

Prior Written Notice

October 18, 2022



5 W's of Prior Written Notice (PWN)

- What is PWN and what must PWN include?
- Who must receive PWN?
- How must PWN be provided?
- Why is PWN required?
- When must PWN be provided?

Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- Written notice
- Given to parents of a child with a disability
- A reasonable time before the public agency:
 - Proposes or Refuses to initiate or change:
 - the identification of the child
 - the evaluation of the child
 - the educational placement of the child
 - the provision of a free appropriate public education (FAPE) to the child
- Meets seven (7) requirements of 34 C.F.R. § 300.503(b)

Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- **PWN Requirement: Written notice**

- In **language understandable to the general public**; and provided in the **native language of the parent** or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- If native language or other mode of communication is not a written language, the local educational agency must have written evidence that the notice is translated orally or by other means and the parent understands the content of the notice.
- 34 C.F.R. § 300.503(c)

Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- **PWN Requirement: Given to parents of a child with a disability**
 - A parent of a child with a disability may “elect” to receive PWN by an electronic mail communication if the public agency makes that option available. 34 C.F.R. § 300.505
 - This is not automatic. Parent must agree to receive notices by email.
 - Whatever mode is used, be sure to document when and how PWN was provided to the parent.

Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- **PWN Requirement: A reasonable time before the public agency:**
 - Proposes or Refuses to initiate or change:
 - the identification of the child
 - the evaluation of the child
 - the educational placement of the child
 - the provision of a free appropriate public education (FAPE) to the child

What does provide notice a “reasonable time” before the proposal or refusal mean?

- “There is no requirement in the [IDEA] regarding the point at which the written notice must be provided as long as it is provided a reasonable time *before* the LEA actually implements [or refuses to implement] the action.”
- “This provides parents, in the case of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented.”
- [U.S. Department of Education, Office of Special Education Programs \(OSEP\) Letter to Chandler, April 26, 2012](#)

Please note....

- Providing PWN in advance of an IEP Team meeting could suggest the LEA's proposal or refusal was determined before the meeting.
- PWN must be provided “irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting. . .”
- OSEP Letter to Chandler, April 26, 2012.

Please note...

- PWN must also be provided “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. . . . 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.” [OSEP Letter to Leiberman, August 15, 2008.](#)

The Why

- “Providing [PWN] following an IEP Team meeting where [] 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.” OSEP Letter to Leiberman, August 15, 2008.
- Making sure parents are informed participants through the special education process

Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- **PWN Requirement: Meets the seven (7) requirements of Content of Notice (34 C.F.R. § 300.503(b))**

Content of Notice (34 C.F.R. § 300.503(b))

1. A description of the action proposed or refused by the agency;
 - Should be “specific” and not vague or implied
2. An explanation of why the agency proposes or refuses to take the action;
 - Should be “child-specific” and connect to the child’s needs that result from child’s disability

Content of Notice (34 C.F.R. § 300.503(b))

3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - Must include “each” - meaning “ALL”
 - Examples:
 - Evaluation reports
 - IEP progress reports
 - Discipline records
 - Report cards
 - MTSS/RTI data
 - Teacher observations

Content of Notice (34 C.F.R. § 300.503(b))

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;
 - Only requires the “statement” that parents have rights under IDEA and “how” they can obtain a copy of those rights unless the PWN is related to a referral for initial evaluation

Content of Notice (34 C.F.R. § 300.503(b))

5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - Could include name and contact information for district-level staff
 - Could also include outside resources such as GaDOE Special Education Help Desk, Parent to Parent of Georgia, local advocacy groups

Content of Notice (34 C.F.R. § 300.503(b))

6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- Should be “specific” and not vague or implied
 - Should be “child-specific” and connect to the child’s needs that result from the child’s disability
 - Just saying that it is not “appropriate” or not the student’s least restrictive environment (LRE) is NOT enough

Content of Notice (34 C.F.R. § 300.503(b))

7. A description of other factors that are relevant to the agency's proposal or refusal.

- This is not optional
- Include other “child-specific” information that is relevant to the decision

Tips

- Make sure the PWN is easy to read and understand. No “legalese” or “education-lese”
- Don’t use Individuals with Disabilities Education Act (IDEA) acronyms without writing them out first
- Use factual, objective statements
- Avoid emotional, speculative, and judgmental language
- Be specific and detailed
- Proofread

Identification of the child

- Examples
 - Child found eligible for special education
 - Child found ineligible for special education
 - Child continues to be eligible for special education after reevaluation
 - Change in child's eligibility category after reevaluation

**Not an exhaustive list*

Identification of the child

- Non-examples
 - Child receiving interventions in general education
 - Child eligible or ineligible for Section 504 plan

**Not an exhaustive list*

Evaluation of the child

- Examples
 - Referral for initial evaluation
 - Collection of new data for reevaluation
 - Decision to not conduct evaluation
 - Decision to deny request for independent educational evaluation (IEE)

**Not an exhaustive list*

Evaluation of the child

- Non-examples
 - Administering districtwide or statewide assessments
 - Progress monitoring on annual goals and objectives

**Not an exhaustive list*

Educational placement of the child

- Examples
 - Initial educational placement into special education
 - Change in placement along continuum of alternative placements
 - Refusal to change placement along continuum of alternative placements
 - Change in instructional delivery model that substantially or materially alters the child's educational program

**Not an exhaustive list*

Educational placement of the child

- Examples
 - Graduation from high school with regular education diploma
 - Student “ages out” of special education eligibility at 22 years old
 - Disciplinary removal that results in change of placement (more than 10 consecutive days or series of removals that constitute a pattern)
 - Disciplinary removal to an interim alternative educational setting
 - Parent places student in residential facility

**Not an exhaustive list*

Educational placement of the child

- Non-examples
 - Relocation of program to another location/building**
 - Change in instructional delivery model that does not substantially or materially alter the student's educational program
 - Transitioning from elementary school to middle school or middle school to high school
 - Student receives state-defined alternate diploma
 - Disciplinary removal that does not result in a change of placement (10 or fewer consecutive days or series of removals that do not constitute a pattern)

**Not an exhaustive list*

Provision of FAPE

- Examples

- Change or refusal to change the type, amount, or location of the special education and related services
- Change or refusal to change the specially designed instruction to provide to the child (e.g., adapting of content, methodology, or delivery of instruction)
- Child not attending home school
- Change or refusal to change an annual goal
- Development of behavior intervention plan (BIP)
- Proposal or rejection of compensatory services to provide to the child

**Not an exhaustive list*

Provision of FAPE

- Examples
 - Revocation of parental consent
 - Refusal to convene an IEP Team meeting
 - Refusal to adopt outside provider's recommendations

**Not an exhaustive list*

Provision of FAPE

- Non-examples
 - Refusal to provide a specific program to a child **unless** such program is required for the student to receive a FAPE (e.g., Wilson Reading Program)
 - Change in course schedule
 - After a parent-teacher conference
 - Minor or typographical changes

**Not an exhaustive list*

IEP as PWN

- “[N]othing 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 C.F.R. §300.503.” OSEP Letter to Lieberman, August 15, 2008.

IEP and other documents as PWN (Ga. Bd. of Educ. 160-4-7-.09(c))

- “In most cases,” the PWN requirements can be addressed by providing the parent(s) with a copy of documents such as:
 - Consent to evaluate
 - Consent for initial provision of special education services
 - Consent for accessing a child’s or parent’s public benefits or insurance
 - Evaluation report
 - Eligibility report
 - Invitation to a meeting
 - Full IEP with minutes, if taken and/or
 - Other relevant documents, as appropriate
- **BUT all required sections of PWN must be addressed**

Evaluation Example – District agrees/refuses to conduct initial evaluation

1. A description of the action proposed or refused by the agency;
 - The district agrees/refuses to conduct an evaluation of the student for possible eligibility for special education services.
2. An explanation of why the agency proposes or refuses to take the action;
 - Explain why the district is agreeing/refusing to conduct an initial evaluation. Should be child-specific.

Evaluation Example – District agrees/refuses to conduct initial evaluation

3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - Describe each child-specific assessment, record, report, etc. used in determining whether to evaluate or not evaluate.

Evaluation Example – District agrees/refuses to conduct initial evaluation

4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and the means by which a copy of a description of the procedural safeguards can be obtained
 - Required IN or WITH the PWN
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part
 - Required IN or WITH the PWN

Evaluation Example – District agrees/refuses to conduct initial evaluation

6. A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - Based on whether the district agreed/refused to conduct evaluation, describe the other child-specific options and why those options were not chosen.
7. A description of other factors that are relevant to the agency's proposal or refusal.
 - Other relevant child-specific information related to decision

Identification Example - Child found eligible/ineligible for special education

1. A description of the action proposed or refused by the agency;
 - The eligibility team has determined the student is eligible for special education services under the category of Other Health Impairment (OHI).
2. An explanation of why the agency proposes or refuses to take the action;
 - Explain why the student is eligible for special education services under the category of OHI

Identification Example - Child found eligible/ineligible for special education

3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - Describe each assessment and other evaluation materials used in determining eligibility

Identification Example - Child found eligible/ineligible for special education

4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and the means by which a copy of a description of the procedural safeguards can be obtained
 - Required IN or WITH the PWN
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part
 - Required IN or WITH the PWN

Identification Example - Child found eligible/ineligible for special education

6. A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - Describe other eligibility categories considered and why those categories were rejected
7. A description of other factors that are relevant to the agency's proposal or refusal.
 - E.g., Review eligibility report and minutes, if applicable, to include other relevant child-specific information related to eligibility decision

Remember...

- PWN must be in writing and must include all required information.
- Robust discussions during IEP Team meetings where issues and reasons were discussed at length CANNOT substitute for the written requirements of PWN.
- PWN is not a “nicety” but a “requirement”

Questions?

