



The Individuals with Disabilities Education Act (IDEA)

92 NAC 51 (Rule 51)

Prior Written Notice Guidance Document

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document. For comments regarding this document contact nde.guidance@nebraska.gov



The Individuals with Disabilities Education Act (IDEA) and 92 NAC 51 contain important procedural safeguards for students with disabilities receiving a Free Appropriate Public Education (FAPE). These safeguards include the requirement that a school district provide the child's parents with prior written notice a reasonable time before the school district proposes or refuses to take certain actions. School districts must provide prior written notice **after** a decision has been made regarding matters affecting the student's IEP or eligibility for special education, but **before** any decision is implemented or changes to the student's program take place.

Specifically, 92 NAC 51 (Rule 51) states:

009.05A *Prior written notice shall be given to the parents of a child with a disability a reasonable time before a school district or approved cooperative:*

009.05A1 *Proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education; or*

009.05A2 *Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child.*

009.05B *Such prior written notice shall include:*

009.05B1 *A description of the action proposed or refused by the school district or approved cooperative;*

009.05B2 *An explanation of why the district or approved cooperative proposes or refuses to take the action;*

009.05B3 *A description of other options the IEP Team considered and the reasons why those options were rejected;*

009.05B4 *A description of each evaluation procedure, assessment, record, or report the school district or approved cooperatives uses as a basis for the proposal or refusal;*

009.05B5 *A description of any other factors which are relevant to the school district's or approved cooperative's proposal or refusal;*

009.05B6 *A statement that the parents of a child with a disability have protection under the procedural safeguards of this Chapter and, if this notice is not an initial referral for evaluation, the means by which a copy or description of the procedural safeguards can be obtained; and*

009.05B7 *Sources for parents to contact to obtain assistance in understanding the provisions of this Chapter.*

(NOTE: Prior written notice is **not** the same as the IEP meeting notice referenced in 92 NAC 51-007.06. The purpose of the IEP meeting notice is to notify the parents of the IEP conference early enough to ensure they will have an opportunity to attend and participate in the IEP meeting. The purpose of the Prior Written Notice is to ensure that a parent understands the special education and related services which a school district has proposed or refused to provide to the student.)

Drafting the Prior Written Notice

1. In the “Description of the proposed or refused action” section, consider:

- Listing every action discussed during the meeting including all actions proposed and refused. Actions will include issues related to the identification, evaluation, educational placement of or provision of FAPE to a student.

2. In the “Reason why we are proposing or refusing to take action” section:

- Reference the action(s) that you are taking/refusing to take and the reasons why you are proposing/refusing to take action.

3. In the “Description of any other options considered and rejected” section,

- Describe in detail each of the other options that were considered and rejected.
- If no other options were considered, indicate no other options were considered. Do not use NA.
- State each reason why you rejected the other options.
- Do not list options or reasons that are not feasible. For example, if you are preparing a PWN following an annual IEP meeting, don’t indicate that you considered and rejected the option of not holding the meeting. You don’t have the option of not holding the meeting!

5. In the “Description of Each Evaluation Procedure, etc.” section:

- List each evaluation, test, record or report that the team used in making the decisions to take or refuse to take actions, if applicable.
- If PWN is being sent to inform the parent of an evaluation, include the areas in which the student will be evaluated or reevaluated (eg: cognitive, behavioral, reading, etc.), either in the PWN or a referenced document.

Means of Providing Prior Written Notice

Except for requiring that the notice be in writing, neither federal nor state special education regulations specify the format in which prior written notice must be provided. Therefore, any of the following formats are permissible provided they include the required elements:

- formal letter on letterhead;
- form letter;
- fill in the blank form;
- online system generated;
- e-mail;
- student's IEP.

Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements set forth in 92 NAC 51-009.05. Prior Written Notice must be in writing whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education. While the district may verbally discuss the circumstances with the parent; the proposal or refusal must be in writing, and the contents of the notice must meet the requirements of 92 NAC 51-009.05B.

Additionally, neither the Federal nor state regulations require that the prior written notice indicate who prepared the prior written notice or who provided it to the parent. Therefore, prior written notice can be prepared and provided by:

- the child's case manager;
- the IEP team chairperson; or
- an individual from the LEA's central office.

However, it is recommended that someone who has "firsthand" knowledge of what was discussed during the decision-making process prepare the prior written notice associated with any proposed or refused actions.

Timeliness of Prior Written Notice

Prior Written Notice shall be given to the parent(s) of a child with a disability a reasonable time **before** the LEA proposes or refuses to initiate or change an action related to the identification, evaluation, educational placement, or provision of FAPE to a child with a disability. Neither Federal or state regulations define "reasonable time". However, the Federal Office of Special Education Programs (OSEP) and the Nebraska Department of Education has issued guidance on the timeliness of Prior Written Notice:

- "Such notice must be given to parents a reasonable time before the agency implements that action, but after the agency's decision on the proposal or refusal has been made."
Letter to Helmuth, 16 IDELR 550, (OSEP 1990)
- "We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written

notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable.” *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*

- “There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA (local educational agency) actually implements the action. This provides parents, in the event of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented.”
Letter to Chandler, 112 LRP 2763, (OSEP 2012)
- “It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice (emphasis added). The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior written notice at the same time that parental consent is sought, should the agency choose to do so.”
USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.

“92 NAC 51 and IDEA require prior written notice be provided a reasonable time before the district actually implements the action. The purpose of prior written notice is to give parents the opportunity to fully consider a decision about FAPE. The district should include in its procedures the number of days which the district considers reasonable (for example 10 school days). However, whether that number of days is reasonable must be based on individual circumstances and may be shortened or lengthened as necessary.”

Nebraska Department of Education, Office of Special Education, August 2012

Prior Written Notice and the IEP

Decisions regarding the provision of a Free Appropriate Public Education (FAPE) are made during the IEP meeting. Therefore, pursuant to 92 NAC 51-009.05, Prior Written Notice must be provided to the child’s parents a reasonable time before implementation of an initial or revised IEP. This is true in situations in which the parent participated in the IEP meeting and agreed to the proposed changes as well as situations in which the parent and school district agree to amend the IEP without an IEP meeting. (See Letter to Lieberman, OSEP 2008 which states: “If during and IEP meeting, the team, including the parent, agrees to a change in the child’s services, the public agency must provide written notice in accordance with 34 CFR 300.503. Providing such notice following an IEP Team meeting where such a change is proposed – or refused – allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions and so forth”. “A parent’s agreement with a change

to the student's identification, evaluation, placement, or services does not relieve an LEA of its obligation to provide prior written notice of that change.”)

There is nothing in the Federal or state regulations that would prohibit a school district from using the IEP as part of the prior written notice. However, if the IEP is used, all of the required elements of prior written notice must be included in or attached to the IEP document. School districts choosing to use the IEP as part of the prior written notice are encourage to review the IEP document to determine which elements of the prior written notice are included on the IEP form and which elements of the prior written notice must be provided through other documents.

Acknowledgement of Receipt

Neither Federal or state regulations require that a prior written notice be dated or that the school district obtain written confirmation that the parent of a child with a disability has received the prior written notice. However, given the potential ramifications for not sending notice (i.e. denial of access to FAPE), it would be wise to document the provision of the prior written notice and the date it was provided. Additionally, including the date on which the proposed and/or refused action was made provides documentation that the notice was provided within a reasonable time before the school district implemented the proposed or refused action.

Federal and state regulations do not require a parent to acknowledge receipt of the prior written notice. In those cases were a district requests that the parent acknowledge receipt of the prior written notice, such acknowledgement does not relieve the school district's responsibility to ensure that the prior written notice satisfies the procedural requirements of state and federal regulations with regards to content and timeliness.

Conclusion

Both Federal and state regulations are clear that prior written notice must be provided to the parents of a child with a disability a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education. When implemented correctly, prior written notice allows parents to fully participate in the educational planning process and a reasonable time to fully consider the change and respond to the action before it is implemented.

APPENDIX A

Sample Prior Written Notice Form (Stand-Alone Format)

PRIOR WRITTEN NOTICE

Name _____	LEA: _____
Date ____/____/____	Student ID Number _____
 <input type="checkbox"/> Proposes to initiate or change the areas as described below; AND/OR	
<input type="checkbox"/> Refuses to initiate or change the areas as described below	

Description of the action proposed or refused by the local education agency:
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Explanation of why the local educational agency proposes or refuses to take action:

Description of any other options the IEP team considered and the reasons for the rejection of those options:
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Description of each evaluation procedure, assessment, record or report the local educational agency used as a basis for the proposed or refused action:

Description of any other factors that are relevant to the local educational agency's proposal or refusal:

Parents of a child with a disability have protection under the procedural safeguards.

____ A copy of your procedural safeguards is attached to this notice.

____ A copy of a description of your procedural safeguards may be obtained by contacting the agency at: <https://www.education.ne.gov/sped/parentinfo/Parent%20Rights%20-%20Eng%202012.pdf>



The Individuals with Disabilities Education Act (IDEA)

92 NAC 52 (Rule 52) and 480 NAC 3

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The Individuals with Disabilities Education Act (IDEA), 92 NAC 52, and 480 NAC 3 contain important procedural safeguards for children with disabilities receiving early intervention services. These safeguards include the requirement that a school district/early intervention provider provide the child's parents with prior written notice a reasonable time before the school district/early intervention provider proposes or refuses to take certain actions. School districts/early intervention providers must provide prior written notice **after** a decision has been made regarding matters affecting the child's IFSP or eligibility for early intervention, but **before** any decision is implemented or changes to the child's program/interventions to take place.

Specifically, 92 NAC 52 (Rule 52) states:

003.19 - *Notice means prior written notice that must be provided to parents a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.*

34 C.F.R. 303.421(b); Rule 52-009.03A and B; 480 NAC 3-012 and 3-013 – *Such prior written notice shall include:*

- 52-009.03B2a *The action proposed or refused by the early intervention provider;*
- 52-009.03Bb *The reasons for taking the action;*
- 52-009.03B2c *All procedural safeguards that are available under 92 NAC 52-009, including a description of mediation in 92 NAC 52-009.05, how to file a State complaint in 92 NAC 52-009.06 and a due process complaint in the provisions adopted under 92 NAC 55, and any timelines under those procedures.*
- 480 NAC 3-012.02 *Families must be provided written notice of their right to a timely, comprehensive, multidisciplinary evaluation (to include screening, if applicable) for the child, including assessment activities related to the child, and, if eligible, the provision of appropriate early intervention services.*
- 480 NAC 3-012.03 *Families must be provided written notice of IFSP meetings with adequate time for them to make arrangements to attend.*

Means of Providing Prior Written Notice

All forms utilized in the Early Intervention Program are state-mandated to ensure consistency and adherence to Family Rights and all laws/regulations that govern the program. [480 NAC 3-015] State Regulations require state-mandated forms for PWN and Consent be utilized for the following actions:

- Authorization/Consent for Release of Information
- Notice/Consent for Screening
- Notice/Consent for Evaluation
- Notice/Consent for IFSP services

Outside of these Early Development Network required forms, neither federal nor state special education regulations specify the format in which prior written notice must be provided. Therefore, any of the following formats are permissible provided they include the required elements:

- formal letter on letterhead;
- form letter;
- fill in the blank form;
- online system generated;
- e-mail;
- child's IFSP.

Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements set forth in 92 NAC 52-009.03 and 480 NAC 3-012. Prior Written Notice must be in writing whenever a school district/early intervention provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. While the EIS provider/district may verbally discuss the circumstances with the parent; the proposal or refusal must be in writing, and the contents of the notice must meet the requirements of 92 NAC 52-009.03B.

In Part C, 480 NAC 3 requires the Services Coordinator to provide all Notices/Consents relating to exchange/release of info; Initial Evaluation/Assessment; and IFSP services. Rule 52 requires districts to provide written notice re: screening results (if applicable); eligibility determination; and refusal to provide FAPE-Early Intervention services.

Timeliness of Prior Written Notice

Prior Written Notice shall be given to the parent(s) of a child with a disability a reasonable time **before** the EIS provider/LEA proposes or refuses to initiate or change an action related to the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. Neither Federal or state regulations define "reasonable time". However, the Federal Office of Special Education

Programs (OSEP) and the Nebraska Department of Education has issued guidance on the timeliness of Prior Written Notice:

- “Such notice must be given to parents a reasonable time before the agency implements that action, but after the agency’s decision on the proposal or refusal has been made.”
Letter to Helmuth, 16 IDELR 550, (OSEP 1990)
- “We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable.”
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- “There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA (local educational agency) actually implements the action. This provides parents, in the event of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented.”
Letter to Chandler, 112 LRP 2763, (OSEP 2012)
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USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.

Timeliness of Prior Written Notice - When Parental Consent Is An Issue

The IDEA Part C 2011 implementing regulations at 34 C.F.R. §303.7(a) define consent to mean that “the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in 303.25.”

The IDEA Part C 2011 implementing regulations at 34 C.F.R. §303.7(b) and (c) state that “the parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked)”).

Prior Written Notice and the IFSP

480 NAC 3-013 states: “The IFSP provides for the written consent of the family to provide services to the child and family. Although the family may accept or reject any part of the early intervention services offered, the child will not receive services until the parents have provided written consent for the service(s) on the IFSP”. So the IFSP serves as PWN and informed consent since both PWN and informed consent is required before the provision of any early intervention services on the IFSP.

Acknowledgement of Receipt

Given the potential ramifications for not sending notice (i.e. denial of access to FAPE-Early Intervention Services), it is required to document the provision of the prior written notice and the date it was provided. Additionally, including the date on which the proposed and/or refused action was made provides documentation that the notice was provided within a reasonable time before the school district implemented the proposed or refused action.

Federal and state regulations do not require a parent to acknowledge receipt of the prior written notice. In those cases where an early intervention provider/district requests that the parent acknowledge receipt of the prior written notice, such acknowledgement does not relieve the early intervention provider/school district’s responsibility to ensure that the prior written notice satisfies the procedural requirements of state and federal regulations with regards to content and timeliness.

Conclusion

Both Federal and state regulations are clear that prior written notice must be provided to the parents of a child with a disability a reasonable time before the school district/early intervention providers proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. When implemented correctly, prior written notice allows parents to fully participate in the early intervention planning process and a reasonable time to fully consider the change and respond to the action before it is implemented.