



PRIOR WRITTEN NOTICE

Special Education Guidance



Legal Requirements



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The Individuals with Disabilities Education Act (IDEA) Part B and 92 NAC 51 (Rule 51)

This document provides guidance to school districts regarding the requirement to provide parents of children with disabilities with **prior written notice (PWN)**. PWN is a critical component of the Individuals with Disabilities Education Act (IDEA), ensuring parental involvement and informed consent in decisions regarding their child's education. This guide outlines the specific actions that trigger the PWN requirement, the necessary content of the notice, and best practices for effective communication with parents.

When is Prior Written Notice Required?

Prior written notice must be provided to parents a reasonable time *before* the school district proposes or refuses to take the following actions related to the identification, evaluation, or educational placement of a child with a disability, or the provision of Free Appropriate Public Education (FAPE) to the child:

- **Proposing to initiate or change:**
 - The identification of the child as a child with a disability.
 - The evaluation of the child.
 - The educational placement of the child.
 - The provision of FAPE to the child.

- **Refusing to initiate or change:**
 - The identification of the child as a child with a disability.
 - The evaluation of the child.
 - The educational placement of the child.
 - The provision of FAPE to the child.

Specifically, 92 NAC 51 (Rule 51) states:

009.05A *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or*

009.05A2 *Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.*

Content of the Prior Written Notice

The prior written notice must be written 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. The notice must include the following information:

- 1. Description of the proposed or refused action:** Clearly state what the school district intends to do or refuses to do.
- 2. Explanation of why the school district is proposing or refusing the action:** Provide a rationale for the decision, including any relevant data or assessments used.
- 3. Description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action:** Identify the specific information considered in making the decision.
- 4. Description of other options that the IEP Team considered and the reasons why those options were rejected:** Explain alternative approaches that were discussed and why they were not selected.
- 5. Description of other factors that are relevant to the school district's proposal or refusal:** Include any additional information that influenced the decision.
- 6. A statement that the parents of a child with a disability have protection under the procedural safeguards of Part B of the IDEA:** Inform parents of their rights under IDEA, including the right to access records, request an independent educational evaluation (IEE), and resolve disputes.
- 7. Sources for parents to contact to obtain assistance in understanding the provisions of Part B of the IDEA:** Provide contact information for relevant advocacy organizations, parent training centers, and other resources.

Specifically, 92 NAC 51 (Rule 51) states:

009.05B *Such prior written notice shall include:*

009.05B1 *A description of the action proposed or refused by the school district or approved cooperative;*

009.05B2 *An explanation of why the district or approved cooperative proposes or refuses to take the action;*

009.05B3 *A description of other options the IEP Team considered and the reasons why those options were rejected;*

009.05B4 *A description of each evaluation procedure, assessment, record, or report the school district or approved cooperatives uses as a basis for the proposal or refusal;*

009.05B5 *A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;*

009.05B6 *A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and*

009.05B7 *Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.*

NOTE: Prior written notice is **not** the same as the IEP meeting notice referenced in 92 NAC 51-007.06: The purpose of the IEP meeting notice is to notify the parents of the IEP conference early enough to ensure they will have an opportunity to attend and participate in the IEP meeting.

The purpose of the Prior Written Notice is to ensure that a parent understands the special education and related services which a school district has proposed or refused to provide to the student.

Drafting the Prior Written Notice

In the "Description of the proposed or refused action" section, consider:

- Listing every action discussed during the meeting including all actions proposed and refused. Actions will include issues related to the identification, evaluation, educational placement of or provision of FAPE to a student.

In the "Reason why we are proposing or refusing to take action" section:

- Reference the action(s) that you are taking/refusing to take and the reasons why you are proposing/refusing to take action.

In the "Description of any other options considered and rejected" section,

- Describe in detail each of the other options that were considered and rejected.

If no other options were considered, indicate no other options were considered.

Do not use NA.

- State each reason why you rejected the other options.
- Do not list options or reasons that are not feasible. For example, if you are preparing a PWN following an annual IEP meeting, don't indicate that you considered and rejected the option of not holding the meeting. You don't have the option of not holding the meeting!

In the "Description of Each Evaluation Procedure, etc." section:

- Provide a summary of the information/data for each evaluation.
- If PWN is being sent to inform the parent of an evaluation, include the areas in which the student will be evaluated or reevaluated (e.g.: cognitive, behavioral, reading, etc.), either in the PWN or a referenced document.

Best Practices for Providing Prior Written Notice

To ensure effective communication and compliance with IDEA, school districts should consider the following best practices:

- **Timeliness:** Provide notice a *reasonable time* before the proposed action. What constitutes a reasonable time will vary depending on the complexity of the action and the needs of the parents.
- **Clarity:** Use clear, concise language that is easily understood by parents. Avoid jargon and technical terms.
- **Individualization:** Tailor the notice to the specific circumstances of the child and the proposed or refused action.
- **Collaboration:** Involve parents in the decision-making process and seek their input before issuing the notice.
- **Documentation:** Maintain accurate records of all notices provided to parents, including the date of issuance and the content of the notice.
- **Translation:** Make sure the notices can be provided to parents in their native language.

For example, consider a scenario where a school district proposes to change a student's placement from a general education classroom to a special education classroom. The PWN should detail: why the current placement is not meeting the student's needs, the specific services and supports that will be provided in the special education classroom, any other options considered (like additional support within the general education classroom), and why those options were rejected. It must also inform the parents of their rights to disagree and challenge the proposed change.

Means of Providing Prior Written Notice

Except for requiring that the notice be in writing, neither federal nor state special education regulations specify the format in which prior written notice must be provided. Therefore, any of the following formats are permissible provided they include the required elements:

- formal letter on letterhead;
- form letter;
- fill in the blank form;
- online system generated;
- e-mail;
- student's IEP.

Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements set forth in 92 NAC 51-009.05. Prior Written Notice must be in writing whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education.

While the district may verbally discuss the circumstances with the parent; the proposal or refusal must be in writing, and the contents of the notice must meet the requirements of 92 NAC 51-009.05B.

Additionally, neither the Federal nor state regulations require that the prior written notice indicate who prepared the prior written notice or who provided it to the parent. Therefore, prior written notice can be prepared and provided by:

- the child's case manager;
- the IEP team chairperson; or
- an individual from the LEA's central office.

However, it is recommended that someone who has "firsthand" knowledge of what was discussed during the decision-making process prepare the prior written notice associated with any proposed or refused actions.

Timeliness of Prior Written Notice

Prior Written Notice shall be given to the parent(s) of a child with a disability a reasonable time **before** the LEA proposes or refuses to initiate or change an action related to the identification, evaluation, educational placement, or provision of FAPE to a child with a disability. Neither Federal or state regulations define "reasonable time". However, the Federal Office of Special Education Programs (OSEP) and the Nebraska Department of Education has issued guidance on the timeliness of Prior Written Notice:

- "Such notice must be given to parents a reasonable time before the agency implements that action, but after the agency's decision on the proposal or refusal has been made." *Letter to Helmuth, 16 IDELR 550, (OSEP 1990)*
- "We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*
- "There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA (local educational agency) actually implements the action. This provides parents, in the event 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." *Letter to Chandler, 112 LRP 2763, (OSEP 2012)*
- "It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice (emphasis added). The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior

written notice at the same time that parental consent is sought, should the agency choose to do so." *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*

- "92 NAC 51 and IDEA require prior written notice be provided a reasonable time before the district actually implements the action. The purpose of prior written notice is to give parents the opportunity to fully consider a decision about FAPE. The district should include in its procedures the number of days which the district considers reasonable (for example 10 school days). However, whether that number of days is reasonable must be based on individual circumstances and may be shortened or lengthened as necessary." *Nebraska Department of Education, Office of Special Education, August 2012*

Prior Written Notice and the IEP

Decisions regarding the provision of a Free Appropriate Public Education (FAPE) are made during the IEP meeting. Therefore, pursuant to 92 NAC 51-009.05, Prior Written Notice must be provided to the child's parents a reasonable time before implementation of an initial or revised IEP. This is true in situations in which the parent participated in the IEP meeting and agreed to the proposed changes as well as situations in which the parent and school district agree to amend the IEP without an IEP meeting.

See Letter to Lieberman, OSEP 2008 which states: "If during and 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". "A parent's agreement with a change to the student's identification, evaluation, placement, or services does not relieve an LEA of its obligation to provide prior written notice of that change."

There is nothing in the Federal or state regulations that would prohibit a school district from using the IEP as part of the prior written notice. However, if the IEP is used, all the required elements of prior written notice must be included in or attached to the IEP document. School districts choosing to use the IEP as part of

the prior written notice are encouraged to review the IEP document to determine which elements of the prior written notice are included on the IEP form and which elements of the prior written notice must be provided through other documents.

Acknowledgement of Receipt

Neither Federal or state regulations require that a prior written notice be dated or that the school district obtain written confirmation that the parent of a child with a disability has received the prior written notice. However, given the potential ramifications for not sending notice (i.e. denial of access to FAPE), it would be wise to document the provision of the prior written notice and the date it was provided. Additionally, including the date on which the proposed and/or refused action was made provides documentation that the notice was provided within a reasonable time before the school district implemented the proposed or refused action.

Federal and state regulations do not require a parent to acknowledge receipt of the prior written notice. In those cases where a district requests that the parent acknowledge receipt of the prior written notice, such acknowledgement does not relieve the school district's responsibility to ensure that the prior written notice satisfies the procedural requirements of state and federal regulations with regards to content and timeliness.

Conclusion

Prior Written Notice is a cornerstone of IDEA, empowering parents to actively participate in their child's education. By adhering to the requirements outlined in this guide, school districts can ensure that parents are fully informed and involved in decisions regarding their child's identification, evaluation, educational placement, and the provision of FAPE.

The Individuals with Disabilities Education Act (IDEA)

Part C, 92 NAC 52 (Rule 52), and 480 NAC 1

The Individuals with Disabilities Education Act (IDEA), along with Nebraska rules (92 NAC 52 and 480 NAC 1), include important protections for children with disabilities who receive early intervention services. One key protection is that the school district or early intervention provider must give parents **written notice in advance** when they plan to make or refuse certain decisions about their child's services or eligibility. This written notice must be given **after a decision is made but before any changes happen** to the child's IFSP or early intervention services.

When is Prior Written Notice Required?

Prior written notice must be provided to parents a reasonable time before the lead agency or early intervention service (EIS) provider proposes or refuses to take any of the following actions related to an infant or toddler with a disability or the child's family:

Proposing to initiate or change:

- The identification of the infant or toddler as eligible for early intervention services under Part C.
- The evaluation or assessment of the infant or toddler.
- The early intervention services, including the type, frequency, intensity, method, or natural environment in which services are provided.
- The outcomes, services, or supports included in the Individualized Family Service Plan (IFSP).

Refusing to initiate or change:

- The identification of the infant or toddler as eligible for early intervention services.
- The evaluation or assessment of the infant or toddler.
- The early intervention services proposed for the child or family.
- Any outcomes, services, or supports requested for inclusion in the IFSP.

Specifically, 92 NAC 52 (Rule 52) states:

003.19 - **Notice** means prior written notice that must be provided to parents a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.

Content of the Prior Written Notice

When an early intervention provider makes a decision about your child or family, **you must receive written notice ahead of time**. This notice helps you understand what is being decided and what your rights are.

The written notice must explain:

- **What the program is proposing or refusing to do**
This could include decisions about eligibility, evaluations, services, or changes to your child's IFSP.
- **Why the program is making this decision**
The notice should clearly explain the reasons for the action being proposed or refused.
- **Your procedural safeguards (your rights)**
The notice must tell you about the rights available to you, including:
 - Your right to mediation
 - How to file a state complaint
 - How to request a due process hearing
 - Any timelines related to these options

Evaluation and Services Notice

Families must receive written notice that explains:

- Their right to a timely, thorough evaluation of their child
This includes screening (if used), assessment activities, and, if the child is found eligible, the availability of appropriate early intervention services.

Written notice is required so families:

- Know what decisions are being made
- Understand why those decisions were made
- Are informed of their rights
- Have time to participate and ask questions

Specifically, 92 NAC 52 (Rule 52) and 480 NAC 1 state:

34 C.F.R. 303.421(b); Rule 52-009.03A and B; 480 NAC 1-012 and 1-013 – *Such prior written notice shall include:*

52-009.03B2a *The action proposed or refused by the early intervention provider;*

52-009.03Bb *The reasons for taking the action;*

52-009.03B2c *All procedural safeguards that are available under 92 NAC 52-009, including a description of mediation in 92 NAC 52-009.05, how to file a State complaint in 92 NAC 52-009.06 and a due process complaint in the provisions adopted under 92 NAC 55, and any timelines under those procedures.*

480 NAC 1-012.02 *Families must be provided written notice of their right to a timely, comprehensive, multidisciplinary evaluation for the child, including assessment activities related to the child, and if eligible, the provision of appropriate early intervention services.*

NOTE: Families must receive written notice of IFSP meetings early enough, so they have time to:

- Make arrangements to attend
- Participate meaningfully in planning for their child and family

480 NAC 1 - 014.03 *Families must be provided written notice of IFSP meetings with adequate time for them to make arrangements to attend.*

Means of Providing Prior Written Notice

All forms utilized in the Early Intervention Program are state-mandated to ensure consistency and adherence to Family Rights and all laws/regulations that govern the program. [480 NAC 1-017] State Regulations require state-mandated forms for PWN and Consent be utilized for the following actions:

- Authorization of Release/Request for Information Notice and Consent for Early Intervention Initial Screening Notice and Consent for Early Intervention Initial Multidisciplinary Evaluation and Child Assessment Individualized Family Service Plan.

Outside of these Early Development Network required forms, neither federal nor state special education regulations specify the format in which prior written notice must be provided.

Therefore, any of the following formats are permissible provided they include the required elements:

- formal letter on letterhead;
- form letter;
- fill in the blank form;
- online system generated;
- e-mail;
- child's IFSP.

Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements set forth in 92 NAC 52-009.03 and 480 NAC 1-014. Prior Written Notice must be in writing whenever a school district/early intervention provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. While the EIS provider/district may verbally discuss the circumstances with the parent; the proposal or refusal must be in writing, and the contents of the notice must meet the requirements of 92 NAC 52-009.03B.

In Part C, 480 NAC 1 requires the Services Coordinator to provide all Notices/Consents relating to exchange/release of info; Initial Evaluation/Assessment; and IFSP services. Rule 52 requires districts to provide written notice re: screening results (if applicable); eligibility determination; and refusal to provide FAPE-Early Intervention services.

Timeliness of Prior Written Notice

Prior Written Notice shall be given to the parent(s) of a child with a disability a reasonable time **before** the EIS provider/LEA proposes or refuses to initiate or change an action related to the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. Neither Federal nor state regulations define "reasonable time". However, the Federal Office of Special Education Programs (OSEP) and the Nebraska Department of Education has issued guidance on the timeliness of Prior Written Notice:

- "Such notice must be given to parents a reasonable time before the agency implements that action, but after the agency's decision on the proposal or refusal has been made." *Letter to Helmuth, 16 IDELR 550, (OSEP 1990)*
- "We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*
- "There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA (local educational agency) actually implements the action. This provides parents, in the event 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." *Letter to Chandler, 112 LRP 2763, (OSEP 2012)*
- "It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice (emphasis added). The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior written notice at the same time that parental consent is sought, should the agency choose to do so." *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*

Timeliness of Prior Written Notice - When Parental Consent Is An Issue

The IDEA Part C, 2011 implementing regulations at 34 C.F.R. §303.7(a) define consent to mean that “the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in 303.25.”

The IDEA Part C 2011 implementing regulations at 34 C.F.R. §303.7(b) and (c) state that “the parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked)”).

Prior Written Notice and the IFSP

480 NAC 1-010.06(E) states: "The IFSP provides for the written consent of the parent to provide services to the child and family. Although the parent may accept or reject any part of the early intervention services offered, the child will not receive service until the parent(s) have signed the IFSP. So, the IFSP serves as PWN and informed consent since both PWN and informed consent is required before the provision of any early intervention services on the IFSP.

Acknowledgement of Receipt

Given the potential ramifications for not sending notice (i.e. denial of access to FAPE-Early Intervention Services), it is required to document the provision of the prior written notice and the date it was provided. Additionally, including the date on which the proposed and/or refused action was made provides documentation that the notice was provided within a reasonable time before the school district implemented the proposed or refused action. Federal and state regulations do not require a parent to acknowledge receipt of the prior written notice. In those cases where an early intervention provider/district requests that the parent acknowledge receipt of the prior written notice; such acknowledgement does not relieve the early intervention provider/school district's responsibility to ensure that the prior written notice satisfies the procedural requirements of state and federal regulations with regards to content and timeliness.

Conclusion

Both Federal and state regulations are clear that prior written notice must be provided to the parents of a child with a disability a reasonable time before the school district/early intervention providers proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. When implemented correctly, prior written notice allows parents to fully participate in the early intervention planning process and a reasonable time to fully consider the change and respond to the action before it is implemented.