



# Technical Assistance Bulletin

## 17-02



November 2017

### Division of Early Intervention and Special Education Services

Birth-4	Birth-5	Age 3-5	Age 3-21	X	Birth-21
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## PARENTAL CONSENT UNDER MARYLAND LAW

Updated: November 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 took 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 and/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.

**13. What happens if the parent consents to instruction based on Maryland’s alternate academic achievement standards but not assessment, or vice versa?**

While instruction and assessment generally align, the law separates the two and requires that the IEP team must obtain the written consent of a parent for each. This raises the possibility that a parent might provide written consent for one and not the other. The chart below illustrates the practical effect of the various possibilities, most notably that the student may not earn a Maryland High School Diploma. While the IEP team must determine what is appropriate and necessary to meet the student’s needs at a given time, the team should be cognizant of the fact that splitting these two decisions does not change the student’s graduation prospects. Either one, if continued through high school, makes it less likely that the student will earn a Maryland High School Diploma.

The IEP team has obtained the written consent of a parent for...	Student A	Student B	Student C	Student D
<b>Instruction</b> Based on Alternate Academic Achievement Standards	Yes	Yes	No	No
<b>Assessment</b> Based on Alternate Academic Achievement Standards	Yes	No	Yes	No

**Student A:** If these decisions are continued through high school, this student will not be eligible for a Maryland High School Diploma because the student will neither have passed the credit-bearing content courses nor have earned a passing score on the general assessments or their equivalent, both of which are graduation requirements.

**Student B:** If these decisions are continued through high school, this student will not be eligible for a Maryland High School Diploma because, although the student may have passed the credit-bearing content courses, the student will not have earned a passing score on the general assessments or their equivalent, which is a graduation requirement.

**Student C:** If these decisions are continued through high school, this student will not be eligible for a Maryland High School Diploma because, although the student may have earned a passing score on the general assessments or their equivalent, the student will not have passed the credit-bearing content courses, which is a graduation requirement.

**Student D:** If these decisions are continued through high school, this student will be eligible for a Maryland High School Diploma because the student may have both passed the credit-bearing content courses and earned a passing score on the general assessments or their equivalent, both of which are graduation requirements.

**14. What does it mean to “enroll” a student in an “alternative education program”?**

This language, taken from the law itself, effectively means that a student will be receiving instruction based on Maryland’s alternate academic achievement standards. It does not denote a particular placement and/or environment, but rather which standards will be used for instruction in one or more courses. If the student is not receiving instruction based on Maryland’s College and Career Ready Standards, and this continues through high school, then the student may not pass the credit-bearing content courses that are required to earn a Maryland High School Diploma.

**15. Is parental consent required if the student has not yet reached high school?**

Yes. Parental consent is required any time a student is identified to receive instruction based on Maryland’s alternate academic achievement standards and/or identified to participate in an alternate assessment that is based on those standards. If a student is identified for such instruction and/or assessment in the early grades, then continuance of those decisions make it less likely the student will be prepared to meet the requirements for a Maryland High School Diploma. This is why the IEP team should review both decisions annually in light of student progress.

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