

Topic and Question Index
December 2010
Updated May 2011

A. REQUIREMENTS OF PRIOR WRITTEN NOTICE 1

**1. Do the regulations indicate that Prior Written Notice must include the
Parent’s Guide to Special Education? 1**

**2. Man1s3....
..... 1**

**accommodations, supplementary services or assistive technology?
(Added 4/11) 3**

**11. Is it necessary to provide prior written notice to parents after every
Committee meeting, including annual review meetings where there are
no recommended changes to the IEP? (Added 4/11) 3**

**12. Must prior written notice be provided to a parent prior to an annual
review if the district proposes to administer standardized assessments
in order to update student progress for the meeting? (Added 4/11)..... 3**

**13. A few districts have mentioned that a State Education Department
representative told them the letters could simply say "refer to the
enclosed IEP for information" on several sections of these letters. Is this
possible? (Added 4/11)..... 4**

**14. Does "changes to special education programs and services" for which
prior written notice is always required include changes to: frequency and
duration, modifications, accommodations, supplementary services,
assistive technology or other items in the IEP? (Added 4/11)..... 4**

**If the answer is yes, then the requirement for prior written notice
includes any change to the IEP, unless the change is only in the present
levels of performance statements? (Added 4/11) 4**

15. 4

the notice to the parent before the BOE approves, is the district required to send a second letter to the parent indicating that the BOE approved the recommendation? 6

3. If a family requests a full CSE meet

..... 6



**QUESTIONS AND ANSWERS ON
PRIOR WRITTEN NOTICE (NOTICE OF RECOMMENDATION),
THE STATE'S MODEL PRIOR WRITTEN NOTICE FORM
AND RELATED REQUIREMENTS**

December 2010

Updated May 2011

The following questions and answers address some of the important issues raised by requests for clarification of the federal and State requirements for prior written notice. equireme9his I

a) prior written notice form is completed

While regulations require that prior written notice generated during the 2011-12 school year and beyond use the State's form, the form does not add any new IEP content requirements than were previously required by State law and regulation. It is the district's responsibility to establish procedures to ensure that information required in prior written notice to parents contains all the federal and State required

assessment), then it is not necessary for the district to provide prior written notice and obtain parental consent for these assessments that are used solely for this purpose.

Prior written notice must be provided to a parent after an annual review meeting in order to inform the parent of the outcome of the meeting.

- 13. A few districts have mentioned that a State Education Department representative told them the letters could simply say "refer to the enclosed IEP for information" on several sections of these letters. Is this possible? (Added 4/11)**

The Department has had long-standing guidance that states that, while an IEP does not provide all the information that is required in prior written notice, it may be used in part to meet some of the prior written notice requirements. To document that prior written notice was properly provided to the student's parents, the district must use the State's prior written notice form, but may, as appropriate, reference in the applicable sections of the prior written notice form, specifically citing where in other enclosed documents or sections of documents the required information is provided. Documents that are enclosed with prior written notice that are used to meet some of the prior written notice requirements must also be provided in the native language of the parent.

- 14. Does "changes to special education programs and services" for which prior written notice is always required include changes to: frequency and duration, modifications, accommodations, supplementary services, assistive technology or other items in the IEP? (Added 4/11)**

Yes.

If the answer is yes, then the requirement for prior written notice includes any change to the IEP, unless the change is only in the present levels of performance statements? (Added 4/11)

Prior written notice must be provided to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of FAPE to the student. While a change to the IEP only in the area of the student's present levels of performance would not require prior written notice to the parent, it seems reasonable that a change in the student's performance levels would result in some change to the student's goals and services.

- 15. Must a student's disability classification be included in prior written notice, and if so, when? (Added 5/11)**

Prior written notice must be given to the parents of the student with a disability a reasonable time before the district proposes or refuses to initiate or change the

identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. The purpose of such advance notice is to provide the parent sufficient time to consider the proposal or refusal and respond prior to the implementation of the proposed action or in response to a refusal to take a requested action. If the disability classification is pertinent to the prior written notice (i.e., initial eligibility determination, declassification or change in disability classification) the disability category must be included in prior written notice.

Can a district include additional enclosures (such as the CSE meeting minutes) with a prior written notice in addition to the required enclosures as listed in Attachment 3? (Added 5/11)

Yes.

Who is responsible for completing the prior written notice forms? Is it the individual special education teacher or the CSE? (Added 5/11)

The decision as to the most appropriate individual responsible to complete and provide prior written notice to a parent is left to local discretion.

In reviewing your Q&A Related to Special Education Forms document, I noted that there was a statement regarding notices that have been translated into

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suggestions, concerns, questions, etc., and/or if he/she is going to challenge the recommendations of the CSE or CPSE.

2. **To conduct a reevaluation and to receive the required consent from parent(s)... is there still an "implied consent" that exists wherein after repeated notices to parent(s) no response is received? If so, can you explain this? (Added 4/11)**

There is no 'implied consent' when a parent fails to respond to a request to provide consent for a reevaluation. The school district must make reasonable efforts to obtain written informed consent of the parent and it must maintain a detailed record of its attempts and the results of those attempts. However, parental consent need not be obtained if the district can demonstrate that it has made reasonable efforts to obtain the consent and the student's parents failed to respond.

D. INITIAL/REEVALUATION

1. **On Attachment 3 under the Description of the Proposed Initial or Reevaluation, it states, "if the district is proposing to base its initial or reevaluation on existing information, the form must still identify the evaluations to be considered as part of the evaluation." Does the district need to include this information if no additional information is needed? Is it required that specific assessments be named?**

Section 200.5(a)(5)(i) of the Regulations of the Commissioner of Education states that upon receipt of a referral for initial evaluation or prior to conducting a reevaluation, prior written notice shall include a description of the proposed evaluation or reevaluation. Section 200.5(a)(6)(i) states that if the committee and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's education needs, the school district must notify the parents of that determination and the reasons for that determination.

Based upon these two regulatory citations, a district must provide a description of the initial or reevaluation, whether new data are needed or not. The examples used in Attachment 3 clarify that this description can identify the type of assessment (e.g., language assessment, psychological assessment

proposed initial evaluation, pursuant to section 200.4(b)(5) of the Regulations of the Commissioner of Education.

3. **For initial evaluation scenarios – What do we write in the section for "Description of Evaluations used in decision . . ." when a parent is the referring agent and does not provide evaluation or report documentation for referral?**

This section of the IEP documents the relevant facts that are the reason/basis for an initial evaluation to occur. There may be cases where there are no prior assessments, records or reports, in which case, that is what would be documented in this section.