

Compliance Corner

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Is it Hit or Miss Regarding Your Prior Written Notice? (Part 1 of 4)

There are many circumstances that all of us experience in which protections are provided to us. This occurs when we are purchasing a new car, taking out a loan or getting repairs completed, to name a few examples. Our protections are written in what is often called “the fine print” and explains what each party is responsible for in carrying out the agreement.

An important document pertaining to special education and the protections afforded to parents and students is the Prior Written Notice or PWN. It is a requirement for the district to provide and a right of the parent to receive. A PWN is provided to a parent, guardian or adult student in many situations involving the special education process. It captures the requested actions and the district’s decisions regarding those requests. The requests can originate from the parent, adult student or the district and would include agreements or refusals regarding the requests as well as explanations for the decisions that were made.

The Individuals with Disabilities Education Act (IDEA) requires school districts to provide notice to parents as outlined in 34 CFR §300.503:

(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 public agency—

(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.

The IDEA provides timelines in certain situations in which a Local Education Agency (LEA) must provide a notice. Those instances will be discussed in subsequent editions. In addition, it is important to note the New Mexico Administrative Code (NMAC) has amended rules that went into effect as of July 1, 2023 pertaining to the provision of a Prior Written Notice when a request for an evaluation has been received. NMAC 6.31.2.10 states:

D. Evaluation requests and referrals.

(3) The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.

(4) The public agency shall respond to a parental request for initial evaluation or reevaluation by:

(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or

(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency's refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

(5) When the public agency makes a referral for an evaluation without a parental request, the public agency shall provide prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seek parental consent for the evaluation no later than 15 school days from the referral. If a referral for an evaluation or reevaluation is made within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall request parental consent no later than 30 calendar days from the date of the referral.

As referenced above, there are many instances in which a PWN is required. Join me in the upcoming editions to discuss what those situations are. In addition, we will discuss what information must be included in a PWN, examples of what sources to use when making decisions as well as some comprehensive and non-comprehensive examples when responding.

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.