Prior Written Notice and Other Factors

IDEA provides procedural safeguards, which are legal rights and protections given to parents/guardians. One of those safeguards is the documentation called Prior Written Notice (PWN). The PWN provides a clear record for the student, parent and school of the decisions that have been made; the basis for those decisions and the actions that will or will not be taken. The PWN may be references in any number of circumstances, such as subsequent meetings or dispute resolution situations, or as a clarification and reminder to all parties of all commitments made. The written notice must provide:

* A description of the schools’ action(s), proposed or refused
* An explanation of why the school proposes or refuses to act
* A description of other options the school considered and why they were rejected
* A description of evaluations, tests, records or reports the school used as a basis for the action proposed or refused
* A description of other factors relevant to the school’s proposal or refusal
* A statement that procedural safeguards are available to the parents and how to attain a copy of the Safeguards.
* A statement of who the parents of a child with a disability may contact to understand their rights and the rights of their children afforded under the protection of IDEA of 2004.

1. **Sample PWN statements on an Initial/Reval IEP.**

* Billy received extra help in reading and math within regular education, but his skills are still significantly below grade level and he has difficulties processing information. The child study team considered if additional formal testing was needed to determine whether Billy is/continues to be eligible for special education. The option was rejected because sufficient exiting information on Billy’s academic performance is available and it is not necessary to subject Billy to further formal testing. The IEP team considered whether Billy’s special education needs could be met through consultation by the special education teacher to the regular education teacher. This option was rejected because the team determined that Billy’s reading and math skills are too delayed at this time and would not provide him with sufficient help to make progress.
* Positive behavior interventions using a behavior contract and opportunities to earn special privileges for maintaining behavioral self-control have not been effective in helping improve Jessie’s behavior. Jessie has difficulty following classroom and school behavior rules and expectations and his aggressive behavior is unsafe and disruptive in the general education classroom. Teacher and parent reports, school discipline records, observations by the school counselor, review of data from behavior interventions were used to make a decision to evaluate and determine/continue to determine Jessie eligible for special education. The child study team with input from Jessie’s parents considered additional resources such as KOFI and an after school club to address Jessie’s behavior problems. The team including the parents determined that Jessie would benefit from those resources but they were not sufficient at this time to address Jessie unsafe behavior. The option of serving Jessie in regular education with services from special education was rejected because Jessie’s aggressive behavior poses a threat to the safety of others. The team also considered placing Jessie in a regular classroom for science and social studies, this option was rejected due to the frequency and severity of Jessie’s aggressive behavior in all regular education classes based on an analysis of behavior data. The team agreed for full time placement in special education class that supports social emotional development.
* Lacina’s speech clarity is not at a level expected for her age and her parents and teachers have difficulty understanding her when she talks. A review of the speech sounds Lacina has difficulty saying was reviewed. Speech samples, parent and teacher report were used to determine the need for speech therapy. The SLP, teacher and parent discussed whether Lacina’s speech would improve by continuing to expose her to good speech sounds in the classroom. This options was rejected because Lacina’s speech has not improved using this method and she continues to have multiple errors in her speech. The IEP team considered whether Lacina’s speech needs could be met by providing speech therapy in the regular education classroom. This option was rejected because Lacina needs a quiet environment to learn and practice how to make correct speech sounds.

1. **PWN for annual review**

* Johnny has not made sufficient progress on his IEP goals and continues to demonstrate a need for special education and related services. Johnny has been identified with a Specific Learning Disability in reading and requires direct instruction in order to make sufficient academic progress. The team considered input from the parents and classroom teachers, progress on previous IEP goals and current district and classroom performance to determine current goals and objectives. The team considered increasing his time in special education but decided against that option because Johnny is making sufficient progress with his current amount of service time.
* Sally is a 9th grader and is required to have a transition assessment to determine her needs in post-secondary education, training, employment and independent living. Sally has been identified with multiple disabilities and requires intensive direct instruction in order to make sufficient academic, career and independent living skill development. The team considered input from parents, classroom teachers and special education staff reviewing progress on her previous IEP goals and current district and classroom performance. This information was used to determine new annual goals and determined that increased time in the extended services classroom would benefit Sally’s need for gaining career and independent living skill development. The team rejected the option of keeping the hours of special education the same as Sally is not making sufficient progress in academics and could benefit from increased time to gain skills to meet her goal of living as independently as possible and working with support. ESY eligibility was reviewed and determined. Sally is eligible for summer services to work on communication and reading and math goals.
* The IEP team reviewed the parents request for a paraprofessional to be assigned to support Jane throughout her 6 hour school day. After a review of progress of IEP goals, input from Jane’s general education teacher, her special education teacher and related service providers, the team felt additional aide support would create a dependence on this continuous support, lessening her ability to develop independence and the ability to self-monitor. AT this time, Jane has been very successful with part-time help from the paraprofessional who supports two other students along with Jane during the core academic times.

1. **Other factors**

* If other relevant factors exist, report them in this section. Other factors affecting a proposal include language and/or cultural issues, communications concerns, health concerns, behavior concerns and/or assistive technology
  + Minerva has a diagnosis of ADHD and will need testing sessions broken down into smaller segments to obtain optimal results.
  + Jose is not a native English Language speaker, some accommodations will be made for …(Evaluation or Vocabulary Development in instruction, or for English and Spanish concept development).
  + Wyatt uses bilateral hearing aids and aids will be checked for proper function and will be worn during all instructional activities.
  + Pierre has a health condition that requires frequent restroom breaks. This accommodation is addressed in the IEP.
  + Paraprofessional supports were described and will be provided under the direct supervision of…..for/diaper changing/in regular classroom.

1. **PWN termination of special education or related services.** Notice of meeting and permission to evaluate should reflect PWN notice that eligibility for special education is a consideration/or adding or removing a related service will be a consideration.  **Complete a Prior Written Notice for Special Education Action in Enrich/Add Action EVERY time a student is exited from (no longer found eligible) special education and an IEP is no longer written.**

* For Jane’s redetermination of eligibility, a review of existing data was completed. The team determined that the data was sufficient to determine eligibility. The team, based on the review of existing data, determined that Jane no longer meets the eligibility criteria for specific learning disability in the area of reading and writing. The team also determined that Jane does not meet the criteria to quality for any other disability category. The current school year’s grades, progress reports, input and feedback from special education and regular ed teachers, along with samples of Jane’s work in the areas of reading and writing, were reviewed. Jane has demonstrated marked achievement. She is fully included in the regular class and has been receiving minimal support from special education. Her achievement scores and grade reports indicate Jane is now performing at grade level. Both of Jane’s teachers and parents agree that Jane is able to maintain progress without special education services.
* Lucy has made significant progress in her speech clarity. Parents and classroom teachers reported that her speech has ability has improved and that they are understanding her communication most of the time. Lucy has made progress on her annual goals. The review of existing data (speech samples, teacher and parent report) was used to determine that Lucy is no longer in need of speech therapy services. Lucy continues to be eligible for special education supports for the gaps that continue in her academic progress. The team, including the parents, agreed to continue special education services for academics and to eliminate the speech language services. (**When special education services are continued, the PWN is embedded in the IEP).**

The examples in this PWN guidance are NOT comprehensive example or list. There are a multitude of other scenarios that could be documented. PWN depends on each situation and is dependent on what occurred in the IEP meeting. See the attached What Circumstances Require a Prior Written Notice to determine events that require PWN.

In Colorado, there are 8 times when PWN must be provided.

1. When the public agency proposes to initiate or change identification of a student.
2. When the public agency proposes to initiate or change the evaluation of a student.
3. When the public agency proposes to initiate or change the educational placement of a student.
4. When the public agency proposes to initiate or change the provision of free, appropriate public education (FAPE) to a student.
5. When the public agency refuses to initiate or change identification of a student.
6. When the public agency refuses to initiate or change the evaluation of a student.
7. When the public agency refuses to initiate or change the educational placement of a student.
8. When the public agency refuses to initiate or change the provision of FAPE to a student.

If ESY services are determined at a later date, PWN regarding ESY services needs to be provided, as this is a change in services.

**What Circumstances Require a Prior Written Notice:**

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| --- | --- | --- |
| **Events Requiring Prior Written Notice** | **Yes** | **No** |
| **Identification** |  |  |
| Screening |  | **X** |
| Problem Solving Team |  | **X** |
| Intervention Strategies |  | **X** |
| Referral for Initial Evaluation (Use *Prior Notice & Consent for Evaluation*) | **X** |  |
| **Evaluation** |  |  |
| Collection of new data for initial evaluation and reevaluation (Use *Prior Notice & Consent for Evaluation*) | **X** |  |
| Evaluation of progress on the annual goals |  | **X** |
| Administration of state or district assessments |  | **X** |
| Independent education evaluation |  | **X** |
| Determination of eligibility upon completion of an initial evaluation or reevaluation (Use *Prior Notice & Consent for Initial Provision of Services*) | **X** |  |
| Eligibility issues | **X** |  |
| Refusal to conduct an evaluation | **X** |  |
| **Educational Placement** |  |  |
| Initial provision of special education services (Use *Prior Notice & Consent for Initial Provision of Services*) | **X** |  |
| Relocation of the special education program |  | **X** |
| Any change in educational placement | **X** |  |
| Termination of special education and related services | **X** |  |
| Transfer of student to another school or district |  | **X** |
| Graduation with a regular diploma | **X** |  |
| Disciplinary removal for more than 10 consecutive school days | **X** |  |
| Disciplinary removal for not more than 10 school days |  | **X** |
| A series of disciplinary removals that constitute a pattern of removals | **X** |  |
| Disciplinary removal to an Interim Alternate Educational Setting for not more than 45 school days | **X** |  |
| **Provision of FAPE** |  |  |
| Deletion or addition of related service | **X** |  |
| Change in annual goals on an existing IEP | **X** |  |
| Increase or decrease in special education services or related services | **X** |  |
| Change in how a student will participate in state and district assessments | **X** |  |
| Review and revision of the IEP | **X** |  |
| Increase or decrease of supplementary aids and services or supports to the school personnel | **X** |  |
| Refusal to increase or decrease related service | **X** |  |
| Consideration of ESY if done at a separate meeting | **X** |  |