

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Ways and Means --

Introduced by **Chair, Education, Health, and Environmental Affairs**
Committee (By Request - Departmental - Education)

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

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

President.

CHAPTER _____

1 AN ACT concerning

2 **Education - Special Programs for Exceptional Children**

3 FOR the purpose of prohibiting the payment or reimbursement of the costs of certain
4 services if a child is eligible for certain funding under regulations adopted by the
5 State Department of Education; requiring a local school system to obtain certain
6 funding approval for certain nonpublic tuition payments in accordance with
7 regulations adopted by the Department; altering certain procedures for the
8 appointment of parent surrogates; altering certain procedures for the resolution
9 of certain disputes; requiring administrative due process hearing decisions to be
10 based on certain criteria; requiring expedited administrative due process
11 hearings under certain conditions within a certain time period; requiring public
12 agencies to pay the special education expenses at private and nonpublic schools
13 under certain conditions; repealing certain obsolete references; altering certain
14 definitions; defining certain terms; providing for the repeal of laws inconsistent
15 with this Act; and generally relating to the provision of special education and
16 related services to children with disabilities.

1 BY repealing and reenacting, with amendments,
2 Article - Education
3 Section 8-401(a), 8-406(d)(2) and (f), 8-408(a)(4), 8-410(b)(2), 8-412, 8-413,
4 8-416(c), and 8-417(b) and (c)
5 Annotated Code of Maryland
6 (2004 Replacement Volume and 2005 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article - Education
9 Section 8-416(a)
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2005 Supplement)

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

14 **Article - Education**

15 8-401.

16 (a) (1) In this subtitle the following words have the meanings indicated.

17 (2) "Child with a disability" means a child who has been determined
18 through appropriate assessment as having autism, deaf-blindness, hearing
19 impairment, including deafness, emotional disturbance, mental retardation, multiple
20 disabilities, orthopedic impairment, other health impairment, specific learning
21 disability, speech or language impairment, traumatic brain injury, visual impairment,
22 including blindness, and who because of that impairment needs special education and
23 related services.

24 (3) "Free appropriate public education" means special education and
25 related services that:

26 (i) Are provided at public expense, under public supervision and
27 direction, at no cost to the parents;

28 (ii) Meet the standards of the State Board regulations and the
29 Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq. [1997]);

30 (iii) Includes preschool, elementary, and secondary education; and

31 (iv) Are provided in conformance with the requirements of the
32 child's individualized education program.

33 (4) "Special education" means specially designed instruction, at no cost
34 to parents, to meet the unique needs of a child with a disability, including:

1 (i) Instruction in the classroom, in the home, in hospitals and
2 institutions, and in other settings; and

3 (ii) Instruction in physical education.

4 (5) (i) "Related services" means transportation and such
5 developmental, corrective, and other supportive services as may be required to assist
6 a child with a disability to benefit from special education.

7 (ii) "Related services" includes the early identification and
8 assessment of disabling conditions in children.

9 (III) "RELATED SERVICES" DOES NOT INCLUDE A SURGICALLY
10 IMPLANTED MEDICAL DEVICE OR THE REPLACEMENT OF THE DEVICE.

11 8-406.

12 (d) (2) For wraparound services, payment or reimbursement may not be
13 provided in accordance with § 8-415(d) of this subtitle if:

14 (i) The child is eligible for funding for out-of-state placement of
15 children under [Article 49D, §§ 4.3 and 20.1 of the Code] DEPARTMENTAL
16 REGULATIONS; or

17 (ii) Alternative federal, State, or local funding is available.

18 (f) In addition to meeting the requirements of this subtitle, a local school
19 system seeking nonpublic tuition payment [must also meet the requirements of
20 Article 49D of the Code, as applicable, and] SHALL obtain funding approval from the
21 local coordinating council and the State Coordinating Council IN ACCORDANCE WITH
22 DEPARTMENTAL REGULATIONS.

23 8-408.

24 (a) (4) "Individualized education program" and "IEP team" have the same
25 meaning as provided by the Individuals with Disabilities Education Act
26 [Amendments of 1997, P.L. 105-17, Section 614(d)].

27 8-410.

28 (b) (2) If a local management board, AS established [under Article 49D, § 11
29 of the Code] BY THE GOVERNOR'S OFFICE FOR CHILDREN, funds the placement of a
30 child in a school that is outside the State or the county in which the child resides
31 without consulting the local school system, the local management board shall certify
32 and pay the cost of the student's daily or other reasonable transportation to school.

33 8-412.

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

1 (2) "Child" means an individual [under the age of 21] who IS ELIGIBLE
 2 TO RECEIVE EDUCATION SERVICES IN ACCORDANCE WITH THE INDIVIDUALS WITH
 3 DISABILITIES EDUCATION ACT AND APPLICABLE STATE LAW AND REGULATION];

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

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

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

11 (4) "Local school superintendent" means the school system
 12 superintendent or [any individual] THE ADMINISTRATIVE HEAD in charge of a
 13 [system or program] PUBLIC AGENCY AS DEFINED IN PARAGRAPH (7) OF THIS
 14 SUBSECTION that provides educational services to children.

15 (5) (i) "Parent" means:

16 1. A child's natural parents;

17 2. A CHILD'S ADOPTIVE PARENTS;

18 [2.] 3. A guardian;

19 [3.] 4. A person acting as a parent of a child such as a
 20 relative ~~or~~, or a stepparent, ~~OR A FOSTER PARENT~~ with whom a child lives
 21 [including those relatives or stepparents who are the foster parents]; ~~or~~

22 5. A FOSTER PARENT WITH WHOM A CHILD LIVES IF THE
 23 FOSTER PARENT HAS BEEN GRANTED LIMITED GUARDIANSHIP FOR EDUCATIONAL
 24 DECISION-MAKING PURPOSES BY THE COURT THAT HAS PLACED THE CHILD IN
 25 FOSTER CARE; OR

26 [4.] ~~5.~~ 6. Any other individual who is legally responsible
 27 for a child's welfare.

28 (ii) "Parent" does not include a social worker or [a foster parent,
 29 except as provided in item 3, unless appointed as a parent surrogate] OTHER
 30 EMPLOYEE OF A PUBLIC AGENCY WHO IS RESPONSIBLE FOR THE EDUCATION OR
 31 CARE OF THE CHILD.

32 (6) "Parent surrogate" means a person who is appointed by the local
 33 school superintendent to act in place of a parent of a child in the educational decision
 34 making process.

35 (7) "Public agency" includes the State Department of Education, local
 36 education agencies, and other agencies that are responsible for providing education to

1 a child with a disability, including the Department of Health and Mental Hygiene,
2 Mental Hygiene Administration, the Mental Retardation Administration, the
3 Department of Juvenile Services, and the Maryland School for the Deaf. For the
4 purpose of this section the Maryland School for the Blind shall be considered a public
5 agency.

6 (8) "UNACCOMPANIED HOMELESS CHILD" MEANS A CHILD WHO IS
7 CONSIDERED HOMELESS AS DEFINED BY THE MCKINNEY-VENTO HOMELESS
8 ASSISTANCE ACT.

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

11 [(9)] (10) "Unknown" means that a public agency, after reasonable efforts,
12 cannot identify the child's parent.

13 [(10)] (11) "Ward of the State" means a child for whom a State or county
14 agency or official has been appointed legal guardian, or who has been committed by a
15 court of competent jurisdiction to the legal custody of a State or county agency or
16 official with the express authorization that the State or county agency or official
17 make educational decisions for the child.

18 (b) [A public] PUBLIC agency PERSONNEL shall request that the local school
19 superintendent appoint a parent surrogate to represent a child at any point in the
20 educational decision making process if it is suspected that the child may be disabled
21 and if:

22 (1) The child is a ward of the State; [or]

23 (2) THE CHILD IS AN UNACCOMPANIED HOMELESS CHILD; OR

24 [(2)] (3) (I) The parents of the child are unknown or unavailable; AND

25 (II) THE CHILD'S RIGHTS HAVE NOT BEEN TRANSFERRED IN
26 ACCORDANCE WITH § 8-412.1 OF THIS SUBTITLE.

27 (c) Any request to the local school superintendent for the appointment of a
28 parent surrogate under subsection (b) of this section shall include:

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

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

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

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

4 (d) [(1)] The [public agency requesting the appointment of a parent
5 surrogate] LOCAL SCHOOL SUPERINTENDENT shall ensure that the person proposed
6 TO SERVE AS THE CHILD'S PARENT SURROGATE:

7 [(i)] (1) Has no interest that conflicts with the interests of the
8 child to be entrusted to that person; and

9 [(ii)] (2) Has knowledge and skills that ensure adequate
10 representation of the child.

11 [(2)] A parent surrogate may not be an employee of a public agency
12 involved in the care and education of the child entrusted to that parent surrogate,
13 except that a foster parent may not be considered an employee of a public agency
14 under this section solely because the foster parent receives public funds for the care of
15 the child.]

16 (e) (1) [If a public agency files a request for the appointment of a parent
17 surrogate, the] THE local school superintendent shall appoint a parent surrogate NOT
18 MORE THAN 30 DAYS AFTER A DETERMINATION OF NEED, if [that] THE LOCAL
19 SCHOOL superintendent finds:

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

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

25 (2) If the local school superintendent finds that the child is not eligible
26 for the appointment of a parent surrogate in accordance with subsection (b) of this
27 section, the local school superintendent shall notify the requesting [public agency]
28 INDIVIDUAL of this finding and specify the reasons in writing.

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

33 (i) Request [the] public agency PERSONNEL to propose THE
34 APPOINTMENT OF another parent surrogate who is qualified; or

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

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

1 [(5)] (4) (i) The local school superintendent shall notify[, in writing,]
2 the State Superintendent IN WRITING of the parent surrogate appointment.

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

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

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

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

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

15 (g) (1) [A public agency may request that the] THE local school
16 superintendent MAY terminate the appointment of a previously assigned parent
17 surrogate for good cause.

18 (2) When [a public agency requests that] the local school
19 superintendent [terminate] TERMINATES the appointment of the parent surrogate,
20 the [agency] LOCAL SCHOOL SUPERINTENDENT shall state the reasons for the action
21 and [submit the name and qualifications of another individual who is proposed to be
22 assigned as the new parent surrogate] NOTIFY THE STATE SUPERINTENDENT, IN
23 WRITING, OF THE TERMINATION OF A PREVIOUSLY APPOINTED PARENT SURROGATE.

24 (3) THE LOCAL SCHOOL SUPERINTENDENT SHALL SUBMIT THE NAME
25 AND QUALIFICATIONS OF ANOTHER INDIVIDUAL WHO IS ASSIGNED AS THE NEW
26 PARENT SURROGATE IF THE CHILD CONTINUES TO REQUIRE A PARENT SURROGATE
27 IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

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

31 8-413.

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

33 (2) "Administrative law judge" means an individual serving in the role of
34 an impartial hearing officer as required under the federal Individuals with
35 Disabilities Education Act.

36 (3) "DUE PROCESS COMPLAINT" MEANS A WRITTEN REQUEST FOR A DUE
37 PROCESS HEARING FILED BY THE PARENT OF A CHILD WITH A DISABILITY, AS

1 DEFINED IN § 8-412 OF THIS SUBTITLE, OR A PUBLIC AGENCY, TO RESOLVE A
 2 DISPUTE OVER THE IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT, OR
 3 THE PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION, IN ACCORDANCE WITH
 4 FEDERAL LAW.

5 [(3)] (4) "Federal law" means the Individuals with Disabilities
 6 Education Act and regulations adopted under that Act.

7 (5) "PARENT" MEANS:

8 (I) A CHILD'S NATURAL ~~PARENTS, OR~~ ADOPTIVE PARENTS, A
 9 GUARDIAN, OR A PERSON ACTING AS A PARENT OF A CHILD, SUCH AS A RELATIVE; OR
 10 A STEPPARENT, ~~OR A FOSTER PARENT~~ WITH WHOM THE CHILD LIVES;

11 (II) A FOSTER PARENT WITH WHOM A CHILD LIVES IF THE FOSTER
 12 PARENT HAS BEEN GRANTED LIMITED GUARDIANSHIP FOR EDUCATIONAL
 13 DECISION-MAKING PURPOSES BY THE COURT THAT PLACED THE CHILD IN FOSTER
 14 CARE;

15 ~~(H)~~ (III) ANOTHER INDIVIDUAL WHO IS LEGALLY RESPONSIBLE
 16 FOR THE CHILD'S WELFARE; OR

17 ~~(HH)~~ (IV) A PARENT SURROGATE APPOINTED IN ACCORDANCE WITH
 18 § 8-412 OF THIS SUBTITLE.

19 [(4)] (6) "Public agency" means the State Department of Education, a
 20 local school system, or any State agency responsible for providing education to
 21 students with disabilities, including the Maryland School for the Blind and the
 22 Maryland School for the Deaf.

23 (7) "RESOLUTION SESSION" MEANS A PRELIMINARY MEETING THE
 24 PUBLIC AGENCY SHALL CONVENE WITH THE CHILD'S PARENT IN ACCORDANCE WITH
 25 FEDERAL LAW.

26 (b) (1) THE PARENT OF A CHILD WITH A DISABILITY OR A PUBLIC AGENCY
 27 MAY FORMALLY REQUEST MEDIATION AT ANY TIME TO RESOLVE ANY
 28 DISAGREEMENT BETWEEN THE PARTIES REGARDING THE CHILD'S SPECIAL
 29 EDUCATION SERVICES OR PROGRAM.

30 [(1)] (2) If a parent [seeks review of the decision of] FILES A DUE
 31 PROCESS COMPLAINT AGAINST a public agency concerning the identification,
 32 evaluation, or educational placement of a student or the provision of a free
 33 appropriate public education, any party shall be given the opportunity to request
 34 mediation of those aspects of the decision subject to dispute.

35 [(2)] (3) The request for mediation may not be used to deny or delay the
 36 parent's rights under federal law or this section.

37 [(3)] (4) Any party to the mediation has the right to be accompanied and
 38 advised by counsel.

1 (5) MEDIATION SHALL BE CONDUCTED IN ACCORDANCE WITH
2 DEPARTMENTAL REGULATIONS.

3 (6) A MEDIATION AGREEMENT SHALL BE IN WRITING AND IS
4 ENFORCEABLE IN A COURT OF COMPETENT JURISDICTION IN ACCORDANCE WITH
5 FEDERAL LAW.

6 (C) (1) ~~BEFORE CONDUCTING A DUE PROCESS HEARING AS DESCRIBED IN~~
7 ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, THE PUBLIC AGENCY SHALL
8 PROVIDE THE PARENT WITH AN OPPORTUNITY TO RESOLVE THE DUE PROCESS
9 COMPLAINT AT A RESOLUTION SESSION IN ACCORDANCE WITH FEDERAL LAW.

10 (2) A RESOLUTION SESSION AGREEMENT SHALL BE IN WRITING AND
11 ENFORCEABLE IN A COURT OF COMPETENT JURISDICTION IN ACCORDANCE WITH
12 FEDERAL LAW.

13 (3) A WRITTEN RESOLUTION AGREEMENT MAY BE VOIDED BY THE
14 PARTIES WITHIN 3 BUSINESS DAYS OF EXECUTION IN ACCORDANCE WITH FEDERAL
15 LAW.

16 [(c)] (D) (1) A parent [or guardian] of a [student] CHILD with disabilities
17 [or the public agency may make] SHALL FILE a [written request to] DUE PROCESS
18 COMPLAINT WITH the Office of Administrative Hearings [for a review of the
19 identification, evaluation, or educational placement of the child or the provision of a
20 free appropriate education for the child] AND THE PUBLIC AGENCY.

21 (2) A PUBLIC AGENCY SHALL FILE A DUE PROCESS COMPLAINT WITH
22 THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE PARENT.

23 (3) ~~UNLESS A PARENT WAS PREVENTED FROM REQUESTING A DUE~~
24 ~~PROCESS HEARING DUE TO CONDITIONS SET FORTH IN FEDERAL LAW EXCEPT AS~~
25 PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE COMPLAINING PARTY
26 SHALL FILE A DUE PROCESS COMPLAINT WITHIN 2 YEARS OF THE DATE THE PARTY
27 KNEW OR SHOULD HAVE KNOWN ABOUT THE ACTION THAT FORMS THE BASIS OF
28 THE DUE PROCESS COMPLAINT.

29 (4) THE STATUTE OF LIMITATIONS DESCRIBED UNDER PARAGRAPH (3)
30 OF THIS SUBSECTION DOES NOT APPLY TO A PARENT WHO IS PREVENTED FROM
31 REQUESTING A DUE PROCESS HEARING DUE TO:

32 (I) SPECIFIC MISREPRESENTATIONS MADE BY THE PUBLIC
33 AGENCY THAT IT HAD RESOLVED THE PROBLEM THAT FORMED THE BASIS OF THE
34 DUE PROCESS COMPLAINT; OR

35 (II) THE PUBLIC AGENCY'S WITHHOLDING OF INFORMATION THAT
36 THE PUBLIC AGENCY WAS REQUIRED TO PROVIDE TO THE PARENT.

37 [(2)] (4) (5) In order to conduct a hearing, the Office of Administrative
38 Hearings shall appoint an [impartial] administrative law judge who:

1 (i) Is an administrative law judge in the Office of Administrative
2 Hearings; AND

3 [(ii) Has received and continues to receive specialized training in
4 matters significant to the educational review of students with disabilities; and

5 (iii) Has no interest that would conflict with the administrative law
6 judge's objectivity in the review.

7 (3) The Office of Administrative Hearings shall inform the parent of any
8 free or low cost legal and other relevant services available upon request or whenever
9 a hearing is initiated under this section.]

10 (II) MEETS THE REQUIREMENTS OF A DUE PROCESS HEARING
11 OFFICER IN ACCORDANCE WITH FEDERAL LAW.

12 [(4)] ~~(5)~~ (6) Unless the parent and the public agency otherwise agree,
13 during the course of any administrative or judicial proceeding, the [student] CHILD
14 must remain in the last approved placement IN ACCORDANCE WITH FEDERAL LAW.

15 [(5)] ~~(6)~~ (7) If the hearing concerns the initial admission of a child into
16 a public school, the [student] CHILD with the consent of the parent must be placed in
17 the public school program until the proceedings have been completed.

18 [(d)] (E) (1) The administrative law judge appointed under subsection [(c)]
19 (D) of this section shall conduct the hearing in accordance with federal law, Title 10 of
20 the State Government Article, and the Office of Administrative Hearings Rules of
21 Administrative Procedure, and may:

22 (i) After review of the educational records of the child, dismiss any
23 request for review which does not relate to a matter described in subsection [(c)(1)]
24 (D)(1) of this section;

25 (ii) Require the parties to attend a prehearing conference prior to
26 the due process hearing;

27 (iii) Hear any testimony that it considers relevant;

28 (iv) Require an independent evaluation or call an impartial expert
29 witness in the diagnosis or education of students with disabilities whose testimony
30 shall be on the record and whose costs shall be paid by the State Education Agency;
31 and

32 (v) Administer oaths to witnesses at the hearing on request of a
33 party.

34 (2) The provisions of the Family Educational Rights and Privacy Act and
35 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

1 (3) If the parties cannot agree on an impartial expert witness, each party
 2 shall be given the opportunity to submit a list of possible experts, and the
 3 administrative law judge shall decide which impartial expert witness to call.

4 [(e)] (F) (1) Any party to the hearing has the right to:

5 (i) Be accompanied and be advised by counsel and individuals with
 6 special knowledge or training with respect to the problems of children with
 7 disabilities;

8 (ii) Present evidence and confront, cross-examine, and compel the
 9 attendance of witnesses;

10 (iii) Prohibit the introduction of any evidence at the hearing which
 11 has not been disclosed to all parties at least 5 days before the hearing;

12 (iv) Obtain a written or electronic verbatim record of the hearing;
 13 and

14 (v) Obtain written findings of fact and decisions.

15 (2) Parents involved in the hearings must be given the right to:

16 (i) Have the child who is the subject of the hearing present; and

17 (ii) Open the hearing to the public.

18 (G) (1) THE DECISION OF THE ADMINISTRATIVE LAW JUDGE SHALL BE
 19 MADE ON SUBSTANTIVE GROUNDS BASED ON THE DETERMINATION OF WHETHER
 20 THE CHILD RECEIVED A FREE APPROPRIATE PUBLIC EDUCATION.

21 (2) IN MATTERS ALLEGING A PROCEDURAL VIOLATION, AN
 22 ADMINISTRATIVE LAW JUDGE MAY FIND THAT THE CHILD DID NOT RECEIVE A FREE
 23 APPROPRIATE PUBLIC EDUCATION ONLY IF THE PROCEDURAL INADEQUACIES ~~MEET~~
 24 ~~THE CONDITIONS ESTABLISHED IN FEDERAL LAW;~~

25 (I) IMPEDED THE CHILD'S RIGHT TO A FREE APPROPRIATE PUBLIC
 26 EDUCATION;

27 (II) SIGNIFICANTLY IMPEDED THE PARENTS' OPPORTUNITY TO
 28 PARTICIPATE IN THE EDUCATIONAL DECISION-MAKING PROCESS REGARDING THE
 29 PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION TO THE PARENTS' CHILD;
 30 OR

31 (III) CAUSED A DEPRIVATION OF EDUCATIONAL BENEFITS.

32 [(f)] (H) The hearing shall be held and a written decision shall be issued
 33 within [45 calendar days from the request for the hearing] THE TIME PERIODS
 34 ESTABLISHED BY FEDERAL LAW. The administrative law judge may grant a specific
 35 extension of time [not to exceed 60 calendar days for good cause shown] AT THE
 36 REQUEST OF EITHER PARTY.

1 [(g)] (I) If, at the time of the [hearing request] DUE PROCESS COMPLAINT,
 2 the [student] CHILD who is the subject of the hearing is not enrolled and attending
 3 an APPROVED educational program OR, IF THE DUE PROCESS COMPLAINT IS OVER
 4 THE PLACEMENT OR MANIFESTATION DETERMINATION OF A CHILD, DUE TO A
 5 VIOLATION OF THE RULES OF CONDUCT, an expedited hearing [schedule shall apply.
 6 In these cases, the hearing shall be held within 20 calendar days and a written
 7 decision shall be issued within 15 calendar days of the hearing] SHALL OCCUR
 8 WITHIN 20 SCHOOL DAYS OF THE DATE THE HEARING IS REQUESTED AND SHALL
 9 RESULT IN A DECISION WITHIN 10 SCHOOL DAYS OF THE HEARING.

10 ~~[(h)] (J) [Within 180 calendar days of the issuance of the hearing decision,
 11 any] ANY party to the hearing may [file an] appeal [from] a final [review] decision
 12 of the Office of Administrative Hearings to the federal District Court for Maryland IN
 13 ACCORDANCE WITH FEDERAL LAW or to the circuit court for the county in which the
 14 [student] CHILD resides.~~

15 [(h)] (J) Within 180 /20 calendar days of the issuance of the hearing decision,
 16 any party to the hearing may file an appeal from a final [review] decision of the
 17 Office of Administrative Hearings to the federal District Court for Maryland or to the
 18 circuit court for the county in which the [student] CHILD resides.

19 [(i)] (K) (1) [If a local school system has] A PUBLIC AGENCY IS NOT
 20 REQUIRED TO PAY FOR THE COST OF EDUCATION, INCLUDING SPECIAL EDUCATION
 21 AND RELATED SERVICES, FOR A CHILD WITH A DISABILITY AT A PRIVATE OR
 22 NONPUBLIC SCHOOL IF THE PUBLIC AGENCY made a free appropriate public
 23 education available to [a] THE child [with a disability] and the parent of the child
 24 [chooses] ELECTED to place the child in [a nonpublic school, the local school system
 25 is not required to pay for the child's education at the nonpublic school] SUCH A
 26 SCHOOL OR FACILITY.

27 [(2) Before removing a child from the local school system, a parent of the
 28 child shall notify the local school system of the parent's:

29 (i) Decision to reject the local school system's proposed placement;

30 (ii) Concerns leading to the decision to remove the child from the
 31 local school system; and

32 (iii) Intention to enroll the child in a nonpublic school at public
 33 expense.

34 (3) The parent shall provide notice by:

35 (i) Informing the individualized education program team at the
 36 most recent meeting the parent attended before the removal of the child; or

37 (ii) Providing the local school system with written notice at least 10
 38 business days, including holidays that occur on business days, before the removal of
 39 the child.]

1 [(4)] (2) If the parent [decides to enroll the] OF A CHILD WITH A
2 DISABILITY, WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED
3 SERVICES UNDER THE AUTHORITY OF A PUBLIC AGENCY, ENROLLS THE child in a
4 nonpublic school OR FACILITY without the consent of or referral by the [local school
5 system] PUBLIC AGENCY, an [impartial hearing officer] ADMINISTRATIVE LAW
6 JUDGE or a court may require the [local school system] PUBLIC AGENCY to reimburse
7 the parent for the costs of the placement ENROLLMENT if:

8 (i) The child had previously received special education and related
9 services under the authority of the local school system; and

10 (ii) An impartial hearing officer] THE ADMINISTRATIVE LAW
11 JUDGE or court determines that the [local school system] PUBLIC AGENCY had not
12 made a free appropriate public education available to the child in a timely manner
13 [before the parent enrolled the child in the nonpublic school] PRIOR TO THAT
14 ENROLLMENT.

15 [(5)] (3) Reimbursement may be reduced or denied by the [impartial
16 hearing officer] ADMINISTRATIVE LAW JUDGE or court [if the:

17 (i) Parent failed to notify the local school system of the decision as
18 required under paragraph (3) of this subsection;

19 (ii) Parent's actions were unreasonable; or

20 (iii) Parent failed to make the child available for evaluation before
21 the child's removal and after the local school system provided the parent with written
22 notice of its intention to evaluate the child, including an appropriate and reasonable
23 statement of the purpose of the evaluation] IN ACCORDANCE WITH FEDERAL LAW.

24 [(6) An impartial hearing officer or court may not reduce or deny
25 reimbursement for failure to provide notice as required under paragraph (3) of this
26 subsection if:

27 (i) The parent is illiterate and cannot write in English;

28 (ii) Providing notice would likely result in physical or serious
29 emotional harm to the child;

30 (iii) The local school system prevented the parent from providing
31 notice; or

32 (iv) The parent was not provided with a copy of the procedural
33 safeguards notice in accordance with COMAR 13A.05.01.11A, including the
34 requirements of this subsection.

35 (7) Disagreements between a parent and a local school system regarding
36 the availability of a free appropriate public education and the question of financial
37 responsibility are subject to the provisions of subsections (c) through (h) of this section
38 and COMAR 13A.05.01.15C.]

1 8-416.

2 (a) (1) There is a Maryland Infants and Toddlers Program in the
3 Department.

4 (2) The purpose of the Program is to provide a statewide,
5 community-based interagency system of comprehensive early intervention services to
6 eligible infants and toddlers, birth through age 2, and their families.

7 (c) The Program shall include the early intervention services provided or
8 supervised by the Department and the [State Departments] DEPARTMENT of Health
9 and Mental Hygiene including the Program for Hearing-Impaired Infants established
10 under Title 13, Subtitle 6 of the Health - General Article and THE DEPARTMENT OF
11 Human Resources[, and the Office for Children, Youth, and Families].

12 8-417.

13 (b) (1) The Department of Education, as the fiscal agent of the [Subcabinet
14 Fund for Children, Youth, and Families under Article 49D of the Code] CHILDREN'S
15 CABINET INTERAGENCY FUND, shall administer and implement a redesigned rate
16 setting process for nonpublic general education schools, residential child care
17 programs, and nonresidential child care programs.

18 (2) The Department of Human Resources, the Department of Juvenile
19 Services, the Department of Budget and Management, the Office for Children, Youth,
20 and Families, and the Department of Health and Mental Hygiene, AND THE
21 GOVERNOR'S OFFICE FOR CHILDREN shall participate with the Department of
22 Education in the development and implementation of rates in programs licensed or
23 approved by those agencies to the extent required by federal and State law.

24 (c) (1) A decision as to the amount or implementation of rates established
25 under this section may be appealed by sending a written request for appeal to the
26 [Subcabinet] THE CHILDREN'S CABINET.

27 (2) The request shall set forth the specific objections to the decision as to
28 the amount or implementation of rates established under this section.

29 (3) The [Subcabinet or the Subcabinet's] CHILDREN'S CABINET OR
30 designees shall issue a final, binding opinion upholding, reversing, or modifying the
31 rates set by the Interagency Rates Committee within 30 days after receipt of the
32 request for appeal.

33 SECTION 2. AND BE IT FURTHER ENACTED, That all laws or parts of
34 laws, public general or public local, inconsistent with this Act, are repealed to the
35 extent of the inconsistency.

36 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
37 effect July 1, 2006.

