

Prior Written Notice of Refusal

Prior written notice of refusal, often referred to as PWN, is frequently mentioned on parent forums and advocacy sites. This document will address what prior written notice of refusal (PWNR) is and how it can assist parents in dealing with public schools to promote the provision of appropriate and required services for their child.

Prior Written Notice (PWN) is a procedural safeguard provided in the federal law for parents and is actually broader than PWNR. The IDEA regulations at 300.503 say that a school must give written notice “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.”

In addition, a school must provide prior written notice before implementing an individualized education program (IEP) with which the parent or adult student disagrees.

Item (2) refers to what we will call PWNR. Schools have more difficulty in doing (2) or doing it correctly than in doing item (1). Examples of PWN under (1) are: the notice of the intent to evaluate a student (a consent to evaluate form should come with this notice); the notice of an ARD/IEP committee meeting, whether the request is initiated by the school or the parent; and the notice of an ARD/IEP committee meeting to consider special situations, e.g. manifestation determination and moving a student to a discipline program and dismissing a student from special education services.

The content of the written notice must include (300.503(b)):

1. A description of the action proposed or refused by the district;
2. An explanation of why the district proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
4. A statement that the parents of a child with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this regulation; (FYI, the TX required procedural safeguards document requires schools to show the Partners Resource Network Project in your area as one source.)
6. A description of other options that the ARD/IEP committee considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the district’s proposal or refusal.

PWNR must be provided a reasonable time before a school refuses to initiate or change one of the required actions. In Texas, reasonable notice has been defined as at least five school days. This means that a student’s new or revised IEP cannot be implemented until at least five school days after the LEA provides the prior written notice, unless the parent or adult child agrees otherwise. Prior written notice is required whenever a student’s IEP is changed, regardless of whether the parent agrees or disagrees with the change. The record from the ARD committee meeting, which includes among other things the proposed IEP, can be used for the prior written notice as long as the documents the parent or adult student receives contain all of the content that must be included in a prior written notice.

Often when a school provides PWNR it does not include all of the required seven items. In a number of cases, state agencies and hearing officers have ruled that districts have violated the requirements of PWN. However, in

some cases it was ruled that content left out of the notice was a procedural violation, but was “a mere technical violation”, because it did not seriously impact the child’s or parent’s rights. Despite such rulings, it is still important for parents to understand these regulations and request and push for a PWN that is complete and easy to understand.

A complete and clear PWN is not only a communication instrument; it also can give parents a basis for challenging a school’s actions at that time. It can also be used in challenging the school’s actions later, if their child continues to struggle and/or make limited or no progress. Many school attorneys stress to schools the importance of providing notices with well thought out and defensible descriptions and explanations of why an action was refused. In one case cited to schools, the state agency found that the district’s response to the parent that the service could not be offered because it was not in the IEP was “circular and specious.” 106 LRP 25823 (MN State Educational Agency) (2000). In another case, a hearing officer found that the school’s statement that the placement would be a violation of IDEA with no explanation or citation to law or regulations was a violation of the law. 102 LRP 3682 (HI Hearing Officer) (2000).

OSEP has said that PWN is required when consensus is not reached on services to be in the IEP or other issues regarding the child. At times the parent may disagree with part, but not all of the proposed IEP. If a compromise can not be reached, they must decide whether to disagree with the total IEP or indicate which parts of the IEP that they disagree with. Then the school must provide PWN regarding the items that there is disagreement on.

In other cases, the school would need to provide notice in a separate document. This would be the case if the district was refusing to initiate or change evaluation. If the parent made a request in writing that dealt with identification, evaluation, or educational placement or the provision of FAPE, which was dealt with outside of an ARD/IEP meeting, separate PWN would be required. This could also involve requests involving non-academic matters, such as transportation, counseling, employment of students, and extracurricular services and activities.

If adequate notice of refusal is not included in the ARD/IEP documents or within five school days of the meeting, the parent should send a letter requesting PWN to the special education director with a copy to the school superintendent. The same procedure should be followed, if the parent makes a request in writing and the school does not respond within five school days.

The effort by many schools to implement the Response to Intervention (RtI) concept should increase the number of PWN’s sent to parents. If a parent requests in writing a special education evaluation of their child and the school responds that they are trying or will try RtI activities first, the school should provide PWN. If the school does not do this, the parent should request the required notice. At any point a request for a due process hearing, or mediation, or a complaint can be made to the state (Texas Education Agency) following procedures in the Notice of Procedural Safeguards Document.

Parents should also closely and frequently monitor the RtI activities and should be prepared to make another request for a special education evaluation, if progress is not being made within 4-6 weeks. RtI activities are specifically part of the procedures for identifying students with specific learning disabilities. Learning disabilities involve processes in understanding or in using language, spoken or written, and include conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. At times, schools may implement RtI for students who have or may have disabilities other than a specific learning disability.

PWN and PWN are requirements intended to help parents better understand what the school is proposing to do or not do and an explanation of why the school is taking this position. If you are not clear on what the school is saying and why it is taking a position, you have the right to ask for additional information. If you have questions about specific situations, contact the Partners Resource Network office or your PRN Regional Coordinator for assistance. TEA guidance on PWN is at: www.tea.state.tx.us/index2.aspx?id=2147498965



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