

STUDENTS: Enrollment and Attendance

Assignment to Special Education Program: Impartial Due Process Hearing Procedures

1. Definitions

- a. “Handicapped child” means a child through the age of twenty (20) who has been determined through appropriate assessment as having temporary or long-term special educational needs arising from cognitive, emotional, or physical factors, or any combination of these whose ability to meet general educational objectives is impaired to a degree whereby the services available in the general education program are inadequate in preparing the child to achieve his/her educational potential. A handicapped child is one who has been described as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having a specific learning disability, who because of these impairments, needs special education and related services.
- b. “Parent” means a parent, a guardian, a person acting as a parent of a child, or a parent surrogate who has been appointed for the child.
- c. “Special Education” means instruction, at no cost to the parent, specially designed to meet the unique needs of the handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

2. How to Request a Hearing

A written request for Hearing shall be filed with the Coordinator of the Office of Special Education, Baltimore County Public Schools, 6901 Charles Street, Towson, Maryland 21204, on forms supplied by that office.

3. Time of Hearing

Upon receipt of the written request, a hearing will be scheduled within twenty (20) calendar days. Within forty-five (45) days from the receipt of the request for hearing, the hearing shall be held and a written decision mailed to each of the parties. The hearing officer may grant an extension beyond this time period at the request of either party, but the time may not be extended beyond sixty (60) days.

4. Rights Prior to Hearing

- a. A parent has the right to inspect and copy, at reasonable times, both before any hearing and otherwise, all records of the Baltimore County Public Schools, its agents, and employees, pertaining to the child, including all tests or reports upon which the proposed action may be based.
- b. A parent shall have the right to obtain an independent educational assessment of the child. The Baltimore County Public Schools shall provide to a parent, on request, information about where an independent educational assessment may be obtained. This independent educational assessment shall be at public expense if the parent disagrees with the assessment obtained by the Baltimore County Public Schools. However, the Baltimore County Public Schools may initiate a hearing to show that its assessment is appropriate. If the final decision is that the assessment of the Baltimore County Public Schools is appropriate, the parent still has the right to an independent educational assessment but not at the public expense. The results of such an assessment must be considered by the Baltimore County Public Schools in any decision concerning placement or the provision of a free, appropriate education to the child.

5. Rights to Representation

A parent shall have the right to be accompanied and advised by counsel or other individuals with special knowledge or training with respect to the problems of handicapped children at any stage during the hearing process. The cost of such representation shall be borne by the parent of the child. The Baltimore County Public Schools shall inform the parent of any free or low-cost legal or other related services available in the area.

Representatives of the Baltimore County Public Schools have the right to be represented by council.

6. Conduct of the Hearing

- a. Within 45 days after it receives a request for review, the Office of Special Education shall appoint a hearing officer. The hearing officer shall be knowledgeable in the fields and areas of significance to the educational review of the child. The hearing officer will be selected from a list of ten hearing officers maintained in the Office of Special Education. Unless otherwise agreed by both parties, the hearing officer shall be chosen in rotating alphabetical sequence from the officers on the list. A person who was directly responsible for the recommendation of a proposed action, or who has furnished significant advice or

consultation in reference to the recommendation, may not serve as a hearing officer. A hearing conducted pursuant to these regulations may not be conducted by the School Board or by an employee of the Baltimore County Public Schools or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

- b. The hearing shall be closed unless the parent requests that the hearing be open to the public. All persons present shall be identified for the record at the initiation of the hearing. The parent has the right to have the child who is the subject of the hearing present.
- c. The parent of a child may require the attendance and testimony of employees of the Baltimore County Public Schools who may have direct knowledge pertinent to the subject of the inquiry by requesting the attendance of such employee in writing through the Office of Special Education at least five (5) school days prior to the scheduled hearing date. Due consideration will be given to minimizing interference with the regular duties of employees called to testify.
- d. Both the parent and the representatives of the Baltimore County Public Schools shall have the opportunity to present competent and relevant evidence, both in documentary form and through witnesses.
- e. Parties shall have the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least five (5) calendar days before the hearing.
- f. Each side will be afforded the opportunity to confront and cross-examine witnesses called by the other and will be afforded a reasonable time to present its case.
- g. The hearing officer may request an independent educational assessment, which shall be at public expense.
- h. It shall be the initial responsibility of the party proposing any action to present evidence which supports its appropriateness. Evidence opposing the action shall then be presented. The responsibility for explaining the initial placement recommendation shall be upon the Baltimore County Public Schools. A placement shall be deemed appropriate if it provides special education and related services which: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the Maryland State Board of Education; are provided in conformity with an individualized education program; meet the educational needs of the child; and cannot be provided in any

significantly less restrictive programs which would satisfy these needs equally well.

- i. The Baltimore County Public Schools shall arrange for a written or electronic verbatim record of the hearing unless all parties agree that this record need not be made. Such written or electronic verbatim record shall be made available upon request to the parent appealing the decision at no more than the actual cost of duplication.
- j. The decision of the hearing officer shall be based on the testimony and documented information on the record at the hearing before the hearing officer.
- k. After a hearing has been requested and held in the manner provided, the parent, or upon request, his/her counsel or representative of record shall be informed in writing of the final decision, including a statement of the findings and conclusions upon which it is based. The findings and conclusions in any placement decision shall (1) specify the nature and severity of any handicaps the child has, (2) any special educational needs the child has as a result of those handicaps, (3) any modification of the child's individualized educational program to meet those needs, and (4) shall identify a placement that will provide the child with the required appropriate program. The parent or the counsel or representative shall also be informed by the hearing officer of his/her right to appeal, and the procedure for taking that appeal to the next highest authority. The decision of the hearing officer is final unless a party to the hearing appeals the decision in the manner set forth.
- l. When a hearing is requested by a parent concerning a proposed placement action and the child is at the time enrolled in a free educational program, the Baltimore County Public Schools may not effect any change in the child's placement status without the consent of the parent, or pursuant to a decision of the hearing officer, whichever occurs first, except in emergency situations. The decision of the hearing officer shall be implemented as soon as possible but no sooner than fourteen (14) school days nor later than thirty (30) school days after the decision; provided, that during the pendency of an appeal, unless Baltimore County Public Schools and the parent otherwise agree, the child shall remain in the current placement.
- m. When a hearing is requested concerning a proposed placement action and the child is not currently receiving free educational services, the child shall be placed immediately if the parent consents and a special expedited hearing schedule shall apply. In these cases, the hearing shall be held within twenty (20) calendar days of request; a written decision shall be issued within fifteen (15) calendar days of

the hearing; and the decision shall be implemented within fifteen (15) school days of the decision unless specifically stayed pending appeal or otherwise by the hearing officer. During the pendency of an appeal, unless the Baltimore County Public Schools and the parent otherwise agree, the child shall remain in his or her then current educational placement; or, if the child is not yet receiving free educational services either because the parent did not consent to immediate placement or for any other reason, the child shall be placed in the local public school program until all such appeals have been concluded, if the parent consents.

7. Appeals

If either the representative of the Baltimore County Public Schools or the parent of the child feel aggrieved by the findings and decision of the hearing officer, they may request that the Maryland State Board of Education review the case as it relates to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. Any such request for review shall be made in writing to the Maryland State Board of Education within thirty (30) calendar days of the final decision of the Baltimore County Public Schools.

Rule
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Superintendent of Schools