

# Compliance Corner

March 2025

By Cindy Soo Hoo, TAP Consultant

## Is it Hit or Miss Regarding Your Prior Written Notice? (Part 2 of 4)

In the previous edition of Compliance Corner, the Prior Written Notice (PWN) was introduced as the legal mandate specified in the Individuals with Disabilities Education Act (IDEA). This Prior Written Notice is different from the PWN one might think of when providing an invitation to a meeting. That PWN informs parents of the nature of the meeting, the time and date of the meeting and the names/roles of the participants the parents would expect to be in attendance. Instead, the PWN referenced below is the document afforded to parents that details the proposals that have been brought forward and the decisions regarding those proposals made by the Local Education Agency (LEA).

The regulations in IDEA generally refer to circumstances in which a PWN must be provided. However, they do not provide examples of those circumstances. Nor do they dictate what must be included.

34 CFR §300.503 (a) requires a PWN to be provided to a parent when the LEA:

*(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.*

So, let's break down those regulations to see what examples might be included in each.

### **Identification:**

When looking at the identification of a student, there are several circumstances that apply. These include processes following an evaluation as well as the transition of a child from Early Intervention Services into public schools. Eligibility determinations are designed to determine if the child in question meets the definition of a student who qualifies as a student with a disability under the IDEA. Children transitioning from Part C to Part B of IDEA are leaving family-centered services and are entering a system in which that child's individualized needs are identified and addressed. Below are some examples of these circumstances.

Identification	Circumstance
Eligibility Determination	Determining from an initial evaluation if the child has a disability and is need of special education and related services
	Determining if the child continues to qualify for special education and related services through a reevaluation
	Determining if the child qualifies under additional eligibility category (ies)
	Determining if the child requires a discontinuation of eligibility category (ies)
	Determining if the child no longer requires special education and related services
Transitioning from Part C to Part B	Transition of children from Part C of IDEA (Birth to Age 3) to Part B of IDEA (Ages 3-21)

**Evaluation:**

Generally, actions included in the Response to Intervention (Rtl) process would not require a Prior Written Notice. Processes in the Multi-Layered System of Supports (MLSS) would include interventions as determined necessary by the Student Assistance Team to address the academic and/or behavioral concerns a student displays. Interventions would be implemented and data would be gathered to determine if a student is responding adequately to targeted interventions.

In addition, screenings generally do not apply. Often, screenings are administered on a grade-level or school-wide basis for instructional purposes. These screenings may also provide information for instructional staff who can then determine if a more formal assessment may be necessary.

When conducting a Functional Behavioral Assessment (FBA), a PWN is not necessary if the information/data that is being utilized and analyzed consists of existing evaluation data. This would not require a PWN as the information already exists and new information is not being obtained.

<b>Evaluation</b>	<b>Circumstance</b>
Initial Referral	Conducting evaluation components in advance of eligibility determination
Reevaluation	Conducting evaluation components in advance of eligibility determination
Independent Educational Evaluation (IEE)	Parental request to pay for an IEE
Functional Behavioral Assessment (FBA)	Conducting an FBA if utilizing new information and data

**Educational Placement:**

The term educational placement in IDEA refers to the point on the continuum of educational placements the child needs to be placed in order to receive a Free Appropriate Public Education (FAPE). It does not refer to the location (classroom number, teacher, school address) of where the services and supports are delivered.

The educational placement of a child can change if the child is subjected to disciplinary procedures that constitute a change in placement. This occurs when the student is removed for more than 10 consecutive school days or in a series of removals that constitute a pattern of removals.

<b>Educational Placement</b>	<b>Circumstance</b>
Continuum Change	Change in type of setting on the continuum of placements
Discipline	Change in placement due to disciplinary removal

**Provision of FAPE:**

A Free Appropriate Public Education consists of the special education and related services that enable the child to make progress appropriate in light of that child’s circumstances. It includes other aspects included in the child’s Individualized Education Program (IEP) that are determined necessary in order for the child to participate in and make progress in the general education curriculum. This would include the goals that were designed for the student as well as the accommodations and modifications that were found to be necessary, to name a few examples.

Students whose IEPs include identified transition needs will consist of a course of study in terms of the subjects the student is expected to take prior to graduation. This course of study includes electives in addition to the required courses. Typically, changes in elective

courses would not require a Prior Written Notice. It would, however, require a PWN if the elective being changed is tied to the student's goals. The IEP Team would have determined that elective to be necessary due to a skill deficit. Changes to the elective course could impact the student's educational needs.

Provision of FAPE	Circumstance
Individualized Educational Program (IEP)	Initial provision of special education and related services
	Change(s) to the provision of special education and related services and other aspects of the child's IEP
Revocation of Services	Parental-initiated withdrawal of services
Program of Study	Options to the diploma for students with transition needs
Graduation	Graduation from high school with a diploma
Transfer of Rights	Age 18 in NM if guardianship does not apply

**Conclusion:**

As you can see from the information above, there are many instances when the provision of a Prior Written Notice is required. The list is by no means exhaustive. One must not assume that if the circumstance is not listed, it is not required. When in doubt, it is better to provide one when it's not necessary rather than the reverse.

It's important to note that individual school districts may have specific circumstances they require to be included in a Prior Written Notice. It is imperative to consult your district's policies and procedures to ensure you are in compliance with local requirements.

Join me next month for Part Three of Compliance Corner when we will discuss various sources of data that may be considered when justifying the LEA's acceptance or rejection of a proposal. In addition, we will have the opportunity to examine various examples of Prior Written Notice decisions.

*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.*