

## Chapter 458

(Senate Bill 58)

AN ACT concerning

### **Education – Children in Informal Kinship Care Relationships – Payments for Students with Disabilities – Funding**

FOR the purpose of altering a certain provision relating to funding the education of certain students with disabilities in informal kinship care relationships; defining certain terms; and generally relating to education funding for students with disabilities in informal kinship care relationships.

BY repealing and reenacting, with amendments,  
Article – Education  
Section 4–122.1  
Annotated Code of Maryland  
(2008 Replacement Volume and 2011 Supplement)

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

#### **Article – Education**

4–122.1.

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

(2) “Informal kinship care” means a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship.

(3) “**LEAST RESTRICTIVE ENVIRONMENT C (LRE–C)**” MEANS A **SETTING IN WHICH A CHILD IS ENROLLED IN A COMPREHENSIVE SCHOOL ~~WHO~~ AND RECEIVES SPECIAL EDUCATION AND RELATED SERVICES IN REGULAR EDUCATION SETTINGS LESS THAN 40% OF THE SCHOOL DAY.**

(4) “**LEAST RESTRICTIVE ENVIRONMENT F (LRE–F)**” MEANS A **SETTING IN WHICH A CHILD ~~WHO~~ RECEIVES SPECIAL EDUCATION AND RELATED SERVICES FOR GREATER THAN 50% OF THE SCHOOL DAY IN A PUBLIC SEPARATE DAY FACILITY THAT DOES NOT INCLUDE PROGRAMS FOR STUDENTS WITHOUT DISABILITIES.**

**[(3)] (5)** “Local current expense per student” means all expenditures made by a county from county appropriations, except State, federal, and other aid, for public elementary and secondary education in the prior fiscal year, divided by the full-time equivalent enrollment, as defined in § 5–202(a) of this article.

**[(4)] (6)** “Receiving agency” means the local education agency for the county where the relative of a child in an informal kinship care relationship resides.

**[(5)] (7)** “Relative” means an adult related to the child by blood or marriage within the fifth degree of consanguinity.

**[(6)] (8)** “Sending agency” means the local education agency for a county where the parent or legal guardian of a child in an informal kinship care relationship resides, subject to the following conditions:

(i) If the parents or legal guardians of the child live apart, the sending agency is the local education agency in the county where the parent or legal guardian who has been awarded custody of the child resides;

(ii) If custody has not been awarded to a parent or legal guardian, the sending agency is the local education agency of the county where the parent or legal guardian with whom the child lives when not in an informal kinship care relationship resides;

(iii) If custody has been awarded to both parents or legal guardians, and the parents or legal guardians reside in different counties, the local education agencies of both counties shall be considered a sending agency and shall pay one-half the amount as computed in accordance with subsection (d) of this section, except that if a child receives a public education in a county where a parent resides, this subparagraph shall not apply; and

(iv) If custody has been awarded to both parents or legal guardians, and one parent resides in a county and the other resides out of state, the local education agency of the county shall be considered the sending agency.

**[(7)] (9)** “Serious family hardship” means:

- (i) Death of a parent or legal guardian of the child;
- (ii) Serious illness of a parent or legal guardian of the child;
- (iii) Drug addiction of a parent or legal guardian of the child;
- (iv) Incarceration of a parent or legal guardian of the child;
- (v) Abandonment by a parent or legal guardian of a child; or

(vi) Assignment of a parent or legal guardian of a child to active military duty.

(b) Subsection (d) of this section shall apply to the education funding of a child in an informal kinship care relationship if the fiscal impact of the requirements of § 7–101(c) of this article to a county exceeds 0.1% of a county board's total operating budget for a fiscal year.

(c) (1) A child in an informal kinship care relationship shall receive an appropriate education from the receiving agency.

(2) The receiving agency shall include a child enrolled as the result of an informal kinship care relationship in its full-time equivalent enrollment as provided by § 5–202(a) of this article.

(d) (1) Subject to subsection (b) of this section, and except as provided in paragraph (3) of this subsection, for each child in an informal kinship care relationship enrolled in a public school program, the sending agency shall pay the receiving agency an amount equal to the lesser of:

(i) The local current expense per student under the jurisdiction of the sending agency; or

(ii) The local current expense per student under the jurisdiction of the receiving agency.

(2) If the receiving agency determines that a child in an informal kinship care relationship is **[disabled and] A STUDENT WITH A DISABILITY WHO needs [public school Intensity IV or V Special Education Services] AN LRE–C OR LRE–F PLACEMENT**, the sending agency shall pay the receiving agency for each such child an amount equal to the lesser of:

(i) Three times the local current expense per student under the jurisdiction of the sending agency; or

(ii) Three times the local current expense per student under the jurisdiction of the receiving agency.

(3) If the receiving agency determines that a child in an informal kinship care relationship is disabled and needs a nonpublic educational program as provided by § 8–406 of this article, the sending agency shall pay for each such child the amount provided by § 8–415(d)(3) of this article.

(e) (1) Each receiving agency shall:

(i) Notify the State Superintendent of the name of each child in an informal kinship care relationship as of December 31 of each year; and

(ii) Subject to subsection (b) of this section, make a preliminary determination of the sending agency that is financially responsible for each child under subsection (d) of this section.

(2) The receiving agency shall send a copy of the notice required under paragraph (1) of this subsection to the sending agency by January 31, and, at the same time, shall send notice to the State Superintendent.

(3) The sending agency that was determined to be financially responsible under this subsection may appeal that determination to the State Superintendent within 30 days of the date on which the notice was mailed.

(4) The State Superintendent shall decide all appeals that are made under paragraph (3) of this subsection and make a final determination regarding the sending agency's financial responsibility for each child in an informal kinship care relationship under the jurisdiction of the receiving agency.

(5) By January 15 of each year, each county board shall provide the State Superintendent the data necessary to compute the local current expense per student under this section.

(6) If by May 15 a sending agency has failed to make the required payment to a receiving agency, the State Superintendent shall deduct from the next payment of State aid to the sending agency an amount equal to the amount owed under this section and shall pay those funds to the receiving agency.

(f) The State Board shall adopt regulations to implement this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

**Approved by the Governor, May 22, 2012.**