

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2017

CHAPTER _____

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)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Education**

4 8–405.

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

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

8 (3) “Extenuating circumstance” means:

9 (i) A death in the family;

10 (ii) A personal emergency;

11 (iii) A natural disaster; or

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

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

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

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

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

23 1. Address disciplinary issues;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **(III) INCLUDE RESTRAINT OR SECLUSION IN THE
22 INDIVIDUALIZED EDUCATION PROGRAM TO ADDRESS THE CHILD'S BEHAVIOR AS
23 DESCRIBED IN COMAR ~~13A.08.04.05~~, 13A.08.04.05; OR**

24 **(IV) INITIATE A CHANGE IN THE CHILD'S EDUCATIONAL
25 PLACEMENT.**

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

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

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

6 **(3) IF THE PARENT REFUSES TO CONSENT TO THE ACTION PROPOSED,**
7 **THE INDIVIDUALIZED EDUCATION PROGRAM TEAM MAY USE THE DISPUTE**
8 **RESOLUTION OPTIONS LISTED IN § 8-413 OF THIS SUBTITLE TO RESOLVE THE**
9 **MATTER.**

10 **[(f)] (G)** To fulfill the purposes of this section, school personnel may provide the
11 documents required under this section through:

12 (1) Electronic delivery;

13 (2) Home delivery with the student; or

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

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

17 **[(h)] (I)** The Department shall adopt:

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
24 1, 2017.