

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 611
Ways and Means

(Delegate Guyton, *et al.*)

Education, Health, and Environmental Affairs

**Special Education – Individualized Education Programs – Timeline for
Independent Educational Evaluations**

This bill authorizes a parent who disagrees with the educational evaluation regarding a child’s individualized family service plan (IFSP), individualized education program (IEP), or special education services to request an independent educational evaluation at public expense in accordance with regulations adopted by the Maryland State Department of Education (MSDE). The local school system must provide a written response approving or denying a request within 30 days of the date the request was made. If the local school system approves a request, the written response must advise the parent of the process for arranging the evaluation at public expense. If the local school system denies a request, the local school system must file a due process complaint within 30 days of the date of the denial. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: None.

Local Effect: None. Local school systems can comply with the bill’s requirements using existing resources.

Small Business Effect: None.

Analysis

Current Law:

Individualized Education Programs

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an IFSP or IEP specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities age 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

An IFSP is similar to an IEP and requires a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified for each child and family. The parent of a child with a disability is a member of the IFSP team that is responsible for developing and reviewing a child's IFSP and for revisions to the IFSP.

At the initial evaluation meeting, the parents of a child with a disability must be provided, in plain language, a verbal and written explanation of the parents' rights and responsibilities in the process and a program procedural safeguards notice. The parents may request this information at any subsequent meeting and may request the information in their native language if it is spoken by more than 1% of the students in the school system.

Dispute Resolution

Chapter 233 of 2006 established a Maryland process for resolution sessions that can be used to settle disputes about the identification, evaluation, and educational placements of children with disabilities, consistent with IDEA provisions for dispute resolution.

Before conducting a due process hearing, the parent must have an opportunity to resolve a due process complaint at a resolution session.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child's special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. (Public agencies include MSDE, local school systems, the Maryland School for the Blind, the Maryland School for the Deaf, and any other State agency responsible for providing education to students with disabilities.) A parent of a child with disabilities may file a due process complaint with the Office of Administrative Hearings (OAH) and the public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

Federal regulations (34 CFR §300.502) entitle a parent to one independent evaluation at public expense each time that the parent disagrees with an evaluation obtained by a public agency. If a parent requests such an evaluation, the public agency must, without unnecessary delay, either:

- file a due process complaint to request a hearing to show that its evaluation is appropriate; or
- ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.

If the public agency's evaluation is found to be appropriate, the parent has the right to an independent educational evaluation but not at public expense. The results of the independent evaluation (1) must be considered by the public agency, if it meets agency criteria, in any decision made regarding provision of a free appropriate public education to the child and (2) may be presented by any party as evidence at a hearing on a due process complaint.

Local Expenditures: Anne Arundel County Public Schools (AACPS) advises that it typically responds to requests for independent educational evaluations within the 30-day timeframe required under the bill. Similarly, Montgomery County Public Schools (MCPS) advises that it responds to these requests within two to three weeks.

Given the federal requirement to respond to requests for independent educational evaluations without unnecessary delay, and given responses from AACPS and MCPS, it is assumed that many, if not most, local school systems respond within 30 days. If some local

school systems tend to take longer in responding, it is assumed that priorities can be shifted to meet the requirements of the bill. Therefore, existing local resources will suffice.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education; U.S. Department of Education; Anne Arundel County Public Schools; Montgomery County Public Schools; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2019
mm/rhh Third Reader - March 1, 2019

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510