

	MARYLAND STATE DEPARTMENT OF EDUCATION <b>DSE/EIS Technical Assistance Bulletin</b> DIVISION OF SPECIAL EDUCATION/EARLY INTERVENTION SERVICES				
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## PARENTAL CONSENT UNDER MARYLAND LAW

**Issue Date:** June 28, 2017

**Revised** July 1, 2017

### Background

On April 10, 2017, the Maryland General Assembly passed Senate Bill 710, which amended Education Article §8-405(f) to require that an individualized education program (IEP) team must obtain the written consent of a parent if it proposes certain actions. The new law takes effect on July 1, 2017, and the Maryland Online IEP has been updated to reflect its provisions. This technical assistance bulletin seeks to address questions that may arise regarding new parental consent requirements under Maryland law. It does not address pre-existing parental consent requirements under federal law.

Senate Bill 710 exceeds the requirements of federal law. Pursuant to the Individuals with Disabilities Education Act (IDEA), parental consent is only required for: 1) initial evaluation; 2) initial provision of services; and 3) reevaluation (34 C.F.R. §300.300(a)-(c)). The IDEA allows a State to require parental consent for other services and activities, provided each local school system establishes and implements effective procedures to ensure that a parent’s refusal to consent does not result in a failure to provide the child with a free appropriate public education (FAPE) (34 C.F.R. §300.300(d)(2)). In addition to the actions for which the IDEA requires parental consent, Maryland law now requires that an IEP team must obtain the written consent of a parent if the team proposes to:

- 1) Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- 2) Identify the child for the alternative education assessment aligned with the State’s alternative curriculum; or
- 3) Include restraint or seclusion in the IEP to address the child’s behavior as described in COMAR 13A.08.04.05 (Md. Code Ann., Educ. §8-405(f)(1)).

If the parent does not provide written consent to one of the actions listed, the IEP team must send the parent written notice of their consent rights no later than five (5) business days after the IEP team meeting informing them that: 1) the parent has the right to either consent to or refuse to consent to the action proposed; and 2) if the parent does not provide written consent or a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action (Md. Code Ann., Educ. §8-405(f)(2)).

If the parent refuses to consent to one of the actions proposed, the IEP team may use the dispute resolution options listed in Education Article §8-413 (mediation or due process) to resolve the matter (Md. Code Ann., Educ. §8-405(f)(3)).

## **Questions and Answers**

**1. Is parental consent required if these actions are already included in a student’s IEP?**

Yes. If one or more of these actions (i.e. alternative education program, alternative education assessment, restraint or seclusion) is already included in a student’s IEP, the IEP team should discuss them at the next IEP team meeting so that parental consent can be obtained accordingly. If one or more of these actions is not already included in a student’s IEP, the IEP team should be aware moving forward that parental consent is required if the IEP team proposes any one of these actions – or a combination of them. Importantly, each is an independent decision from the others, and the IEP team should review each decision at the annual IEP team meeting. The parent may also reconsider their consent or refusal on each decision at any time.

**2. What is an “alternative education program” or “alternative education assessment”?**

The terms “alternative education program” and “alternative education assessment,” in the context of this law, refer to instruction and assessment based on Maryland’s alternate academic achievement standards. Alternate academic achievement standards are reserved for students with the most significant cognitive disabilities. While instruction and assessment generally align, the law separates the two in the event that the IEP team determines that only one is appropriate and necessary to meet the student’s needs at a given time. The IEP team should review both decisions annually because a student who participates in an alternate assessment and continues to receive instruction based on alternate academic achievement standards may not meet the requirements for a Maryland High School Diploma (COMAR 13A.03.02.09).

**3. Does this law prohibit restraint or seclusion in all instances without parental consent?**

No. The law requires that the IEP team must obtain the written consent of a parent in order to include restraint or seclusion in the IEP to address the child’s behavior as described in COMAR 13A.08.04.05. However, restraint or seclusion may still be used if there is an emergency situation and restraint or seclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive interventions have failed or been determined inappropriate (COMAR 13A.08.04.05).

**4. What if the parent provides written consent at the IEP team meeting?**

If the parent provides written consent at the IEP team meeting, the IEP team may implement the proposed action. The IEP team should maintain documentation of parental consent.

**5. What if the parent does not provide written consent at the IEP team meeting?**

If the parent does not provide written consent at the IEP team meeting, the IEP team may not yet implement the proposed action. Instead, the IEP team is required to send the parent written notice of their consent rights no later than five (5) business days after the IEP team meeting, and await a response for fifteen (15) business days from the date of the meeting.

**6. What must the written notice contain?**

The written notice must state that the parent has the right to either consent to or refuse to consent to the proposed action. In addition, it must alert the parent that if they do not provide written consent or a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action. If the parent is at the IEP team meeting, the written notice may be hand delivered to avoid delay; if not, the IEP team must send it to the parent no later than five (5) business days after the IEP team meeting.

**7. What if the parent provides a written refusal at the IEP team meeting?**

If the parent provides a written refusal at the IEP team meeting, the IEP team may not implement the proposed action. The requirement to send the parent written notice of their consent rights is, at that point, no longer applicable. If the IEP team disagrees with the parent's decision and/or determines that the failure to provide consent results in a failure to provide the child with a FAPE, the IEP team may use the dispute resolution options listed in Education Article §8-413 (mediation and due process) to resolve the matter.

**8. What if the parent responds after the IEP team meeting, but prior to the deadline?**

The deadline for a response is fifteen (15) business days from the date of the IEP team meeting at which the action was proposed. If the parent provides written consent prior to the deadline, the IEP team may implement the proposed action. If the parent provides a written refusal prior to the deadline, the IEP team may not implement the proposed action – and should not have implemented it during the time that the IEP team was awaiting the parent's response. Once the parent responds, the IEP team may either reconvene or amend the IEP by agreement to reflect the parent's written consent or written refusal.

**9. What if the parent responds after the IEP team meeting, and after the deadline?**

The deadline for a response is fifteen (15) business days from the date of the IEP team meeting at which the action was proposed. If the parent provides written consent after the deadline, then the action may continue – it is a continuation because the parent's failure to respond by the deadline would have allowed the IEP team to implement the proposed action at that time. If the parent provides a written refusal after the deadline, then the action must cease. Once the parent responds, the IEP team may either reconvene or amend the IEP by agreement to reflect the parent's written consent or written refusal.

**10. How does the IEP team calculate the timelines associated with this law?**

The IEP team calculates the timelines in business days, not calendar days. A "business day" means a day when a public agency is open for business, whether or not students are required to be in attendance for instruction (COMAR 13A.15.01.03). In other words, Monday through Friday, except for federal and State holidays (34 C.F.R. §300.11). If an IEP team meeting is held on a Thursday and the parent does not provide written consent that day, the IEP team would in a typical work week be required to send the written notice no later than close of business on the

following Thursday. Importantly, both timelines start from the date of the IEP team meeting. This means that the five (5) business days used by the IEP team to send the parent written notice of their consent rights are included in the fifteen (15) business days available to the parent to respond. These two timeframes are not added together.

**11. How does the parent’s revocation of consent affect the rest of the IEP?**

If the parent revokes consent for any of the actions listed in Education Article §8-405(f), the rest of the IEP should still be implemented as appropriate. For example, if the parent revokes consent only for restraint or seclusion, special education and related services continue (unlike when a parent revokes consent for services). Similarly, if the IEP team has obtained parental consent for the initial provision of services, but the parent has refused to identify their child for instruction and/or assessment based on Maryland’s alternate academic achievement standards, special education and related services still begin or continue as appropriate.

**12. What options does the IEP team have if they disagree with the parent?**

If the parent refuses to consent to a proposed action, and the IEP team disagrees with the parent’s decision and/or determines that the failure to provide consent results in a failure to provide the child with a FAPE, the IEP team may use the dispute resolution options listed in Education Article §8-413 (mediation and due process) to resolve the matter.

**MODEL PARENTAL CONSENT FORM**  
*To comply with the requirements of Education Article §8-405(f)*

**Student Name:** \_\_\_\_\_

**Grade:** \_\_\_\_\_ **LSS:** \_\_\_\_\_

**Parent Name:** \_\_\_\_\_

**IEP Team Meeting Date**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

1. The individualized education program (IEP) team proposes to (*select all that apply*):
  - Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
  - Identify the child for the alternative education assessment aligned with the State's alternative curriculum; and/or
  - Include restraint or seclusion (*circle one or both*) in the IEP to address the child's behavior as described in COMAR 13A.08.04.05.
2. If the IEP team has proposed any of the actions above, then the IEP team **must** obtain written consent from a parent.
3. If the parent does **not** provide written consent at the IEP team meeting, then the IEP team must send the parent written notice of their consent rights no later than five (5) business days after the meeting. If the parent is at the meeting, the notice may be hand delivered to avoid delay.
4. If the parent refuses to consent to any of the actions proposed, the IEP team **may** use dispute resolution (mediation or due process) to resolve the matter.

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**NOTICE TO PARENT:**

1. You have the right to either consent to OR refuse to consent to any of the actions proposed by the IEP team above.
2. **If you do not provide written consent OR a written refusal within fifteen (15) business days of the IEP team meeting, the IEP team may implement the proposed action.**
3. The deadline for you to respond starts from the date of the IEP team meeting at which the action was proposed. See the other side of this form to provide your written consent or a written refusal – and return it before the deadline.

**Parent Response Deadline**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

(SIDE ONE)

**Written Consent**

I, \_\_\_\_\_, on behalf of my child, \_\_\_\_\_,  
(Parent Name) (Child Name)

hereby **AGREE** to allow the individualized education program (IEP) team to implement the following proposed actions (*select all that apply*):

- Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- Identify the child for the alternative education assessment aligned with the State’s alternative curriculum; and/or
- Include restraint or seclusion (*circle one or both*) in the IEP to address the child’s behavior as described in COMAR 13A.08.04.05.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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**Written Refusal**

I, \_\_\_\_\_, on behalf of my child, \_\_\_\_\_,  
(Parent Name) (Child Name)

hereby **DO NOT AGREE** and refuse to allow the individualized education program (IEP) team to implement the following proposed actions (*select all that apply*):

- Enroll the child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- Identify the child for the alternative education assessment aligned with the State’s alternative curriculum; and/or
- Include restraint or seclusion (*circle one or both*) in the IEP to address the child’s behavior as described in COMAR 13A.08.04.05.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(SIDE TWO)