

What is Prior Written Notice?

Anyone who has navigated the IEP (Individualized Education Program) process knows that there is no shortage of paperwork involved! Parents of students who participate in special education receive a variety of forms and documents that provide important legal protections, as well documentation for their child's educational program. One kind of form parents will see is called **Prior Written Notice**.

Prior Written Notice is just what its name suggests—*Notice* that school teams are required to provide to parents in *writing* before (*prior to*) taking or refusing to take certain actions that impact a child's educational program. However, the term "prior" can be misleading at times, since parents may not receive the actual written notice until *after* a decision is made, at an IEP meeting for example.

Is Prior Written Notice the Same as Informed Consent or Notice of Meeting?

No, Prior written notice is not the same as either Informed Consent or Notice of Meeting. Informed consent refers to permission from parents to move forward with a particular step in the special education process. It means that parents have had all of the relevant information clearly explained to them, in terms and in a language that they understand, and they are signing their permission to go forward with an evaluation, and consent for services. While informed consent and Prior Written Notice are often required in similar circumstances, Prior Written Notice reflects actual considerations and decisions of the IEP team and must contain certain information as outlined below. In addition, a meeting notice is a notice that lets a family know about a proposed meeting. The notices of meetings to be held are also separate from Prior Written Notice and require a separate form.

When is Prior Written Notice Used?

The Individuals with Disabilities Education Act (IDEA) states that school teams *must* provide parents with Prior Written Notice before they:

1. Propose to initiate (start) to 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. Refuse to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child (see FAPE below).

For example, let's say that Sally's parents request that she be evaluated for special education services. The school must provide her parents with Prior Written Notice and obtain written consent before the evaluation can begin, even though it was at the parent's request. Once the evaluation is complete, let's say that the school team finds Sally eligible for special education services. Before Sally can be identified as a child with a disability, and before she can begin receiving services, the school team once must again provide her parents with Prior Written Notice.

Three years later, Sally's team agrees that additional evaluation data is needed. They must again provide Sally's parents with Prior Written Notice before beginning another evaluation. As Sally continues in her special education program, the school must provide her parents with Prior Written notice each time they propose or refuse to conduct an evaluation and each time they propose or refuse to change her placement. If the school team one day finds that Sally is no longer eligible for special education services, then they must provide Prior Written Notice at this time as well.

The law also states that Prior Written Notice must be given if the school team proposes to initiate or change the provision of a "free and appropriate education" (FAPE). In order to fully understand the requirements for Prior Written Notice, it is important to understand what is meant by FAPE. IDEA requires a school district to provide FAPE to each eligible student with a disability, ages 3 to 21 years old, and is in need of specialized instruction, within the school district's jurisdiction, regardless of the nature or severity of the person's disability. In order to be considered "appropriate," education services must:

- Meet the needs of the student with the disability as adequately as the needs of students without disabilities;

- Allow the student with disabilities to remain with his or her non-disabled peers as much as possible;
- Use appropriate evaluation, re-evaluation, and placement procedures; and
- Include due process procedures (i.e. dispute resolution such as mediation).

For instance, let us suppose that Sally's parents make a request for her to receive additional time with the speech-language pathologist. Believing that this is necessary in order for Sally to receive FAPE, her parents request it verbally or in writing. However, after considering the parents' request and input, the school team determines that additional time is not supported by Sally's recent evaluation and that granting the request would prevent Sally from remaining with her non-disabled peers to the maximum extent possible. Because the school team is refusing make changes that relate to the provision of FAPE, they must provide the parents with Prior Written Notice. Sally's parents may then decide if they wish to pursue any of the dispute resolution procedures that are outlined in IDEA (see PIC's *Solving Problems at School* disability brochure for more information).

Other scenarios where the school team must provide Prior Written Notice include:

- Disciplinary changes in placement; and
- Revocation of parental consent for special education services (call PIC if you have questions on revocation).

What Must Prior Written Notice Include?

According to IDEA, there are certain things that must be included in a Prior Written Notice. The notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the IDEA;

5. Tell you how you can obtain a copy of the procedural safeguards;
6. Include resources for you to contact for help understanding your rights;
7. Describe any other options that your child's individualized education program (IEP) team considered and the reasons why those options were rejected; and
8. Provide a description of other factors that are relevant to your school district's proposal or refusal.

The law also requires that the notice be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not possible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written proof (evidence) that #1 and #2 have been met.

Why is Prior Written Notice Important to Me?

Prior Written Notice is important for a number of reasons. For one, it helps ensure that parents are included in and aware of decisions that impact their child's educational program.

Prior Written Notice is also important because it helps ensure that careful consideration takes place before decisions are made. For example, when Sally's parents requested additional time with the speech-language pathologist, the school did not simply say "no." Prior Written Notice required the school team to explain why they made that decision and what data they used. It also required the school team to consider other alternatives for addressing Sally's needs.

If, after receiving the school team's explanation, Sally's parents still disagreed, they would now have a written record of the request that could be used during dispute resolution proceedings.

Prior Written Notice is a valuable tool for parents and professionals. For more information about this important document, visit idea.ed.gov or www2.ed.gov

For more information on PRIOR WRITTEN NOTICE

CONTACT:



Parent Information Center

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The contents of this brochure were developed under a grant from the U.S. Department of Education. However, the contents do not necessarily represent the policy of the Department of Education, and endorsement by the Federal Government should not be assumed.

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Disability Brochure #28



Why it is Important for You and Your Child

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