

## **GUIDELINES ON THE USE OF NEW YORK STATE MANDATED PRIOR WRITTEN NOTICE FORMS (NOTICE OF RECOMMENDATION)**

All Prior Written Notices provided to a parent of a student with a disability or parent of a student suspected of having a disability must, beginning September 1, 2009, be on a form prescribed by the Commissioner.

### **WHAT IS A PRIOR WRITTEN NOTICE?**

Prior written notice means a notice from the school district in writing that fully informs the parent of any recommendations (including recommendations in which the school district is refusing to take certain actions) of the Committee on Special Education (CSE), Subcommittee on Special Education or Committee on Preschool Special Education (CPSE) before the recommendations are implemented.

### **WHEN MUST A SCHOOL DISTRICT PROVIDE THE PARENT WITH PRIOR WRITTEN NOTICE?**

The school district must give the parent prior written notice whenever the district/Committee proposes or refuses to initiate, continue or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. Prior written notice is required when the school district/Committee:

- proposes (or refuses) to initiate an evaluation or reevaluation of the student;
- proposes (or refuses) to provide special education services for the student;
- proposes (or refuses) a change to the educational placement of the student;
- proposes (or refuses) to change the student's eligibility for special education (disability classification);
- proposes (or refuses) to change the recommendations in the student's individualized education program (IEP);
- proposes to graduate the student with an IEP diploma; or
- proposes to graduate the student with a Regents or local high school diploma.

### **WHEN MUST THE PARENT RECEIVE THE PRIOR WRITTEN NOTICE?**

A parent must receive written notice within a reasonable period of time before the action occurs (e.g., before the IEP is implemented).

### **WHY IS PRIOR WRITTEN NOTICE REQUIRED?**

Prior written notice is necessary so that parents are fully informed, in writing, of district/Committee recommendations and the basis and reasons for the recommendations. A parent has the right to disagree with the recommendations and request further review by the district/Committee. A parent could also request dispute

resolution through mediation or an impartial hearing. The written notice must be provided within a reasonable time before the recommendations are implemented so that a parent can exercise his or her due process rights before the recommendations are implemented.

**WHAT INFORMATION MUST BE INCLUDED IN THE PRIOR WRITTEN NOTICE?**

The information in the prior written notice must, in writing, describe what action the district/Committee proposes or refuses to take and the reasons why. At a minimum, **each prior written notice must include** the following:

- a description of the actions proposed or refused by the district/Committee;
- an explanation of why the district/Committee proposes or refuses to take the action;
- a description of each evaluation procedure, test, record, or report the district/Committee used as a basis for the proposed or refused action;
- a description of other options that the district/Committee considered and the reasons why those options were rejected;
- a description of other factors that are relevant to the district/Committee's proposed or refused action;
- a statement that the parents of a student with a disability have protection under the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) and, if the notice is not an initial referral for an evaluation, the means by which a copy of the New York State Education Department (NYSED) Procedural Safeguards Notice can be obtained; and
- sources for parents to contact to obtain assistance in understanding the special education process.

**DESCRIPTION OF ACTIONS PROPOSED BY THE DISTRICT**

The prior written notice must inform the parent of any actions the district/Committee is proposing to take. Examples include when the district/Committee proposes to:

- *conduct an individual evaluation or reevaluation to determine a child's eligibility or continuing eligibility for special education services;*
- *identify the student as having a disability to receive special education services;*
- *provide special education services as recommended on the student's IEP; or*
- *declassify the student.*

A copy of the IEP, which must be given to the student's parents, provides some of the required prior written notice information (actions proposed by the district/Committee). A district/Committee may indicate on the prior written notice form that the IEP is

attached that describes the actions proposed for the student. If so, the IEP must be provided in the native language or other mode of communication used by the parent, unless it is clearly not feasible to do so.

*DESCRIPTION OF THE ACTIONS REFUSED BY THE DISTRICT*

When the district/Committee refuses to implement a recommendation proposed by the parent relating to the identification, evaluation, IEP services, or educational placement of a student, this must be documented in the prior written notice to the parent. Examples include when the district/Committee refuses to:

- *conduct an evaluation requested by the parent;*
- *provide a particular special education service, modification or accommodation;*
- *place the student in a particular placement;*
- *change the student's eligibility status or change the student's classification;*
- *recommend a specific assistive technology device; or*
- *recommend extended school year services.*

*EXPLANATION OF WHY THE DISTRICT PROPOSES OR REFUSES TO TAKE THE ACTION*

The explanation of why the district/Committee proposes or refuses to take a particular action should, as appropriate, be based on the needs of the student. Examples include:

- *The student was evaluated in this area three month's earlier.*
- *The student's hypersensitivity to noise and visual distractions cannot be accommodated in a general education class.*
- *The student's delay in reading is attributed to a lack of instruction in reading rather than a disability in this area.*

*DESCRIPTION OF EACH EVALUATION PROCEDURE, TEST, RECORD OR REPORT THE DISTRICT USED AS A BASIS FOR THE PROPOSED OR REFUSED ACTION*

The prior written notice must include a description of the information which served as the basis for a proposed or refused action. For example:

- *An assessment of speech/language skills*
- *A functional behavioral assessment*
- *Observations of the student*
- *Social history of the student*
- *Physical evaluation of the student*
- *Psychological evaluation*

*DESCRIPTION OF ANY OTHER OPTIONS THAT THE DISTRICT CONSIDERED AND THE REASONS THOSE OPTIONS WERE REJECTED*

The prior written notice must provide an explanation of other options considered. The reasons other options were rejected should be based on the needs of the student. As an example:

*Resource room services were not selected because of Richard's need for intensive specialized instruction to address his difficulties with verbally presented information. Richard's documented*

*problems processing verbally presented information and not recalling information well has resulted in his inability to pass these subjects even with significant support (e.g., direct consultant teacher services and individual behavioral intervention plan). He has been unable to maintain his attention to task in classes where there are verbal lectures (even when provided with written notes to accompany the lectures). Richard's frustration when he cannot keep pace with his peers results in acting out behaviors leading to frequent removals from the classroom. Therefore, special class instruction is recommended outside of the general education class.*

**DESCRIPTION OF  
OTHER FACTORS  
THAT ARE RELEVANT  
TO THE PROPOSED  
OR REFUSED ACTION**

The prior written notice must provide an explanation of other factors relevant to the proposed or refused action. As an example:

*Marci's age and physical limitations were considered in the Committee's recommendation.*

**PROCEDURAL  
SAFEGUARDS  
NOTICE**

The prior written notice must include a statement that the parents of a student with a disability have procedural safeguards protection.

If the prior written notice is an initial referral for evaluation, a copy of the procedural safeguards notice must accompany the prior written notice. Otherwise, the prior written notice must include a statement that tells the parent how he or she may obtain a copy of the procedural safeguards notice. A school district may place a copy of the procedural safeguards notice on its Internet website if such website exists. A parent of a student with a disability may elect to receive the procedural safeguards notice by an electronic mail (e-mail) communication if the school district makes such an option available.

New York State's mandatory procedural safeguards notice can be found at: <http://www.vesid.nysed.gov/specialed/publications/policy/psgncover.htm>.

**SOURCES FOR  
PARENTS TO  
CONTACT TO OBTAIN  
ASSISTANCE IN  
UNDERSTANDING  
THE SPECIAL  
EDUCATION  
PROCESS**

The prior written notice must include sources for the parent to contact in order to obtain assistance in understanding the special education process. For example, a Special Education Parent Center with phone number, a district contact person such as the CSE or CPSE chairperson or the Parent's Guide to Special Education.

**ADDITIONAL  
INFORMATION IN  
PRIOR WRITTEN  
NOTICES**

The following information is also required when prior written notice is given for specific recommendations:

**Prior to conducting an initial or reevaluation of the student:**

- a description of each proposed evaluation or reevaluation and the uses to be made of the information; and
- a statement that the parent may submit evaluation information which, if submitted, will be considered by the Committee as part of its evaluation or review.

**Prior to a student's graduation with a local high school or Regents diploma:** indicate that the student is not eligible to receive a free appropriate public education after graduation with the receipt of a local or Regents diploma.

**Before a student graduates with an IEP diploma:** indicate that the student continues to be eligible for a free appropriate public education until the end of the school year in which the student turns age 21 or until the receipt of a regular (local or Regents) high school diploma.

**HOW PRIOR  
WRITTEN NOTICE  
MUST BE WRITTEN**

The notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure that:

- the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- the parent understands the content of the notice; and
- there is written evidence that the above requirements have been met.

**PRIOR WRITTEN  
NOTICE WHEN  
PARENT CONSENT IS  
REQUIRED**

Parent consent means the parent has been fully informed of all information relevant to the activity for which consent is sought. Therefore, the district/Committee must give prior written notice to the parent at the same time it requests the parent's consent for the proposed activity (e.g., initial referral, reevaluation, initial provision of services and initial provision of 12-month services).

**REQUIRED  
ATTACHMENTS TO  
PRIOR WRITTEN  
NOTICE**

Upon initial referral for special education evaluation, a copy of the New York State Procedural Safeguards Notice and a copy of the NYSED's Parent's Guide to Special Education in New York State (<http://www.vesid.nysed.gov/specialed/publications/policy/parentguide.htm>) (or locally developed handbook) must be provided to the

parent. In addition, parent consent forms should be attached to prior notices seeking parent consent for initial or reevaluation, and the initial provision of service, including initial provision of 12-month services.

**REQUIRED FORMS  
FOR PRIOR WRITTEN  
NOTICE**

The following forms must be used for all prior written notice provided to the parent beginning September 1, 2009:

- Initial Referral for Special Education
- Reevaluation for Special Education
- Eligible for Special Education Services
- Not Eligible for Special Education Services
- Declassification – School-Age Student
- Declassification – Preschool Child
- Changes to Special Education Identification, Services or Educational Placement
- Initial Provision of Twelve-Month Special Education Services
- Graduation with a Regular High School (Local or Regents) Diploma
- Receipt of an IEP Diploma

**ARE ALTERATIONS  
TO THE STATE'S  
MANDATED PRIOR  
WRITTEN NOTICE  
ALLOWED?**

A school district may not alter or omit any wording of the content in the State's mandated forms, except where the forms require one or more selections of content or if information is clearly not applicable to a student (e.g., when the notice is going to the parent or guardian of a school age student, information applicable only for preschool students may be omitted). The notice may be inserted on school district letterhead and the district may provide additional enclosures with the prior written notice as it deems appropriate to the individual student.