



EXCEPTIONAL CHILDREN RESOURCES WORK GROUP

Prior Written Notice Frequently Asked Questions

This document addresses frequently asked questions regarding the Individuals with Disabilities Education Act (IDEA) and the Department of Education (Department) regulations specific to the Prior Written Notice (PWN) requirement.

1. When does a Local Education Agency (LEA) have to provide Prior Written Notice?

An LEA must provide parents written notice that meets the requirements of 14 DE Admin Code § 926.3.2 no less than ten (10) school days before the LEA proposes to (or refuses to) initiate or change the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE) to a child. However, in cases involving a change of placement for a disciplinary removal, the written notice must be provided no less than five (5) school days before the LEA proposes to change the child's placement. *See*, 14 DE Admin Code § 926.3.1; 14 *Del. C.* § 3133; 34 C.F.R. § 503(a).

2. What must the Prior Written Notice include?

The Prior Written Notice must include the following:

- (a) A written description of the action proposed or refused by the LEA;
- (b) A written explanation of why the LEA proposes or refuses to take the action;
- (c) A written description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
- (d) A written statement that the parents of a child with a disability have protection under the procedural safeguards of state and federal regulations 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;
- (e) Sources for parents to contact to obtain assistance in understanding the

provisions of these regulations, including contact information for parent assistance programs, legal assistance programs, and the Delaware State Bar Association;

- (f) A written description of any other options the IEP Team considered and the reasons why those options were rejected;
- (g) A written description of other factors which are relevant to the agency's proposal or refusal; and
- (h) A written summary of procedural safeguards must be available to the parents under state and federal law and regulations. *See*, 14 DE Admin Code § 926.3.2; 14 *Del. C.* § 3134; 34 C.F.R. § 503(b).

3. Since, the Prior Written Notice contains a summary of the Procedural Safeguards, must the LEA provide a full copy of the Procedural Safeguards at the IEP meeting?

Although the Prior Written Notice contains a summary of the Procedural Safeguards, the LEA must provide the parents with a full copy of the Procedural Safeguards at the IEP Meeting. *See*, 14 DE Admin Code § 926.3.2.8.1

4. Can the LEA send Prior Written Notice to parents by electronic mail?

If the LEA offers parents the choice of receiving documents by E-mail, parents may choose to receive the Prior Written Notice and Procedural Safeguards Notice by E-Mail. *See*, 14 DE Admin Code § 926.5.0; 34 C.F.R. § 505.

5. What if a parent's native language is not English?

The Prior Written Notice must be written in language understandable to the general public. It must be 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 the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure: (a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; and (b) the parent understands the content of the notice; and (c) there is written evidence the LEA met these requirements. *See*, 14 DE Admin Code § 926.3.3-3.4; 34 C.F.R. § 503(c).

6. What is the difference between Notice of Meeting and Prior Written Notice?

Notice of Meeting

LEAs are responsible for ensuring that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded an opportunity to participate. As a result, LEAs must give parents advance notice of scheduled IEP Team meetings. More specifically, parents must be notified of the IEP Team meeting, in writing no less than ten (10) school days prior to the IEP Team meeting (unless mutually agreed otherwise) to ensure that they will have the opportunity to attend, and no less than five (5) school days prior to a meeting to conduct a manifestation determination. The Notice of Meeting must include certain information. The purpose of the notice is to ensure parental participation at IEP Team meetings. *See*, 14 DE Admin Code § 925.22; 34 C.F.R. § 300.322.

Prior Written Notice

The Prior Written Notice requirement serves a somewhat different purpose. An LEA must give parents prior written notice before the LEA proposes to (or refuses to) initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to a child. The Prior Written Notice must be given at least ten (10) school days *before* the LEA implements the proposal (or takes the action) or refuses to implement the proposal (not take the action) identified in the Prior Written Notice. (Remember this timeline is five (5) school days in cases involving a change of placement for disciplinary removal). This gives parents the opportunity to invoke their procedural safeguards (such as filing a due process complaint) if they disagree with the action the LEA is proposing or refusing to take. *See*, 14 DE Admin Code § 926.3.; 14 *Del. C.* § 3134; 34 C.F.R. § 503.

10. What sources can parents contact to obtain help in understanding the IDEA and the Department of Education regulations?

The Department has listed sources for parents to contact to obtain help in understanding the IDEA and the Department of Education regulations in its Procedural Safeguards Notice. These sources include, but are not limited to:

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| <div>Delaware Department of Education https://www.doe.k12.de.us/ Dale Matusevich Director, Exceptional Children Resources Department of Education 40I Federal Street, Suite 2 Dover, DE 19901 Telephone: (302) 735-4210 Fax: (302) 739-2388 Email: dale.matusevich@doe.k12.de.us</div> | | | | | |
| <div>Disabilities Law Program: http://www.declasi.org/disabilities-law-program/</div> <table><tr><td><div><u>New Castle County:</u> 100 W. Tenth St., Suite 801 Wilmington, DE 19801 (302) 575-0690 (302) 575-0696 (TTY/TTD) (800) 292-7980</div></td><td><div><u>Kent County:</u> 840 Walker Road Dover, DE 19904 (302) 674-8503 (TTY/TTD Also) (800) 537-8383</div></td><td><div><u>Sussex County:</u> Georgetown Professional Park 20151 Office Circle Georgetown, DE 19947 (302) 856-3742 (TTY/TTD Also) (800) 462-7070</div></td></tr></table> | | | <div><u>New Castle County:</u> 100 W. Tenth St., Suite 801 Wilmington, DE 19801 (302) 575-0690 (302) 575-0696 (TTY/TTD) (800) 292-7980</div> | <div><u>Kent County:</u> 840 Walker Road Dover, DE 19904 (302) 674-8503 (TTY/TTD Also) (800) 537-8383</div> | <div><u>Sussex County:</u> Georgetown Professional Park 20151 Office Circle Georgetown, DE 19947 (302) 856-3742 (TTY/TTD Also) (800) 462-7070</div> |
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| <div>Delaware Volunteer Legal Services http://www.dvls.org/ Telephone: Wilmington (302) 478-8850 Sussex and Kent Counties (302) 225-0582 Email: tventresca@dvls.org</div> | <div>Delaware Bar Association http://www.dsba.org/ 405 North King Street, Suite 100 Wilmington, DE 19801 Telephone: (302) 658-5279 Fax: (302) 658-5212</div> | | | | |
| <div>Parent Information Center of Delaware, Inc. http://www.picofdel.org/ 404 Larch Corporate Center Wilmington, DE 19804 Email: picofdel@picofdel.org Telephone: (302) 999-7394 Toll Free: (888) 547-4412 Fax: (302) 999-7637</div> | <div>The Special Education Partnership for the Amicable Resolution of Conflict (SPARC) Mediation Program http://www.ipa.udel.edu/crp/sparc.html 177 Graham Hall University of Delaware Newark, DE 19716-7380 Telephone: (302) 831-8158 Fax: (302) 831-0450 Kathleen M. Murphy Policy Scientist/CRP Coordinator Email: kmmurphy@udel.edu Email: sparc-info@udel.edu</div> | | | | |

11. Does the Department have a model form for LEAs to use when sending Prior Written Notice?

The Department of Education provides a model form that LEAs *may* use to construct Prior Written Notice. Each LEA must; however, insert the required information as it relates to each child-specific situation. The Department's model Prior Written Notice form is available in PowerSchool IEP, as well as on the Department's website at: <https://www.doe.k12.de.us/Page/2335>