

Parental Consent in the IEP Process

Understanding Important Changes to Maryland Law

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HOWARD COUNTY
AUTISM SOCIETY

Individuals with Disabilities Education Act (IDEA 2004)

- Provides federal funds to states to make special education services available to students with disabilities.
- Includes very specific requirements to ensure students with disabilities receive a free appropriate public education (FAPE).
- Emphasizes the rights of parents and the importance of parents in the special education process.
- Ensures parents have meaningful opportunities to participate in the education of their children.

Parental Participation in the IEP Process

According to IDEA . . .

- Parents are equal partners in the development of a student's individualized education program (IEP).
- Parents have rights *and responsibilities* to participate in decisions.
- IEP Team discussions should be designed to meaningfully include parents and, if necessary, facilitate their participation.

School Obligations to Ensure Parental Participation

Procedural Safeguards Notice

Parents must be provided with the Procedural Safeguards Notice at least once a year. Explains procedures and safeguards in parent's native language (if native language is above the one percent (1%) threshold).

Informed Parental Consent

Parents must give informed consent for certain actions proposed by the school. (This topic will be fully discussed in this presentation.)

Prior Written Notice

Parents must be notified in writing of meetings and referrals; evaluations; eligibility determination; changes in evaluation, educational placement, or educational plan (IEP); school's refusal to evaluate or change plan or placement.

Parents Included as Decisions Makers

Parents must be included as members of any group that makes decisions concerning identification, evaluation, or placement, and provision of FAPE.

Parental Consent under Maryland Law

Senate Bill 710

passed in April 2017;
effective July 1, 2017



Senate Bill 710

- Senate Bill 710 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
- Maryland law exceeds the requirements of federal law
- Federal law only requires parental consent for:
 - (1) initial evaluation
 - (2) initial provision of services
 - (3) reevaluation

34 C.F.R. §300.300(a)-(c)

under this new
law, parents
have expanded
rights

Parents now have the right to consent or refuse to consent if the IEP 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 the Maryland alternative curriculum (certificate)
- (3) include restraint or seclusion in their child's IEP if the behavior and circumstances are described in COMAR (Code of Maryland Annotated Regulations)

parents can
choose

Consent

- If a parent provides consent to the proposed action, the proposed action will be implemented.

Refuse to Consent

- If a parent refuses to consent, the IEP team cannot move forward with implementation of the proposed action.
- 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 can
also choose
neither to
consent or
refuse to
consent

What happens if you do nothing?

- IEP team must send notice within five business days after the IEP team meeting telling the parents that they have the right to consent or refuse to consent.
- If the parents do not respond within 15 business days with a written consent or refusal, the IEP team's proposed action will be implemented.

(Essentially, the parents silently agree to allow the proposed action to be implemented without actively consenting or refusing.)

parents who
consent this
year may refuse
consent next
year

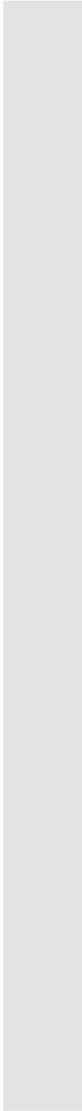
The IEP team must look at
the issue anew each year.





Commonly Asked Questions

Putting Parental Consent into Practice



What is an “alternative education program”?

In the context of this Parental Consent law, “alternative education program” refers to instruction based on Maryland’s alternate academic achievement standards. This may apply to heavily modified instruction and curriculum that is essentially different from what the general education class is learning.

What is the “alternative assessment”?

It is the assessment that is based on Maryland’s alternate academic achievement standards. It is reserved for students with the most significant cognitive disabilities. Students who participate in the alternative assessment may not meet the requirements for a Maryland High School Diploma.

If a child is enrolled in an “alternative education program,” does that mean he is no longer working toward a diploma?

No, enrollment in an “alternative education program” does not equate to alternative assessment or the pathway to a certificate of completion rather than a diploma. The two are separate and distinct decisions that must be considered annually.

What happens if the parent consents to instruction based on Maryland's alternate academic achievement standards but not to the alternate assessment?

Over time, it will become increasingly difficult to meet the requirements to earn a Maryland High School Diploma if instruction is based on alternate academic achievement standards and that instruction continues through high school.

Graduation requirements are such that students must pass credit-bearing courses and earn passing scores on the general assessments or their equivalent in order to graduate.

My child is in elementary school! He's not earning credits yet! Does any of this apply?

Yes. The law applies to decisions about assessments and placements that remove students from the general education curriculum even in elementary school.

Parents essentially must acknowledge that they understand that their child **may** not gain enough exposure to, and knowledge of, the general curriculum to eventually meet high school diploma requirements. If a student is identified for such instruction in the early grades, then continuance of those decisions makes it less likely that a student will be prepared to meet the requirements of a Maryland High School Diploma. This is why the IEP team should review both decisions annually in light of student progress.

Parents do not have to consent to the alternate assessment at the same time that they consent to an alternative education program or substantially modified (different) work.

Why do we have to talk about diploma or certificate when my child is only in kindergarten, first, or second grade?

According to MSDE, IEP teams have a responsibility to discuss assessments when

- ✓ a student's disability significantly impacts intellectual functioning and adaptive behavior
- ✓ a student requires modifications to instruction that do not represent the full scope and sequence of the general education curriculum
- ✓ the student requires extensive, direct, repeated, and individualized instruction and support across his day (in school and at home and in the community)
- ✓ the student uses substantially modified materials with individualized methods of accessing information in alternate ways to acquire, maintain, generalize, demonstrate, and transfer skills across academic content

THAT SAID, the IEP team must obtain written consent of the parent in order to move a child from diploma to certificate.

Let's review:



Consent

- If a parent provides consent to the proposed action, the proposed action will be implemented.

Refuse to Consent

- If a parent refuses to consent, the IEP team cannot move forward with implementation of the proposed action.
- 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.

Can restraint and seclusion be used if I refuse to consent to their use in the BIP and IEP?

Yes. Restraint and seclusion may be used in an emergency situation if your child poses a likelihood of imminent serious physical harm to himself or others.

What if I consent?

Restraint and seclusion can be used if the behavior and circumstances under which they would be used are specified in the behavior intervention plan or IEP.

What if I refuse to consent?

Restraint and seclusion may only be used if your child poses a likelihood of imminent serious physical harm to himself and others, and less restrictive interventions have failed or are not feasible.

Advocacy Help

Family Advocacy and Parent Education Program

Howard County Autism Society 410-290-3466 info@howard-autism.org

Family Support and Resource Center

Howard County Public School System 410-313-7161 ann_scholz@hcpss.org

Special Education Citizens Advisory Committee

Howard County Public School System secacchair@hcpss.org



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410-727-6352

