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FACT SHEET

SPECIAL EDUCATION -PRIOR WRITTEN NOTICE-

If a school wants to change a child's special education program OR will not make changes a parent wants, then the law says the school must give the parent "prior written notice." "Prior written notice" is an explanation why the school wants to make changes or why it does not want to make changes. What should a school include in its "prior written notice" to a parent? This fact sheet provides a list of requirements.

Why is prior written notice important?

Prior written notice is important for several reasons:

- It gives detailed information to help parents understand why there is a disagreement with the school.
- It explains what information the school considered before making a decision. (Parents may then be able to show that the school should consider more information.)
- It can be used by parents as evidence if a due process hearing is needed to resolve disputes.
- It discourages bad decisions and prejudice by requiring all reasons to be in writing.

When must a school give a parent "prior written notice?"

A school must provide prior written notice whenever a school wants to evaluate a child, change a child's placement or change how it is providing a Free Appropriate Public

Education to a child. A school must also provide written notice if a school is refusing to do any of these. Examples:

- If a child is not in special education, but the school thinks he/she needs to be, the school must give prior written notice before identifying, evaluating, or placing the child in special education.
- A school must give prior written notice if it refuses a parent's request to perform an evaluation, identify a student as needing special education, make a certain placement, or provide special education services to the child.
- Special education includes not only educational instruction, but also related services such as physical therapy, occupational therapy, speech therapy, etc. Therefore, if the school and the parent disagree on what related services may be appropriate for a child, the school should also provide "prior written notice."

What information should a parent receive in the school's prior written notice?

Prior written notice must include all of the following:

- A description of the action proposed or refused by the school;
- An explanation why the school proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the school used as a basis for the action it has proposed or refused;
- Either,
 - 1) A full listing of the parents' rights and procedural safeguards, or
 - 2) A statement that the parents have procedural safeguards followed by an explanation how parents can obtain a description of the safeguards;
- A list of sources parents may contact to obtain assistance in understanding special education law (IDEA);
- A description of any other options considered by the Individualized Educational Program (IEP) team and the reasons why those options were rejected; and
- A description of any other factors that are relevant to the school's proposal or refusal.

The prior written notice must be written in language understandable to the general public. Additionally, prior written notice must be in the native language or mode of communication used by the parent unless it is clearly not feasible to do so.

I am entitled to prior written notice. When can I expect to receive it?

The law says simply that prior written notice must be given a “reasonable time” before the school will take action. There should be enough time for a parent to read and think about what the notice says. For example, if you get a prior written notice right before being asked to sign a consent for an evaluation you may tell the school you need more time and then make your decision as soon after that as possible.

Do I have to ask for prior written notice?

Unfortunately, even though the law says schools must give prior written notice, they often do not give prior written notice unless the parent asks for it. Therefore, the **parent** should make a **written request** to the school **asking for prior written notice** if the school is suggesting a change the parent does not like or if the school will not make a change the parent wants.

The Individuals with Disabilities Education Act (IDEA) does not specify how many days a district has to issue the Prior Written Notice. South Carolina law/regulations no longer set any particular number of days either. If the district has not responded in a *reasonable* time, like 10 days, write again to the district and let them know you are still waiting for an answer.

Asking for prior written notice in writing is good for two reasons. First, it gives you proof that you asked the school for prior written notice. Second, schools tend to pay more attention to requests that are in writing.

How do I make a request in writing for “prior written notice”?

You can write a letter requesting prior written notice on all areas where you disagree with the school. You may send this letter at any time. But, if you have an IEP meeting scheduled, take the letter with you to the meeting. Wait until it becomes clear that the school will not agree with what you are asking for or wants to take some action you do not want. Then hand in your letter. Presenting the letter at the very beginning of the meeting may make the IEP team think you do not want to negotiate and work things out.

A sample letter is attached to this fact sheet. The letter can easily be changed to fit your situation. When you hand the IEP team your letter, be sure to ask them to make a note in the IEP meeting minutes that you asked for prior written notice. Also, ask them to attach a copy of your letter to the IEP meeting minutes. Be sure to keep a copy of your letter.

Please be aware, if you are at an IEP meeting and you do not agree with what the school is proposing, **do not sign** the IEP or any other documents you do not agree

with (such as a consent form). If you sign, the school can use your signature later on as "proof" you agreed with what they wanted.

Also, remember, you have a right to a due process hearing whenever:

- The school wants to make a change to your child's placement you do not agree with, or
- The school refuses to make a change you want.

If you have a due process hearing, you must present evidence to convince the hearing officer the school is wrong. A prior written notice may be a helpful piece of evidence to bring to a due process hearing.

Sources for the information in this Fact Sheet:

Individuals with Disabilities Education Act 2004, 20 USC §1415(b)&(c) and 34 Code of Federal Regulations 300.503

If you need additional information about this process, call our toll-free Help Line at 1-866-275-7273 (VOICE) or 1-866-232-4525 (TTY).

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact the P&A Help Line for updates.

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Sample Letter

TO: [Name of school/district representative present at meeting]

FROM: [Your name]

DATE: [Date]

RE: Request for "Prior Written Notice" for [your child's name]

In response to the following proposals or refusals made by my child's school, I am hereby requesting that you provide me with "prior written notice" in accordance with the Individuals with Disabilities Education Act 2004, 20 U.S.C. § 1415(b)&(c).

The issue(s) I want covered in the "Prior Written Notice" are:

[List each matter or issue with which you disagree, being as specific as possible]

- EXAMPLES:
1. Refusal to place my child in special education
 2. Proposal to place my child in a self-contained classroom
 3. Refusal to consider the report from my child's doctor in determining placement
 4. Proposal to take my child out of special education
 5. Refusal to provide physical therapy, occupational therapy, speech therapy, etc. that my child needs

Sincerely,

[Your Signature]

[Your Typed or Printed Name]