

HOUSE BILL 174

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7lr1652

By: **Delegates Luedtke, M. Washington, Afzali, D. Barnes, Buckel, Ebersole, Hixson, Hornberger, Kelly, Vogt, Walker, and A. Washington**

Introduced and read first time: January 19, 2017

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education – Children With Disabilities – Individualized Education Program**
3 **Process – Parental Consent**

4 FOR the purpose of requiring an individualized education program team to obtain written
5 consent from the parent of a child with a disability if the team proposes certain
6 actions regarding the individualized education program of the child; requiring an
7 individualized education program team, under certain circumstances, to send a
8 parent certain written notice within a certain time frame that informs the parent of
9 certain rights to consent or refuse to consent to certain actions; authorizing an
10 individualized education program team to implement a certain action regarding an
11 individualized education program if a parent does not provide certain written
12 consent or a written refusal to consent to a certain action within a certain time frame;
13 authorizing an individualized education program team to use certain dispute
14 resolution options to resolve a certain matter under certain circumstances; and
15 generally relating to parental consent in the individualized education program
16 process.

17 BY repealing and reenacting, with amendments,
18 Article – Education
19 Section 8–405
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2016 Supplement)

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

24 **Article – Education**

25 8–405.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

(2) “Accessible copy” includes a copy of a document provided to an individual in a format as defined in § 8–408 of this subtitle.

(3) “Extenuating circumstance” means:

(i) A death in the family;

(ii) A personal emergency;

(iii) A natural disaster; or

(iv) Any other similar situation defined by the Department.

(4) “Individualized education program” and “individualized family service plan” have the same meaning as provided in the federal Individuals with Disabilities Education Act.

(b) (1) When a team of qualified professionals and the parents meet for the purpose of discussing the identification, evaluation, educational program, or the provision of a free appropriate public education of a child with a disability:

(i) The parents of the child shall be afforded the opportunity to participate and shall be provided reasonable notice in advance of the meeting; and

(ii) Reasonable notice shall be at least 10 calendar days in advance of the meeting, unless an expedited meeting is being conducted to:

1. Address disciplinary issues;

2. Determine the placement of the child with a disability not currently receiving educational services; or

3. Meet other urgent needs of a child with a disability to ensure the provision of a free appropriate public education.

(2) (i) 1. At the initial evaluation meeting, the parents of the child shall be provided:

A. In plain language, a verbal and written explanation of the parents’ rights and responsibilities in the individualized education program process and a program procedural safeguards notice; and

B. Written information that the parents may use to contact early intervention and special education family support services staff members within the local school system and a brief description of the services provided by the staff members.

1 2. If a parent's native language is not English, the
2 information in subsubparagraph 1B of this subparagraph shall be provided to the parent
3 in the parent's native language.

4 (ii) The parents may request the information provided under
5 subparagraph (i) of this paragraph at any subsequent meeting.

6 (iii) If a child who has an individualized education program
7 developed in another school system moves into a different local school system, that local
8 school system shall provide the information required under subparagraph (i)1B of this
9 paragraph at the time of the first written communication with the parents regarding the
10 child's individualized education program or special education services.

11 (iv) A local school system shall publish information that a parent
12 may use to contact early intervention and special education family support services staff
13 members within the local school system and a brief description of the services provided by
14 the staff members in a prominent place on the section of its Web site relating to special
15 education services.

16 (3) Failure to provide the information required under paragraph (2)(i)1B of
17 this subsection does not constitute grounds for a due process complaint under § 8–413 of
18 this subtitle.

19 (4) (i) If, during an individualized education program team meeting, a
20 parent disagrees with the child's individualized education program or the special education
21 services provided to the child, the individualized education program team shall provide the
22 parent with, in plain language:

23 1. An oral and a written explanation of the parent's right to
24 request mediation in accordance with § 8–413 of this subtitle;

25 2. Contact information, including a telephone number that a
26 parent may use to receive more information about the mediation process; and

27 3. Information regarding pro bono representation and other
28 free or low-cost legal and related services available in the area.

29 (ii) A parent may request the information provided under
30 subparagraph (i) of this paragraph at any individualized education program team meeting.

31 (5) (i) If the native language spoken by a parent who requests
32 information under paragraph (4) of this subsection is spoken by more than 1% of the
33 student population in the local school system, the parent may request that the information
34 be translated into the parent's native language.

(ii) If a parent makes a request under subparagraph (i) of this paragraph, the individualized education program team shall provide the parent with the translated document within 30 days after the date of the request.

(c) The individualized education program team shall determine, on at least an annual basis, whether the child requires extended year services in order to ensure that the child is not deprived of a free appropriate public education by virtue of the normal break in the regular school year.

(d) (1) (i) Except as provided in paragraph (2) of this subsection, and subject to subparagraphs (ii) and (iii) of this paragraph, at least 5 business days before a scheduled meeting of the individualized education program team or other multidisciplinary education team for any purpose for a child with a disability, appropriate school personnel shall provide the parents of the child with an accessible copy of each assessment, report, data chart, draft individualized education program, or other document that either team plans to discuss at the meeting.

(ii) Subject to subparagraph (i) of this paragraph, an assessment, report, data chart, or other document prepared by a school psychologist or other medical professional that either team plans to discuss at the meeting may be provided to the parents of the child orally and in writing prior to the meeting.

(iii) The parents of a child may notify appropriate school personnel that they do not want to receive the documents required to be provided under subparagraph (i) of this paragraph.

(2) (i) Subject to subparagraph (ii) of this paragraph, appropriate school personnel are not required to comply with paragraph (1) of this subsection in the event of an extenuating circumstance.

(ii) In the event of an extenuating circumstance, appropriate school personnel who fail to comply with paragraph (1) of this subsection shall document the extenuating circumstance and communicate that information to the parents of the child.

(e) (1) Not later than 5 business days after a scheduled meeting of the individualized education program team or other multidisciplinary team for a child with a disability, appropriate school personnel shall provide the parents of the child with a copy of the completed individualized education program.

(2) If the individualized education program has not been completed by the 5th business day after the meeting, the parents shall be provided with the draft copy of the individualized education program.

(3) The completed or draft individualized education program shall be provided to the parents in an accessible format.

(4) (i) If the native language spoken by the parents of a child with a completed individualized education program or a completed individualized family service plan is spoken by more than 1 percent of the student population in the local school system, the parents may request the document to be translated into the parents' native language.

(ii) If a parent makes a request under subparagraph (i) of this paragraph, appropriate school personnel shall provide the parents with the translated document within 30 days after the date of the request.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL OBTAIN WRITTEN CONSENT FROM A PARENT IF THE TEAM PROPOSES TO:

(I) ENROLL THE CHILD IN AN ALTERNATIVE EDUCATION PROGRAM THAT DOES NOT ISSUE OR PROVIDE CREDITS TOWARDS A MARYLAND HIGH SCHOOL DIPLOMA;

(II) IDENTIFY THE CHILD FOR THE ALTERNATIVE EDUCATION ASSESSMENT ALIGNED WITH THE STATE'S ALTERNATIVE CURRICULUM; OR

(III) INCLUDE RESTRAINT OR SECLUSION IN THE INDIVIDUALIZED EDUCATION PROGRAM TO ADDRESS THE CHILD'S BEHAVIOR AS DESCRIBED IN COMAR 13A.08.04.05.

(2) IF THE PARENT DOES NOT PROVIDE WRITTEN CONSENT TO AN ACTION PROPOSED IN PARAGRAPH (1) OF THIS SUBSECTION AT THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM SHALL SEND THE PARENT WRITTEN NOTICE NO LATER THAN 5 BUSINESS DAYS AFTER THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING THAT INFORMS THE PARENT THAT:

(I) THE PARENT HAS THE RIGHT TO EITHER CONSENT TO OR REFUSE TO CONSENT TO AN ACTION PROPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND

(II) IF THE PARENT DOES NOT PROVIDE WRITTEN CONSENT OR A WRITTEN REFUSAL TO CONSENT TO AN ACTION PROPOSED UNDER PARAGRAPH (1) OF THIS SUBSECTION WITHIN 15 BUSINESS DAYS OF THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MAY IMPLEMENT THE PROPOSED ACTION.

(3) IF THE PARENT REFUSES TO CONSENT TO THE ACTION PROPOSED, THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MAY USE THE DISPUTE

1 RESOLUTION OPTIONS LISTED IN § 8-413 OF THIS SUBTITLE TO RESOLVE THE
2 MATTER.

3 ~~[(f)]~~ (G) To fulfill the purposes of this section, school personnel may provide the
4 documents required under this section through:

5 (1) Electronic delivery;

6 (2) Home delivery with the student; or

7 (3) Any other reasonable and legal method of delivery.

8 ~~[(g)]~~ (H) Failure to comply with this section does not constitute a substantive
9 violation of the requirement to provide a student with a free appropriate public education.

10 ~~[(h)]~~ (I) The Department shall adopt:

11 (1) Regulations that define what information should be provided in the
12 verbal and written explanations of the parents' rights and responsibilities in the
13 individualized education program process; and

14 (2) Any other regulations necessary to carry out subsection (b)(2) of this
15 section.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
17 1, 2017.