

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD GROUP

“Prior Written Notice”
Frequently Asked Questions

This document is offered by the Delaware Department of Education as guidance to school administrators, parents, attorneys, advocates, and due process hearing panel members in implementing the Individuals With Disabilities Education Act (“the IDEA”) and Department of Education regulations specific to the Prior Written Notice requirement.

1. When Does A School District Have To Give Prior Written Notice?

A school district must give parents written notice no less than ten (10) business days before the school district 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 to a child. But, in cases involving a change of placement for a disciplinary removal, the notice must be provided no less than three (3) business days before the school district 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 Does The Prior Written Notice Have To Contain?

The Prior Written Notice must include the following:

- (a) A description of the action proposed or refused by the school district;
- (b) An explanation of why the action was proposed or refused by the school district;
- (c) A description of any other options the IEP team considered and the reasons those options were rejected;
- (d) A description of each evaluation procedure, assessment, record or report the school district used as a basis for the proposed or refused action;
- (e) A description of any other factor relevant to the action proposed or refused;
- (f) A statement that parents of a child with a disability are protected by the procedural safeguards of the IDEA and Department of Education regulations. If the Prior Written Notice is not sent because of an initial referral for evaluation, it must also tell parents how they can obtain a copy of the Notice of Procedural Safeguards;
- (g) Sources for parents to contact to obtain help in understanding the IDEA and Department of Education regulations; and
- (h) A full explanation of the procedural safeguards available to parents.

See, 14 DE Admin Code § 926.3.2; 14 *Del. C.* § 3134; 34 C.F.R. § 503(a).

3. How Can The School District Provide A Full Explanation Of The Procedural Safeguards Available To Parents In The Prior Written Notice?

The Department of Education has issued a Procedural Safeguards Notice dated September 10, 2007 which describes the procedural safeguards available to parents under the IDEA and Department of Education regulations. The school district can provide a full explanation of the procedural safeguards to parents in the Prior Written Notice by sending this document as an enclosure or attachment to the district's Prior Written Notice for each child. The Procedural Safeguards Notice is available on the Department's website at: www.doe.state.de.us/programs/specialed/.

4. Can The School District Send Prior Written Notice To Parents By Electronic Mail?

If the school district 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 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 school district 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; (b) the parent understands the content of the notice; and (c) there is written evidence the district met these requirements. *See*, 14 DE Admin Code § 926.3.3; 34 C.F.R. § 503(c).

6. Can The IEP Itself Constitute The Prior Written Notice, Rather Than Requiring A Separate Document?

Nothing in the IDEA or Department of Education regulations prohibit a school district from using a proposed IEP *as part of* the Prior Written Notice so long as the documents the parent receives contains all the required provisions of the Prior Written Notice as outlined in Question #2 above. *See*, OSEP's comments, 71 Fed. Reg. 46,691 (August 14, 2006).

7. Must The Prior Written Notice Be Given To Parents Before An IEP Team Meeting?

Prior Written Notice is provided in a variety of circumstances. As a general rule, a school district meets its obligation so long as the Prior Written Notice is provided ten (10) business days before the school district implements the proposal (or refusal) described in the Prior Written Notice. A school district is not required to convene an IEP team meeting before it proposes a change in the identification, evaluation, or educational placement of a child, or the provision of FAPE to a child. But, school districts should be aware the proposal typically triggers the obligation to convene an IEP team meeting. As a result, providing Prior Written Notice in advance of IEP team meetings could suggest, in some circumstances, the school district's proposal was improperly arrived at before the IEP team meeting and without parent input. *See*, OSEP's comments, 71 Fed. Reg. 46,691 (August 14, 2006).

8. Is There A Difference Between The Notice Requirements Governing IEP Team Meetings And The Prior Written Notice Requirement?

There is a difference between the notice requirements governing IEP team meetings and the Prior Written Notice requirement. School districts 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, school districts must give parents advance notice of scheduled IEP team meetings, and the notice must include certain information. The purpose of the notice is to ensure parental participation at IEP team meetings.

The Prior Written Notice requirement serves a somewhat different purpose. As mentioned above, a school district must give parents written notice before the school district 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 to a child. The Prior Written Notice must be given *before* the school district implements the proposal (or takes the action) identified in the Prior Written Notice. This gives parents the opportunity to invoke their procedural safeguards (such as filing for due process) if they disagree with the action the school district is proposing to take.

9. What Are The Notice Requirements Governing IEP Team Meetings?

School districts must notify parents of an IEP team meeting no less than ten (10) business days before the meeting to ensure they will have an opportunity to attend. The notice must: (1) state the purpose, time, and location of the meeting, and who will be in attendance; and (2) inform parents of the provisions in 14 DE Admin Code §§ 925.21.1.6 and 21.3 relating to the participation of other individuals on the IEP team who knowledge or special expertise about the child. *See*, 14 DE Admin Code §§ 925.22.1 and 22.2; 34 C.F.R. § 300.322(b).

If the meeting is an initial IEP team meeting for a child previously served under Part C of the IDEA, the notice must also inform parents of the provisions in 14 DE Admin Code § 925.21.6 relating to the participation of the Part C service coordinator or other representatives of the Part C system.

In addition, for a child with a disability beginning not later than the 8th grade, or when the child turns fourteen (14), whichever occurs first, the notice must also state that a purpose of the meeting will be the consideration of postsecondary goals and transition services for the child, and that the school district will invite the student, and identify any other agency that will be invited to send a representative. *See*, 14 DE Admin Code §§ 925.22.2.3 and 22.3; 34 C.F.R. § 300.322(b).

10. What Sources Can Parents Contact To Obtain Help In Understanding The IDEA and Department of Education Regulations?

The Department has listed sources for parents to contact to obtain help in understanding the IDEA and Department of Education regulations in its Procedural Safeguards Notice dated September 10, 2007. These sources include, but are not limited to:

The Delaware Department of Education's website located at www.doe.k12.de.us/programs/specialed.

The U.S. Department of Education Office of Special Education Programs' website located at www.ed.gov/about/offices/list/osers/osep.

The school district's director of special education services

Delaware Department of Education

Martha Toomey, Director, Exceptional Children & Early Childhood Education Group,
401 Federal Street, Suite 2, Dover, DE 19901
Telephone: (302) 735-4210; Fax: (302) 739-2388
E-mail: mtoomey@doe.k12.de.us

Parent Information Center of Delaware, Inc.

5570 Kirkwood Highway
Wilmington, DE 19808
www.picofdel.org
Telephone: (302) 999-7394

Disabilities Law Program

New Castle County
Community Services Building; 100 W. Tenth Street, Suite 801
Wilmington, DE 19801
(302) 575-0660; (voice/TDD) 1-800-292-7980 (toll free)

Kent County
840 Walker Road
Dover, DE 19904
(302) 674-8500; (voice/TDD) 1-800-537-8383 (toll free)

Sussex County
144 East Market Street
Georgetown, DE 19947
(302) 856-0038; (voice/TDD) 1-800-462-7070

11. Does The Department Have A Model Form For School Districts To Use When Sending Prior Written Notice?

The Department of Education provides a model form that school districts *may* use to construct Prior Written Notice. Each school district must, however, insert the required information as it relates to each child-specific situation. The Department's model Prior Written Notice form is available on the Department's website at:

www.doe.state.de.us/programs/specialed/.