

SENATE BILL 371

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CF HB 716

By: **Senator Peters**

Introduced and read first time: January 15, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 24, 2021

CHAPTER _____

1 AN ACT concerning

2 **Special Education – Individualized Education Programs – Educational**
3 **Evaluations**

4 FOR the purpose of altering the circumstances under which a parent may request an
5 independent educational evaluation of a child with a disability at public expense to
6 include a parent who submits a certain request to a local school system and the local
7 school system does not respond within a certain period of time or, on approval, the
8 educational evaluation meeting does not occur within a certain period of time under
9 certain circumstances; making conforming changes; and generally relating to
10 educational evaluations in individualized education programs.

11 BY repealing and reenacting, with amendments,
12 Article – Education
13 Section 8–405
14 Annotated Code of Maryland
15 (2018 Replacement Volume and 2020 Supplement)

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

18 **Article – Education**

19 8–405.

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

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

3 (3) "Extenuating circumstance" means:

4 (i) A death in the family;

5 (ii) A personal emergency;

6 (iii) A natural disaster; or

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

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

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

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

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

18 1. Address disciplinary issues;

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

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

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

25 A. In plain language, an oral and written explanation of the
26 parents' rights and responsibilities in the individualized education program process and a
27 program procedural safeguards notice;

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

1 C. Written information on the Special Education
2 Ombudsman and toll-free telephone number established under Title 6, Subtitle 5 of the
3 State Government Article.

4 2. If a parent's native language is not English, the
5 information in subparagraph 1B and C of this subparagraph shall be provided to the
6 parent in the parent's native language.

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

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

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

19 (3) Failure to provide the information required under paragraph (2)(i)1B
20 and C of this subsection does not constitute grounds for a due process complaint under §
21 8-413 of this subtitle.

22 (4) (i) [If the parent disagrees with the educational evaluation of the
23 student that was conducted by the local school system, the] A parent may request an
24 independent educational evaluation at public expense in accordance with regulations
25 adopted by the Department IF:

26 1. THE PARENT DISAGREES WITH THE EDUCATIONAL
27 EVALUATION OF THE STUDENT THAT WAS CONDUCTED BY THE LOCAL SCHOOL
28 SYSTEM; OR

29 2. THE PARENT SUBMITS TO THE LOCAL SCHOOL
30 SYSTEM A WRITTEN REQUEST FOR AN EDUCATIONAL EVALUATION CONDUCTED BY
31 THE LOCAL SCHOOL SYSTEM AND THE LOCAL SCHOOL SYSTEM:

32 A. DOES NOT RESPOND TO THE REQUEST WITHIN 30
33 DAYS AFTER THE DATE ON WHICH THE REQUEST WAS RECEIVED BY THE LOCAL
34 SCHOOL SYSTEM AS REQUIRED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH; OR

35 B. APPROVES THE REQUEST BUT THE EDUCATIONAL

1 EVALUATION MEETING DOES NOT OCCUR, THROUGH NO FAULT OF THE PARENT,
2 WITHIN:

3 **I. 60 DAYS AFTER THE DATE ON WHICH THE REQUEST**
4 **WAS RECEIVED BY THE LOCAL SCHOOL SYSTEM; OR**

5 **II. IF THE STATE IS UNDER A STATE OF EMERGENCY**
6 **PROCLAIMED BY THE GOVERNOR, 90 DAYS AFTER THE DATE ON WHICH THE**
7 **REQUEST WAS RECEIVED BY THE LOCAL SCHOOL SYSTEM.**

8 (ii) The local school system shall provide a written response
9 approving or denying a request within 30 days of the date the request was made.

10 (iii) If the local school system approves a request, the written
11 response shall advise the parent of the process for arranging the evaluation at public
12 expense.

13 (iv) If the local school system denies a request, the local school system
14 shall file a due process complaint under § 8–413 of this subtitle within 30 days of the date
15 of the denial.

16 (5) (i) If, during an individualized education program team meeting, a
17 parent disagrees with the child’s individualized education program or the special education
18 services provided to the child, the individualized education program team shall provide the
19 parent with, in plain language:

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

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

24 3. Information regarding pro bono representation and other
25 free or low–cost legal and related services available in the area.

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

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

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

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

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

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

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

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

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

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

29 (2) If the individualized education program has not been completed by the
30 5th business day after the meeting, the parents shall be provided with the draft copy of the
31 individualized education program.

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

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

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

4 (f) (1) Except as provided in paragraph (2) of this subsection, an
5 individualized education program team shall obtain written consent from a parent if the
6 team proposes to:

7 (i) Enroll the child in an alternative education program that does
8 not issue or provide credits toward a Maryland high school diploma;

9 (ii) Identify the child for the alternative education assessment
10 aligned with the State's alternative curriculum; or

11 (iii) Include restraint or seclusion in the individualized education
12 program to address the child's behavior as described in COMAR 13A.08.04.05.

13 (2) If the parent does not provide written consent to an action proposed in
14 paragraph (1) of this subsection at the individualized education program team meeting, the
15 individualized education program team shall send the parent written notice no later than
16 5 business days after the individualized education program team meeting that informs the
17 parent that:

18 (i) The parent has the right to either consent to or refuse to consent
19 to an action proposed under paragraph (1) of this subsection; and

20 (ii) If the parent does not provide written consent or a written refusal
21 to consent to an action proposed under paragraph (1) of this subsection within 15 business
22 days of the individualized education program team meeting, the individualized education
23 program team may implement the proposed action.

24 (3) If the parent refuses to consent to the action proposed, the
25 individualized education program team may use the dispute resolution options listed in §
26 8-413 of this subtitle to resolve the matter.

27 (g) To fulfill the purposes of this section, school personnel may provide the
28 documents required under this section through:

29 (1) Electronic delivery;

30 (2) Home delivery with the student; or

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

32 (h) Failure to comply with this section does not constitute a substantive violation
33 of the requirement to provide a student with a free appropriate public education.

1 (i) The Department shall adopt:

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

5 (2) Any other regulations necessary to carry out subsection (b)(2) and (4) of
6 this section.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.