



Delegate Jheanelle K. Wilkins, Chair
Delegate Jessica Feldmark, Vice Chair
Ways and Means Committee
130 Taylor House Office Building
131 Taylor House Office Building
Annapolis, Maryland 21401

Dear Chair Wilkins, Vice Chair Feldmark, and Members of the Committee,

The Maryland School Psychologists' Association (MSPA) respectfully submits this informational testimony regarding the Individuals with Disabilities Education Act (IDEA) and Code of Maryland Regulations (COMAR), and **House Bill 901**.

Points of clarification are as follows:

1. Special education qualification is not dependent on a medical diagnosis.
2. IDEA protects each individual's right to a full and individualized evaluation *before* the provision of services, because services must be matched to individual need and specific to how that disability impacts education.
3. IDEA and COMAR prohibit schools from delivering services until the full evaluation has been completed, and the parent has fully consented to those procedures, as set forth in a meeting to which they have attendance and participation rights, and in technically adequate and accessible language in writing.
4. External or medical diagnoses are not intrinsically more accurate or thorough than educational evaluations - they do not necessarily conform to the standards required of special education evaluations.
5. Recommendations in external psychological reports are often uniform and not individualized, recommend very restrictive arrangements (e.g., one-to-one adult support, specific classroom ratios)
6. Implementing these recommendations immediately bypasses the safeguard and due process procedures protecting students' rights to the least restrictive environment, per IDEA.
7. Implementing a law that requires different treatment of a student based solely on their disability category is substantially inequitable.
8. Providing services before a full individualized educational evaluation will entail unnecessary provision of services (based on the eventuality that not every child will qualify for those services), wasting time and resources and taking them away from students who have already qualified.

IDEA sets forth federal disability categories, upon which eligibility for special education services is predicated. These categories are defined in the law and **do not depend on medical diagnoses**. Although use of empirically derived taxonomies (such as the Diagnostic and Statistical Manual, Fifth Edition, Text Revision; DSM-V-TR) is common in special education evaluations, the focus of the evaluation is on whether the disability category as outlined in IDEA is in evidence, and whether *by reason thereof* the student requires specially designed instruction and related services. This is because individual evaluation of each specific student **in the educational environment** is required to determine their eligibility for special education. See below for an excerpt of guidance regarding educational evaluation (IDEA):

- (3) Additional requirements
- Each local educational agency shall ensure that—
 - (A) assessments and other evaluation materials used to assess a child under this section—
 - § (i) are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - § (ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;
 - § (iii) are used for purposes for which the assessments or measures are valid and reliable;
 - § (iv) are administered by trained and knowledgeable personnel; and
 - § (v) are administered in accordance with any instructions provided by the producer of such assessments;
 - (B) the child is assessed in all areas of suspected disability;
 - (C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and
 - (D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- (4) Determination of eligibility and educational need
 - Upon completion of the administration of assessments and other evaluation measures—
 - (A) the determination of whether the child is a child with a disability as defined in section 1401(3) of this title and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and
 - (B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

(5) Special rule for eligibility determination

- In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—
 - (A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 6368(3) of this title, as such section was in effect on the day before December 10, 2015);
 - (B) lack of instruction in math; or
 - (C) limited English proficiency.

Parents and children have a right, through IDEA and COMAR, to a full individual evaluation before the provision of services. See below for an excerpt from IDEA:

- [§1414](#). Evaluations, eligibility determinations, individualized education programs, and educational placements
- [\(a\)](#) Evaluations, parental consent, and reevaluations
- [\(1\)](#) Initial evaluations
- [\(A\)](#) In general

§ A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this subchapter.

Schools are prohibited from providing special education and related services before full parent consent is provided. See below for an excerpt from IDEA:

- [\(D\)](#) Parental consent
 - § [\(i\)](#) In general
 - [\(I\)](#) Consent for initial evaluation
 - The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section [1401](#) of this title shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.
 - [\(II\)](#) Consent for services
 - An agency that is responsible for making a free appropriate public education available to a child with a disability under this subchapter shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

MSPA sincerely hopes this information is useful as your committee considers **HB901**. If we can provide any further information or be of any assistance, please contact us at legislative@mspaonline.org or Sarah Peters at speters@hbstrategies.us or 410-322-2320.

Respectfully submitted,



Laura M. Grubb, PhD, BCBA-D, LBA

Chair, MSPA Legislative Committee