
By: **Chairman, Ways and Means Committee (Departmental - Education)**
Introduced and read first time: February 13, 1998
Assigned to: Ways and Means

A BILL ENTITLED

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; making certain technical alterations; and generally relating to
12 the education of children with disabilities.

13 BY repealing and reenacting, with amendments,
14 Article - Education
15 Section 7-305, 8-307, 8-312, 8-401, 8-402, 8-403, 8-404, 8-405, 8-406, 8-407,
16 8-410, 8-411, and 8-412
17 Annotated Code of Maryland
18 (1997 Replacement Volume and 1997 Supplement)

19 BY repealing
20 Article - Education
21 Section 8-408, 8-409, and 8-414
22 Annotated Code of Maryland
23 (1997 Replacement Volume and 1997 Supplement)

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

1

Article - Education

2 7-305.

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

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

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

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

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

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

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

22 (i) Appeal to the county board within 10 days after the
23 determination;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) (1) In this subsection, "firearm" means a firearm as defined in 18 U.S.C.
26 § 921.

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

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

35 [(4) (i) Except as provided in subparagraph (iii) of this paragraph, if
36 the proceedings conducted under this subsection involve an identified student with
37 disabilities who is determined to have brought a firearm to school, the student may be
38 placed in an interim alternative educational setting in accordance with State law
39 procedures, for not more than the maximum number of days specified in the federal

1 Individuals with Disabilities Education Act, 20 U.S.C. 1415(e) or the Improving
2 America's Schools Act.

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

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

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

14 [(5)] (4) The State Board shall adopt regulations to implement this
15 subsection.

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

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

23 (ii) The Admission, Review, and Dismissal Committee has
24 determined in accordance with regulations adopted by the State Board of Education
25 that the cumulative effect of 2 or more suspensions totaling more than 10 school days
26 each school year does not create a pattern of exclusion that significantly impacts upon
27 the student's educational program and the student's parents have not appealed the
28 determination;

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

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

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

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

37 (2) In injunctive proceedings under paragraph (1)(iv)3 of this subsection,
38 there is a presumption in favor of maintaining the student's current educational

1 placement. The county superintendent or the superintendent's designated
2 representative may overcome this presumption by showing that maintaining the
3 student's current educational placement is substantially likely to result in injury
4 either to the student or to others.

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

9 (F) THE DISCIPLINE OF A CHILD WITH A DISABILITY, INCLUDING THE
10 SUSPENSION, EXPULSION, OR INTERIM ALTERNATIVE PLACEMENT OF THE CHILD
11 FOR DISCIPLINARY REASONS, SHALL BE CONDUCTED IN CONFORMANCE WITH THE
12 REQUIREMENTS OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT OF THE
13 UNITED STATES CODE.

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

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

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

25 8-307.

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

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

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

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

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

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

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

4 (d) The hearing board:

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

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

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

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

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

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

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

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

21 (i) The decision of the hearing board; or

22 (ii) The decision of the Maryland School for the Blind if a hearing
23 board decision is not made within the time required by the bylaws of the State Board
24 and applicable federal law or regulations.

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

27 8-401.

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

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

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

8 (2) "CHILD WITH A DISABILITY" MEANS A CHILD WHO HAS BEEN
9 DETERMINED THROUGH APPROPRIATE ASSESSMENT AS HAVING AUTISM, HEARING
10 IMPAIRMENT, INCLUDING DEAFNESS, EMOTIONAL DISTURBANCE, MULTIPLE
11 DISABILITIES, ORTHOPEDIC IMPAIRMENT, OTHER HEALTH IMPAIRMENT, SPECIFIC
12 LEARNING DISABILITY, SPEECH OR LANGUAGE IMPAIRMENT, TRAUMATIC BRAIN
13 INJURY, VISUAL IMPAIRMENT, INCLUDING BLINDNESS, AND WHO BECAUSE OF THAT
14 IMPAIRMENT NEEDS SPECIAL EDUCATION SERVICES.

15 (3) "FREE APPROPRIATE PUBLIC EDUCATION" MEANS SPECIAL
16 EDUCATION AND RELATED SERVICES THAT:

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

19 (II) MEET THE STANDARDS OF THE STATE BOARD REGULATIONS
20 AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. 1400 ET SEQ.
21 1997);

22 (III) INCLUDES PRESCHOOL, ELEMENTARY, AND SECONDARY
23 EDUCATION; AND

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

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

31 (I) APPLY TO ALL CHILDREN;

32 (II) INCLUDES INSTRUCTION IN PHYSICAL EDUCATION;

33 (III) INCLUDES VOCATIONAL EDUCATION, IF IT CONSISTS OF
34 SPECIALLY DESIGNED INSTRUCTION; AND

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

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

4 8-402.

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

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

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

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

20 8-403.

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

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

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

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

31 8-404.

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

1 (b) Before these standards are adopted, the State Board shall consult with
2 public and private agencies and persons who are concerned with and knowledgeable
3 about the [problems of children] EDUCATIONAL NEEDS OF CHILDREN WITH
4 DISABILITIES who [need] REQUIRE special [educational] EDUCATION services.

5 (c) The standards for the education of [handicapped children] A CHILD WITH
6 A DISABILITY who [are] IS enrolled in [programs] A SCHOOL that [are] IS operated
7 by an agency other than a [county board] LOCAL SCHOOL SYSTEM may not be lower
8 than the standards for the education of [children] A CHILD WITH A DISABILITY who
9 [are] IS enrolled in [programs] A SCHOOL that [are] IS operated by a [county
10 board] LOCAL SCHOOL SYSTEM. The standards for the approval of [programs]
11 SCHOOLS located in jurisdictions outside Maryland shall be the same as standards
12 applicable to the approval of [programs] SCHOOLS within Maryland. However, no
13 [program] SCHOOL located in a jurisdiction outside Maryland shall be approved if
14 the charges for pupils approved by the Department are higher than charges for pupils
15 from any other state for the same services, unless waived by the State
16 Superintendent.

17 (d) The standards shall include:

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

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

26 (3) Guidelines for curricula, instructional materials, equipment, and the
27 organization, administration, and supervision of the program, including accounting,
28 auditing, and reporting procedures;

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

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

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

36 8-405.

37 When [an admission, review, and dismissal committee] A TEAM OF
38 INDIVIDUALS, [meets] MEET for the purpose of discussing [a child's] THE
39 IDENTIFICATION, EVALUATION, educational program, or THE PROVISION OF A FREE

1 APPROPRIATE PUBLIC EDUCATION [handicapping condition,] OF A CHILD WITH A
2 DISABILITY:

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

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

10 (I) ADDRESS DISCIPLINARY ISSUES;

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

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

15 8-406.

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

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

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

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

31 (i) The nonpublic program;

32 (ii) The placement of the child in the program;

33 (iii) The cost of the program; and

34 (iv) The amount of payment or reimbursement.

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

1 (i) The [county board] LOCAL SCHOOL SYSTEM approves the
2 placement of the child in the program;

3 (ii) The [county board] LOCAL SCHOOL SYSTEM makes the
4 payment or reimbursement from funds available to the [county board] LOCAL
5 SCHOOL SYSTEM established under § 8-415(c) and (d)(1) of this subtitle; and

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

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

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

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

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

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

28 (E) IN ADDITION TO MEETING THE REQUIREMENTS OF THIS SUBTITLE, A
29 LOCAL SCHOOL SYSTEM SEEKING NONPUBLIC TUITION PAYMENT MUST ALSO MEET
30 THE REQUIREMENTS OF ARTICLE 49D OF THE CODE AND OBTAIN FUNDING
31 APPROVAL FROM THE LOCAL COORDINATING COUNCIL AND THE STATE
32 COORDINATING COUNCIL.

33 8-407.

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

36 [8-408.

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

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

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

4 [8-312.] 8-408.

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

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

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

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

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

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

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

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

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

36 (3) This section does not require the exclusive use of Braille if other
37 reading and writing media are appropriate to the [student's] CHILD'S educational

1 needs. The use of other reading and writing media does not preclude the use of Braille
2 or the instruction of Braille.

3 [(4) Braille instruction and use are not required by this section if, in
4 developing the student's individualized education program, all members of the
5 individualized education program team concur that the student's visual impairment
6 does not affect the student's reading and writing performance commensurate with the
7 student's ability and in consideration of the student's future literacy needs. When a
8 consensus cannot be reached, a blind or visually impaired student shall receive
9 instruction in alternative media to be agreed upon by the individualized education
10 program team and to be provided as an interim measure without prejudice to the due
11 process rights of either party.]

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

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

18 [8-409.

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

21 (b) The county health department shall:

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

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

25 (c) Each county board:

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

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

30 8-410.

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

36 (1) A public school;

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

2 (3) A nonpublic school.

3 (b) The [county board] LOCAL SCHOOL SYSTEM of the county in which the
4 [handicapped] child WITH A DISABILITY resides shall certify and pay the cost of his
5 daily or other reasonable transportation to school under the rules and regulations
6 adopted by the State Board if:

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

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

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

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

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

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

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

35 (2) The State Department shall annually:

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

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

3 (e) In both the adoption of guidelines under subsection (c)(2) of this section
4 and the annual review under subsection (d) of this section of each applicable county's
5 plan or procedures for transporting children WITH DISABILITIES to [Level V]
6 nonpublic special education facilities, the State Department shall:

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

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

12 8-411.

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

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

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

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

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

26 (1) [Nonmedical examination] IDENTIFICATION, EVALUATION,
27 [classification] EARLY INTERVENTION, and education of [handicapped] children
28 WITH DISABILITIES;

29 (2) Qualifications of SERVICE PROVIDERS AND teachers;

30 (3) Curriculum and equipment; and

31 (4) General supervision and operation of the program provided in this
32 section.

33 8-412.

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

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

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

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

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

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

11 (5) "Parent" means:

12 (i) A child's natural parents;

13 (ii) A guardian;

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

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

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

21 [(6)] (7) "Parent surrogate" means a person who is appointed by the
22 local school superintendent to act in place of a parent of a child in the educational
23 decision making process.

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

31 [(8)] (9) "Unavailable" means that a public agency, after reasonable
32 efforts, cannot discover the physical whereabouts of a child's parent.

33 [(9)] (10) "Unknown" means that a public agency, after reasonable efforts,
34 cannot identify the child's parent.

35 [(10)] (11) "Ward of the State" means a child for whom a State or county
36 agency or official has been appointed legal guardian, or who has been committed by a

1 court of competent jurisdiction to the legal custody of a State or county agency or
2 official with the express authorization that the State or county agency or official
3 make educational decisions for the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 [8-414.

5 Beginning in fiscal year 1982, the funding level provided by this State and its
6 counties for educational programs for handicapped children under § 8-415 of this
7 subtitle may not be less than the funding level for these programs in Fiscal Year
8 1981.]

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