

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 778
Ways and Means

(Delegates M. Washington and Luedtke)

Rules

**Education - Students With Disabilities - Study of Parental Consent in the
Individualized Education Program Process**

This bill requires the Maryland State Department of Education (MSDE) to convene a workgroup that consults with specified stakeholders regarding special education. By November 15, 2016, the workgroup must report the results of the activities of the workgroup (as described below), including recommendations for legislative changes, to the Senate Education, Health, and Environmental Affairs Committee and the House Committee on Ways and Means.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: MSDE can convene the required workgroup and engage stakeholders using existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The workgroup must review and make recommendations regarding parental consent (and its definition) and parental participation provisions of special education statutes and regulations in place in other states, including data and information regarding the effectiveness of these provisions. The workgroup must discuss the legal and policy ramifications for obtaining written parental consent before an individualized

education program (IEP) team may (1) enroll the student in an alternative education program that does not issue or provide credits toward a high school diploma; (2) identify the student for the alternate assessment aligned with the State's alternate curriculum; (3) use restraint or seclusion to correct the student's behavior; (4) reduce or terminate the amount of instructional or related services provided to the student; or (5) initiate a change in the student's educational placement.

The workgroup must also review and make recommendations regarding the feasibility of authorizing a student with disabilities to attend a public school other than the public school to which the student is assigned, including a school in another local school system.

Current Law:

Individualized Education Program

The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an IEP specific to the individual needs of the student. Local school systems are required to make a free appropriate public education available to students with an IEP. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the IEP team that is responsible for developing and reviewing a child's IEP and for revisions to the IEP.

At the initial evaluation meeting, the parents of a child with a disability must be provided, in plain language, a verbal and written explanation of the parents' rights and responsibilities in the IEP process and a program procedural safeguards notice. The parents may request this information at any subsequent meeting.

Dispute Resolution

Chapter 233 of 2006 established a Maryland process for resolution sessions that can be used to settle disputes about the identification, evaluation, and educational placements of children with disabilities, consistent with IDEA provisions for dispute resolution.

Before conducting a due process hearing, the parent must have an opportunity to resolve a due process complaint at a resolution session.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child's special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. A parent of a child with disabilities may file a due process complaint with the Maryland Office of Administrative Hearings (OAH) and the public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

Background: The U.S. Department of Education, Office of Special Education Programs (OSEP) has stated that the IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education. OSEP indicates that (1) it is not appropriate to make IEP team decisions based upon a majority "vote" and (2) that if the IEP team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Chapter 671 of 2013 established a Commission on Special Education Access and Equity to study the extent to which parents and guardians of students with disabilities are made aware of their rights under IDEA and State law and regulations relating to children with disabilities and potential ways to improve the awareness of these rights. Among other matters, the commission considered but did not recommend changes to regulation that would have required parental consent in specified circumstances. The [commission's final report](#) is available on MSDE's website.

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file, SB 950 (Senator Conway – Education, Health, and Environmental Affairs) is identical.

Information Source(s): Maryland State Department of Education, Department of Legislative Services

Fiscal Note History:
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