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

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Rules suspended

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 20, 2006

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.

17 BY repealing and reenacting, with amendments,

18 Article - Education

19 Section 8-401(a), 8-406(d)(2) and (f), 8-408(a)(4), 8-410(b)(2), 8-412, 8-413,

20 8-416(c), and 8-417(b) and (c)

21 Annotated Code of Maryland

22 (2004 Replacement Volume and 2005 Supplement)

23 BY repealing and reenacting, without amendments,

1 Article - Education
2 Section 8-416(a)
3 Annotated Code of Maryland
4 (2004 Replacement Volume and 2005 Supplement)

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

7 **Article - Education**

8 8-401.

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

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

17 (3) "Free appropriate public education" means special education and
18 related services that:

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

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

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

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

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

28 (i) Instruction in the classroom, in the home, in hospitals and
29 institutions, and in other settings; and

30 (ii) Instruction in physical education.

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

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

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

3 8-406.

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

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

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

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

15 8-408.

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

19 8-410.

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

25 8-412.

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

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

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

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

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

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

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

6 1. A child's natural parents;

7 2. A CHILD'S ADOPTIVE PARENTS;

8 [2.] 3. A guardian;

9 [3.] 4. A person acting as a parent of a child such as a
 10 relative ~~or~~, or a stepparent, ~~OR A FOSTER PARENT~~ with whom a child lives
 11 [including those relatives or stepparents who are the foster parents]; ~~or~~

12 5. A FOSTER PARENT WITH WHOM A CHILD LIVES IF THE
 13 FOSTER PARENT HAS BEEN GRANTED LIMITED GUARDIANSHIP FOR EDUCATIONAL
 14 DECISION-MAKING PURPOSES BY THE COURT THAT HAS PLACED THE CHILD IN
 15 FOSTER CARE; OR

16 [4.] ~~5.~~ 6. Any other individual who is legally responsible
 17 for a child's welfare.

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

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

25 (7) "Public agency" includes the State Department of Education, local
 26 education agencies, and other agencies that are responsible for providing education to
 27 a child with a disability, including the Department of Health and Mental Hygiene,
 28 Mental Hygiene Administration, the Mental Retardation Administration, the
 29 Department of Juvenile Services, and the Maryland School for the Deaf. For the
 30 purpose of this section the Maryland School for the Blind shall be considered a public
 31 agency.

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

35 [(8)] (9) "Unavailable" means that a public agency, after reasonable
 36 efforts, cannot discover the physical whereabouts of a child's parent.

1 [(9)] (10) "Unknown" means that a public agency, after reasonable efforts,
2 cannot identify the child's parent.

3 [(10)] (11) "Ward of the State" means a child for whom a State or county
4 agency or official has been appointed legal guardian, or who has been committed by a
5 court of competent jurisdiction to the legal custody of a State or county agency or
6 official with the express authorization that the State or county agency or official
7 make educational decisions for the child.

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

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

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

14 [(2)] (3) (I) The parents of the child are unknown or unavailable; AND

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

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

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

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

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

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

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

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

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

35 [(2) A parent surrogate may not be an employee of a public agency
36 involved in the care and education of the child entrusted to that parent surrogate,

1 except that a foster parent may not be considered an employee of a public agency
2 under this section solely because the foster parent receives public funds for the care of
3 the child.]

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

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

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

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

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

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

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

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

27 [(5) (4) (i) The local school superintendent shall notify[, in writing,]
28 the State Superintendent IN WRITING of the parent surrogate appointment.

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

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

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

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

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

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

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

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

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

20 8-413.

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

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

25 (3) "DUE PROCESS COMPLAINT" MEANS A WRITTEN REQUEST FOR A DUE
 26 PROCESS HEARING FILED BY THE PARENT OF A CHILD WITH A DISABILITY, AS
 27 DEFINED IN § 8-412 OF THIS SUBTITLE, OR A PUBLIC AGENCY, TO RESOLVE A
 28 DISPUTE OVER THE IDENTIFICATION, EVALUATION, EDUCATIONAL PLACEMENT, OR
 29 THE PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION, IN ACCORDANCE WITH
 30 FEDERAL LAW.

31 [(3)] (4) "Federal law" means the Individuals with Disabilities
 32 Education Act and regulations adopted under that Act.

33 (5) "PARENT" MEANS:

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

37 (II) A FOSTER PARENT WITH WHOM A CHILD LIVES IF THE FOSTER
 38 PARENT HAS BEEN GRANTED LIMITED GUARDIANSHIP FOR EDUCATIONAL

1 DECISION-MAKING PURPOSES BY THE COURT THAT PLACED THE CHILD IN FOSTER
 2 CARE:

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

5 ~~(H)~~ (IV) A PARENT SURROGATE APPOINTED IN ACCORDANCE WITH
 6 § 8-412 OF THIS SUBTITLE.

7 [(4)] (6) "Public agency" means the State Department of Education, a
 8 local school system, or any State agency responsible for providing education to
 9 students with disabilities, including the Maryland School for the Blind and the
 10 Maryland School for the Deaf.

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

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

18 [(1)] (2) If a parent [seeks review of the decision of] FILES A DUE
 19 PROCESS COMPLAINT AGAINST a public agency concerning the identification,
 20 evaluation, or educational placement of a student or the provision of a free
 21 appropriate public education, any party shall be given the opportunity to request
 22 mediation of those aspects of the decision subject to dispute.

23 [(2)] (3) The request for mediation may not be used to deny or delay the
 24 parent's rights under federal law or this section.

25 [(3)] (4) Any party to the mediation has the right to be accompanied and
 26 advised by counsel.

27 (5) MEDIATION SHALL BE CONDUCTED IN ACCORDANCE WITH
 28 DEPARTMENTAL REGULATIONS.

29 (6) A MEDIATION AGREEMENT SHALL BE IN WRITING AND IS
 30 ENFORCEABLE IN A COURT OF COMPETENT JURISDICTION IN ACCORDANCE WITH
 31 FEDERAL LAW.

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

36 (2) A RESOLUTION SESSION AGREEMENT SHALL BE IN WRITING AND
 37 ENFORCEABLE IN A COURT OF COMPETENT JURISDICTION IN ACCORDANCE WITH
 38 FEDERAL LAW.

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

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

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

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

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

20 (I) SPECIFIC MISREPRESENTATIONS MADE BY THE PUBLIC
 21 AGENCY THAT IT HAD RESOLVED THE PROBLEM THAT FORMED THE BASIS OF THE
 22 DUE PROCESS COMPLAINT; OR

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

25 [(2)] ~~(4)~~ (5) In order to conduct a hearing, the Office of Administrative
 26 Hearings shall appoint an [impartial] administrative law judge who:

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

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

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

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

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

1 [(4)] ~~(5)~~ (6) Unless the parent and the public agency otherwise agree,
2 during the course of any administrative or judicial proceeding, the [student] CHILD
3 must remain in the last approved placement IN ACCORDANCE WITH FEDERAL LAW.

4 [(5)] ~~(6)~~ (7) If the hearing concerns the initial admission of a child into
5 a public school, the [student] CHILD with the consent of the parent must be placed in
6 the public school program until the proceedings have been completed.

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

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

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

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

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

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

23 (2) The provisions of the Family Educational Rights and Privacy Act and
24 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

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

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

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

1 (iv) Obtain a written or electronic verbatim record of the hearing;

2 and

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

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

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

6 (ii) Open the hearing to the public.

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

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

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

16 (II) SIGNIFICANTLY IMPEDED THE PARENTS' OPPORTUNITY TO
17 PARTICIPATE IN THE EDUCATIONAL DECISION-MAKING PROCESS REGARDING THE
18 PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION TO THE PARENTS' CHILD;
19 OR

20 (III) CAUSED A DEPRIVATION OF EDUCATIONAL BENEFITS.

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

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

35 [(h)] (J) [~~Within 180 calendar days of the issuance of the hearing decision,~~
36 ~~any] ANY party to the hearing may [file an] appeal [from] a final [review] decision
37 of the Office of Administrative Hearings to the federal District Court for Maryland IN~~

1 ~~ACCORDANCE WITH FEDERAL LAW~~ or to the circuit court for the county in which the
2 ~~[student] CHILD resides.~~

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

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

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

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

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

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

22 (3) The parent shall provide notice by:

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

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

28 [(4)] (2) If the parent [decides to enroll the] OF A CHILD WITH A
29 DISABILITY, WHO PREVIOUSLY RECEIVED SPECIAL EDUCATION AND RELATED
30 SERVICES UNDER THE AUTHORITY OF A PUBLIC AGENCY, ENROLLS THE child in a
31 nonpublic school OR FACILITY without the consent of or referral by the [local school
32 system] PUBLIC AGENCY, an [impartial hearing officer] ADMINISTRATIVE LAW
33 JUDGE or a court may require the [local school system] PUBLIC AGENCY to reimburse
34 the parent for the costs of the placement ENROLLMENT if]:

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

37 (ii) An impartial hearing officer] THE ADMINISTRATIVE LAW
38 JUDGE or court determines that the [local school system] PUBLIC AGENCY had not

1 made a free appropriate public education available to the child in a timely manner
2 [before the parent enrolled the child in the nonpublic school] PRIOR TO THAT
3 ENROLLMENT.

4 [(5)] (3) Reimbursement may be reduced or denied by the [impartial
5 hearing officer] ADMINISTRATIVE LAW JUDGE or court [if the:

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

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

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

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

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

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

19 (iii) The local school system prevented the parent from providing
20 notice; or

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

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

28 8-416.

29 (a) (1) There is a Maryland Infants and Toddlers Program in the
30 Department.

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

34 (c) The Program shall include the early intervention services provided or
35 supervised by the Department and the [State Departments] DEPARTMENT of Health
36 and Mental Hygiene including the Program for Hearing-Impaired Infants established

1 under Title 13, Subtitle 6 of the Health - General Article and THE DEPARTMENT OF
2 Human Resources[, and the Office for Children, Youth, and Families].

3 8-417.

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

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

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

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

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

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

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