and witnesses to the hearing.

5 (5) Unless a public hearing is requested by the parent or guardian of the
6 student, a hearing shall be held out of the presence of all individuals except those
7 whose presence is considered necessary or desirable by the board.

8 (6) The appeal to the county board does not stay the decision of the
9 county superintendent.

10 (7) The decision of the county board is final.

11 (d) (1) Any student expelled or suspended from school:

12 (i) Shall remain away from the school premises during those hours
13 each school day when the school the student attends is in session; and

14 (ii) May not participate in school sponsored activities.

15 (2) The expelled or suspended student may return to the school premises
16 during the prohibited hours only for attendance at a previously scheduled
17 appointment, and if the student is a minor then only if accompanied by his parent or
18 guardian.

19 (3) Any person who violates paragraph (1) or (2) of this subsection is
20 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 for
21 each violation.

22 (4) (i) If a student has been suspended or expelled, the principal or a
23 designee of the principal may not return the student to the classroom without
24 conferring with the teacher who referred the student to the principal, if the student
25 was referred by a teacher, other teachers as appropriate, other appropriate school
26 personnel, the student, and the student's parent or guardian.

27 (ii) If the disruptive behavior results in action less than suspension,
28 the principal or a designee of the principal shall confer with the teacher who referred
29 the student to the principal prior to returning the student to that teacher's classroom.

30 (5) A county superintendent may deny attendance to any student who is
31 currently expelled from another school system for a length of time equal to that
32 expulsion.

33 (6) A school system shall forward information to another school system
34 relating to the discipline of a student, including information on an expulsion of the
35 student, on receipt of the request for information.

1 (e) (1) In this subsection, "firearm" means a firearm as defined in 18 U.S.C.
2 § 921.

3 (2) Except as provided in paragraph (3) of this subsection, if the county
4 superintendent or the superintendent's designated representative finds that a
5 student has brought a firearm onto school property, the student shall be expelled for
6 a minimum of 1 year.

7 (3) The county superintendent may specify, on a case by case basis, a
8 shorter period of expulsion or an alternative educational setting, if alternative
9 educational settings have been approved by the county board, for a student who has
10 brought a firearm onto school property.

11 [(4) (i) Except as provided in subparagraph (iii) of this paragraph, if
12 the proceedings conducted under this subsection involve an identified student with
13 disabilities who is determined to have brought a firearm to school, the student may be
14 placed in an interim alternative educational setting in accordance with State law
15 procedures, for not more than the maximum number of days specified in the federal
16 Individuals with Disabilities Education Act, 20 U.S.C. 1415(e) or the Improving
17 America's Schools Act.

18 (ii) The interim alternative educational setting shall be decided by
19 the Admission, Review, and Dismissal Committee.

20 (iii) If a parent or guardian of an identified student with disabilities
21 requests a due process hearing, the student shall remain in the alternative
22 educational setting described above during the pendency of any proceedings
23 conducted under this subsection, unless the parents and the local school system agree
24 otherwise.

25 (iv) This subsection does not supersede the provisions of § 14601 of
26 the federal Elementary and Secondary Education Act if the conduct of the identified
27 student with disabilities is unrelated to the student's disability, except that, in those
28 circumstances, the procedures under State and federal law shall be followed.]

29 [(5)] (4) The State Board shall adopt regulations to implement this
30 subsection.

31 [(f) (1) For any other nonfirearm disciplinary action a student with a
32 disability may not be removed from the student's current educational placement for
33 more than 10 school days each school year unless:

34 (i) The Admission, Review, and Dismissal Committee has
35 determined that the conduct which prompted the disciplinary action was not a
36 manifestation of the student's disability and the student's parents have not appealed
37 the determination;

38 (ii) The Admission, Review, and Dismissal Committee has
39 determined in accordance with regulations adopted by the State Board of Education
40 that the cumulative effect of 2 or more suspensions totaling more than 10 school days

1 each school year does not create a pattern of exclusion that significantly impacts upon
2 the student's educational program and the student's parents have not appealed the
3 determination;

4 (iii) The student's parents have agreed to an alternative or interim
5 educational placement; or

6 (iv) 1. The maintenance of the student's current educational
7 placement is substantially likely to result in injury to the student or to others;

8 2. The student's parents have not agreed to an alternative or
9 interim educational placement; and

10 3. A court of competent jurisdiction has temporarily enjoined
11 the student from remaining in the student's current educational placement.

12 (2) In injunctive proceedings under paragraph (1)(iv)3 of this subsection,
13 there is a presumption in favor of maintaining the student's current educational
14 placement. The county superintendent or the superintendent's designated
15 representative may overcome this presumption by showing that maintaining the
16 student's current educational placement is substantially likely to result in injury
17 either to the student or to others.

18 (3) Whenever a student has been enjoined from attending the student's
19 current educational placement under paragraph (1)(iv)3 of this subsection, the county
20 superintendent shall ensure that the student continues to receive appropriate
21 educational and related services to the extent practicable.]

22 (F) THE DISCIPLINE OF A CHILD WITH A DISABILITY, INCLUDING THE
23 SUSPENSION, EXPULSION, OR INTERIM ALTERNATIVE PLACEMENT OF THE CHILD
24 FOR DISCIPLINARY REASONS, SHALL BE CONDUCTED IN CONFORMANCE WITH THE
25 REQUIREMENTS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF THE
26 UNITED STATES CODE.

27 (g) (1) This subsection does not apply if the student is referred to the
28 Department of Juvenile Justice.

29 (2) If a student violates a State or local law or regulation and during or
30 as a result of the commission of that violation damaged, destroyed, or substantially
31 decreased the value of school property or property of another that was on school
32 property at the time of the violation, as part of a conference on the matter with the
33 student, the student's parent or guardian and any other appropriate person, the
34 principal shall require the student or the student's parent to make restitution.

35 (3) The restitution may be in the form of monetary restitution not to
36 exceed the lesser of the fair market value of the property or \$2,500, or the student's
37 assignment to a school work project, or both.

1 8-307.

2 (a) If the Maryland School for the Blind refuses to admit a child or dismisses
3 a child, a parent or guardian of the child may make a written request to the [State
4 Board] OFFICE OF ADMINISTRATIVE HEARINGS that a review be conducted to
5 determine if the decision was appropriate.

6 (b) [(1) After it receives a request for review, the State Board shall establish
7 a hearing board of at least three qualified individuals who are knowledgeable in the
8 fields that are significant to the educational review of the child.] A REVIEW SHALL BE
9 CONDUCTED PURSUANT TO THE PROVISIONS OF § 8-413 OF THIS TITLE.

10 [(2) An individual may not be a member of the hearing board if he:

11 (i) Is an employee of the Maryland School for the Blind; or

12 (ii) Has an interest that conflicts with his objectivity in the hearing.

13 (3) A member of the hearing board is entitled to a reasonable fee and
14 expenses as established by the State Board.

15 (c) In accordance with the bylaws of the State Board and applicable federal
16 law or regulation and after a review of the education records of the child, the hearing
17 board may dismiss any request for review.

18 (d) The hearing board:

19 (1) Shall conduct the review in accordance with bylaws adopted by the
20 State Board that are consistent with this section and any applicable federal law;

21 (2) May require a complete and independent diagnosis, evaluation, and
22 prescription of educational programs for the child to be conducted by qualified
23 persons, the cost of which shall be paid by the State Board;

24 (3) May hear any testimony that it considers relevant;

25 (4) Shall make its decision within the time required by the bylaws of the
26 State Board and applicable federal law or regulations; and

27 (5) Subject to the standards adopted and approved under § 8-306 of this
28 subtitle, shall affirm, modify, or reject the decision under review.

29 (e) (1) The Maryland School for the Blind shall provide the educational
30 records of the child that the hearing board requires.

31 (2) The State Board shall require the Maryland School for the Blind to
32 carry out the decision of the hearing board.

33 (f) (1) The circuit court for the county in which the child resides shall
34 review, on petition:

1 (i) The decision of the hearing board; or
2 (ii) The decision of the Maryland School for the Blind if a hearing
3 board decision is not made within the time required by the bylaws of the State Board
4 and applicable federal law or regulations.

5 (2) Any appeal or review under this section that is brought before a
6 circuit court shall be decided as soon as practicable.]

7 8-401.

8 (a) (1) In this subtitle[,] the following words have the meanings indicated.

9 [(1) "Handicapped child" means a child who has been determined through
10 appropriate assessment as having temporary or long-term special educational needs
11 arising from cognitive, emotional, or physical factors, or any combination of these,
12 and whose ability to meet general educational objectives is impaired to a degree
13 whereby the services available in the general education program are inadequate in
14 preparing one to achieve his educational potential.]

15 [(2) "Special educational services" means the educational services
16 necessary to assure that all handicapped children are given the opportunity to reach
17 appropriate levels of knowledge and learning skills consistent with their potential
18 and includes the full range of these services, including special equipment, therapeutic
19 treatments ancillary to education, and transportation, whether provided as part of or
20 in addition to regular classroom placement or in separate public or private classes or
21 facilities.]

22 (2) "CHILD WITH A DISABILITY" MEANS A CHILD WHO HAS BEEN
23 DETERMINED THROUGH APPROPRIATE ASSESSMENT AS HAVING AUTISM,
24 DEAF-BLINDNESS, HEARING IMPAIRMENT, INCLUDING DEAFNESS, EMOTIONAL
25 DISTURBANCE, MENTAL RETARDATION, MULTIPLE DISABILITIES, ORTHOPEDIC
26 IMPAIRMENT, OTHER HEALTH IMPAIRMENT, SPECIFIC LEARNING DISABILITY,
27 SPEECH OR LANGUAGE IMPAIRMENT, TRAUMATIC BRAIN INJURY, VISUAL
28 IMPAIRMENT, INCLUDING BLINDNESS, AND WHO BECAUSE OF THAT IMPAIRMENT
29 NEEDS SPECIAL EDUCATION AND RELATED SERVICES.

30 (3) "FREE APPROPRIATE PUBLIC EDUCATION" MEANS SPECIAL
31 EDUCATION AND RELATED SERVICES THAT:

32 (I) ARE PROVIDED AT PUBLIC EXPENSE, UNDER PUBLIC
33 SUPERVISION AND DIRECTION, AT NO COST TO THE PARENTS;

34 (II) MEET THE STANDARDS OF THE STATE BOARD REGULATIONS
35 AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. 1400 ET SEQ.
36 1997);

37 (III) INCLUDES PRESCHOOL, ELEMENTARY, AND SECONDARY
38 EDUCATION; AND

1 (IV) ARE PROVIDED IN CONFORMANCE WITH THE REQUIREMENTS
2 OF THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM.

3 ~~(4) "SPECIAL EDUCATION SERVICES" MEANS SPECIALLY DESIGNED~~
4 ~~INSTRUCTION, TO ADDRESS THE UNIQUE NEEDS OF THE CHILD WITH A DISABILITY~~
5 ~~THAT RESULT FROM THE CHILD'S DISABILITY AND TO ENSURE ACCESS IN THE~~
6 ~~GENERAL CURRICULUM SO THAT HE CAN MEET THE EDUCATIONAL STANDARDS~~
7 ~~WITHIN THE JURISDICTION OF THE LOCAL SCHOOL SYSTEM THAT:~~

8 ~~(I) APPLY TO ALL CHILDREN;~~

9 ~~(II) INCLUDES INSTRUCTION IN PHYSICAL EDUCATION;~~

10 ~~(III) INCLUDES VOCATIONAL EDUCATION, IF IT CONSISTS OF~~
11 ~~SPECIALLY DESIGNED INSTRUCTION; AND~~

12 ~~(IV) INCLUDES RELATED SERVICE, IF THE SERVICE IS NECESSARY~~
13 ~~FOR THE CHILD WITH A DISABILITY TO BENEFIT FROM SPECIAL EDUCATION.~~

14 (4) "SPECIAL EDUCATION" MEANS SPECIALLY DESIGNED INSTRUCTION,
15 AT NO COST TO PARENTS, TO MEET THE UNIQUE NEEDS OF A CHILD WITH A
16 DISABILITY, INCLUDING:

17 (I) INSTRUCTION IN THE CLASSROOM, IN THE HOME, IN
18 HOSPITALS AND INSTITUTIONS, AND IN OTHER SETTINGS; AND

19 (II) INSTRUCTION IN PHYSICAL EDUCATION.

20 (5) (I) "RELATED SERVICES" MEANS TRANSPORTATION AND SUCH
21 DEVELOPMENTAL, CORRECTIVE, AND OTHER SUPPORTIVE SERVICES AS MAY BE
22 REQUIRED TO ASSIST A CHILD WITH A DISABILITY TO BENEFIT FROM SPECIAL
23 EDUCATION.

24 (II) "RELATED SERVICES" INCLUDES THE EARLY IDENTIFICATION
25 AND ASSESSMENT OF DISABLING CONDITIONS IN CHILDREN.

26 (b) In this subtitle[,] the domicile of a [school-age] child WITH A DISABILITY
27 is the county in which the parent or guardian who has legal custody of the child is
28 domiciled.

29 8-402.

30 (a) (1) A [handicapped student] CHILD WITH A DISABILITY who has been
31 placed with an employer in an unpaid work assignment as part of an individualized
32 education [plan] PROGRAM is a covered employee, as defined in Title 9 of the Labor
33 and Employment Article, of the employer for the purposes of workers' compensation.

34 (2) A resident in a facility as defined under § 10-101(e) of the Health -
35 General Article is not a covered employee, as defined in Title 9 of the Labor and
36 Employment Article, of the employer for the purposes of workers' compensation.

1 (b) Compensation for injury or death to a [handicapped student] CHILD WITH
2 A DISABILITY under this section shall be based on the federal minimum wage in effect
3 at the time of the [student's] CHILD'S injury.

4 (c) A [county board of education] LOCAL SCHOOL SYSTEM that places a
5 [handicapped student] CHILD WITH A DISABILITY with an employer in an unpaid
6 work assignment pursuant to the [student's] CHILD'S individualized education
7 [plan] PROGRAM may secure workers' compensation coverage for that [student]
8 CHILD.

9 8-403.

10 (a) The State and each [county] LOCAL SCHOOL SYSTEM shall:

11 (1) ~~Make~~ MAKE A free [educational programs] APPROPRIATE PUBLIC
12 EDUCATION available to each [handicapped] child WITH A DISABILITY, [including a
13 child who is severely handicapped,] as provided by this subtitle; ~~and~~

14 (2) ~~Notify the parents or guardians of each [handicapped] child WITH A~~
15 ~~DISABILITY of the availability of extended year programs if the child is currently~~
16 ~~enrolled in an educational program.~~

17 (b) Appropriate special [educational] EDUCATION AND RELATED services are
18 [to begin as soon as a child can benefit from them] AVAILABLE TO A CHILD WITH A
19 DISABILITY FROM BIRTH THROUGH AGE 20[, whether or not he is of regular school
20 age].

21 8-404.

22 (a) The State Board shall adopt, as [bylaws] REGULATIONS, standards for the
23 identification, [diagnosis, examination, and education] EVALUATION, EDUCATIONAL
24 PLACEMENT, AND THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION of
25 each child in this State who is under the age of 21 and is found to need special
26 [educational] EDUCATION AND RELATED services, whether or not the child is
27 receiving nonduplicative services from another governmental agency.

28 (b) Before these standards are adopted, the State Board shall consult with
29 public and private agencies and persons who are concerned with and knowledgeable
30 about the [problems of children] EDUCATIONAL NEEDS OF CHILDREN WITH
31 DISABILITIES who [need] REQUIRE special [educational] EDUCATION AND RELATED
32 services.

33 (c) The standards for the education of [handicapped children] A CHILD WITH
34 A DISABILITY who [are] IS enrolled in [programs] A SCHOOL that [are] IS operated
35 by an agency other than a [county board] LOCAL SCHOOL SYSTEM may not be lower
36 than the standards for the education of [children] A CHILD WITH A DISABILITY who
37 [are] IS enrolled in [programs] A SCHOOL that [are] IS operated by a [county
38 board] LOCAL SCHOOL SYSTEM. The standards for the approval of [programs]
39 SCHOOLS located in jurisdictions outside Maryland shall be the same as standards
40 applicable to the approval of [programs] SCHOOLS within Maryland. However, no

1 [program] SCHOOL located in a jurisdiction outside Maryland shall be approved if
 2 the charges for pupils approved by the Department are higher than charges for pupils
 3 from any other state for the same services, unless waived by the State
 4 Superintendent.

5 (d) The standards shall include:

6 (1) The required qualifications for teachers, administrators, and other
 7 [professional, paraprofessional, and nonprofessional personnel] PROFESSIONALS
 8 SERVING A CHILD WITH A DISABILITY;

9 (2) Procedures for [identifying, testing, and diagnosing] THE
 10 IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT, AND PROVISION OF A
 11 FREE APPROPRIATE PUBLIC EDUCATION FOR A [children] CHILD WITH A DISABILITY
 12 who [need special educational services] REQUIRES THE PROVISION OF SPECIAL
 13 EDUCATION AND RELATED SERVICES;

14 (3) Guidelines for curricula, instructional materials, equipment, and the
 15 organization, administration, and supervision of the program, including accounting,
 16 auditing, and reporting procedures;

17 (4) Provisions for local, regional, and State day and residential centers
 18 for children WITH DISABILITIES who cannot be served [reasonably] APPROPRIATELY
 19 in the [regular] public schools;

20 (5) Coordination of these special [educational] EDUCATION services
 21 with services given by any other government agency; and

22 (6) Guidelines for approval of placement in nonpublic schools or facilities
 23 if [suitable] APPROPRIATE public [programs] SERVICES are not available.

24 8-405.

25 (A) When [an admission, review, and dismissal committee] A TEAM OF
 26 ~~INDIVIDUALS, QUALIFIED PROFESSIONALS AND THE PARENTS~~ [meets] MEET for the
 27 purpose of discussing [a child's] THE IDENTIFICATION, EVALUATION, educational
 28 program, or THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION
 29 [handicapping condition,] OF A CHILD WITH A DISABILITY:

30 (1) THE PARENTS OF THE CHILD SHALL BE AFFORDED THE
 31 OPPORTUNITY TO PARTICIPATE AND SHALL BE PROVIDED REASONABLE NOTICE IN
 32 ADVANCE OF the meeting [shall be open to the child's parents, who shall be notified
 33 of the meeting at least 10 calendar days in advance.]; AND

34 (2) REASONABLE NOTICE SHALL BE AT LEAST 10 CALENDAR DAYS IN
 35 ADVANCE OF THE MEETING, UNLESS AN EXPEDITED MEETING IS BEING CONDUCTED
 36 TO:

37 (I) ADDRESS DISCIPLINARY ISSUES;

1 (II) DETERMINE THE PLACEMENT OF THE CHILD WITH A
2 DISABILITY NOT CURRENTLY RECEIVING EDUCATIONAL SERVICES; OR

3 (III) MEET OTHER URGENT NEEDS OF A CHILD WITH A DISABILITY
4 TO ENSURE THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION.

5 (B) THE INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL DETERMINE,
6 ON AT LEAST AN ANNUAL BASIS, WHETHER THE CHILD REQUIRES EXTENDED YEAR
7 SERVICES IN ORDER TO ENSURE THAT THE CHILD IS NOT DEPRIVED OF A FREE
8 APPROPRIATE PUBLIC EDUCATION BY VIRTUE OF THE NORMAL BREAK IN THE
9 REGULAR SCHOOL YEAR.

10 8-406.

11 (a) [(1)] A child WITH A DISABILITY who needs special [educational]
12 EDUCATION AND RELATED services that [are not] CANNOT BE provided in a public
13 county, regional, or State program shall be placed in an appropriate nonpublic
14 educational program that offers these services.

15 [(2)] For fiscal years 1983, 1984, and 1985, for the purposes of this section,
16 the provisions of this subtitle applicable to nonpublic special education programs
17 apply to the special education day programs of the Children's Residential School of
18 the Institute of Psychiatry and Human Behavior at the University of Maryland
19 Hospital.]

20 (b) The cost of the nonpublic educational program shall be paid by the State
21 and the county in which the child is domiciled in accordance with § 8-415(d) of this
22 subtitle, as appropriate.

23 (c) (1) Payment or reimbursement for a nonpublic program may not be
24 provided if the payment or reimbursement would require an additional contribution
25 from the State under § 8-415(d)(2) of this subtitle unless the Department approves:

- 26 (i) The nonpublic program;
- 27 (ii) The placement of the child in the program;
- 28 (iii) The cost of the program; and
- 29 (iv) The amount of payment or reimbursement.

30 (2) Department approval is not required for a nonpublic program if:

31 (i) The [county board] LOCAL SCHOOL SYSTEM approves the
32 placement of the child in the program; AND

33 (ii) The [county board] LOCAL SCHOOL SYSTEM makes the
34 payment or reimbursement from LOCAL funds ~~available to the [county board]~~ LOCAL
35 ~~SCHOOL SYSTEM established under § 8-415(e) and (d)(1) of this subtitle; and~~

1 (iii) The placement does not require an additional State contribution
2 under ~~§ 8-415(d)(2)~~ of this subtitle.

3 (3) The State Board shall adopt [bylaws] REGULATIONS that establish
4 standards and guidelines for approvals required by paragraph (2) of this subsection.

5 (d) A nonpublic placement recommended by a [county board] LOCAL SCHOOL
6 SYSTEM for approval under subsection (c)(1) of this section shall be approved or
7 disapproved pursuant to the [bylaws] REGULATIONS of the State Board. However,
8 the Department may not disapprove a nonpublic placement recommended by a
9 [county board] LOCAL SCHOOL SYSTEM for a child unless the Department provides
10 an appropriate alternative placement in conformity with the [bylaws] REGULATIONS
11 of the State Board and applicable federal laws and regulations. The Department may
12 not terminate funding for the last approved nonpublic placement of a child during the
13 pendency of an administrative or judicial review of a recommended placement
14 change.

15 [(e) (1) Except for a placement that results from an appeal from a decision of
16 the Department taken under the Administrative Procedure Act, a child may not be
17 placed in a nonpublic educational program at public expense by any court unless the
18 placement is in accordance with this section.

19 (2) The Department shall be notified of each case in which the placement
20 of a child in a nonpublic educational program at public expense is sought or is under
21 consideration by a court.

22 (3) The Department shall be made a party to the proceeding.]

23 (E) IN ADDITION TO MEETING THE REQUIREMENTS OF THIS SUBTITLE, A
24 LOCAL SCHOOL SYSTEM SEEKING NONPUBLIC TUITION PAYMENT MUST ALSO MEET
25 THE REQUIREMENTS OF ARTICLE 49D OF THE CODE, AS APPLICABLE, AND OBTAIN
26 FUNDING APPROVAL FROM THE LOCAL COORDINATING COUNCIL AND THE STATE
27 COORDINATING COUNCIL.

28 8-407.

29 All proceedings held and decisions made pursuant to [§ 8-406 or § 8-413 of]
30 this subtitle shall be in conformance with applicable federal law.

31 [8-408.

32 Each plan for special educational services submitted by a county board and each
33 plan developed and adopted by the State Superintendent shall include:

34 (1) A detailed estimate of the number of children who will receive special
35 educational services under the plan; and

36 (2) The annual cost of implementing the plan.]

1 [8-312.] 8-408.

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

3 (2) [Blind] "CHILD WHO IS BLIND or visually impaired [student]"
4 means [an individual] A CHILD who:

5 (i) Has a visual acuity of 20/200 or less in the better eye with
6 correcting lenses or has a limited field of vision so that the widest diameter of the
7 visual field subtends an angle no greater than 20 degrees;

8 (ii) Has a medically indicated expectation of visual deterioration; or

9 (iii) Has a medically diagnosed limitation in visual functioning that
10 restricts the [student's] CHILD'S ability to read and write standard print at levels
11 expected of other [students] CHILDREN of comparable ability and grade level.

12 (3) "Braille" means the system of reading and writing through touch
13 commonly known as Standard English Grade 2 Braille.

14 (4) "Individualized education program" [means a written description of
15 the special education needs of the student and the special education and related
16 services to be provided to meet those needs with goals, objectives, activities, and
17 materials adapted to the needs, interests, and abilities of the student] AND "IEP
18 TEAM" HAVE THE SAME MEANING AS PROVIDED BY THE INDIVIDUALS WITH
19 DISABILITIES EDUCATION ACT AMENDMENTS OF 1997, P.L. 105-17, SECTION 614(D).

20 (b) (1) In developing the individualized education program [for each blind
21 or visually impaired student, it shall be presumed that proficiency in Braille reading
22 and writing is essential to enable the student to communicate effectively and
23 efficiently] FOR A CHILD WHO IS BLIND OR VISUALLY IMPAIRED, PROVISIONS SHALL
24 BE MADE FOR INSTRUCTION IN BRAILLE AND THE USE OF BRAILLE UNLESS THE IEP
25 TEAM DETERMINES, AFTER AN EVALUATION OF THE CHILD'S READING AND WRITING
26 SKILLS, NEEDS, AND APPROPRIATE READING AND WRITING MEDIA, INCLUDING AN
27 EVALUATION OF THE CHILD'S FUTURE NEEDS FOR INSTRUCTION IN BRAILLE OR THE
28 USE OF BRAILLE, THAT SUCH INSTRUCTION OR USE IS NOT APPROPRIATE FOR THE
29 CHILD.

30 (2) A [student] CHILD may not be denied the opportunity for instruction
31 in Braille reading and writing solely because the [student] CHILD has some
32 remaining vision.

33 (3) This section does not require the exclusive use of Braille if other
34 reading and writing media are appropriate to the [student's] CHILD'S educational
35 needs. The use of other reading and writing media does not preclude the use of Braille
36 or the instruction of Braille.

37 [(4) Braille instruction and use are not required by this section if, in
38 developing the student's individualized education program, all members of the
39 individualized education program team concur that the student's visual impairment

1 does not affect the student's reading and writing performance commensurate with the
2 student's ability and in consideration of the student's future literacy needs. When a
3 consensus cannot be reached, a blind or visually impaired student shall receive
4 instruction in alternative media to be agreed upon by the individualized education
5 program team and to be provided as an interim measure without prejudice to the due
6 process rights of either party.]

7 (c) For the purpose of achieving successful implementation of this section, the
8 State Board and the Professional Standards and Teacher Education Board shall adopt
9 certification standards for teachers of blind and visually impaired students.

10 (d) The Department shall develop procedures to coordinate the statewide
11 availability of textbooks and supplementary instructional materials in nonvisually
12 accessible media.

13 [8-409.

14 (a) Each county board shall give the county health department any
15 information the board receives as to handicapped children who live in its county.

16 (b) The county health department shall:

17 (1) Recommend which of these handicapped children need additional
18 diagnostic or treatment services; and

19 (2) Refer these children to the county board for evaluation.

20 (c) Each county board:

21 (1) Is responsible for the identification of handicapped children who need
22 special educational services; and

23 (2) Shall provide or arrange for appropriate educational facilities and
24 services for these handicapped children.]

25 8-410.

26 (a) Each [county board] LOCAL SCHOOL SYSTEM shall provide or arrange for
27 the transportation during the regular school year of each [handicapped] child WITH A
28 DISABILITY who is in a placement approved in conformity with [§§ 8-404 and 8-406
29 of] this subtitle and applicable [bylaws] REGULATIONS of the State Board and
30 standards in:

31 (1) A public school;

32 (2) A school maintained by a State agency; and

33 (3) A nonpublic school.

34 (b) The [county board] LOCAL SCHOOL SYSTEM of the county in which the
35 [handicapped] child WITH A DISABILITY resides shall certify and pay the cost of his

1 daily or other reasonable transportation to school under the rules and regulations
2 adopted by the State Board if:

3 (1) The school is outside this State or the county in which the child
4 resides; and

5 (2) State aid has provided for the education of the child under this
6 subtitle.

7 (c) (1) The rules and regulations adopted by the State Board shall take into
8 consideration any hardship cases that reasonably may require additional expenses to
9 guarantee adequate transportation during the regular school year.

10 (2) In addition to providing advice to the Motor Vehicle Administration
11 under § 25-110 of the Transportation Article regarding the adoption by the
12 Administration of rules and regulations relating to the safe operation of school
13 vehicles, including vehicles and equipment appropriate for transporting
14 [handicapped children] A CHILD WITH A DISABILITY, the Department shall adopt
15 guidelines which set minimum standards to meet in each of the following categories:

16 (i) The qualifications for hiring and training of drivers and aides,
17 including private contract personnel, involved in handling and transporting
18 [handicapped children] A CHILD WITH A DISABILITY to [Level V] A nonpublic special
19 education [facilities] FACILITY; and

20 (ii) The appropriate length of time and distance for transporting
21 [handicapped children] A CHILD WITH A DISABILITY to [Level V] A nonpublic special
22 education [facilities] FACILITY.

23 (d) (1) By July 1 of each year any [county] LOCAL SCHOOL SYSTEM that has
24 25 or more [handicapped] children WITH DISABILITIES attending [Level V]
25 nonpublic education facilities shall submit to the State Department a detailed report,
26 including any rules and regulations it has adopted since the submission of its last
27 report, which outline the [county's] LOCAL SCHOOL SYSTEM'S compliance with the
28 State Department adopted guidelines for the transportation of [handicapped
29 children] A CHILD WITH A DISABILITY to [Level V] nonpublic special education
30 facilities.

31 (2) The State Department shall annually:

32 (i) Review each applicable [county's] LOCAL SCHOOL SYSTEM'S
33 plan or procedures for transporting [handicapped] children WITH DISABILITIES to
34 [Level V] nonpublic special education facilities for compliance with the State
35 Department's guidelines; and

36 (ii) Advise a [county] LOCAL SCHOOL SYSTEM as to whether its
37 plan or procedures are in compliance.

38 (e) In both the adoption of guidelines under subsection (c)(2) of this section
39 and the annual review under subsection (d) of this section of each applicable county's

1 plan or procedures for transporting children WITH DISABILITIES to [Level V]
2 nonpublic special education facilities, the State Department shall:

3 (1) Take into consideration the particular circumstances and needs of
4 each applicable [county] LOCAL SCHOOL SYSTEM, including the differences among
5 urban and rural [counties] SCHOOL SYSTEMS; and

6 (2) Recognize the need for flexibility on an individual [client] CHILD
7 basis.

8 8-411.

9 [(a) (1) In this section "handicapped child" means a child under the age of 6
10 with a physical, mental, or emotional impairment that, in the judgment of the
11 Department, makes a special educational and training program necessary or
12 desirable to help the child reach a scholastic achievement as near normal as feasible.

13 (2) "Handicapped child" includes a child who suffers from mild,
14 moderate, severe, or profound hearing loss.]

15 [(b) (A) (1) Each year the Governor shall place an item in the State budget
16 for the education and training of [handicapped] children WITH DISABILITIES who are
17 under the age of 6.

18 (2) The appropriation by the General Assembly shall be spent under the
19 supervision and control of the Department.

20 [(c) (B) The Department shall adopt standards and issue rules and
21 regulations based on these standards for:

22 (1) [Nonmedical examination] IDENTIFICATION, EVALUATION,
23 [classification] EARLY INTERVENTION, and education of [handicapped] children
24 WITH DISABILITIES;

25 (2) Qualifications of SERVICE PROVIDERS AND teachers;

26 (3) Curriculum and equipment; and

27 (4) General supervision and operation of the program provided in this
28 section.

29 8-412.

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

31 (2) "Child" means an individual under the age of 21 who:

32 (i) Has been determined through appropriate procedures to be
33 disabled and in need of special education; or

34 (ii) Is believed to be disabled and in need of special education.

1 (3) "Educational decision making process" means all procedures relating
2 to the identification, evaluation, or educational placement of a child and the provision
3 of a free appropriate public education, including the appeal procedures provided for
4 by § 8-413 of this article.

5 (4) "Local school superintendent" means the school system
6 superintendent or any individual in charge of a system or program that provides
7 educational services to children.

8 (5) "Parent" means:

9 (i) A child's natural parents;

10 (ii) A guardian;

11 (iii) A person acting as a parent of a child such as a relative or a
12 stepparent with whom a child lives including those relatives or stepparents who are
13 the foster parents; or

14 (iv) Any other individual who is legally responsible for a child's
15 welfare.

16 (6) Parent does not include a social worker or a foster parent, except as
17 provided in subparagraph (iii), unless appointed as a parent surrogate.

18 [(6)] (7) "Parent surrogate" means a person who is appointed by the
19 local school superintendent to act in place of a parent of a child in the educational
20 decision making process.

21 [(7)] (8) "Public agency" includes the State Department of Education,
22 local education agencies, and other agencies that are responsible for providing
23 education to [disabled children] A CHILD WITH A DISABILITY, including the
24 Department of Health and Mental Hygiene, Mental Hygiene Administration, the
25 Mental Retardation Administration, the Department of Juvenile Justice, and the
26 Maryland School for the Deaf. For the purpose of this section the Maryland School for
27 the Blind shall be considered a public agency.

28 [(8)] (9) "Unavailable" means that a public agency, after reasonable
29 efforts, cannot discover the physical whereabouts of a child's parent.

30 [(9)] (10) "Unknown" means that a public agency, after reasonable efforts,
31 cannot identify the child's parent.

32 [(10)] (11) "Ward of the State" means a child for whom a State or county
33 agency or official has been appointed legal guardian, or who has been committed by a
34 court of competent jurisdiction to the legal custody of a State or county agency or
35 official with the express authorization that the State or county agency or official
36 make educational decisions for the child.

1 (b) A public agency shall request that the local school superintendent appoint
2 a parent surrogate to represent a child at any point in the educational decision
3 making process if it is suspected that the child may be disabled and if:

4 (1) The child is a ward of the State; or

5 (2) The parents of the child are unknown or unavailable.

6 (c) Any request to the local school superintendent for the appointment of a
7 parent surrogate under subsection (b) shall include:

8 (1) The name, date of birth, sex, legal domicile, and present residence of
9 the child;

10 (2) A statement that the child is eligible for the appointment of a parent
11 surrogate in accordance with subsection (b) of this section;

12 (3) Documentation, as applicable, of the efforts made to identify the
13 parent if unknown or to locate the parent if unavailable; and

14 (4) The name and qualifications of the proposed parent surrogate whom
15 the public agency considers to be qualified to represent the child in the educational
16 decision making process.

17 (d) (1) The public agency requesting the appointment of a parent surrogate
18 shall [insure] ENSURE that the person proposed:

19 (i) Has no interest that conflicts with the interests of the child to
20 be entrusted to that person; and

21 (ii) Has knowledge and skills that [insure] ENSURE adequate
22 representation of the child.

23 (2) A parent surrogate may not be an employee of a public agency
24 involved in the care and education of the child entrusted to that parent surrogate,
25 except that a foster parent may not be considered an employee of a public agency
26 under this section solely because the foster parent receives public funds for the care of
27 the child.

28 (e) (1) If a public agency files a request for the appointment of a parent
29 surrogate, the local school superintendent shall appoint a parent surrogate if that
30 superintendent finds:

31 (i) The child is eligible for the appointment of a parent surrogate in
32 accordance with subsection (b) of this section; and

33 (ii) The proposed parent surrogate is qualified to represent the
34 child in the educational decision making process in accordance with subsection (d) of
35 this section.

1 (2) If the local school superintendent finds that the child is not eligible
2 for the appointment of a parent surrogate in accordance with subsection (b) of this
3 section, the local school superintendent shall notify the requesting public agency of
4 this finding and specify the reasons in writing.

5 (3) If the local school superintendent finds that the proposed parent
6 surrogate is not qualified to represent the child in the educational decision making
7 process in accordance with subsection (d) of this section, the local school
8 superintendent may:

9 (i) Request the public agency to propose another parent surrogate
10 who is qualified; or

11 (ii) Select and appoint a parent surrogate who is qualified.

12 (4) The local school superintendent shall make a final selection or
13 rejection of a parent surrogate within 10 days after it receives a request which
14 includes appropriate eligibility documentation from a public agency.

15 (5) (i) The local school superintendent shall notify, in writing, the
16 State Superintendent of the parent surrogate appointment.

17 (ii) The notice shall occur within 30 days after the day on which the
18 appointment is made.

19 (iii) The notification shall include the child's name, the name of the
20 parent surrogate, and any other information deemed applicable.

21 (f) (1) A child entrusted to a parent surrogate shall be represented by that
22 parent surrogate in the educational decision making process.

23 (2) A parent surrogate is not liable to the child entrusted to that parent
24 surrogate or to the parent of that child for any damages that result from acts or
25 omissions of that parent surrogate constituting ordinary negligence.

26 (3) This immunity does not apply to liability covered by any applicable
27 insurance, to the extent of that coverage, or to acts or omissions constituting gross,
28 willful, or wanton negligence.

29 (g) (1) A public agency may request that the local school superintendent
30 terminate the appointment of a previously assigned parent surrogate for good cause.

31 (2) When a public agency requests that the local school superintendent
32 terminate the appointment of the parent surrogate, the agency shall state the reasons
33 for the action and submit the name and qualifications of another individual who is
34 proposed to be assigned as the new parent surrogate.

35 (h) The State Board shall adopt rules and regulations in accordance with the
36 Administrative Procedure Act on the qualifications, selection, appointment, training,
37 compensation, removal, and replacement necessary to implement this section.

1 §8-414.

2 Beginning in ~~fiscal year 1982~~ FISCAL YEAR 1998 ~~fiscal year 1982~~, the funding
3 level provided by this State and its counties for ~~educational programs~~ SPECIAL
4 EDUCATION AND RELATED SERVICES for ~~handicapped~~ children WITH DISABILITIES
5 ~~under § 8-415 of this subtitle~~ may not be less than the funding level for these
6 ~~programs~~ SERVICES in Fiscal Year ~~1981~~ 1997 1981 REQUIRED UNDER §§ 8-417
7 THROUGH 8-417.6 OF THIS SUBTITLE, AS THOSE SECTIONS WERE CODIFIED ON JUNE
8 30, 1981. †

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect July 1, 1998.