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A PROCEDURAL GUIDELINE FOR IMPLEMENTING THE RIGHT TO FREE PUBLIC EDUCATION FOR HANDICAPPED CHILDREN

Recent legislation and judicial decisions in Maryland have established the right to free public education for all handicapped children. This article will acquaint the practicing attorney with the substantive and procedural law recently enacted in Maryland to secure this right for mentally and physically handicapped students.

THE RIGHT TO EDUCATION

The precedent for the right to free public education for handicapped children was established by the United States Supreme Court in *Brown v. Board of Education*.¹ In *Brown*, the Court decided that a state must make public education available to all children on an equal basis. Although *Brown*'s thrust was to eliminate racial segregation in education, it also has created a cornerstone for subsequent litigation concerning the right of handicapped children to adequate educational opportunities.²

The practice of excluding handicapped children from free public education programs has been challenged as a violation of the child's constitutional rights to due process and equal protection of the law.³ In *Pennsylvania Association for Retarded Children v. Pennsylvania* ("P.A.R.C."),⁴ a class action was brought to enjoin the enforcement of certain state statutes which were the basis for excluding children, unilaterally determined to be mentally retarded, from the public school system without procedural due process. In its opinion approving a voluntary consent decree, the P.A.R.C. court noted that the Commonwealth of Pennsylvania had denied handicapped children procedural due process by not providing a hearing procedure prior to the grant or denial of placement in a public education program.⁵

The court noted that such a placement process could stigmatize a

1. 347 U.S. 483 (1954).

2. See, e.g., *Mills v. Board of Educ. of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972); *Pennsylvania Ass'n. for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972).

3. A handicapped child's *right to education* can be defined as a right to an appropriate program of education and training based upon a placement procedure that involves the parent or guardian in the placement process and affords the child due process of law. See PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, *YOUR CHILD'S RIGHT TO EDUCATION DEPENDS ON YOU* (1972).

4. 343 F. Supp. 279 (E.D. Pa. 1972) [hereinafter referred to as P.A.R.C.].

5. *Id.* at 295.

child improperly assigned to an educational program.⁶ Noting that such stigmatization is a major concern among parents of retarded children,⁷ the court concluded that the school is primarily responsible for "[imposing] the mentally retarded label and concomitant stigmatization upon children, either initially or later on through a change in educational assignment."⁸

The question of whether due process requires a hearing before a state stigmatizes any citizen was decided in *Wisconsin v. Constantineau*,⁹ wherein the Supreme Court said:

The only issue present here is whether the label or characterization given a person by "posting," though a mark of serious illness to some, is to others such a stigma or badge of disgrace that procedural due process requires notice and an opportunity to be heard. We agree with the district court that the private interest is such that those requirements . . . must be met.¹⁰

Relying solely upon *Constantineau*, the *P.A.R.C.* court was convinced that a colorable claim under the due process clause had been established.¹¹

The *P.A.R.C.* court, relying upon *Brown*, also peripherally analyzed the equal protection problems raised, concluding that there were "serious doubts as to the existence of a rational basis"¹² for the state to undertake a program of public education for some children while

6. See E. GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963) (defining stigma as "an undesired differentness").

The *P.A.R.C.* court noted that a stigma is unfortunately attached to a child who is labeled mentally retarded. 343 F. Supp. at 293.

The school system by placing or reassigning a child into a special education program is essentially labeling the child handicapped, and in so doing, imposes societal characterization of the child. Such an action by the school system requires notice and a hearing so that the child's due process rights can be protected. *Id.* See also *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Wisconsin v. Constantineau*, 400 U.S. 183 (1971); *Weinman v. Updegraff*, 344 U.S. 183 (1952); *cf. Arnett v. Kennedy*,—U.S.—, 94 S.Ct. 1633 (1974).

7. 343 F. Supp. at 295.

8. *Id.*

9. 400 U.S. 433 (1971).

10. *Id.* at 436.

11. 343 F. Supp. at 295.

12. *Id.* at 297. The use of the strict judicial scrutiny test as a basis for an equal protection right to education was rejected by the United States Supreme Court in *San Antonio Unified School Dist. v. Rodriguez*, 411 U.S. 1 (1973). The *Rodriguez* Court held that education was not a fundamental right and therefore required only that the state show a rational basis for its legislative goals. However, *Rodriguez* only concerned the allegation of a relative deprivation of rights by the defendants. The question was not presented as to whether a valid due process claim might exist if the state failed to provide any educational facilities and thus the question of the substantive nature of the right to education remains open. There does exist a due process right to some form of education; recognition of the existence of this right arguably might render the *Rodriguez* decision suspect. *Cf. Pierce v. Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). The *P.A.R.C.* court noted that the State of Pennsylvania may not have been able to meet the less restrictive rational basis test when it denied education to certain groups of children. 343 F. Supp. at 297.

denying public education to others. However, since this action culminated in a voluntary consent decree, wherein Pennsylvania committed itself to a program of free public education for all handicapped children and the implementation of hearing procedures to guarantee appropriate placement, the P.A.R.C. court did not further examine the merits of the plaintiff's equal protection arguments.¹³

Similar arguments were presented to the United States District Court for the District of Columbia in *Mills v. Board of Education of the District of Columbia*,¹⁴ wherein a class action was brought seeking declaratory relief and an injunction restraining the District of Columbia Board of Education from denying publicly supported education to handicapped children. The court, relying upon the equal protection analysis in *Brown* and a similar argument in *Hobson v. Hansen*,¹⁵ found no rational basis for providing education for some children and denying it to others.¹⁶ The *Mills* court concluded that procedural due process dictates "a hearing prior to exclusion, termination [or] classification into a special program."¹⁷ The court also ordered that each child in the District of Columbia be afforded a free public education.¹⁸

DEVELOPMENT OF MARYLAND LAW

The framers of the Maryland Constitution sought to establish an "efficient System of Free Public Schools."¹⁹ The Public Education Laws of Maryland²⁰ provide for educational opportunity for "all youth."²¹ Although each child is required to attend school, special exceptions have been allowed for handicapped children.²² In these situations the local boards are required to provide educational facilities for such children.²³

The passage of the Mental Retardation Act²⁴ by the Maryland Legislature in 1972 indicated a new governmental awareness of the problems of the handicapped. The act specifically established a policy aimed at encouraging the "development . . . of each mentally retarded person in the State to the fullest possible extent. . . ."²⁵ The implementation of this policy in the field of education was established through the enactment of the Special Education Services amendment to the Maryland Public Education Laws in 1973.²⁶

13. 343 F. Supp. at 297.

14. 348 F. Supp. 866 (D.D.C. 1972).

15. 269 F. Supp. 401 (D.D.C. 1967).

16. 348 F. Supp. at 875.

17. *Id.* at 875; see pp. 142 *infra*, for a discussion of due process requirements.

18. 348 F. Supp. at 875.

19. MD. CONST. art. VIII, §1.

20. MD. ANN. CODE art. 77 (1969).

21. *Id.* § 40.

22. *Id.* § 92 (Supp. 1974).

23. *Id.* § 99 (Supp. 1974).

24. *Id.* art. 59A (Supp. 1974).

25. *Id.* § 2.

26. *Id.* art. 77, § 106D (Supp. 1974).

The standards for the education of all handicapped children are provided in the Special Education Services amendment which assures that:

[T]hose educational services necessary to assure that all children with handicaps which impede their ability to learn are afforded the opportunity to attain appropriate levels of knowledge and learning skills, consistent with their potential, and shall include the full range of such services, including but not limited to special equipment, therapeutic treatments ancillary to education, and transportation, whether provided as part of or additional to regular classroom placement or in separate public or private classes or facilities, such appropriate educational services to begin as soon as the child can benefit from them, whether or not he is of regular school age.²⁷

The responsibility for planning and programming special education services falls primarily on the local boards of education, with the Maryland State Board of Education merely adding support through funding and establishment of minimum standards for programming.²⁸ The statute provides for a five year implementation plan for special education programs commencing July 1, 1974.²⁹ A Maryland court decree, however, has established that this five-year period does not modify the present obligation of local boards of education under previously existing statutes to make appropriate free educational programs available for all handicapped children.³⁰

Maryland Association for Retarded Children v. Maryland ("M.A.R.C."),³¹ has further clarified the State commitment to provide free education for handicapped children. *M.A.R.C.*, a class action, required Maryland to provide free education to all handicapped children in the State in accordance with the recently enacted statutes and the court's interpretation of previously existing statutory provisions.³² Unlike *P.A.R.C.* and *Mills*, which were tried in federal courts on federal issues, *M.A.R.C.* was conducted in state court upon issues of state law.³³ Defining education as "any plan or structured program administered by competent persons that is designed to help individuals achieve

27. *Id.* § 106D(a).

28. *Id.* § 106D(b)-(e).

29. *Id.* § 106D(b).

30. See *Maryland Ass'n for Retarded Children v. Maryland*, Equity No. 77676 (Balt. Co. Cir. Ct. 1974) [hereinafter referred to as *M.A.R.C.*], where the court allowed the dependents a year of grace, until September 1975, to comply with statutory provisions requiring appropriate educational programs to be made available for all handicapped children at no cost.

31. Equity No. 77676 (Balt. Co. Cir. Ct. 1974).

32. See MD. ANN: CODE art. 77, §§ 40, 92, 99-100 (1969).

33. The action was originally brought in the Federal District Court for the District of Maryland. *Maryland Ass'n for Retarded Children v. Maryland*, Civil No. 72-0733-K (D. Md., filed July 19, 1972). A three-judge court, however, decided on September 7, 1973 to abstain from deciding the constitutional issues involved until the issues of state law were decided by the Maryland State courts. The Plaintiffs were denied certification to the Maryland Courts of Appeals, which therefore necessitated an entirely new action in the Circuit Court.

their full potential,"³⁴ the *M.A.R.C.* court held that every handicapped child is entitled to a free public education.³⁵

As a result of *M.A.R.C.*, each local board of education in Maryland has the initial responsibility for providing an educational program appropriate for each student.³⁶ When the program "provide[s] for the education outside the public school system, the program must be made available free of charge to the [student and] parent."³⁷

In the past, a parent had been forced to place a handicapped child in a non-public educational program when an appropriate public special education program had not been available.³⁸ The State offered tuition assistance where placement in a non-public school was approved by the Maryland State Department of Education. Under the "regular" funding program a child received up to a maximum \$1,000 tuition grant, while under the "excess cost" funding program the child received additional funding after screening and review by the State Department of Education.³⁹ However, the parent or guardian was forced to bear the additional expense of educating the child.⁴⁰ In many instances non-public facilities did not have adequate programming for the most severely retarded children.⁴¹ A parent's only alternative in this situation was to seek placement of the child in a day care program or a boarding institution.⁴² Many of these programs have not been accredited by the Maryland State Department of Education.⁴³

Some children have not been placed in any program, partly due to the absence of adequate programs, or the inability of the parent to afford a special program.⁴⁴ The *M.A.R.C.* court's ruling will help alleviate the problems of those parents who cannot afford the cost of non-public programs for their handicapped child, and it will assure other parents that some suitable program will be found for their child by local school authorities.

Unfortunately, the implementation of the *M.A.R.C.* decree is entirely dependent upon the funding of the special education programs by the Maryland Legislature in 1975. If funding does not become available,

34. Amended Decree at 4, Equity No. 77676 (Balt. Co. Cir. Ct. May 5, 1974).

35. Memorandum at 4, Equity No. 77676 (Balt. Co. Cir. Ct. Apr. 9, 1974).

36. Amended Decree at 1, Equity No. 77676 (Balt. Co. Cir. Ct. May 5, 1974).

37. *Id.* at 4.

38. Findings of Fact at 24, Equity No. 77676 (Balt. Co. Cir. Ct. Apr. 9, 1974).

39. MD. ANN. CODE art. 77, § 100(b)-(c) (Supp. 1974); MARYLAND STATE BOARD OF EDUCATION, Bylaw 411:III (1973) [hereinafter cited as Bylaw].

Regular funding is provided if the child cannot be placed in a public educational facility. The parent must follow placement procedures discussed at p. 143 *infra*, before such funding can be approved. Excess cost funding is additional funds given for the education of the handicapped child, above the regular cost funding. Excess cost funding must be approved by the State Board of Education pursuant to an Excess Cost Hearing. The Special Education Division of the Maryland State Board of Education should be contacted for additional information. MD. ANN. CODE art. 77 § 100(b)-(c) (Supp. 1974).

40. Finding of Fact at 86, Equity No. 77676 (Balt. Co. Cir. Ct. Apr. 9, 1974).

41. *Id.* at 10.

42. *Id.*

43. *Id.* at 21.

44. *Id.* at 24.

the right cannot become effective.⁴⁵ The State, however, has committed itself to a 6.6 million dollar funding program, and therefore, in accordance with the *M.A.R.C.* decree, the program should be implemented in September of 1975.⁴⁶ Until that time, certain handicapped children may be excluded from special education programs.⁴⁷

With respect to hearings, the federal courts that decided *P.A.R.C.* and *Mills* established procedural rules that guaranteed a child's right to due process of law before being excluded or reassigned to a special education program.⁴⁸ The *M.A.R.C.* court did not address itself to the due process question because hearing procedures preserving this constitutional right were then in the process of being drafted.⁴⁹ These procedures were adopted by the Maryland State Board of Education on December 19, 1973.

The *M.A.R.C.* decision did, however, have an effect on the procedural due process question because the substantive rights of those subject to the procedures had been altered. Prior to *M.A.R.C.*, the end result of a hearing procedure could still have meant exclusion from the school system if no adequate program was available to the child. The child could have gone through the procedural process with no substantive right to enforce. As a result of *M.A.R.C.*, the child is now guaranteed that the result of his due process hearing will be placement into a free public education program, or, into a non-public program at no cost to his parents.

PROCEDURAL OUTLINE

The Maryland State Board of Education has established a model set of rules for placement of handicapped children in free public education programs.⁵⁰ The local boards of education have the option to follow the state guidelines or enact their own procedure.⁵¹ However, those local boards that adopt their own procedures must meet the minimum state requirements established in the State Board's model.⁵²

If the local board of education does not enact its own procedures, those developed by the State automatically apply.⁵³ A writ of man-

45. Record of conference with counsel regarding Amended Decree at 10, Equity No. 77676 (Balt. Co. Cir. Ct. May 30, 1974).

46. *Id.* at 4.

47. *Id.* at 8.

48. See 343 F. Supp. 279, 303; 348 F. Supp. 866, 878.

49. The Bylaw was a compromise between the parties pursuant to count XI of the *M.A.R.C.* complaint filed in the United States District Court for the District of Maryland.

50. Bylaw.

51. *Id.* § X.

52. *Id.*

53. The deadline for the enactment of local procedures was sixty days from the adoption of the Bylaw (Dec. 19, 1973). The Bylaw applies to the local boards until they enact their own procedures. See MD. ANN. CODE art. 77, § 106D (Supp. 1974); Bylaw § X.

Copies of the local bylaws may be obtained by contacting the special education

damus may be appropriate if the local board of education fails to follow either procedure.⁵⁴ As a result, the local board may be compelled to follow its own or the State's procedure, whichever applies, when dealing with the placement of a child in an appropriate educational program.

DUE PROCESS AND THE RIGHT TO EDUCATION HEARING PROCEDURES

The general scope of procedural due process has been outlined in recent United States Supreme Court decisions,⁵⁵ although none of these decisions have directly addressed the problem of the right to education of the handicapped.

In *Board of Regents v. Roth*,⁵⁶ the Supreme Court stated that the "requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount."⁵⁷ Therefore, the nature of the interest at stake must first be examined to determine whether it "is within the Fourteenth Amendment's protection of liberty and property."⁵⁸

The *Roth* Court, citing *Meyer v. Nebraska*,⁵⁹ defined liberty as the "right of the individual to contract, to engage in any common occupations of life, to acquire useful knowledge, to marry, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men."⁶⁰

A "property interest" as defined by the *Roth* Court is more than an "abstract need or desire" or "unilateral expectation."⁶¹ It involves a "legitimate claim of entitlement"⁶² to that which protects those claims upon which people rely in their daily lives.⁶³ They arise from "existing rules or understandings that stem from an independent source such as state law."⁶⁴

division of the local board of education. If the local board of education has not adopted its own set of bylaws, contact the Special Education Division of the Maryland State Board of Education for copies of the Bylaw.

54. Md. R. P. BE40-46.

55. See *Arnett v. Kennedy*, ___U.S. ___, 94 S.Ct. 1633 (1974); *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

56. 408 U.S. 564 (1972).

57. *Id.* at 569-70.

58. *Id.* at 571.

59. 262 U.S. 390 (1923).

60. 408 U.S. at 572 (emphasis added).

61. *Id.* at 577.

62. *Id.* (emphasis added).

63. *Id.*

64. *Id.*

By *Roth*, it would appear that the denial of a free education to a handicapped child is a violation of a property interest⁶⁵ and the right to liberty within the meaning of the Fourteenth Amendment. Consequently, Fourteenth Amendment rights being involved, the nature of the interest would dictate compliance with procedural due process standards.

After it has been determined that procedural due process standards must be met, the form of hearing and opportunity to be heard must be examined. The general test for determining the form of the hearing has been the balancing of the particular interests involved in light of the circumstances of the case.⁶⁶ In *Goldberg v. Kelly*,⁶⁷ the Supreme Court held that the plaintiff welfare recipient was entitled to an evidentiary hearing at which he could personally appear to offer oral evidence and confront and cross-examine witnesses, before his welfare benefits could be terminated. The Court, in balancing the interests of the parties, reasoned that the "interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens."⁶⁸ No state could have a feasible interest in summary adjudication which could outweigh the interest of a child in obtaining a proper education. Therefore, the procedures involved in placement of a child in a special education program should, at the very minimum, meet the *Goldberg* requirements.

GUIDELINE

The following is a step by step analysis of the Maryland procedure involved in placing a handicapped child in a free public education program or reassigning him within the public school system, so that he will be afforded an education appropriate to his needs.

1. *Retention of Counsel.* The handicapped child and his parent or guardian have a right to be represented by counsel or other individuals prior to⁶⁹ and during the course of the placement proceedings.⁷⁰

65. See *Mills v. Board of Educ. of the Dist. of Columbia*, 348 F. Supp. 866 (D.D.C. 1972); *Pennsylvania Ass'n for Retarded Children v. Pennsylvania*, 343 F. Supp. 279 (E.D. Pa. 1972).

66. 408 U.S. at 570. See also *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970); cf. *Arnett v. Kennedy*, ___U.S. ___, 94 S.Ct. 1633 (1974), although the Court rejected the plaintiff's contention that his due process rights were violated, six of the nine Justices applied the balancing test.

67. 397 U.S. 254 (1970), where the Court established the minimum requirements for procedural due process.

68. *Id.* at 266.

69. Under the Administrative Procedure Act, a state agency may not "grant the right to practice law to anyone not authorized to so do." MD. ANN. CODE art. 41, § 254(a) (1971).

The Administrative Procedure Act, however, does not apply to the procedures of the

These procedures may be instituted at the request of the parent or upon action by the school board. Although the right to counsel may not be a mandatory provision of procedural due process at an administrative hearing, the Supreme Court noted in *Powell v. Alabama*,⁷¹ "that the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."⁷² Upon being retained, counsel is advised to contact the local board of education (special education division) for information as to variations between its placement procedure and the State's guidelines.⁷³

2. *Consultation with the Local Board of Education, Special Education Division, and the Pre-proposed Placement Conference.* The parent or guardian of the child must contact the special education division of the local school board for the purpose of requesting diagnosis and placement of the child in a free public education program.⁷⁴ If the child is already enrolled in a program, the parent or guardian must request diagnosis and transfer of the child to another program.⁷⁵ However, it is in the discretion of the school board to hold a pre-proposed placement conference when the parent or guardian makes such requests or when the special education division of the local board of education desires to transfer the child on its own initiative.⁷⁶

The pre-proposed placement conference is carried out informally, with special education experts, guidance counselors, pupil personnel workers, school psychologists, principals and teachers recommending proper placement for the child.⁷⁷ The attorney and his clients are entitled to participate in this informal placement action.⁷⁸ If proper input is channeled into these informal proceedings by the parent, subsequent litigation because of parental misunderstanding and dissatisfaction may be avoided.

The special education division of the local board of education will decide whether the child will be placed in a free program, or whether he will be transferred from one public program to another. The division

county boards of education since they are not State agencies within the meaning of the Act. *Bernstein v. Board of Educ. of Prince Georges Co.*, 245 Md. 464, 226 A.2d 243 (1967).

Counsel need not be an attorney in order to advocate proper placement of a handicapped child through local board of education procedures. Unless the parent qualifies for Legal Aid or some other form of legal assistance, the cost of an attorney's services must be borne by the parent.

70. Bylaw § V.

71. 287 U.S. 45 (1932).

72. *Id.* at 68-69.

73. See Appendix II for a copy of the form.

74. Bylaw § I.

75. *Id.*

76. *Id.*; see p. 146 *infra*, for a discussion and definition of proposed placement action. The local board is not required to notify the parent until after the proposed placement action is taken, but it may do so if it desires to hold a pre-proposed placement conference.

77. See, e.g., COORDINATOR OF SPECIAL EDUCATION ANNE ARUNDEL COUNTY, PROCEDURES FOR PLACEMENT AND DISMISSAL OF STUDENTS IN ANNE ARUNDEL COUNTY SPECIAL EDUCATION PROGRAMS (1974).

78. Bylaw § I.

may also recommend non-public facilities with tuition funding if no program is available for the child in the public school system.

3. *School Records.* The parent or guardian of a child has a right to inspect the child's school records at any time during the placement action, whether during the initial consultation with the local board's special education division or during the hearing process.⁷⁹ Such records include all data compiled by the local school system about the child, including tests and other reports used by the local board in instituting the placement action, if such action was begun on the school's initiative.⁸⁰

4. *Notice.* The parent or guardian of the handicapped child has the right to be notified by mail (either personally delivered or first class) of the decision of the special education division.⁸¹ Such notification is required to contain reasons for the action of the special education division, a description of the action and its effective date, and the basis for the action, including a listing of other alternatives, and a concise statement notifying the parent of the right to a hearing.⁸² Except in the case of emergencies, notices must be mailed at least 25 days in advance of the proposed placement action.⁸³ A hearing is required to be scheduled within forty-five days of the request, but not earlier than twenty days.⁸⁴ However, where the child is presently excluded from free public education programs, a hearing must be held within twenty days of the request.⁸⁵

Notice is an essential requirement of procedural due process.⁸⁶ Should notice not be forthcoming from the special education division of the local school system, steps should be taken to enjoin the school board from any placement action,⁸⁷ pending a placement hearing. The right to such a hearing, however, may be waived by the parent or guardian on behalf of the child, if a written waiver is signed. This could bar any administrative proceedings if the parent or guardian "intelligently and understandingly rejected"⁸⁸ the hearing offer, despite the fact that such a procedure is the constitutional right of the child.

5. *Request for a Hearing.* If the parent or guardian is dissatisfied with the decision and recommendation of the local special education board, the parent may apply for a hearing.⁸⁹ The hearing will afford

79. *Id.* § IV.

80. *Id.*

81. *Id.* § I.

82. *Id.* § III.

83. *Id.* § II.

84. *Id.*

85. *Id.* § VIII(B).

86. See *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971); *Goldberg v. Kelly*, 397 U.S. 254 (1970).

87. Md. R. P. B70-80.

88. *Carnely v. Cochran*, 369 U.S. 506, 516 (1962). See also *Johnson v. Zerbst* 304 U.S. 458 (1938); *Wayne v. State*, 4 Md. App. 424, 243, A.2d 19 (1968); cf. *Burgett v. Texas*, 389 U.S. 109 (1967).

89. Bylaw § I. See appendix II for form.

the parent the opportunity to suggest alternative placement for the child and present witnesses⁹⁰ and evidence⁹¹ to support this contention. The hearing will also provide the parent or counsel with the opportunity to cross-examine the school officials who made the initial placement decision.

The state guidelines provide that such a hearing will be granted whenever a "proposed placement action"⁹² is pending. This action encompasses a decision of the local special education committee when it:

- A. [Places] a child in a program of special education.
- B. Transfers a child from one program of special education to another significantly different program.
- C. Whenever a child is denied placement in a program of special education requested by the child's parent or guardian.
- D. Before excluding a child in need of a special education program from local free education programs.⁹³

6. *Emergency Situations.* The aforementioned notice and hearing procedures are circumvented when school officials feel that immediate action is necessary to protect the "health or safety of the child or of other persons."⁹⁴ Although notice must be given to the parent and hearing procedures instituted upon request,⁹⁵ the placement of the child *precedes these procedures*. The emergency placement procedures present serious due process questions in light of the *Constantineau* and *P.A.R.C.* decisions. The child is subject to being stigmatized and misplaced in a program prior to being given a proper hearing to determine his placement.

7. *Conduct of the Hearings.* During the course of the hearing the parent or guardian on behalf of the child will be afforded the following rights:

- A. The parent[s] or guardian[s] shall have the opportunity to present competent and relevant evidence, both in documentary form and through witnesses.⁹⁶

90. Such witnesses could include psychologists and educators from local colleges and universities, independent psychiatrists and psychologists, and community social workers. The cost of providing the witnesses falls upon the parent or guardian. Local community agencies such as the Kennedy Institute, located in Baltimore City, may be a helpful source in obtaining witnesses and evaluating the child.

91. Evidence may include independent testing of the child, demonstrations of deficiencies in the school systems testing methods, etc.

92. Bylaw § I.

93. *Id.*

94. Bylaw § II.

95. *Id.* The parent or guardian must be notified within 2 days subsequent to the emergency placement. *Id.* However, due process requirements have been relaxed in emergency situations. See generally *Bell v. Burson*, 402 U.S. 535 (1971); *Fahey v. Mallonee*, 332 U.S. 245 (1947).

96. Bylaw § VI(A).

The right to present witnesses on one's own behalf is one of the requirements enunciated by the *Goldberg* Court. However, the cost of expert testimony must be borne by the parents or guardians.⁹⁷

- B. Procedures shall be adopted affording the parent[s] or guardian[s] the opportunity to require the attendance and testimony of employees of the local school system who may have direct knowledge pertinent to the subject of the inquiry. In adopting such procedures, consideration may be given to minimizing interference with the regular duties of employees called to testify.⁹⁸
- C. The parent[s] or guardian[s] shall be afforded the opportunity to question witnesses called by local school officials.⁹⁹

These requirements offer the handicapped child and his parents or guardians the right to cross-examine adverse witnesses. This right has been derived from the Sixth Amendment which provides for the right to cross-examine adverse witnesses in a criminal proceeding.¹⁰⁰ This right has been extended to cross-examination of adverse witnesses in administrative hearings.¹⁰¹

- D. No person shall serve as a hearing officer or member of a hearing panel who was directly responsible for the recommendation of the proposed placement action or who has furnished significant advice or consultation in connection with the recommendation or who, in the opinion of the local school system, will be incapable of making an objective judgment. Every reasonable effort will be made to name as a hearing officer, or include on a hearing panel, a person who is knowledgeable in the field of special education or a related field.¹⁰²

The purpose of this section is to afford the plaintiff an impartial hearing officer. In *Tumey v. Ohio*,¹⁰³ the United States Supreme Court decided that "the mere union of the executive power and the judicial power [in a hearing officer] cannot be said to violate due process of law."¹⁰⁴ In a practical sense, however, the impartiality of the hearing officers are minimized if they are employed by the local board

97. *Id.* § II.

98. *Id.* § VI(B).

99. *Id.* § VI(C).

100. See generally *Washington v. Texas*, 388 U.S. 14 (1967).

101. *Greene v. McElroy*, 360 U.S. 474 (1959).

102. Bylaw § VI(D). This Bylaw is consistent with the Supreme Court's opinion in *Goldberg*, wherein it was noted that the party empowered to make such a decision "should not ... have participated in making the determination which is under review." 397 U.S. 254, 271.

103. 273 U.S. 510 (1947).

104. *Id.* at 534.

of education in other educational capacities. In addition, the rules make no provision for the challenge of hearing board members.¹⁰⁵ The parent and child do not have any say in the selection of the hearing officers.

- E. The hearing shall be closed unless the parent[s] or guardian[s] request that the the hearing be open to the public.¹⁰⁶

This section provides the parent with considerable leverage. He can publicize the hearing by requesting its opening to the public, and therefore invite public reaction to the proceedings. However, he can also protect family privacy by requesting that the hearing be kept closed. The parent's decision to open or close the hearing is *not* subject to board review.

- F. The local school system shall make arrangements for a tape recording or other record of the hearing unless all parties agree that such a record need not be made. Tape recordings or written records shall be made available to parent[s] or guardian[s] appealing the decision upon request and under the following conditions: any tape recordings shall be available at no more than actual cost of duplication; a copy of any written record requested by the local school system shall be available to the parent[s] or guardian[s] for a nominal copying cost; otherwise, the hearing officer or panel shall have the authority to determine whether parent[s] or guardian[s] requesting a tape recording or written record should be relieved in whole or part of the obligation to pay the cost thereof.¹⁰⁷

This provision is an attempt to preserve the record for appeal purposes. It appears to provide an indigent plaintiff with a means of obtaining a free transcript of the record, but in light of the fact that the plaintiff must bear the cost of the expert witnesses and counsel, (if retained), it essentially has a *de minimus* effect.¹⁰⁸ This transcript will provide the appellate courts with a record of the conduct of the local board's proceedings. The appellate courts will then have the opportunity to compare any new evidence presented on appeal with the evidence presented at the lower hearing.

- G. The decision of the hearing officer or panel shall be based solely on the information presented on the record at the hearing.¹⁰⁹

105. See generally *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Tumey v. Ohio*, 273 U.S. 510 (1947).

106. Bylaw § VI(E).

107. *Id.* § VI(F).

108. See, e.g., *Griffin v. Illinois*, 351 U.S. 12 (1956).

109. Bylaw § VI(G).

- H. It shall be the initial responsibility of the party proposing any placement action to present evidence which supports its appropriateness and then any evidence to the contrary shall be presented. The ultimate burden of proving or disproving appropriateness by a preponderance of the evidence shall be upon the parent[s] or guardian[s], except that school officials shall bear the burden when a placement action proposed by them does not involve placement in a free educational program. A placement shall be deemed appropriate if it reasonably meets the educational needs of the child and there do not exist any significantly less restrictive programs which would satisfy such needs equally well.¹¹⁰

This section provides an outline for the actual argument of the case. The burden of proof falls upon the parents when they contest the placement decision of the local board of education. The burden of proof falls upon the local board when it excludes a child from a free public program and offers non-public school placement. The term "less restrictive" seems to place emphasis on a new trend in education known as mainstreaming. Mainstreaming involves the placement of a handicapped child into a regular school program, thus opening up space for more severely handicapped children in special education programs.¹¹¹

8. *Decision.* The hearing board must render its decision within thirty days from the conclusion of the hearing.¹¹² The final decision of the board must be in writing.¹¹³ The parent or guardian must be given notice of subsequent appeal procedures.¹¹⁴ The hearing panel has the authority to provide alternative placement, if their decision does not support the proposed placement action.¹¹⁵ In such a situation, the parent would have to be afforded another hearing to contest the board's decision, either through a rehearing or an appeal.¹¹⁶

9. *Placement of the Child During the Proposed Placement Action.* Except in emergency situations, a child enrolled in a public program cannot be placed in another program without the consent of his parents until the decision of the hearing board is announced.¹¹⁷ Once the

110. *Id.* § VI(H).

111. See Benton, *Mainstreaming the Handicapped*, TODAY'S EDUCATION, Mar.-Apr., 1974, at 20.

112. Bylaw § VII.

113. *Id.* Although the Bylaw does not specify the language to be used in the statement of findings and conclusions, it would be advantageous to all parties involved if the parents could easily comprehend the basis of the decision. This will avoid the time and expense of additional explanation of the decision of the local hearing board. It may also prevent further appeal proceedings.

114. *Id.*

115. *Id.*

116. *Id.*

Although this section only grants the right of the parent or guardian to be "reasonably heard in connection with any such alternative placement," the action of the local hearing board may come within the ambit of a "placement action," and require a rehearing. See p. 146 *supra*.

117. Bylaw § VIII(A).

hearing panel has rendered its decision, its plan must be implemented within thirty days, unless the decision is stayed by the local board or hearing officer pending an appeal.¹¹⁸ However, where the child is not presently receiving free educational services, the implementation of the board's decision must take effect within fifteen days of the decision unless specifically stayed pending an appeal.¹¹⁹

10. *Disciplinary Problems.* The Public Education Laws of Maryland provide for the suspension of a child for disciplinary problems.¹²⁰ Too often, however, a child's misbehavior is due to a handicap which may make him eligible for a special education program. The state guidelines therefore provide that if "credible evidence is presented to school authorities indicating that the child may be handicapped and subject to placement in a special education program, then an evaluation shall be initiated within seven days [of the introduction of evidence to school authorities] at the direction of local school authorities."¹²¹ The parent or the guardian has a right to obtain independent evaluations of the child's behavior and such evaluations must be considered in the school authorities' decision or placement action.¹²² Should the school authorities find that the child is in need of a special education program, placement will be made in accordance with the procedures enumerated above.¹²³ If placement is rejected, the parent may request a hearing.¹²⁴ Placement of the child during these review processes is unclear. Placement may be made in accordance with emergency procedures,¹²⁵ or the child may be suspended under the provisions of Article 77, section 95.¹²⁶ Therefore, it appears that two routes may be taken by the principal of the school where the child is enrolled. It would also appear that the emergency procedure route would afford a fairer treatment of the child.

11. *Appeal from the Local Boards.* If the parent or guardian is not satisfied with the decision of the local hearing board, they have a right to appeal to the State Board of Education, Special Education Division.¹²⁷ The appeal may be taken only *after all local administrative remedies have been exhausted.*¹²⁸ The appeal must be in writing and

118. *Id.*

119. *Id.*

120. MD. ANN. CODE art. 77, § 95 (Supp. 1974).

121. Bylaw § IX. The term "credible evidence" is not defined in the Bylaw. The local boards should seek to define this vague standard.

122. *Id.*

123. *Id.*

124. *Id.*

125. See p. 146 *supra*.

126. MD. ANN. CODE art. 77, § 95 (Supp. 1974).

127. *Id.* § 100A. The Administrative Procedure Act applies to the proceedings of the State Board of Education. *Id.* art. 41, §§ 244-56 (1971).

128. The Bylaw appears to establish the only local administrative remedy for placement of a handicapped child. Therefore, the appeal can be taken directly from the local board. There are no cases in Maryland contesting this point. The Maryland Courts, however, have dealt with the issue of exhaustion of remedies in light of judicial intervention. In

submitted to the Special Education Division of the State Board of Education within sixty days of the decision of the local board of education.¹²⁹ Standards for these hearing procedures have been adopted by the State Board of Education.¹³⁰ The scope of the appeal includes a review of the child's case history, an evaluation of educational programs provided for the child by the local board of education, or his exclusion from a free public education.¹³¹

After the receipt of the written request for review, the State Special Education Division will mail an official application to the parent or guardian.¹³² This application must be returned by the parent within fifteen days from the date it is received.¹³³ The reasons for the review, and supporting evidence and documents, must be enclosed in the application.¹³⁴ The Maryland State Superintendent of Schools must acknowledge receipt of the application within one week (in writing)¹³⁵ and schedule an initial review by the State Hearing Review Board.¹³⁶

The State Hearing Review Board will initially review the decision of the local review board within twenty days of the receipt of the state hearing application and documents.¹³⁷ The purpose of the initial review is to decide if sufficient cause has been shown to conduct a complete hearing.¹³⁸ The parent must be notified within five days of the hearing of the Board's decision.¹³⁹ Apparently, the parent or guardian has no input into this initial review, aside from forwarding the necessary documents.

If the Hearing Review Board grants a full hearing, it must be scheduled within twenty days of its initial decision.¹⁴⁰ The parent or guardian must be notified of the date, time and place of the review hearing.¹⁴¹ However, if in the initial screening, the Hearing Review Board determines that the case does not warrant a review, the parent or

Kahl v. Consolidated Gas, Elec. Light and Power Co. of Baltimore, 191 Md. 249, 258, 60 A.2d 754, 758 (1948), the court noted:

We have many times said that, where an administrative agency is given the power to determine questions, such questions must, in the first instance, be submitted to it, and if a statutory method of appeal is provided, that must be, in general followed.

129. MD. ANN. CODE art. 77, § 100A(b) (Supp. 1974).

130. MARYLAND STATE BOARD OF EDUCATION, Bylaw 13.04.01.01A4 (1974) [hereinafter cited as Bylaw 13.04], which is set out in its entirety at Appendix I.

131. MD. ANN. CODE art. 77, § 100A (Supp. 1974). The M.A.R.C. court ruled, however, that as of September, 1975, there no longer can be exclusion from a free public education program. It appears that the State Hearing Review Board will also review the tuition assistance afforded a child who is placed in a non-public program.

132. Bylaw 13.04, § I. See also Appendix II.

133. *Id.*

134. *Id.*

135. *Id.*

136. See Bylaw 13.04, § VI (Hearing Board Composition).

137. Bylaw 13.04, § IIA.

138. *Id.* § IIB.

139. *Id.*

140. *Id.* § IIC.

141. *Id.*

guardian may appeal to the circuit court of the county in which the child resides.¹⁴²

The conduct and procedures of the State Hearing Review Board¹⁴³ are similar to those of Bylaw 411:III. The rules of evidence of the Hearing Board are informal, as set forth in the Administrative Procedure Act,¹⁴⁴ as the Board is not subject to technical common-law rules of evidence.¹⁴⁵

The State Hearing Review Board may confirm, reject or modify the decision of the local hearing board.¹⁴⁶ This decision may be appealed to the circuit court in the county where the child resides.¹⁴⁷

The scope of the judicial review is governed by the Administrative Procedure Act.¹⁴⁸ The court is empowered to:

Affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or
- (6) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the agency and including de novo evidence taken in open court; or
- (7) Unsupported by the entire record, as submitted by the agency and including de novo evidence taken in open court; or
- (8) Arbitrary or capricious.¹⁴⁹

The case is heard without a jury at the circuit court level, and additional evidence may be presented if good reasons are shown for failure to present the evidence before the agency.¹⁵⁰ The decision of the court may be appealed¹⁵¹ to the Court of Special Appeals in the manner provided for appeals in other civil cases.¹⁵²

142. MD. ANN. CODE art. 77, § 100A(d) (Supp. 1974); see p. 152 *infra*, for a review of judicial appeal procedures. In Baltimore City, the action would be brought in one of the common law courts of the Supreme Bench.

143. Bylaw 13.04.

144. MD. ANN. CODE art. 41, § 252 (1957).

145. Cf. *Fairchild Hiller Corp. v. Supervisor of Assmts.*, 267 Md. 519, 298 A.2d 148 (1973).

146. MD. ANN. CODE art. 77, § 100A(d) (Supp. 1974). See Bylaw 13.04 for additional rules including notice requirements, deadlines for decisions, and formal hearing requirements.

147. MD. ANN. CODE art. 77, § 100A(d) (Supp. 1974).

148. *Id.* art. 41, § 255 (1971).

149. *Id.* § 255(g).

150. *Id.* § 255(f).

151. The State appears to have the right to appeal the decision of the Circuit Court. *Id.* § 256A (Supp. 1974).

152. *Id.* § 256 (1971). See also MD. ANN. CODE, CTS. & JUD. PROC. ART. §§ 12-101 to -308 (1974).

CONCLUSION

Although the procedural and substantive rights of the handicapped to free public education have been established, it would be erroneous to conclude that each child will, at the present time, be afforded an education appropriate to his needs.

The courts in Maryland have recognized the rights and duties implicit in the right to education. The procedural mechanisms have been established to implement this right. The next step is to provide the funds necessary to carry out the goals of the right to education. The duty rests upon the United States Congress and the State Legislature to provide the necessary funds. Without such funding the right to education becomes a meaningless phrase.

Michael D. Steinhardt

APPENDIX I

STANDARDS FOR HEARING PROCEDURES FOR SPECIAL
EDUCATION PROGRAMS

Bylaw 13.04.01.01A4

(ON APPEAL TO THE STATE BOARD OF EDUCATION FROM
THE LOCAL BOARDS)

When all local available administrative remedies for providing special education programs for mentally, physically, or emotionally handicapped children in the City of Baltimore or the 23 counties have been exhausted, the parent(s) or guardian(s) of such children may request in writing from the Maryland State Board of Education a review of the case as it relates to the diagnosis, evaluation of the education programs provided by a local or regional board of education, or the exclusion or exemption from school privileges of a child by the local or regional board of education.

The procedure established herein shall be administered by the Maryland State Department of Education.

I. Application for Review

Upon receipt of a written request for review, the Maryland State Department of Education shall provide to the parent(s) or guardian(s) an official application which shall be returned to the Maryland State Superintendent of Schools or his designee within 15 days from the date of receipt. The State Superintendent of Schools shall acknowledge receipt of the application and supporting data/documents signed by the parent(s) or guardian(s) within one week and schedule a date for initial review by the Hearing Review Board.

II. Initial Review

- A. Upon the receipt of the official application and supporting documents, the application—including all education records of the child and the decision of the local review board—shall be initially reviewed by the State Hearing Review Board within 20 days.
- B. The Hearing Review Board shall determine whether or not there is sufficient cause to conduct a review hearing. Within five days, the State Superintendent of Schools shall transmit notice of the Hearing Review Board's determination to the parent(s) or guardian(s), with a copy to the local board of education.
- C. If the Board determines that a review hearing shall be granted, the hearing shall be scheduled by written notice within 20 days. The notice shall include the time, date, and place at which the review hearing will occur.

- D. If the Hearing Review Board determines that the case does not warrant a review, notice of this decision shall be provided to parent(s) or guardian(s) within five days.
- E. Notice of denial of a formal hearing shall indicate the right of appeal to the Circuit Court of the county in which the child resides, or, if the child resides in Baltimore City, to any one of the three Common Law Courts of the Supreme Bench.

III. *Rights Prior to Hearing*

- A. The parent(s) or guardian(s) of a child for whom a placement action is proposed shall have the right to inspect at reasonable times (both prior to any hearing and otherwise) copies of all records pertaining to the child of the local school system developed by its agents and employees, including all tests or reports upon which the proposed placement action may be based, and such other relevant records pertaining to the placement proposal as the school system may deem relevant. The child may receive independent medical, psychological, and educational evaluations.
- B. The parent(s) or guardian(s) shall have the right to be represented by counsel or other individuals at any stage in the hearing process.

IV. *Open or Closed Hearing*

- A. Prior to the date of the scheduled hearing, the parent(s) or guardian(s) shall have the opportunity to request that the hearing be open to the public.
- B. If no request is made, the hearing shall be closed.
- C. In addition to the parent(s) or guardian(s) and counsel, a representative from the office of the State's Attorney General may be present.
- D. Appropriate staff members of the local board of education shall also attend.
- E. Persons other than those identified in C and D, who are present at the request of the parent(s) or guardian(s) or the State Department of Education, shall be identified at the time of the hearing.

V. *Formal Hearing Procedures*

- A. The Hearing Review Board at the scheduled time, date, and place may hear testimony from either of the parties pertaining to issues before it. Each side will be afforded a reasonable time to present its case.
- B. The parent(s) or guardian(s) shall have the opportunity to present competent and relevant evidence, both in documentary form and through witnesses.
- C. The parent(s) or guardian(s) shall be afforded the opportunity to question witnesses called by the Hearing Review Board.
- D. The State Department of Education shall present preferably in writing, or orally if the Hearing Review Board desires, a complete review of the State Department of Education's position supporting the action that has been taken. This information will be presented to the Hearing Review Board at the time of the hearing.
- E. The proceedings will be recorded on tape or by other appropriate means. Transcriptions of the proceedings may be made available at a reasonable cost to the parent(s) or guardian(s), local superintendents of schools, or their authorized agents within 45 days. All requests for transcriptions shall be made in writing to the State Superintendent of Schools.
- F. The State Department of Education may be represented by the Office of the Attorney General at the hearing as legal counsel.

VI. *Hearing Review Board*

A. *Composition*

1. The Hearing Review Board shall consist of at least three persons, each of whom is knowledgeable in one of the areas significant to the educational review of the child. There persons may be:
 - a. A member of the Maryland State Department of Education
 - b. A qualified State agency staff member
 - c. An individual qualified in the area of disability represented within the appeal
2. No person may serve as a member of the Hearing Review Board who has participated in the previous diagnosis, evaluation, prescription of

educational services or in the decision process to deny services made by the local or regional board of education.

B. Responsibilities

1. The Hearing Review Board members shall address themselves only to the following areas of appeal:
 - a. Diagnosis;
 - b. Evaluation of education programs provided for the mentally, physically, or emotionally handicapped child by the local or regional board of education; and/or
 - c. The exclusion or exemption from school privileges of the child by the local or regional board of education.
2. The Hearing Review Board shall have the authority to confirm, modify, reject, or prescribe alternate special education programs for the child in the areas delineated in paragraph VI, B, 1.
3. The Hearing Review Board may require a complete and independent diagnosis, evaluation, and prescription of educational programs by qualified persons, the cost of which shall be paid by the State Board of Education.
4. The chairman shall be appointed by the members of the Board and shall be responsible for rendering the decision to the Maryland State Department of Education within five days following the hearing.

C. Decision

1. A formal judgment shall be rendered by a majority of the Hearing Review Board members within ten days subsequent to the conclusion of the hearing.
2. The judgment shall specifically enumerate the findings and conclusion of the Hearing Review Board.
3. The State Superintendent of Schools, or his designee, shall notify the applicant in writing of the State Hearing Review Board's decision.
4. An appeal of the decision of the Hearing Review Board may be made to the Circuit Court for the county in which the child resides or, if the child resides in Baltimore City, to any one of three Common Law Courts of the Supreme Bench as provided by law.

APPENDIX II

SAMPLE FORM USED BY THE MARYLAND STATE DEPARTMENT OF EDUCATION FOR APPEALS FROM THE LOCAL SCHOOL BOARD.

HANDICAPPED CHILDREN'S STATUS REVIEW REQUEST

1. Date of Application: _____
2. Applicant: (The person or school board requesting the review)
 - a. Applicant or Agency: (check one)
Parent ___ Guardian ___ Local Board of Education ___
 - b. Name of Applicant: _____
Address: _____ Phone: _____
 - c. If local school board is applicant, designate contact person: _____
3. Child, student or person for whom review is being requested:

Name: _____
Address: _____
Date of Birth: _____
Type of Handicap: _____
4. Reason for Review: (Paragraph (A) Section 100 A, Article 77 of the Annotated Code of Maryland (Maryland Law) states "... a parent or guardian ... or the board ... may request in writing to the State Board of Education, a review of (1) diagnosis, (2) evaluation of educational programs provided by the local or regional board of education, or (3) the exclusion or exemption from school privileges of the child by the local or regional board of education.") Indicate the

basis for your review by underlining the appropriate reason or reasons, (1), (2), (3) above.

5. Please give an explanation of each item checked in #4 above. The explanation should detail historical information relative to the reason for review and should refer to supportive information and documents being submitted and which are checked in #6 below. Attach additional pages as needed. _____

6. Check supportive documentation included with this request.

Psychological _____	Sociological _____
Medical _____	Educational _____
Psychiatric _____	Other _____
New supportive documentation since initial application. _____	
7. Specify previous efforts toward appropriate program of placement with the local or State education officials. Indicate dates, persons contacted and results of such efforts. (Use separate sheet if necessary). _____

8. Action requested by applicant to resolve the problem: (Use separate sheet if necessary). _____
9. Signature of Applicant: _____