

# HOUSE BILL 174

F1

(7lr1652)

## ENROLLED BILL

— *Ways and Means/Education, Health, and Environmental Affairs* —

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

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

### 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

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#### 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.

*Italics indicate opposite chamber/conference committee amendments.*



1 generally relating to parental consent in the individualized education program  
2 process.

3 BY repealing and reenacting, with amendments,  
4 Article – Education  
5 Section 8–405  
6 Annotated Code of Maryland  
7 (2014 Replacement Volume and 2016 Supplement)

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

10 **Article – Education**

11 8–405.

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

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

15 (3) “Extenuating circumstance” means:

16 (i) A death in the family;

17 (ii) A personal emergency;

18 (iii) A natural disaster; or

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

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

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

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

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

30 1. Address disciplinary issues;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (2) If the individualized education program has not been completed by the  
9 5th business day after the meeting, the parents shall be provided with the draft copy of the  
10 individualized education program.

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

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

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

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

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

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

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

31 **~~(IV) INITIATE A CHANGE IN THE CHILD'S EDUCATIONAL~~**  
32 **PLACEMENT.**

33 **(2) IF THE PARENT DOES NOT PROVIDE WRITTEN CONSENT TO AN**  
34 **ACTION PROPOSED IN PARAGRAPH (1) OF THIS SUBSECTION AT THE**

1 INDIVIDUALIZED EDUCATION PROGRAM TEAM MEETING, THE INDIVIDUALIZED  
2 EDUCATION PROGRAM TEAM SHALL SEND THE PARENT WRITTEN NOTICE NO LATER  
3 THAN 5 BUSINESS DAYS AFTER THE INDIVIDUALIZED EDUCATION PROGRAM TEAM  
4 MEETING THAT INFORMS THE PARENT THAT:

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

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

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

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

- 19 (1) Electronic delivery;
- 20 (2) Home delivery with the student; or
- 21 (3) Any other reasonable and legal method of delivery.

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

24 [(h)] (I) The Department shall adopt:

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

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

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
31 1, 2017.