

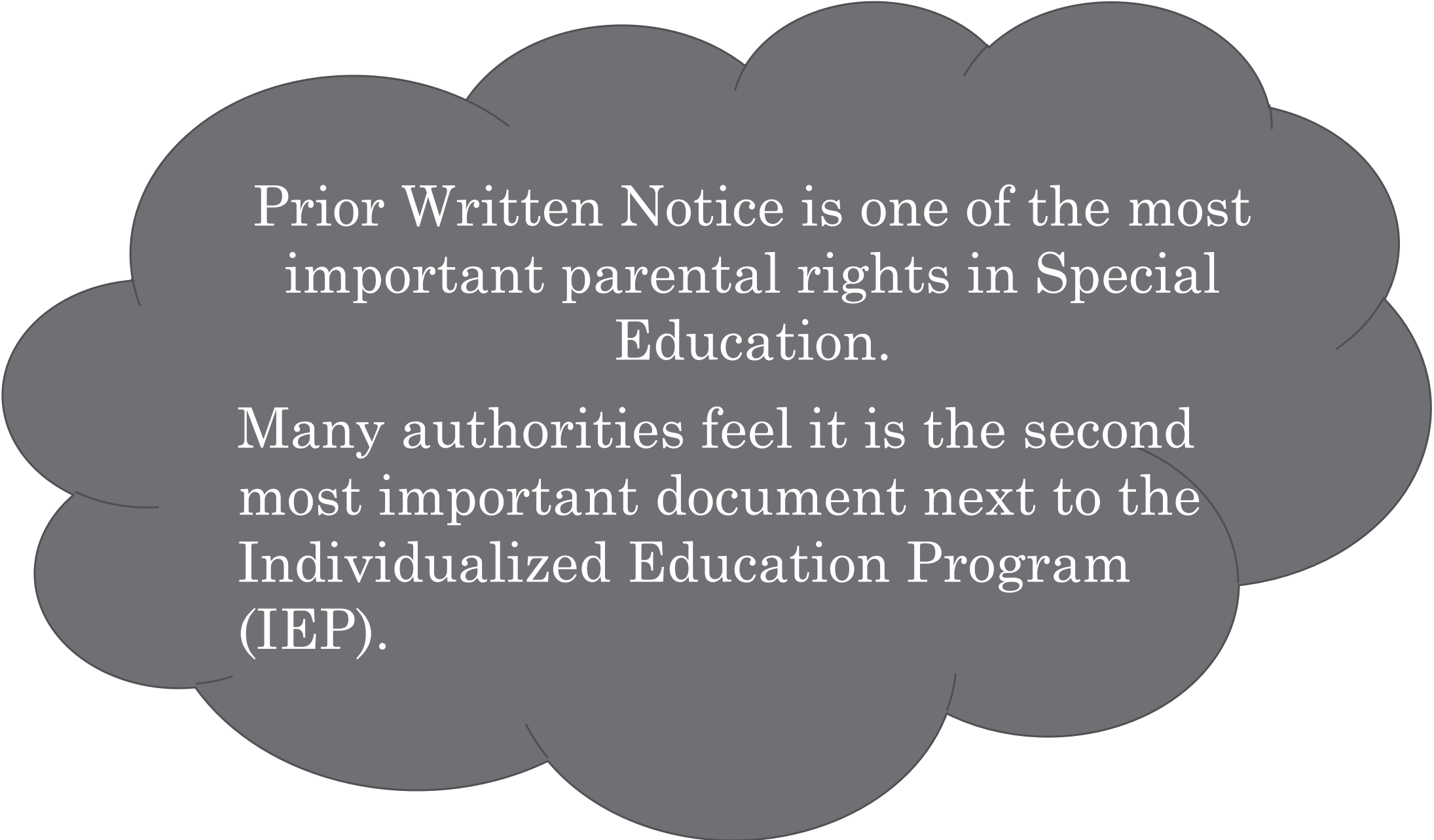


Individualized Education Programs

Module #6: Prior Written Notice

Prior Written Notice

Documenting Decisions



Prior Written Notice is one of the most important parental rights in Special Education.

Many authorities feel it is the second most important document next to the Individualized Education Program (IEP).

Prior Notice by the LEA; Content of Notice NC 1504-1.4

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the LEA--
 - (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) Content of notice. The notice required under paragraph (a) of this section must include--
 - (1) A description of the action proposed or refused by the LEA;
 - (2) An explanation of why the LEA proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the LEA 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 that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the LEA's proposal or refusal.

Prior Notice by the LEA; Content of Notice NC 1504-1.4

(c) Notice in understandable language.

- (1) The notice required under paragraph (a) of this section must be--
 - (i) Written in language understandable to the general public; and
 - (ii) 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.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1); 34 CFR 300.503; 115C-109.5)

What is the Purpose of Prior Written Notice?

- Provides **comprehensive** documentation of proposed and refused actions made by an IEP team
- Makes sure LEA and parents are clear and “on the same page” about this student’s educational program
- Provides sufficient information behind the teams’ decision making regarding a particular proposed or refused action
- Allows the parents or family adequate time to seek resolution if they disagree with the school’s decision

When is Prior Written Notice Required?

- Prior written notice is required to **explain** what the LEA **proposes** or **refuses** in regards to:
 - Initial or change in Identification
 - Evaluation
 - Educational Placement, or
 - Provision of a free and appropriate education (FAPE)

When is Prior Written Notice Required?

It is given *after* a decision is made, but *before* a decision is implemented.

Think of it as “processing time” for a parent to absorb all that has been proposed or refused by the school team.

Examples of When Prior Written Notice is Required

Evaluation / Reevaluation

IEP Team proposes or refuses to:

- Evaluate the child,
- Administer a particular assessment,
- Collect more data,
- Determine eligibility / continuing eligibility based on existing data

Examples of When Prior Written Notice is Required

Identification

IEP Team proposes or refuses to:

- Identify a child as eligible for special education services and/or related services, if appropriate
- Change categorical identification
- Terminate eligibility for special education services

Examples of When Prior Written Notice is Required

Educational Placement

IEP Team proposes or refuses:

- Initial or continued placement
- Change in least restrictive environment along the continuum of placement alternatives

Remember: A child's placement on the continuum must be determined at least annually. NC 1501-3.3

Examples of When Prior Written Notice is Required

Provision of FAPE

IEP Team proposes or refuses :

- Change the provision of a FAPE including:
 - Change in the measurable annual goal(s).
 - Change in the type, amount, or location of the special education and/or related services.
 - Change in accommodations, modifications, supplementary aids, supplementary services, supports, and/or assistive technology; and
- Addition/removal of behavioral intervention plan.

Multiple Decisions

- All the proposals or refusals to initiate or change the identification, evaluation, educational placement, or provision of a FAPE must be documented in the Prior Written Notice
- One form for all actions
- Each decision must be outlined in **all** areas of the notice

Prior Written Notice Must Include Seven (7) Elements

1. Description of actions proposed
2. Detailed explanation of the actions proposed
3. Description of actions refused
4. Detailed explanation of actions refused
5. Description of each evaluation procedure, assessment, record or report the agency used to make their decision
6. Description of other options considered and why they were rejected
7. Description of other factors relevant to the decision

Description of Action(s) Proposed:

- **Provide a description of each action that was proposed**
- **Should be written as a statement that is factually grounded or informative**
- **Can be bulleted or written as a list of actions**

EXPLANATION OF ACTION(S) PROPOSED:**1. Description of action(s) proposed:**

1- Conduct a reevaluation for the suspected disability categories of Specific Learning Disability, Other Health Impairment, and Autism.

Explanation of Why Action is Proposed:

- **LEA details its rationale for its proposed action.**
- **Parents should understand how the LEA reached its decision on a specific action**
- **Include an explanation of each action proposed.**

2. Explanation of why the agency proposed to take the action:

1- The student is currently eligible for special education and related services under the eligibility category of Developmentally Delayed. This eligibility category must be reconsidered prior to the student's 8th birthday and prior to the 3rd grade. For this reason, current and relevant assessment data is necessary in order to determine if the student continues to be in need of special education and related services, and if eligible, under which disability category.

Description of Action(s) Refused:

- **Provide a description of each action that was refused**
- **Should be written as a statement that is factually grounded or informative**

EXPLANATION OF ACTION(S) REFUSED:

3. Description of action(s) refused:

1- The LEA refuses the parent's request to continue the child's eligibility category of Developmentally Delayed past August 30, 2018.

Explanation of Why Action is Refused:

- **Must specify the reasoning behind the school team's decision to reject the parent's requests**

4. Explanation of why the agency refused to take the action:

1- The student will turn eight on August 30, 2018. Per state policy, even though he will still be in the second grade, this disability category must be reconsidered before age eight in order to determine if the child continues to be a child with a disability.

**Description of Each Evaluation Procedure,
Assessment, Record, or Report Used for
Proposed/Refused Action:**

- You must identify each individual evaluation procedure, record, or report used in the decisions
- Failure to do so excludes critical information that the parents need in order to give informed consent and/or file a complaint/seek due process

5. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action(s):

1- Educational records (grade level screening, state-wide assessments, class progress monitoring data, including MCLASS) indicate that the student is not making progress commensurate with peers.

2- Progress monitoring data of IEP goals that demonstrates progress occurs at a slower rate than typical peers.

3- The EC Teacher's written log documents that specially-designed instruction, accommodations and modifications are still required in order to participate in the general education setting.

This is the final decision of the local education agency. If you (Parent, Guardian or Adult Student) disagree, you are entitled to the due process rights that are described in the *Parent Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*.

For an explanation of the rights described in the Procedural Safeguards: Handbook on Parents' Rights, or an additional copy, please contact your school principal or local director/coordinator of Exceptional Children Programs. Additional information can be obtained through the Exceptional Children's Assistance Center (ECAC), 1-800-962-6817.

Description of Other Options Considered and Reasons Why These Options Were Rejected:

- **Provide a detailed description of any other options which were considered and why they were rejected**

6. A description of other options that the IEP Team considered and the reasons why those options were rejected:

The IEP Team considered whether or not the child continues to be a child with a disability; but rejected this option because the progress monitoring data from instruction provided in general and special education settings suggests that the student continues to be in need of special education and related services.

A second option, of suspecting a disability in the area of Speech/Language Impairment, was considered but rejected due to the IEP Team's decision that the student's difficulties could not be attributed solely to deficiencies in speech and language.

Description of Other Factors that are Relevant:

- **Other factors that may affect an LEA's proposed/refused action**
 - examples: language issues, communication concerns, health concerns, behavior concerns, work ethic, etc.

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

The student will be turning eight this year; so in light of state policy, the area of eligibility must be reevaluated. He has responded well to the specially-designed instruction provided through the co-teaching model; however the student continues to demonstrate difficulty with all academic areas and has started exhibiting difficulty with social pragmatics.

This decision will be implemented on:

Prior Written Notice was given to the parent by:	<input type="text"/>	Date:	<input type="text"/>
Prior Written Notice was delivered by:	<input type="text"/>	Date:	<input type="text"/>

Remember....

The Prior Written Notice must be completed and given to the parent before implementation of any actions can occur.

Say it again, please...

Implementation of any action can not occur until after the parent has been given their copy of the Prior Written Notice.

Consider:

1. If the parent attends the meeting and the PWN is completed and handed to the parent at the end of the meeting, the meeting date and the given date will be the same. However, the implementation date should reflect the needed time to allow for the decisions to be fully implemented.
2. If the parent attends the meeting by phone, it would be likely that the meeting date and the given/delivered by dates would not be the same as the actual delivery of the document may not occur until the following day. Here, the implementation date should reflect time for the parent to receive the PWN along with the necessary time for the decisions to be fully implemented.

Cautionary Note...

Parents may appear to accept certain proposed actions and/or refusals during the meeting but then change their minds after reflecting. Just because a parent does not make an issue out of a particular decision during a meeting does not necessarily mean that the decision will not be challenged in the future.

...Cautionary Note

Therefore, it is critically important to write a comprehensive Prior Written Notice which includes:

- all proposed/refused actions,
- the reasons for them, and
- other relevant factors

A well written Prior Written Notice is good documentation that the parents were made aware of all proposals and/or refusals and the rationale behind them.