

**Question and Answer Document
Prior Written Notice**

Question 1: When is a school district required to provide a parent or an adult student with prior written notice?

Response: A school district must provide a parent or an adult student with prior written notice when it proposes or refuses to initiate or change the student's identification, evaluation, placement, or how the student is provided a free appropriate public education (FAPE). A school district is also required to provide prior written notice to a parent or an adult student before it ceases to provide special education and related services in response to the parent's or adult student's revocation of consent for the continued provision of services. In addition, a school district must provide prior written notice before implementing an individualized education program (IEP) with which the parent or adult student disagrees.

Some examples of when a school district must provide prior written notice are when it proposes or refuses to:

- Conduct an initial evaluation of the student;
- Change the student's placement from a special education classroom to a general education classroom; or
- Change the types or amounts of related services the student receives.

Question 2: Is there a timeline for when a school district must provide a parent or an adult student with prior written notice?

Response: Yes. A school district must provide prior written notice at least five school days before it implements the proposal or refusal described in the notice, unless the parent or adult student agrees otherwise. This means that a student's new or revised IEP cannot be implemented until at least five school days after the school district provides the prior written notice.

Question 3: Can a parent or an adult student waive the five-day notice requirement so that a change to the student's IEP can be implemented sooner?

Yes. The parent or adult student may waive the five-day notice requirement. TEA recommends that school districts implement policies and procedures that address how a waiver of the five-day notice requirement should be documented.

Question 4: Must a school district provide a parent or an adult student with prior written notice in every instance where a student's IEP is changed?

Response: Probably yes. Whenever a student's IEP is changed with regard to the student's identification, evaluation, or educational placement, the school district must provide prior written notice. In addition, a school district is required to provide prior written notice when a change relates to the provision of FAPE to the student. FAPE means, among other things, special education and related services that are provided in conformity with a student's IEP. Therefore, a proposal to change a student's IEP, which typically involves a change to the type, amount, or location of the services provided to the student, would trigger the requirement to provide prior written notice.

Question 5: Must a school district provide prior written notice to a parent or an adult student even if the parent or adult student has agreed to the proposed change?

Response: Yes. A school district must provide prior written notice regardless of whether the parent agrees or disagrees with the change.

Question 6: Must a school district provide prior written notice to a parent or an adult student even if the proposed change was initiated by the parent or adult student?

Yes. A school district must provide prior written notice regardless of who initiated the change.

Question 7: Must a school district provide prior written notice to a parent or an adult student when a student's IEP is amended outside of an Admission, Review, and Dismissal (ARD) committee meeting?

Response: Yes. If a school district and a parent or an adult student agree to amend the student's IEP without convening an ARD committee meeting, the school district must provide the parent or adult student with prior written notice of the amendment.

Question 8: Must a school district provide prior written notice to a parent or an adult student when the student graduates from high school?

Response: Yes. Provisions at 34 CFR §300.102 read in part, "Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503."

Question 9: Is there a specific form that school districts must use for prior written notices?

Response: No. The federal regulations do not require that a standard form be used, but do specify the content that must be included in a prior written notice.

Question 10: What information must the prior written notice contain?

The prior written notice must include the following:

- (1) A description of the action proposed or refused by the school district;
- (2) An explanation of why the school district proposes or refuses to take the action;
- (3) A description of each evaluation procedure, assessment, record, or report that the school district used as a basis for the proposed or refused action;
- (4) A statement that the parent of a student with a disability (or an adult student) has protection under the procedural safeguards of Part B of the Individuals with Disabilities Act (IDEA) 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 to contact to obtain assistance in understanding the provisions of Part B of IDEA;
- (6) A description of other options that the ARD committee considered and the reasons why those options were rejected; and

- (7) A description of other factors that are relevant to the school district's proposal or refusal.

Question 11: Can the record from the ARD committee meeting itself constitute the prior written notice, rather than requiring a separate document?

Response: Yes. The record from the ARD committee meeting, which includes, among other things, the proposed IEP, can be used for the prior written notice as long as the documents the parent or adult student receives contain all of the content that must be included in a prior written notice. (See Response to Question 9.)

Question 12: Does the five-day notice requirement apply to notices of ARD committee meetings?

Response: Yes. A school district must provide a parent or an adult student with a notice of the student's ARD committee meeting at least five school days before the meeting, unless the parent or adult student agrees otherwise.

Question 13: When must a school district provide prior written notice that it will implement an IEP with which the parent or adult student disagrees?

Response: When a school district and a parent or an adult student cannot reach agreement about all of the required elements of an IEP, the school district must offer the parent or adult student one opportunity to have the ARD committee recess for a period not to exceed 10 school days. If the parent or adult student refuses the offer to recess the meeting or if the ARD committee still cannot reach agreement after reconvening, the school district must provide the parent or adult student with prior written notice that it will implement the IEP that it has determined to be appropriate.

Question 14: What if a parent's native language is not English?

A prior written notice must be provided in the parent's native language or other mode of communication, unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the school district must take steps to ensure that: (a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (b) the parent understands the content of the notice; and (c) there is written evidence that the school district met these requirements.

Prior Written Notice – Additional Information from TEA

The PWN Question and Answer is located on the TEA Special Education Web site at <http://ritter.tea.state.tx.us/special.ed/> Scroll to Prior Written Notice and click.

The bottom line on PWN is that there are very rare instances when a change in a student's IEP would not need to be documented by the LEA through Prior Written Notice provided five days in advance of the change unless the five-day waiting period is waived in writing by the parent.

Some additional questions from ESCs and answers from TEA included:

1. Can the PWN and waiver may be documented through the ARDC record?

TEA indicated that as long as all the requirements are documented, they may be found in any area of the ARDC record or as a stand-alone document.

2. Can the PWN be provided through email?

TEA indicated that this is an acceptable method of providing PWN.

3. What about a parent who does not attend the meeting or who does not receive copies at the end of the ARDC meeting?

TEA's response was that parents should sign the ARDC record, indicate agreement or disagreement, and receive copies before leaving the meeting. There should be no exceptions. If this is not happening, the LEA should review the policies and procedures to ensure all staff have the resources and commitment to providing the parents a copy of the ARDC record at the end of the meeting. When parents do not attend the meeting after the LEA has exhausted efforts to have an ARDC with the parent, the parent should received copies asap. Otherwise, the LEA could cause a delay in the student's receiving services.

The Legal Framework on ESC Region XVIII's web site is being revised to reflect these changes.

Part B PRIOR WRITTEN NOTICE

Under 34 CFR §300.503(a), the school district must give you a written notice (information received in writing), whenever the school district: (1) Proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or (2) Refuses to begin or change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child. The required content under 34 CFR §300.503(b) is listed below in this model form. The school district must provide the notice in understandable language (34 CFR §300.503(c)).

This model form provides a format that States and/or school districts may choose to adopt to construct the form that they will use to provide that notice. The school district will need to insert the required child- and situation-specific information, and must inform parents, as part of the notice, that they have protection under the procedural safeguards of Part B of the IDEA.

PRIOR WRITTEN NOTICE UNDER PART B OF THE IDEA

- Description of the action that the school district proposes or refuses to take:

- Explanation of why the school district is proposing or refusing to take that action:

- Description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action:

- Description of any other choices that the Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected:

- Description of other reasons why the school district proposed or refused the action:

- Resources for the parents to contact for help in understanding Part B of the IDEA:

- If this notice is not an initial referral for evaluation, how the parent can obtain a copy of a description of the procedural safeguards:



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 15 2008

Heidi Atkins Lieberman
Assistant Commissioner
Division of Special Education
Missouri Department of Elementary and Secondary Education
P.O. Box 480
Jefferson City, MO 65102-0480

Dear Ms. Lieberman:

This is in response to your letter of March 25, 2008. Your questions and OSEP's responses are below.

1. Is a notice required regarding a change that is requested by a parent? In the circumstances where an LEA [local educational agency] is not proposing a change but rather agreeing with a change that has been proposed by a parent, would the LEA be required to provide a notice?

OSEP's Response: Yes. Under 34 CFR §300.503, public agencies are required to give the parents of a child with a disability written notice, that meets the requirements of 34 CFR §300.503(b), a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. The purpose of the written notice requirement is to inform parents of a public agency's final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement, or the provision of FAPE to a particular child. Regardless of how a change to the above factors is suggested, it is the responsibility of the public agency to make a final decision and actually implement any determined change. Therefore, in the circumstances where a public agency is not proposing a change, but rather agreeing with a change that has been proposed by a parent, the public agency would be required to provide prior written notice to the parent, consistent with 34 CFR §300.503.

2. Is a notice required regarding a change with which the parent agrees, e.g., if during an IEP [individualized education program] meeting the team, including the parent, agrees to a change in the student's services, would the LEA be required to provide a notice?

OSEP's Response: Yes. If, during an IEP meeting, the team, including the parent, agrees to a change in the child's services, the public agency must provide written notice in accordance with 34 CFR §300.503. Providing such notice following an IEP Team meeting where such a change is proposed – or refused – allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth.

3. More generally, is the notice requirement intended to provide the parent with notice of a proposed change with which the parent does not or may not agree?

OSEP's Response: Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency.

4. What does a proposal to change “the provision of FAPE” mean in the context of 34 CFR §300.503, i.e., does “provision” refer to the type/amount/location of the services (special education, OT, speech, etc.) or is an IEP goal or statement in the present level considered to be a “provision?”

OSEP’s Response: Under 34 CFR §300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of §§300.320 through 300.324. Therefore, a proposal to revise a child’s IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 CFR §300.503.

5. The comments to the regulations indicate the IEP could be used to satisfy the notice requirement at least in part. Would an LEA meet the requirements of 34 CFR §300.503 if it used its notice form (assuming it met the other requirements) and referenced the IEP document for the change(s)?

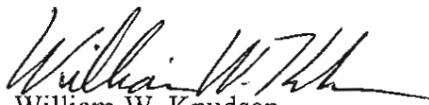
OSEP’s Response: Written notice required under 34 CFR §300.503 must meet the content requirement in 34 CFR §300.503(b). The Analysis of Comments and Changes to the regulations indicate that nothing in the IDEA or the regulations would prohibit a public agency from *using* the IEP *as part of* the prior written notice so long as the document(s) the parent receives meets all the requirements in 34 CFR §300.503. (See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540, 46691 (Aug. 14, 2006)).

As noted above, the standard in the regulations is that a prior written notice must be provided a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. The examples in the guidance document, attached to your questions, do not provide sufficient context for us to answer whether they would trigger the notice requirement in 34 CFR §300.503.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions regarding prior written notice, please do not hesitate to contact Marion Crayton, of my staff, at 202-245-6474.

Sincerely,


 William W. Knudsen
 Acting Director
 Office of Special Education
 Programs