

## SPECIAL EDUCATION FACT SHEET

### Changes to Maryland Law Regarding Parental Consent in the IEP Process

In April, 2017, the Maryland General Assembly passed Senate Bill 710, which expands the rights that parents have in the special education process by giving them the right to consent or refuse to consent to certain actions proposed by their child's Individualized Education Program (IEP) team. The law became effective on July 1, 2017. Under this new law, parents now have the right to consent or refuse to consent if the IEP team proposes to:

- 1) enroll their child in an alternative education program that does not issue or provide credits towards a Maryland High School Diploma;
- 2) identify their child for the alternative education assessment aligned with Maryland's alternative curriculum;
- 3) include restraint or seclusion in their child's IEP if the behavior and circumstances are described. *Note: Restraint and seclusion may be used in an emergency without parental consent in accord with Maryland law.*

Parents can choose to consent to the proposed action, refuse to consent, or do neither. If a parent provides consent, the proposed action will be implemented.

If the parent refuses to consent, the IEP team cannot move forward with implementation of the proposed action. Instead, the IEP team must decide if it wants to pursue mediation or a due process hearing to try to be allowed to move forward with the proposed action.

Parents who may not agree with the proposed action but who may not want to risk the possibility of a due process hearing can choose neither to consent nor to refuse to consent. The IEP team must send them a notice no later than five business days after the IEP team meeting telling them that they have the right to consent or refuse to consent and that if they do not provide a written consent or refusal within 15 business days, the IEP team's proposed action will be implemented. This allows parents to understand their rights and choose whether to actively refuse consent or silently allow the IEP team's proposed action to be implemented.

Parents who consent one year may choose to refuse consent the next year. The IEP team must look at each issue anew each year.

For more information, see next page for "Commonly Asked Questions" and [MSDE's Technical Assistance Bulletin](http://marylandpublicschools.org/programs/Documents/Special-Education/MDTABulletinParentalConsentUnderMdLaw112017.pdf) at <http://marylandpublicschools.org/programs/Documents/Special-Education/MDTABulletinParentalConsentUnderMdLaw112017.pdf>.

## Commonly Asked Questions:

**Q: My child is already takes the alternate assessment and attends an alternative education program that does not provide credits, known in my jurisdiction as a “life skills program.” How does this law affect my child?**

**A:** Each year, the IEP team will determine which assessment is appropriate for your child. The team will also determine the least restrictive environment in which your child’s IEP can be implemented. If the IEP team recommends that your child continue to take the alternate assessment and you agree, you can simply consent. If you disagree, you can refuse to consent, even if your child has previously taken the alternate assessment.

The IEP team must address assessment and placement separately, so the decisions about alternate assessment and attendance in an alternative program must be made independent of each other. It is possible for a student to take the alternate assessment but be placed in general education, for instance. If the IEP team recommends continued placement in an alternative program and you agree, you can simply consent. If you disagree, you can refuse to consent, even if your child has previously attended an alternative education program.

**Q: My child is in elementary school and the IEP team wants to place him in an alternative education program. Elementary schools do not issue credits. Does this law apply to my child?**

**A:** Yes. The law applies to all decisions about assessments or placements that remove students from the curriculum requirements that lead to a high diploma. This is because students who repeatedly take the alternate assessment or who attend alternative education programs for a lengthy period of time will not gain enough exposure to and knowledge of the general curriculum to be able to meet high school diploma requirements.

**Q: Are there any circumstances under which restraint or seclusion can be used if I refuse to consent to their use in the IEP?**

**A:** Yes. Whether you consent or not, restraint or seclusion may be used if your child poses a likelihood of imminent serious physical harm to self or others. If you consent to the use of restraint or seclusion in the IEP or behavior intervention plan, restraint or seclusion can also be used if the behavior and circumstances under which they would be used are specified. If you refuse to consent, restraint and seclusion may only be used if your child poses a likelihood of imminent serious physical harm and less restrictive interventions have failed or are not feasible.

**Q: What happens if I refuse to consent for a proposed action by the IEP team?**

**A:** Your school system can try to resolve the situation informally, ask you to agree to mediation, or ask for a due process hearing to convince an administrative law judge that it should be allowed to implement the proposed action.

**Q: What if I don’t want to agree but I don’t want to go to a hearing?**

**A:** You can neither agree nor disagree. The school system will provide notice of your rights within five business days and after 15 business days, if you have not responded, the proposed action will be implemented without your agreement or disagreement.