

Prior Written Notice

October 2022

**Myth: A Notice of Action and Prior Written Notice are two different documents.**

**Fact:** Missouri has updated terminology to more closely align with the terminology used in the IDEA (Individual with Disabilities in Education Act, 2004) statute and its regulations. The document Missouri previously referred to as a Notice of Action (NOA) is now called a Prior Written Notice (PWN).

**Myth: The PWN only needs to address a description of the action the LEA is proposing or refusing to take.**

**Fact:**A PWN must include all of the following information for each action the district is proposing to take or refusing to take:

* A description of the action proposed or refused by the district.
* An explanation of why the district proposes or refuses to take the action.
* A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
* A description of other options that the IEP team considered and the reasons why those options were rejected.
* A description of other factors relevant to the district's proposal or refusal.
* A statement that the parents have protection under Part B's procedural safeguards and, the means by which a copy of a description of the procedural safeguards can be obtained.

Sources for parents to contact to obtain assistance in understanding the provisions of Part B.

PWN’s, like IEPs, are not "one-size-fits-all" documents. When composing a PWN, use clear, common everyday language to explain precisely what action you are proposing or refusing to take and why you are proposing or refusing to take the specific action. IDEA requires that PWNs should be, “written in language understandable to the general public and in the native language or other communication mode of the parent” (34 CFR §300.503 (c)(1)); Avoid the use of acronyms, such as, IDEA, LRE, and IEE, without proper explanation. While there are many acronyms used in special education, it may be some parents’ first exposure to these terms and could lead to uncertainty and/or misunderstanding of the information being provided. Additionally, the names of any assessments, such as WISC IV, WJ III, BASC, etc. that are mentioned in the prior written notice should be spelled out so that the parent knows precisely to which assessment the IEP team is referring. If the action being addressed in the PWN was a parent requested action, it should be clearly stated as such within the context of the PWN. A well-crafted PWN is one of the best tools in your toolkit to show that parent input is considered and parent requests are being acted upon. Prior written notice serves as a vehicle of communication between schools and families. It is critical that parents are always well informed about whatever action the LEA intends to take (or intends not to take) on behalf of their child.

**Myth: A PWN is only required when we change a service in a student’s IEP.**

**Fact:** There are multiple actions that can trigger the need for PWN to be provided to parents. Written notice must be given to the [parents](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=b6ce5c79a8e97041f2936a0d0d738c11&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:III:Part:300:Subpart:E:300.503) of a child with a disability a reasonable time before the [public agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e0aca252d5dfb28bf343529a57e1b329&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:III:Part:300:Subpart:E:300.503):

**Proposes** to initiate or change the identification, [evaluation](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7fd9f9efac7a11c68c7fbb4a2779de69&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:III:Part:300:Subpart:E:300.503), or educational placement of the child or the provision of FAPE to the child; or

**Refuses** to initiate or change the identification, [evaluation](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=7fd9f9efac7a11c68c7fbb4a2779de69&term_occur=999&term_src=Title:34:Subtitle:B:Chapter:III:Part:300:Subpart:E:300.503), or educational placement of the child or the provision of FAPE to the child. 34 CFR §300.503

Take note that a PWN is required not only when a LEA **proposes** to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child but also when an LEA **refuses** to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.

Keep in mind that the provision of FAPE is a broad and overarching concept that is woven into every aspect of the special education process. IDEA defines FAPE as special education and related services that are provided free of charge to the parent, meets state standards and are provided in conformity with an individualized education program (IEP) that meets the requirements outlined in IDEA. When debating if an action could trigger a PWN under provision of FAPE, teams will need to consider if the proposed or refused action will impact the special education or related services provided to the student. If the answer is “yes”, then the need for a PWN is most likely triggered.

“When in doubt, give it out” might be a mantra LEAs might want to follow when determining if a PWN needs to be provided.

**Myth: We can only include one action on each PWN.**

**Fact:** There may be instances in which LEAs could combine multiple actions in a single PWN, however, each action should be clearly articulated and each of the required components for the PWN (mentioned above) must be addressed for each action listed on the PWN. If the PWN becomes too complex and difficult to understand, the parent may not fully understand what actions you are proposing or refusing to implement and why. In this case, it might be advisable to divide each of the actions on to separate PWN forms.

**Myth: A PWN is not required to be provided to a parent if the IEP is revised using the amendment process.**

**Fact:** A PWN must be provided to the parent 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. This provision applies, even if the IEP is revised without convening an IEP Team meeting.

\*[OSERS Question and Answers on Individualized Education Programs, Evaluations, and Reevaluations, January 2007](https://nceln.fpg.unc.edu/sites/nceln.fpg.unc.edu/files/resources/OSEP%20question%20and%20answer%20document%20for%20IEPs%20and%20Reevaluations.pdf)

**Myth: If the parent is the one who initiates the request for the action the LEA does not need to provide the parents a PWN.**

**Fact:** A PWN is required when the LEA proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to a child. This requirement is triggered regardless if it is the school or the parent who is initiating the request.

**Myth: If all members of the IEP team, including the parent, agree with a proposed action, a PWN does not need to be given to the parents. A PWN is only required if the IEP team does not reach consensus.**

**Fact:** The Office of Special Education Programs (OSEP), U.S Department of Education, (DOE) is clear that PWN is not limited to non-consensus IEP meetings. In Letter to Lieberman, (OSEP 2008), OSEP issued the following guidance: “Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency. If during an 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.” <http://www2.ed.gov/policy/speced/guid/idea/letters/2008-3/lieberman081508notice3q2008.pdf>

**Myth: If we fail to provide a PWN or fail to write a PWN with sufficient detail, it’s only a procedural compliance violation.**

**Fact:** Failure to provide a prior written notice can result in claims that the student was denied a Free Appropriate Public Education (FAPE). Typically, these claims allege that the LEA denied the parents a meaningful opportunity to participate in their student’s education. If challenged, there is potential for this procedural error to result in a more substantive error in which the LEA could be found in violation of IDEA for not providing FAPE to the student.

LEAs should also strive to compose PWNs that are error free and contain details relevant to the individualized decisions being made by the LEA. Avoid “cutting and pasting” from previously completed PWNs, especially when it involves another child, and have another IEP team member “proofread” the prior written notice document at the meeting, if possible, prior to issuing it to the parents to ensure that mistakes, such as referring to a child by the wrong gender, misspelling names, or entering other “incorrect” information, are avoided. While errors such as these may not be substantial enough to result in a denial of FAPE, they could give the parents the impression that the student’s IEP team either does not know their child or that it did not base its proposed or refused actions on information relevant to their child. PWN must be provided without undue delay. So don’t let an internal review process hold up timely provision of the PWN.

**Myth: A proposed action can be implemented before a PWN is provided to parents.**

**Fact:** A PWN must be provided to parents a reasonable time (generally ten days) before the district’s proposed action or refusal goes into effect. If parents indicate they have had ample time to consider the proposed action and would like for the proposed action to be implemented as soon as practical, they may waive the 10 day waiting period either in writing or verbally as documented on Missouri’s model PWN form.