

PRIOR WRITTEN NOTICE

What is prior written notice (PWN)?

Prior written notice is a legal requirement per IDEA, and is a protection afforded to parent(s)/guardian(s) per their Procedural Safeguards. IDEA includes prior written notice as a measure to ensure that parents have adequate notification and understanding of special education decisions made about their child, including elements of a Free Appropriate Public Education (FAPE).

A prior written notice should provide comprehensive documentation of any and all actions proposed and/or refused by an LEA/district. The information included should be sufficient to ensure that parents understand the rationale by which decisions were made, and all things that were considered. Providing prior written notice affords parents an additional opportunity to consider and/or object to decisions that were made prior to implementation by an LEA/district.

Under what circumstances is prior written notice required?

Prior written notice is a document that is required following the proposal and/or refusal related to the initiation or change in the identification, evaluation, educational placement, or offer of FAPE (34 CFR 500.503).

An IEP team may make decisions regarding the identification of a student including, but not limited to:

- Determination of initial identification (eligibility) for special education
- Refusal to identify a student as eligible
- Changing the identification of a student (eligibility category)
- Termination of identification (student no longer found eligible)

An IEP team may make decisions regarding the evaluation of a student including, but not limited to:

- Requesting consent for initial evaluation
- Requesting consent for reevaluation
- Refusal to conduct an evaluation requested by a parent
- Proposal or refusal to provide a requested independent educational evaluation (IEE)

An IEP team may make decisions regarding the placement of a student including, but not limited to:

- Offering initial placement
- Proposing a change in educational placement
- Refusal to change placement as requested by a parent
- Termination of special education placement due to student being found no longer eligible
- Proposal or refusal to offer placement to parent who has unilaterally placed a student with an IEP in a residential facility or nonpublic school

Graduation with a regular high school diploma is also considered a change of placement, though not through IEP team decision, thus requiring the provision of prior written notice. Additionally, any

disciplinary removal of more than 10 consecutive days, or a series of removals accumulating more than 10 days is considered a change of placement, triggering the prior written notice requirement.

An IEP team may make decisions regarding the provision of Free Appropriate Public Education (FAPE) to a student including, but not limited to:



- Changes in IEP services, including addition, deletion, change in minutes, frequency location, or refusal to change a service
- Changes in accommodations/modifications or refusal to change per parent request
- Change(s) in annual goals or refusal to change goals per parent request
- Changes in how a student will participate in statewide and districtwide assessments
- Refusal to provide a specific instructional methodology requested by a parent

Any changes made to FAPE in an IEP through the amendment process also generate the requirement to provide prior written notice.

Parents may submit a letter revoking consent for special education services when they no longer wish for their child to receive special education services or be considered a child with a disability. An LEA/district must terminate provision of special education services upon receipt of a revocation of consent, thus generating the requirement to provide prior written notice. When an LEA/district receives revocation of consent from a parent, they may offer a meeting to discuss the request, but the parent may not be required to attend any additional meetings, and are not required to provide an explanation for their request. The U.S. Department of Education requires that an LEA/ district “promptly” respond to a parent written revocation letter with a PWN (34 CFR 300.503). The PWN must be provided prior to ending any services, and allows parents the opportunity to consider the change(s) that will result from revoking consent.

What are the required elements of prior written notice?

In order to be considered compliant, a prior written notice must include 7 required elements, including:

1. A description of the action proposed or refused by the LEA/district;
2. An explanation of why the LEA/district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options considered by the IEP Team and the reason why those options were rejected; and
7. A description of the factors that are relevant to the LEA’s/district’s proposal or refusal.

In addition to including these elements, PWN must be provided in language that is understandable to parents and the general public, and should be provided in the native language of the parent unless it is not feasible to do so. In order to ensure that the PWN is understandable, it is recommended that it be written without the use of acronyms or abbreviations. It should serve as a stand-alone document that can be understood by a person who does not have other reports and/or IEP documents to which they may refer. Phrases such as “N/A” and “see above” should be avoided.

How soon after educational decisions should prior written notice be sent?

Though there aren’t any specific timelines around when to provide prior written notice, it must be provided “within a reasonable timeline prior to action (34 CFR 300.503(a)).” This means PWN must be given to parents in a reasonable time before the LEA/district implements that action, but after the LEA’s/district’s decision on the proposal or refusal has been made. It is recommended that the LEA/district use common sense when considering the timeline for providing a PWN. It should be provided after the meeting but soon enough so that a parent has time to review and voice a



response prior to the change in the IEP takes place.

How should prior written notice be formatted?

Neither federal nor state special education regulations specify the format in which prior written notice must be provided. Permissible formats include formal letter on letterhead, use of fill in the blank forms (located in the SEIS document library), and use of the IEP document. It is recommended that an LEA/district exercise caution when considering the use of an IEP document to provide prior written notice. Though “there is nothing in the IDEA that would prohibit a public agency from using the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements,” it is not generally the case that an IEP document contains the 7 elements that are required for PWN to be considered compliant. If the LEA/district is not confident that all the required elements for PWN exist in the IEP document, it is strongly recommended that a separate prior written notice be provided along with a copy of the IEP.

How should the LEA/ district document that prior written notice has been provided?

IDEA does not require that a parent acknowledge receipt of prior written notice. Since the LEA/district will not be in receipt of copies of prior written notices with parent signatures or other confirmations of receipt, it is recommended that the LEA/district develops a system and record-keeping mechanism to document that the prior written notices have been provided.

