

*Revised September 2012*

## **Division of Special Education/Early Intervention Services**

### **Child with a Disability – Individualized Education Program Meeting – Document Access**

On May 2, 2012, Governor Martin O’Malley signed House Bill 596 (HB 596) which amends Senate Bill 540 (SB 540) by repealing and reenacting, with amendments, Education Article §8-405, of the Annotated Code of Maryland. Education Article §8-405 requires school personnel to provide parents with an accessible copy of each assessment, report, data chart(s), draft Individualized Education Program (IEP), or other document(s) the IEP team or other multidisciplinary team plans to discuss at that meeting at least five (5) business days before the scheduled meeting. Education Article §8-405 also requires school personnel are to provide parents an accessible copy of the completed IEP not later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting. House Bill 596 went into effect on July 1, 2012.

#### **Background**

The Individuals with Disabilities Education Act (IDEA) and related Maryland laws require IEP team meetings to determine services needed to ensure a Free Appropriate Public Education (FAPE) to students with disabilities. Parents are required IEP team participants. The public agency responsible for provision of services to students with disabilities must provide to parents notice of IEP team meetings that include the purpose, time, location of the meeting and a list of the participants who are expected to attend. In Maryland this notice requirement is commonly satisfied by an invitation to the parents or guardian to attend the IEP team meeting.

The IDEA requires public agencies to inform parents about the IEP process and to allow the parents to have the opportunity for meaningful participation. The IDEA requires that public agencies provide information on procedural safeguards describing the protections and dispute resolution process available to parents in order to protect the educational rights of their children. The IDEA also requires that appropriate services be planned for students through a collaborative process which supports meaningful participation by the parents.

In order to ensure parent participation, meetings are to be scheduled at a mutually convenient time for the parties. Parents have the right to request an IEP team meeting anytime they believe such a need is warranted. They also have the right to review the records of their child and to receive written notice of decisions made by the IEP team and the basis of those decisions. These requirements support the

parents' rights and responsibility to be a meaningful participant in the planning of their child's education program.

HB 596 was effective July 1, 2012 as Md. Code Ann., Educ., §8-405. The intent of the changes in HB 596 was to free up the school system and the parents to communicate and interact more fluently by providing parameters that were clearer to both sides with regards to the delivery of the documentation. This law requires school systems to provide documents to parents that will be considered by the IEP team prior to the meeting to afford parents the opportunity to review the documents prior to the meeting, in order to facilitate their informed participation in the development, review, and/or revision of their child's IEP. The law also clarifies requirements for those documents. This state statute exceeds the IDEA requirements on parental participation.

## **Summary of Md. Code Ann., Educ., §8-405, effective July 1, 2012**

### Before an IEP team or other multidisciplinary education team meeting:

- At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, school systems must provide parents with an accessible copy of each assessment, report, data chart, draft IEP, or other document(s) the team plans to discuss at the meeting. A "business day" is defined as Monday through Friday, except for federal or State holidays, when a local school system (LSS) or public agency (PA) is open for business whether or not students are required to be in attendance for instruction [34 C.F.R. §300.11(b); COMAR 13A.05.01.03B(9)].
- School personnel may provide the document(s) required through "electronic delivery, home delivery with the student or any other reasonable and legal method of delivery" [Md. Code Ann., Educ., §8-405(f)].
- An assessment, report, data chart, or other document(s) prepared by a school psychologist or other medical professional that an IEP or other multidisciplinary education team plans to discuss at the meeting may be provided to parents orally and in writing prior to the meeting [Md. Code Ann., Educ., §8-405(d)(1)(ii)].
- If school personnel are unable to provide an accessible copy of the material(s) at least five (5) business days before the scheduled meeting because of an extenuating circumstance, school personnel are to document and communicate to parents the nature of the extenuating circumstance that prevented school personnel from providing accessible copies of the material(s) [Md. Code Ann., Educ., §8-405(d)(2)(ii)].
- "Extenuating Circumstance" is defined in the statute as "a death in the family, a personal emergency, a natural disaster, or any other similar situation defined by the Department" [Md. Code Ann., Educ., §8-405(a)(3)].
- The parents of a child or youth with a disability may notify the appropriate school personnel that they do not want to receive the document(s) required to be provided [Md. Code Ann., Educ., §8-405(d)(1)(iii)].

After an IEP team or other multidisciplinary education team meeting:

- Not later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth business day after the IEP team meeting, school personnel shall provide the parents with the draft copy of the IEP [Md. Code Ann., Educ., §8-405(e)(1)(2)].

Failure of school personnel to comply with the timelines and actions listed above for providing copies of reports in advance of a meeting or copies of a child's completed IEP following the IEP team meeting does not constitute a substantive violation of the requirement to provide a FAPE [Md. Code Ann., Educ., §8-405)(g)].

## **Implementation**

**1. How does this statute affect the parents of a child with an IEP, or a child who may need special education services?**

The passage of this statute requires school personnel to provide the parents with a copy of certain documents relating to the development of a child's IEP at least five (5) business days before the scheduled meeting. The law also requires that a copy of the completed IEP must be provided to parents not later than five (5) business days after the scheduled meeting. The statute now provides the parents the opportunity to notify the appropriate school personnel that they do not want to receive the document(s) required to be provided.

**2. How should an LSS or a PA ensure parents understand why they are receiving more document(s) prior to scheduled IEP or multidisciplinary education team meetings than they received previously?**

Each LSS and PA is required to ensure school personnel accurately implement local policies and procedures which comply with federal and State requirements, including the recent amendment to Md. Code Ann., Educ., §8-405. Accompanying this bulletin are two sample cover letters an LSS or a PA may consider providing along with the document(s) prior to a scheduled IEP or multidisciplinary education team meeting. The LSSs and the PAs are not required to use either of the samples.

**3. Does the law apply to the development, review, and revision of an Individualized Family Service Plan (IFSP) for infants, toddlers, and children receiving services through Maryland Infants and Toddlers Program?**

No. The statute applies only to students with disabilities, who receive or may be eligible to receive special education and related services in accordance with an IEP under Part B of the IDEA.

**4. Does this law apply to “school personnel” in nonpublic special education schools?**

When a student's IEP cannot be implemented in a public school program and the local school system places the child in a nonpublic special education school, the local school system is required to ensure that all IDEA requirements for the child are met by the school.

This includes initiating and conducting meetings to review the student's IEP, in accordance with COMAR 13A.05.01.16A. Documents that the IEP team plans to discuss, whether generated by the local school system or the nonpublic special education facility, must be provided at least five (5) business days prior to the meeting. The local school system should have procedures in place with the nonpublic special education facility to ensure that the relevant documents are provided to the parents in a timely manner.

**5. If parents do not understand the documents received five (5) business days prior to a scheduled meeting, are school personnel required to explain the documents to the parent prior to the scheduled meeting?**

The statute neither requires nor prohibits the review of the provided document(s) by school personnel with parents prior to the scheduled meeting. Please note that the statute does include a provision that allows school psychologists and other medical professionals to provide documents orally and in writing.

**6. Are school personnel who provide an assessment, report, data chart, draft IEP, or other documents to parents prior to the scheduled meeting now required to attend the scheduled meeting?**

No. The statute does not change the required members of a student's IEP team, as set forth in 34 C.F.R § 300.321(a) and COMAR 13A.05.01.07A. The statute only requires the provision of an accessible copy of document(s) to the parents at least five (5) business days prior to a scheduled team meeting.

**7. If, during the team meeting, a document not previously disclosed is to be reviewed, should the meeting end, given that the parents of the child did not have a chance to review the document five (5) days prior to the meeting?**

A document(s) or data that was not disclosed prior to the meeting may be the result of an extenuating circumstance. A document(s) or data may not have been available five days prior to the meeting. It is always recommended that parents and school personnel engage in open dialogue. This policy is to be enforced on a case by case basis, as long as all parties are in agreement there is flexibility in the law to make the process more efficient, and amenable to each child's needs. The LSS/PA should offer the parent the opportunity to continue the meeting, reconvene the meeting, or any other appropriate option agreeable to both parties.

- 8. If the purpose of the IEP team meeting is to determine whether or not the student is a student with a disability and/or to determine the special education, related services, supplementary aids, services, program modifications, and supports a student may need, must school personnel draft an IEP prior to the IEP team meeting?**

No. There is nothing in the IDEA or the COMAR that requires or prohibits the LSS or the PA personnel to draft a proposal for discussion by the IEP team prior to the scheduled meeting. It is the responsibility of the LSSs and the PAs to develop local policies and procedures to ensure a student's IEP team meets to develop an IEP for the student within 30 days of a determination that the student is a student with a disability and requires the provision of special education and related services. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

- 9. What is a “multidisciplinary education team meeting”?**

The term “other multidisciplinary education teams” is not defined in the statute. An “other multidisciplinary education team” is not an IEP team but is another school team which includes the child's parents and meets to discuss a child with a disability.

## **Business Day**

- 10. Is a “business day” the same as a calendar day?**

No. A business day is defined as “Monday through Friday, except for federal or State holidays, when a local school system or public agency is open for business whether or not students are required to be in attendance for instruction [34 C.F.R. § 300.11; COMAR 13A.05.01.03B(9)].

- 11. Is the first of the five (5) business days prior to an IEP team meeting the day the parents received the documents?**

No. The first of the five (5) business days begins the day after the parents receive the document(s), regardless of the time of day the material(s) are received. Thus, the earliest the IEP team meeting may occur is on the fifth business day following the date the parents received the document(s). As an example, a parent receives the required document(s) via postal delivery on a Friday (9/10). The first of the five business days is Monday (9/13). The earliest an IEP team meeting may be scheduled is Friday (9/14). *See* Maryland Rule §1-203(b), Maryland Rules of Civil Procedure.

## **Accessible Copies**

- 12. What does the law mean when it states that the parents are to receive “accessible” copies?**

The law states that an “accessible copy includes a copy of a document(s) provided to an individual in a format as defined in Md. Code Ann., Educ., §8 408 (2006).” Examples may include a format other than print, such as Braille, larger print, electronic format, audio file, etc.

The IDEA and the COMAR do not require that each assessment, report, data chart(s), draft IEP, or other document(s) the IEP team or other multidisciplinary team plans to discuss at that meeting be written in an individual's native language. [OSEP Letter to Boswell, September 4, 2007]

## **Documents to be Provided**

### **13. Are schools only required to send parents a copy of the draft IEP before the meeting?**

Schools must provide a copy of **ALL** documents that are to be discussed at the meeting. If the LSS/PA has drafted an IEP and that draft IEP is the only document to be discussed, then that is the only document to be provided. However, it is unlikely that if the IEP team plans to change the IEP that no other document(s) would be discussed to support and document the change in the IEP.

### **14. Would a service provider's portfolio of a child's class work or assessment protocols be considered documents that must be provided to parents prior to an IEP team meeting or other multidisciplinary education meeting?**

Yes, if the IEP team plans to discuss the entire portfolio or assessment protocols at the meeting. In such a case, appropriate school personnel must provide an accessible copy of each assessment, report, data chart, draft IEP, or other document(s) to the parents at least five (5) business days before the scheduled meeting. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

### **15. Are documents prepared by school psychologists included among documents which must be provided at least five (5) business days before the scheduled meeting?**

Yes, if the IEP team plans to discuss the psychologist's document(s) at the meeting. In such a case an accessible copy of the document(s) must be provided at least five (5) business days prior to the meeting. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

Additionally, the statute states, "An assessment, report, data chart, or other document prepared by a school psychologist or other medical professional that either team plans to discuss at the meeting may be provided to the parents orally and in writing prior to the meeting." A school psychologist or other medical professional may orally share this information with the parents prior to the scheduled meeting, as well as provide accessible copies to parents at least five (5) business days before the scheduled meeting.

### **16. Often parents provide or agree to allow medical reports from their child's physician or counselor to be sent to local school systems and public agencies. Does the statute require local school systems to re-release those documents to the child's parents?**

Yes, if the IEP team plans to discuss the reports at the meeting. In such case, an accessible copy of each report must be provided to the parents, regardless if the parents provided the report to the school. Many times those reports come to a school within a week of an IEP team meeting and after documents to be discussed at the meeting have been delivered to the parent.

The whole packet does not need to be redelivered if those reports come to school after the initial document delivery. The delivery of these documents to the parents in less than five (5) business days is an extenuating circumstance.

**17. Are LSSs/PAs only required to provide documents which the parents have not received previously?**

Under the statute, if the IEP team plans to discuss a document at the meeting, an accessible copy of the document must be provided at least five (5) business days before the meeting.

**18. Is classwork considered a document to be provided if the teacher decides to discuss certain assignments at the IEP team meeting?**

Yes, if the classwork would be discussed at the meeting. For example, if a teacher wants to show samples of the child's progress, the samples should be provided at least five (5) business days before a scheduled IEP team meeting

**19. If school personnel send a student's behavior charts home to parents daily, are school personnel required to send additional documentation to the parents prior to the IEP team meeting or other multidisciplinary education team meeting?**

Yes, if the IEP team plans to discuss the document(s) at the meeting. Such document(s) must be provided in an accessible format at least five (5) business days before the meeting.

**20. Will the parents get a copy of their child's completed IEP? When should the parents receive this?**

Yes. No later than five (5) business days after a scheduled IEP or other multidisciplinary education meeting, appropriate school personnel are to provide parents an accessible copy of the completed IEP. If the IEP has not been completed by the fifth (5<sup>th</sup>) business day after the IEP team meeting, the parents must be provided with an accessible draft copy of the IEP.

## **Methods of Delivery**

**21. Does the statute allow school personnel to schedule a time for parents to come in to pick up material(s)? Does it require all documents to be mailed by U.S. Mail? Is faxing or e-mailing reports acceptable? Does the statute require the mailing of the psychological report with the other reports?**

The statute states that school personnel may provide the document(s) required through "electronic delivery, home delivery with the student or any other reasonable and legal method of delivery" [Md. Code Ann., Educ., §8-405(f)]. Consistent with 34 C.F.R. § 99 and 34 C.F.R. §§ 300.610—300.626, the LSS or the PA must take the necessary steps to protect the confidentiality of personally identifiable information and the integrity of the process as required under state and federal privacy requirements, including COMAR 13A.08.02. The LSS/PA personnel should consult with parents to determine the most appropriate or preferred manner in which the parents would like to receive the document(s).

- 22. Currently the LSSs are required to provide parents of students with disabilities written notice of a scheduled IEP team meeting at least ten (10) calendar days in advance of the meeting. Does this new law require a second mailing within five (5) business days of the scheduled meeting?**

It is acceptable for an LSS/PA to send the document(s) to be discussed with the notice of the IEP team meeting; however, this is not required. Otherwise, the notice must be sent ten (10) calendar days before the IEP team meeting, and the document(s) must be sent five (5) business days prior.

- 23. What documentation must an LSS or PA maintain to demonstrate that documents were sent to the parents as required?**

The statute is silent on this issue. The LSS or the PA should have policies and procedures to ensure copies of written notices of IEP team meetings and additional information to be discussed at the IEP team meeting are provided to parents as required by State law and regulations. The policies and procedures should specify how school personnel are to track what document(s) were provided to parents, when they were provided, and how they were provided.

## **Parental Request Not to Receive Documents**

- 24. May parents request not to receive documents prior to the team meeting?**

Yes. The statute states that the parents of a child may notify the appropriate school personnel that they do not want to receive the document(s) required to be provided [Md. Code Ann., Educ., §8-405(d)(1)(iii)].

- 25. May parents ask to receive the documents in less time than the required five (5) business days?**

On a case by case basis it is possible that a parent may ask to receive document(s) less than the required five (5) business days prior to a meeting. An LSS/PA may not ask a parent to agree to a reduced timeline that would be a violation of the law. Each LSS should clearly inform all parents of all delivery methods available to parents and inform parents that a parent may choose not to receive document(s) in advance of IEP team meetings. In the general course of business, the LSSs and the PAs must provide document(s) five (5) business days prior to the IEP team meeting.

- 26. Are schools allowed to provide these documents to parents less than five (5) business days before the meeting?**

If school personnel are unable to provide the parents with an accessible copy of the material(s) to be discussed at the IEP team meeting at least five (5) business days before the scheduled meeting, school personnel must document and communicate to the parents the nature of the extenuating circumstance that prevented school personnel from providing parents with accessible copies of the material(s). If the parents agree to the reduced time, the school system should document that communication. If the parents do not agree, the IEP meeting should



either address issues not related to the document(s), with another meeting to follow up, or the IEP team meeting should be rescheduled.

## **Extenuating Circumstances**

- 27. What is meant by “extenuating circumstance”? What examples of these circumstances are provided?**

The statute defines “extenuating circumstance” as “a death in the family, a personal emergency, a natural disaster, or any other *similar situation* defined by the Department” [Md. Code Ann., Educ., §8-405(a)(3) (emphasis added)]. The Maryland State Department of Education defines similar situations as “any unforeseen event that occurs for which delivery of the document(s) would not be possible prior to five (5) business days before the meeting. This can include classwork or behavioral document(s) generated within the delivery window.”

- 28. When it is necessary to schedule an expedited IEP team meeting to address a student’s disciplinary issues, determine the placement of the student with a disability not currently receiving educational services, or to meet other urgent needs of the student to ensure the provision of a FAPE, consistent with COMAR 13A.05.01.07D(2), would that be an extenuating circumstance?**

Local school systems and public agencies are to communicate with parents the nature of the expedited IEP team meeting, and how to provide the parents with accessible document(s) prior to the IEP team meeting. The Maryland State Department of Education further defines an extenuating circumstance as “any unforeseen event that occurs for which delivery of the document(s) would not be possible prior to five (5) business days before the meeting. This can include classwork or behavioral document(s) generated within the delivery window.”

NOTICE of DOCUMENT(S) PROVIDED to PARENT for REVIEW at an IEP MEETING  
(Sample 1)

Name of student: \_\_\_\_\_  
Name of parent: \_\_\_\_\_  
School: \_\_\_\_\_  
Date of Notice: \_\_\_\_\_  
Date of scheduled meeting: \_\_\_\_\_

School personnel must provide parents with an accessible copy of each assessment, report, data chart(s), draft Individualized Education Program (IEP), or other document(s) the IEP team or other multidisciplinary education team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting.

In order to meet this requirement we are providing the following information for your review prior to the IEP meeting that is scheduled for \_\_\_\_\_ (date). A notice of this meeting is: \_\_\_ attached or was sent on \_\_\_\_\_ (date). The following information/document(s) are attached and may be discussed at the meeting:

- XXXX
- XXXX

School personnel may also discuss the following information and are not able to provide document(s) prior to the meeting:

- XXXX
- XXXX

The reason (extenuating circumstance) these document(s) are not available prior to the meeting is:

If the purpose of the IEP team meeting is to develop or review and revise your child's IEP, within five (5) business days following the IEP team meeting, school personnel are required to provide you a completed copy of your child's IEP.

We hope this information is useful and helps us to have a meaningful and productive discussion regarding your child's needs. If you have questions please contact \_\_\_\_\_ (contact name, phone number, and/or email address)

NOTICE of DOCUMENT(S) PROVIDED to PARENT for REVIEW at an IEP MEETING  
(Sample 2)

**Date Meeting Notice Sent:**

**Date Material(s) Sent:**

**Date of Meeting:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dear Parents:

School personnel must provide parents with an accessible copy of each assessment, report, data, draft Individualized Education Program (IEP), or other document(s) the IEP team or other multidisciplinary education team plans to discuss at that meeting, at least five (5) business days before the scheduled meeting. Attached are the following:

- XXX
- XXX
- XXX

School personnel are unable to provide you with accessible copies of the following material(s) at least five (5) business days before the scheduled IEP team meeting because of an extenuating circumstance:

- XXX
- XXX
- XXX

If applicable, the reason (extenuating circumstance) these document(s) are not available prior to the meeting is:

Not later than five (5) business days after a scheduled IEP or other multidisciplinary education team meeting, appropriate school personnel are to provide you with an accessible copy of the completed IEP.

In accordance with Md. Code Ann., Educ., §8-405(g), failure of school personnel to comply with the timelines does not constitute a substantive violation of the requirement to provide your child a free appropriate public education (FAPE).

If you have questions please contact: \_\_\_\_\_ (name) \_\_\_\_\_ (phone)

For more information, call 410-767-0858

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