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By: **Chairman, Ways and Means Committee (Departmental - Education)**

Introduced and read first time: February 13, 1998

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 1998

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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 a certain funding level requirement; making certain  
12 technical alterations; and generally relating to the education of children with  
13 disabilities.

14 BY repealing and reenacting, with amendments,  
15 Article - Education  
16 Section 7-305, 8-307, 8-312, 8-401, 8-402, 8-403, 8-404, 8-405, 8-406, 8-407,  
17 8-410, 8-411, ~~and 8-412~~, and 8-414  
18 Annotated Code of Maryland  
19 (1997 Replacement Volume and 1997 Supplement)

20 BY repealing  
21 Article - Education  
22 Section 8-408, and 8-409, ~~and 8-414~~  
23 Annotated Code of Maryland  
24 (1997 Replacement Volume and 1997 Supplement)

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

3 **Article - Education**

4 7-305.

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

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

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

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

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

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

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

24 (i) Appeal to the county board within 10 days after the  
25 determination;

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

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

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

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

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

- 1 (d) (1) Any student expelled or suspended from school:
- 2 (i) Shall remain away from the school premises during those hours  
3 each school day when the school the student attends is in session; and
- 4 (ii) May not participate in school sponsored activities.
- 5 (2) The expelled or suspended student may return to the school premises  
6 during the prohibited hours only for attendance at a previously scheduled  
7 appointment, and if the student is a minor then only if accompanied by his parent or  
8 guardian.
- 9 (3) Any person who violates paragraph (1) or (2) of this subsection is  
10 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 for  
11 each violation.
- 12 (4) (i) If a student has been suspended or expelled, the principal or a  
13 designee of the principal may not return the student to the classroom without  
14 conferring with the teacher who referred the student to the principal, if the student  
15 was referred by a teacher, other teachers as appropriate, other appropriate school  
16 personnel, the student, and the student's parent or guardian.
- 17 (ii) If the disruptive behavior results in action less than suspension,  
18 the principal or a designee of the principal shall confer with the teacher who referred  
19 the student to the principal prior to returning the student to that teacher's classroom.
- 20 (5) A county superintendent may deny attendance to any student who is  
21 currently expelled from another school system for a length of time equal to that  
22 expulsion.
- 23 (6) A school system shall forward information to another school system  
24 relating to the discipline of a student, including information on an expulsion of the  
25 student, on receipt of the request for information.
- 26 (e) (1) In this subsection, "firearm" means a firearm as defined in 18 U.S.C.  
27 § 921.
- 28 (2) Except as provided in paragraph (3) of this subsection, if the county  
29 superintendent or the superintendent's designated representative finds that a  
30 student has brought a firearm onto school property, the student shall be expelled for  
31 a minimum of 1 year.
- 32 (3) The county superintendent may specify, on a case by case basis, a  
33 shorter period of expulsion or an alternative educational setting, if alternative  
34 educational settings have been approved by the county board, for a student who has  
35 brought a firearm onto school property.
- 36 [(4) (i) Except as provided in subparagraph (iii) of this paragraph, if  
37 the proceedings conducted under this subsection involve an identified student with  
38 disabilities who is determined to have brought a firearm to school, the student may be

1 placed in an interim alternative educational setting in accordance with State law  
2 procedures, for not more than the maximum number of days specified in the federal  
3 Individuals with Disabilities Education Act, 20 U.S.C. 1415(e) or the Improving  
4 America's Schools Act.

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

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

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

16 [(5)] (4) The State Board shall adopt regulations to implement this  
17 subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 8-307.

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

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

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

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

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

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

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

6 (d) The hearing board:

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

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

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

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

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

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

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

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

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

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

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

29 8-401.

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

31 [(1) "Handicapped child" means a child who has been determined through  
32 appropriate assessment as having temporary or long-term special educational needs  
33 arising from cognitive, emotional, or physical factors, or any combination of these,  
34 and whose ability to meet general educational objectives is impaired to a degree

1 whereby the services available in the general education program are inadequate in  
2 preparing one to achieve his educational potential.]

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

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

18           (3) "FREE APPROPRIATE PUBLIC EDUCATION" MEANS SPECIAL  
19 EDUCATION AND RELATED SERVICES THAT:

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

22                   (II) MEET THE STANDARDS OF THE STATE BOARD REGULATIONS  
23 AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. 1400 ET SEQ.  
24 1997);

25                   (III) INCLUDES PRESCHOOL, ELEMENTARY, AND SECONDARY  
26 EDUCATION; AND

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

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

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

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

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

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

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

6 (I) INSTRUCTION IN THE CLASSROOM, IN THE HOME, IN  
7 HOSPITALS AND INSTITUTIONS, AND IN OTHER SETTINGS; AND

8 (II) INSTRUCTION IN PHYSICAL EDUCATION.

9 (5) (I) "RELATED SERVICES" MEANS TRANSPORTATION AND SUCH  
10 DEVELOPMENTAL, CORRECTIVE, AND OTHER SUPPORTIVE SERVICES AS MAY BE  
11 REQUIRED TO ASSIST A CHILD WITH A DISABILITY TO BENEFIT FROM SPECIAL  
12 EDUCATION.

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

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

18 8-402.

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

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

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

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

34 8-403.

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



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

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

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

11 8-404.

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

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

23           (c)     The standards for the education of [handicapped children] A CHILD WITH  
24 A DISABILITY who [are] IS enrolled in [programs] A SCHOOL that [are] IS operated  
25 by an agency other than a [county board] LOCAL SCHOOL SYSTEM may not be lower  
26 than the standards for the education of [children] A CHILD WITH A DISABILITY who  
27 [are] IS enrolled in [programs] A SCHOOL that [are] IS operated by a [county  
28 board] LOCAL SCHOOL SYSTEM. The standards for the approval of [programs]  
29 SCHOOLS located in jurisdictions outside Maryland shall be the same as standards  
30 applicable to the approval of [programs] SCHOOLS within Maryland. However, no  
31 [program] SCHOOL located in a jurisdiction outside Maryland shall be approved if  
32 the charges for pupils approved by the Department are higher than charges for pupils  
33 from any other state for the same services, unless waived by the State  
34 Superintendent.

35           (d)     The standards shall include:

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

39                   (2)     Procedures for [identifying, testing, and diagnosing] THE  
40 IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT, AND PROVISION OF A  
41 FREE APPROPRIATE PUBLIC EDUCATION FOR A [children] CHILD WITH A DISABILITY

1 who [need special educational services] REQUIRES THE PROVISION OF SPECIAL  
2 EDUCATION AND RELATED SERVICES;

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

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

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

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

13 8-405.

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

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

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

26 (I) ADDRESS DISCIPLINARY ISSUES;

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

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

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

1 8-406.

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

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

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

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

- 17 (i) The nonpublic program;
- 18 (ii) The placement of the child in the program;
- 19 (iii) The cost of the program; and
- 20 (iv) The amount of payment or reimbursement.

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

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

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

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

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

31 (d) A nonpublic placement recommended by a [county board] LOCAL SCHOOL  
32 SYSTEM for approval under subsection (c)(1) of this section shall be approved or  
33 disapproved pursuant to the [bylaws] REGULATIONS of the State Board. However,  
34 the Department may not disapprove a nonpublic placement recommended by a  
35 [county board] LOCAL SCHOOL SYSTEM for a child unless the Department provides  
36 an appropriate alternative placement in conformity with the [bylaws] REGULATIONS

1 of the State Board and applicable federal laws and regulations. The Department may  
2 not terminate funding for the last approved nonpublic placement of a child during the  
3 pendency of an administrative or judicial review of a recommended placement  
4 change.

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

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

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

13       (E)     IN ADDITION TO MEETING THE REQUIREMENTS OF THIS SUBTITLE, A  
14 LOCAL SCHOOL SYSTEM SEEKING NONPUBLIC TUITION PAYMENT MUST ALSO MEET  
15 THE REQUIREMENTS OF ARTICLE 49D OF THE CODE, AS APPLICABLE, AND OBTAIN  
16 FUNDING APPROVAL FROM THE LOCAL COORDINATING COUNCIL AND THE STATE  
17 COORDINATING COUNCIL.

18 8-407.

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

21 [8-408.

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

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

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

27 [8-312.] 8-408.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 [8-409.

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

7 (b) The county health department shall:

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

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

11 (c) Each county board:

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

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

16 8-410.

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

22 (1) A public school;

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

24 (3) A nonpublic school.

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

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

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

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

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

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

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

17 (d) (1) By July 1 of each year any [county] LOCAL SCHOOL SYSTEM that has  
18 25 or more [handicapped] children WITH DISABILITIES attending [Level V]  
19 nonpublic education facilities shall submit to the State Department a detailed report,  
20 including any rules and regulations it has adopted since the submission of its last  
21 report, which outline the [county's] LOCAL SCHOOL SYSTEM'S compliance with the  
22 State Department adopted guidelines for the transportation of [handicapped  
23 children] A CHILD WITH A DISABILITY to [Level V] nonpublic special education  
24 facilities.

25 (2) The State Department shall annually:

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

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

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

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

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

1 8-411.

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

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

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

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

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

15 (1) [Nonmedical examination] IDENTIFICATION, EVALUATION,  
16 [classification] EARLY INTERVENTION, and education of [handicapped] children  
17 WITH DISABILITIES;

18 (2) Qualifications of SERVICE PROVIDERS AND teachers;

19 (3) Curriculum and equipment; and

20 (4) General supervision and operation of the program provided in this  
21 section.

22 8-412.

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

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

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

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

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

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



1 (5) "Parent" means:

2 (i) A child's natural parents;

3 (ii) A guardian;

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

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

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

11 [(6)] (7) "Parent surrogate" means a person who is appointed by the  
12 local school superintendent to act in place of a parent of a child in the educational  
13 decision making process.

14 [(7)] (8) "Public agency" includes the State Department of Education,  
15 local education agencies, and other agencies that are responsible for providing  
16 education to [disabled children] A CHILD WITH A DISABILITY, including the  
17 Department of Health and Mental Hygiene, Mental Hygiene Administration, the  
18 Mental Retardation Administration, the Department of Juvenile Justice, and the  
19 Maryland School for the Deaf. For the purpose of this section the Maryland School for  
20 the Blind shall be considered a public agency.

21 [(8)] (9) "Unavailable" means that a public agency, after reasonable  
22 efforts, cannot discover the physical whereabouts of a child's parent.

23 [(9)] (10) "Unknown" means that a public agency, after reasonable efforts,  
24 cannot identify the child's parent.

25 [(10)] (11) "Ward of the State" means a child for whom a State or county  
26 agency or official has been appointed legal guardian, or who has been committed by a  
27 court of competent jurisdiction to the legal custody of a State or county agency or  
28 official with the express authorization that the State or county agency or official  
29 make educational decisions for the child.

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

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

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

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

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

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

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

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

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

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

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

16 (2) A parent surrogate may not be an employee of a public agency  
17 involved in the care and education of the child entrusted to that parent surrogate,  
18 except that a foster parent may not be considered an employee of a public agency  
19 under this section solely because the foster parent receives public funds for the care of  
20 the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 {8-414.

31 Beginning in ~~fiscal year 1982~~ FISCAL YEAR 1998, the funding level provided by  
32 this State and its counties for ~~educational programs~~ SPECIAL EDUCATION AND  
33 RELATED SERVICES for ~~handicapped~~ children WITH DISABILITIES under § 8-415 of  
34 this subtitle may not be less than the funding level for these ~~programs~~ SERVICES in  
35 Fiscal Year ~~1984~~ 1997. †

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