
By: **Delegates Phillips, Dypski, Gladden, Hammen, Krysiak, and Oaks**
Introduced and read first time: February 26, 2001
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Special Education - Program Eligibility - Representation**

3 FOR the purpose of authorizing an eligible person to represent the eligible person in
4 the educational decision making process for special education programs under
5 certain circumstances; requiring a request for self-representation to include
6 certain information; requiring a county superintendent of schools to determine if
7 an eligible person qualifies for self-representation; requiring a county
8 superintendent to provide certain notice of a determination; authorizing certain
9 persons to request that the county superintendent terminate the determination;
10 authorizing a county superintendent to terminate the determination under
11 certain circumstances; defining certain terms; requiring the State Board to
12 adopt certain regulations; and generally relating to representation in the
13 educational decision making process for special education programs.

14 BY adding to
15 Article - Education
16 Section 8-412.1
17 Annotated Code of Maryland
18 (1999 Replacement Volume and 2000 Supplement)

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

21 **Article - Education**

22 8-412.1.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) "AVAILABLE" MEANS THAT A PUBLIC AGENCY, AFTER REASONABLE
26 EFFORTS, CAN DISCOVER THE PHYSICAL WHEREABOUTS OF A PARENT OF AN
27 ELIGIBLE PERSON.

1 (3) "EDUCATIONAL DECISION MAKING PROCESS" MEANS ALL
2 PROCEDURES RELATING TO THE PROVISION OF A FREE APPROPRIATE PUBLIC
3 EDUCATION FOR, AND THE IDENTIFICATION, EVALUATION, OR EDUCATIONAL
4 PLACEMENT OF, AN ELIGIBLE PERSON, INCLUDING THE APPEAL PROCEDURES
5 UNDER § 8-413 OF THIS ARTICLE.

6 (4) "ELIGIBLE PERSON" MEANS AN INDIVIDUAL AT LEAST 18 YEARS OLD
7 AND UNDER THE AGE OF 21 YEARS WHO:

8 (I) HAS BEEN DETERMINED THROUGH APPROPRIATE
9 PROCEDURES TO BE DISABLED AND IN NEED OF SPECIAL EDUCATION; OR

10 (II) IS BELIEVED TO BE DISABLED AND IN NEED OF SPECIAL
11 EDUCATION.

12 (5) "KNOWN" MEANS THAT A PUBLIC AGENCY, AFTER REASONABLE
13 EFFORTS, CAN IDENTIFY A PARENT OF AN ELIGIBLE PERSON.

14 (6) (I) "PARENT" MEANS:

15 1. A NATURAL PARENT OF AN ELIGIBLE PERSON;

16 2. A GUARDIAN OF AN ELIGIBLE PERSON;

17 3. A PERSON ACTING AS A PARENT OF AN ELIGIBLE PERSON,
18 INCLUDING A RELATIVE OR STEPPARENT WITH WHOM THE ELIGIBLE PERSON LIVES
19 OR WHO IS A FOSTER PARENT OF THE ELIGIBLE PERSON; OR

20 4. ANY OTHER INDIVIDUAL WHO IS LEGALLY RESPONSIBLE
21 FOR THE WELFARE OF THE ELIGIBLE PERSON.

22 (II) PARENT DOES NOT INCLUDE A SOCIAL WORKER OR, EXCEPT AS
23 PROVIDED IN ITEM (I)3 OF THIS PARAGRAPH, A FOSTER PARENT, UNLESS APPOINTED
24 AS A PARENT SURROGATE.

25 (7) "PUBLIC AGENCY" INCLUDES THE DEPARTMENT, A COUNTY BOARD,
26 AND OTHER AGENCIES THAT ARE RESPONSIBLE FOR PROVIDING EDUCATION TO AN
27 ELIGIBLE PERSON, INCLUDING THE DEPARTMENT OF HEALTH AND MENTAL
28 HYGIENE, MENTAL HYGIENE ADMINISTRATION, MENTAL RETARDATION
29 ADMINISTRATION, DEPARTMENT OF JUVENILE JUSTICE, MARYLAND SCHOOL FOR
30 THE DEAF, AND MARYLAND SCHOOL FOR THE BLIND.

31 (B) AN ELIGIBLE PERSON MAY REPRESENT THE ELIGIBLE PERSON AT ANY
32 POINT IN THE EDUCATIONAL DECISION MAKING PROCESS IF A PARENT IS AVAILABLE
33 OR KNOWN AND:

34 (1) THE PARENTS HAVE NOT PARTICIPATED IN THE EDUCATIONAL
35 DECISION MAKING PROCESS FOR THE ELIGIBLE PERSON IN THE PREVIOUS YEAR
36 AFTER REPEATED ATTEMPTS TO INVOLVE THE PARENTS;

1 (2) THE PARENTS HAVE AFFIRMATIVELY REJECTED PARTICIPATION IN
2 THE EDUCATIONAL DECISION MAKING PROCESS;

3 (3) (I) THE PARENTS CANNOT PARTICIPATE IN THE EDUCATIONAL
4 DECISION MAKING PROCESS BECAUSE OF PROLONGED HOSPITALIZATION OR
5 INSTITUTIONALIZATION OF A PARENT; AND

6 (II) A PARENT HAS CONSENTED TO ALLOW THE ELIGIBLE PERSON
7 TO PARTICIPATE IN THE EDUCATIONAL DECISION MAKING PROCESS;

8 (4) (I) THE PARENTS CANNOT PARTICIPATE IN THE EDUCATIONAL
9 DECISION MAKING PROCESS BECAUSE OF A PROLONGED SERIOUS ILLNESS OR
10 INFIRMITY OF A PARENT; AND

11 (II) A PARENT HAS CONSENTED TO ALLOW THE ELIGIBLE PERSON
12 TO PARTICIPATE IN THE EDUCATIONAL DECISION MAKING PROCESS; OR

13 (5) (I) THE PARENTS CANNOT PARTICIPATE IN THE EDUCATIONAL
14 DECISION MAKING PROCESS BECAUSE OF CIRCUMSTANCES BEYOND THE CONTROL
15 OF THE PARENTS; AND

16 (II) A PARENT HAS CONSENTED TO ALLOW THE ELIGIBLE PERSON
17 TO PARTICIPATE IN THE EDUCATIONAL DECISION MAKING PROCESS.

18 (C) A REQUEST TO THE COUNTY SUPERINTENDENT FOR AN ELIGIBLE PERSON
19 TO REPRESENT THE ELIGIBLE PERSON IN THE EDUCATIONAL DECISION MAKING
20 PROCESS SHALL INCLUDE A STATEMENT OF THE BASIS UNDER WHICH, AND
21 DOCUMENTATION, IF AVAILABLE, THAT, THE ELIGIBLE PERSON QUALIFIES UNDER
22 SUBSECTION (B) OF THIS SECTION.

23 (D) (1) IF AN ELIGIBLE PERSON REQUESTS TO REPRESENT THE ELIGIBLE
24 PERSON IN THE EDUCATIONAL DECISION MAKING PROCESS, THE COUNTY
25 SUPERINTENDENT SHALL DETERMINE, WITHIN 10 DAYS AFTER IT RECEIVES THE
26 REQUEST AND APPROPRIATE DOCUMENTATION, IF THE ELIGIBLE PERSON
27 QUALIFIES UNDER SUBSECTION (B) OF THIS SECTION.

28 (2) IF THE COUNTY SUPERINTENDENT DETERMINES THAT THE
29 ELIGIBLE PERSON DOES NOT QUALIFY UNDER SUBSECTION (B) OF THIS SECTION,
30 THE COUNTY SUPERINTENDENT SHALL NOTIFY THE ELIGIBLE PERSON, THE
31 PARENTS OF THE ELIGIBLE PERSON, AND ANY APPROPRIATE PUBLIC AGENCY OF
32 THIS DETERMINATION AND SPECIFY THE BASIS FOR THE DETERMINATION IN
33 WRITING.

34 (3) (I) THE COUNTY SUPERINTENDENT SHALL NOTIFY THE STATE
35 SUPERINTENDENT AND ANY APPROPRIATE PUBLIC AGENCY IN WRITING WITHIN 30
36 DAYS OF A DETERMINATION THAT AN ELIGIBLE PERSON MAY REPRESENT THE
37 ELIGIBLE PERSON IN THE EDUCATIONAL DECISION MAKING PROCESS.

1 (II) NOTICE UNDER THIS PARAGRAPH SHALL INCLUDE THE NAME
2 OF THE ELIGIBLE PERSON, THE BASIS FOR THE DETERMINATION, AND ANY OTHER
3 APPROPRIATE INFORMATION.

4 (E) (1) A PARENT OR A PUBLIC AGENCY MAY REQUEST THAT THE COUNTY
5 SUPERINTENDENT TERMINATE FOR GOOD CAUSE THE DETERMINATION THAT AN
6 ELIGIBLE PERSON MAY REPRESENT THE ELIGIBLE PERSON IN THE EDUCATIONAL
7 DECISION MAKING PROCESS.

8 (2) IF A PARENT OR A PUBLIC AGENCY REQUESTS THAT THE COUNTY
9 SUPERINTENDENT TERMINATE A DETERMINATION, THE PARENT OR PUBLIC AGENCY
10 SHALL STATE THE GROUNDS FOR THE REQUEST AND THE NAME AND
11 QUALIFICATIONS OF A PERSON WHO IS PROPOSED TO REPRESENT THE ELIGIBLE
12 PERSON IN THE EDUCATIONAL DECISION MAKING PROCESS.

13 (3) A COUNTY SUPERINTENDENT SHALL TERMINATE THE
14 DETERMINATION IF THE COUNTY SUPERINTENDENT FINDS THAT THE BASIS FOR
15 THE DETERMINATION NO LONGER EXISTS.

16 (F) THE STATE BOARD SHALL ADOPT REGULATIONS NECESSARY TO
17 IMPLEMENT THIS SECTION.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 July 1, 2001.