

June 2010

Division of Special Education/Early Intervention Services

Senate Bill 540 (SB 540) & House Bill 269 (HB 269) Provision of Accessible Copies of Documents to Parents

In 2010, the Maryland General Assembly passed House Bill 269 (HB 269) and Senate Bill 540 (SB 540). These bills amended Education Article §8-405 of the Annotated Code of Maryland. This statute now requires school personnel to provide parents with an accessible copy of each assessment, report, data chart, draft Individualized Education Program (IEP), or other document the IEP team or other multidisciplinary education team plans to discuss at that meeting. These documents must be provided to parents at least five (5) business days before the scheduled meeting. On May 20, 2010, Governor Martin O'Malley signed both the House (HB 269) and Senate (SB 540) versions into law. Senate Bill 540 was recorded as the official bill effective as of July 1, 2010. As a result, school personnel are required to ensure the following actions occur:

Before an IEP or other multidisciplinary education team meeting:

- At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting. In accordance with Individuals with Disabilities Education Act (IDEA) regulations, 34 CFR §300.11(b), and the Code of Maryland Regulations (COMAR) 13A.05.01.03B(9), 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.
- 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 parents orally **and** [emphasis added] in writing prior to the meeting. [Education Article §8-405(c)(2)(i), Annotated Code of Maryland]
- 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). [Education Article §8-405(c)(2)(ii), Annotated Code of Maryland]

After an IEP 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. [Education Article §8-405(d), Annotated Code of Maryland]

In accordance with Education Article §8-405(e), Annotated Code of Maryland, 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 free appropriate public education (FAPE).

Questions and Answers

1. *How does this new statute affect the parents of a child with an IEP, or a child who may need special education services? How should an LSS or PA ensure parents understand why they are receiving more documents be sent to them prior to scheduled IEP or multidisciplinary education team meetings than they received previously because of a change in the law?*

The passage of this new 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.

Each LSS and PA is required to develop and maintain local policies and procedures which comply with federal and State requirements, including the recent amendment to Education Article §8-405, Annotated Code of Maryland. Accompanying this bulletin are two sample cover letters an LSS or PA may consider providing parents along with the documents prior to a scheduled IEP or multidisciplinary education team meeting. LSSs and PAs are not required to use either of the samples.

2. *Does the new 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, 3 years old through the end of the school year in which the student turns 21 years old, who receive or may be eligible to receive special education and related services in accordance with an IEP under Part B of IDEA.

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

Yes. If a student's IEP cannot be implemented in a public school program, the local school system is required to take steps to ensure that the student is provided FAPE. A nonpublic school shall contact the local school system to request an IEP team meeting to review the student's IEP, as appropriate. The local school system shall initiate and conduct meetings to review the student's IEP, in accordance with COMAR 13A.05.01.16A. Documents that the IEP team plans to discuss must be provided at least five business days prior to the meeting.

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

No. The statute states, “At least five (5) business days before a scheduled meeting of the individualized education program team or other multidisciplinary education team for any purpose for a child with a disability, appropriate school personnel shall provide the parents of the child with an accessible copy of each assessment, report, data chart, draft individualized education program, or other document that either team plans to discuss at the meeting.”

5. *Is a service provider’s portfolio of a child’s class work or assessment protocols considered ‘documents’ that must be provided to parents prior to an IEP team meeting or other multidisciplinary education meeting?*

Yes if, as set forth in the statute, the IEP team plans to discuss the entire portfolio or assessment protocols at the meeting, appropriate school personnel must provide an accessible copy of each assessment, report, data chart, draft IEP, or other document to the parents at least five (5) business days before the scheduled meeting. Any document that the IEP team does not plan to discuss does not need to be provided prior to the meeting.

6. *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, as set forth in the statute, the IEP team plans to discuss documents at the meeting, then an accessible copy of the documents must be provided. 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.

7. *Often parents provide or agree to allow medical reports from their child's physician or counselor to be sent 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, as set forth in the statute, the IEP team plans to discuss the reports at the meeting, an accessible copy of each report must be provided to the parents. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting. Additionally, the requirements of 34 CFR §§99.32(a) and 99.33(a) do not apply if the disclosure or re-disclosure is to the parents of the child.

8. *Are reports prepared by the school nurse considered to be reports prepared by a medical professional?*

The statute discusses reports from 'a school psychologist or other medical professional' but does not otherwise define 'medical professional.' Under the statute, if the IEP team plans to discuss a document from a medical professional at the meeting, then an accessible copy of the document must be provided at least five business days before the meeting. A school system may also orally provide documents from medical professionals.

9. *Does the statute allow school personnel to schedule a time for parents to come in to pick up materials? Does it require all documents to be mailed by US Mail? Is faxing or e-mailing reports acceptable? Does the statute require the mailing of the psychological report with the other reports? May a LSS or PA provide the documents electronically?*

The statute does not specify how school personnel must provide documents to the parents at least five (5) business days prior to a scheduled IEP team meeting or other multidisciplinary education team meeting. Consistent with 34 CFR § 99 and 34 CFR §§300.610—300.626, the LSS or PA would need to 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. Also, in accordance with 34 CFR §300.615, if a document includes information on a student other than the parents' child, the parents have the right to inspect and review only the information in the document relating to their child. Redacting the other student's name from the document may allow the document to be reviewed.

10. *May parents waive the receipt of the documents prior to the team meeting? May parents agree to a different timeline (three (3) days instead of five (5) days)? Are schools allowed to provide these documents to parents less than five (5) business days before the meeting? To provide the documents at the IEP meeting?*

The statute does not address a parent's waiver of the law. If school personnel are unable to provide the parents with an accessible copy of the materials 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 materials.

11. *Are LSS/PA's 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. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

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

The statute states, "At least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting, the parents are to receive an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting." A student's class work would be included in "other documents" if the IEP team plans to discuss the student's class work assignments at the IEP team meeting.

13. *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?*

If the IEP team plans to discuss the documents at the meeting, then under the statute, an accessible copy of the document must be provided at least five (5) business days before the meeting. Documents that the IEP team does not plan to discuss do not need to be provided prior to the meeting.

14. *Currently 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? Are two (2) separate mailings now the requirement?*

The statute does not address this issue. In accordance with COMAR 13A.05.01.07D(2), each LSS and PA must send written notice to parents at least ten calendar days prior to a non-expedited IEP team meeting. Under Education Article §8-405, Annotated Code of Maryland, LSS's and PA's must provide parents with an accessible copy of each assessment, report, data chart, draft IEP, or other document the team plans to discuss at the meeting at least five (5) business days prior to the scheduled meeting. Each LSS and PA is required to meet both requirements. The method in which these timelines are met is dependent upon local policy and procedures.

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

The statute does not address this issue. The LSS or 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 within the timelines specified by State law and regulations. The policies and procedures should include information on how school personnel document what documents were provided and when and how the documents were provided to parents.

16. *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 documents 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.

17. *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 CFR §300.321(a) and COMAR 13A.05.01.07A. The statute only requires the provision of an accessible copy of documents to the parents at least five (5) business days prior to a scheduled team meeting.

18. *What is meant by "extenuating circumstance"? What examples of these circumstances are provided?*

The statute does not define or give examples of extenuating circumstance. Schools will therefore determine "extenuating circumstances" on a case-by-case basis. When LSS or PA personnel identify an extenuating circumstance, they must document the extenuating circumstance and communicate the circumstance to the parents of the child.

19. *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 FAPE, consistent with COMAR 13A.05.01.07D(2), would that be an extenuating circumstance?*

The statute does not define or give examples of extenuating circumstance. An "extenuating circumstance" is determined on a case-by-case basis. It is the responsibility of LSS or PA personnel to document and communicate to parents the nature of the extenuating circumstance that prevented school personnel from providing parents with accessible copies of the materials at least five (5) business days before a scheduled IEP team meeting or other multidisciplinary education team meeting. The LSSs/PAs are responsible for developing policies and procedures that address maintaining documentation of extenuating circumstances and the manner in which that information was communicated to parents.

20. *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?*

The statute does not address this issue. The statute requires school personnel to determine what documents need to be discussed at an IEP team meeting in order to develop, review, and/or revise a student's IEP. LSS/PA policies and procedures must address how copies of documents are provided to parents at least five (5) business days prior to a scheduled meeting. Local policies and procedures should also address procedures when accessible copies of information are not provided to parents within the specified timeline prior to the meeting. These procedures should also address whether or not the failure to provide that information to the parent five (5) business days prior to the scheduled meeting is an extenuating circumstance.

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

Yes. Not 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 business day after the IEP team meeting, the parents must be provided with an accessible draft copy of the IEP.

22. *Would a school's failure to meet these timelines be a denial of a child's FAPE?*

Under the statute, failure of school personnel to comply with the timelines to provide parents accessible copies of information at least five (5) days prior to a scheduled meeting, or a copy of the child's IEP following the IEP team meeting, does not constitute a substantive violation of the requirement to provide the student a FAPE. Additional guidance will be issued at a later date.

23. *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, may school personnel "draft" an IEP?*

Yes. There is nothing in IDEA or COMAR that prevents LSS or PA personnel from conferring and developing a proposal for discussion by the IEP team at the scheduled meeting. It is the responsibility of LSSs and 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's need for 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.

24. *What is a "multidisciplinary education team meeting"?*

The term "other multidisciplinary education teams" is mentioned after IEP team meetings. The "other multidisciplinary education team" is not an IEP team but is another school team, which includes the child's parents and meet to discuss a child with a disability.

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

No. In accordance with 34 CFR §300.11 and COMAR 13A.05.01.03B(9) 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.”

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

The law does not define “accessible copy.” Examples may include a format other than print, such as Braille, larger print, electronic format, audio file, etc. IDEA and COMAR do not require that each assessment, report, data chart(s), draft IEP, or other document 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]

NOTICE of DOCUMENTS 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: _____

In 2010 the Maryland General Assembly passed House Bill 269 (HB 269) and Senate Bill 540 (SB 540). As of July 1, 2010, school personnel must provide parents with an accessible copy of each assessment, report, data chart(s), draft Individualized Education Program (IEP), or other document 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/documents 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 documents prior to the meeting:

- XXXX
- XXXX

The reason (extenuating circumstance) these documents 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 5 business days following the IEP team meeting, school personnel are required to provide a completed copy of your child's IEP.

We hope this information is helpful 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 DOCUMENTS PROVIDED to PARENT for REVIEW at an IEP MEETING
(Sample 2)

Date Meeting Notice Sent:

Date Materials Sent:

Date of Meeting:

Dear Parents:

The 2010 Maryland General Assembly passed Senate Bill 540 (SB 540) and House Bill 269 (HB 269). These bills amended Education Article §8-405, Annotated Code of Maryland. Beginning July 1, 2010, school personnel must provide parents with an accessible copy of each assessment, report, data, draft Individualized Education Program (IEP), or other document 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 materials 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 documents 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 Education Article §8-405(e), Annotated Code of Maryland, 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

MARYLAND STATE DEPARTMENT OF EDUCATION
Nancy S. Grasmick, State Superintendent of Schools
Carol Ann Heath, Assistant State Superintendent
Division of Special Education/Early Intervention Services
200 West Baltimore Street
Baltimore, MD 21201

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James H. DeGraffenreidt, Jr.
President, State Board of Education

Nancy S. Grasmick
State Superintendent of Schools

Carol Ann Heath
Assistant State Superintendent
Division of Special Education/Early Intervention Services

Martin O'Malley
Governor