

# Prior Written Notice of Action Q & A's

---

## General Questions

**Question:** What is considered reasonable notice before implementing the action proposed?

**Answer:** Seven days is considered reasonable notice for Prior Written Notice of Action.

**Question:** Do we have seven days to mail Prior Written Notice?

**Answer:** There is no specific timeline for which Prior Written Notice of Action must be provided to the parent. The notice should be provided within a reasonable time of the decision for which the notice is based on, and it is up to the LEA to determine what is reasonable. However, the date the notice is provided (which should be the date entered at the top left hand corner of the form) will affect timelines. The sooner the notice is provided, the sooner the action proposed on the Prior Written Notice of Action can be implemented.

**Question:** Is Prior Written Notice of Action required if the parent no longer wants special education services and signs the Revocation of Parent Consent for Placement?

**Answer:** If the parent wishes to stop special education services completely, the district would still be required to provide Prior Written Notice of Action, even if the parent signed the Revocation of Parent Consent for Placement, Ages 3-21 form. Prior Written Notice of Action would inform the parent that the student would no longer be receiving special education services based on parental request, and their educational placement would be changing from the current placement to regular education with no special education services.

**Question:** Are we still required to get a parent signature for receipt of rights even though the Prior Written Notice of Action form has a section that informs parents that they can access Your Rights Under IDEA on the special education website?

**Answer:** You are not required to provide parents with a copy of Your Rights Under IDEA in every instance Prior Written Notice of Action is provided. However, you are still required to provide a copy and obtain a parent signature on the Documentation of the Receipt of Rights Under the Individuals with Disabilities Education Act, Ages 3-21 form at the following times:

- One time per school year
- Initial referral
- Receipt of first state complaint and receipt of first due process complaint
- The date the decision is made to make a removal that constitutes a change of placement because of a violation of a code of student conduct
- Upon request by a parent

\*If the parent does not attend the conference, document the rights were mailed.

**Question:** Would you please consider renaming this document "Written Notice Prior to Action" or something like that? The word prior at the beginning of the title is confusing and could be a little misleading for parents and staff. If the title is changed, you may want to consider eliminating the title on top of each box and just label it Box A – "Parental Consent is Required for these Actions".

**Answer:** The model form from OSEP is titled Prior Written Notice. In addition, this is the most common terminology. We added "of action" for clarification.

**Question:** Please explain why we would either propose or refuse "Provision of FAPE". Is there a better way to word that? We understand that it is worded that way in the federal law, but does it actually refer to programming?

**Answer:** We will keep FAPE as an option as this is consistent with state and federal regulations. The FAPE option primarily refers to substantial changes in programming. We will be providing

## **Prior Written Notice of Action Q & A's**

---

sample scenarios that involve changes in FAPE and examples of Prior Written Notice of Action based on the accompanying scenario.

### **Evaluations/Re-evaluations**

**Question:** If a parent is not in attendance at a conference for which the purpose is to review existing data prior to a re-evaluation, and the decision is made to conduct the re-evaluation WITH additional assessment, how do you obtain consent? How many attempts before you can proceed?

**Answer:** Section 7.03.1 of the Arkansas Special Education and Related Services Procedural Requirements and Program Standards states the following: *Informed parental consent need not be obtained for re-evaluation if the public agency can demonstrate that it has made reasonable efforts to obtain that consent and the parent has failed to respond.* To demonstrate reasonable efforts the LEA would need documentation of at least two attempts to obtain consent (after the decision was made that additional assessment data was needed) before proceeding with the evaluation. These attempts can be documented on the top right hand corner of the Prior Written Notice of Action form. The choices are “personally presented”, “mail” or “email”.

**Question:** Do we still give the parent the Information Regarding Consent, Ages 3-21 form that was required to be provided with the previous Informed Consent form?

**Answer:** No, this is not required.

**Question:** What do we do if a parent revokes consent for an evaluation within the seven-day “waiting period” before the action proposed (evaluation in this case) can take effect?

**Answer:** Prior Written Notice of Action is required for evaluations, but the LEA may begin the evaluation immediately after receipt of parent consent (a seven-day waiting period is not required). If the parent revokes consent during the evaluation period, the LEA should provide Prior Written Notice of Action to the parent informing them that the evaluation is being discontinued based on parental request.

**Question:** Under “Basis for the Action”, the description of what should be included reads: *A listing of each evaluation procedure, assessment, record, or report used as a basis for the action.* Do you have to list each one or can you state, “see attached” and attach a list?

**Answer:** The data sources used as a basis for the action should be included in this section. It should not be an attachment.

### **Discipline**

**Question:** When is Prior Written Notice required for long-term suspensions? Would Prior Written Notice be needed to notify the parent of the change to the student’s educational placement as a result of the removals (as opposed to notifying the parent of the removals themselves)? Also, would seven days be required before implementing the action proposed?

**Answer:** Parent notification is a very important aspect of implementing IDEA’s discipline procedures. On the date when the decision is made to make a removal that constitutes a change of placement (more than 10 consecutive days or a series of removals that constitutes a pattern) of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision (Prior Written Notice of Action) and provide the parents the procedural safeguards notice described in §300.504. [§300.530(h)]. Before the action is implemented, the district is required to wait a reasonable amount of time (AR considers seven days to be reasonable) to implement the action unless the parent agrees to more immediate

## Prior Written Notice of Action Q & A's

---

implementation. However, the LEA does have some flexibility as circumstances warrant (e.g., need to change placement to ensure safety).

### **Below is a sample scenario of a disciplinary removal that would constitute the need for Prior Written Notice of Action to be provided:**

- The decision to remove a student from school for more than 10 consecutive days due to a violation of a code of student conduct is made on September 9, 2013, and the first day of suspension from school is September 10, 2013
- This would result in a change to the student's educational placement on September 24, 2013 (11<sup>th</sup> day of suspension from school)
- In this case, Prior Written Notice of Action would need to be provided to the parent no later than September 17 to allow for seven days notice prior to implementing the action proposed

**Question:** Would prior written notice be required for cumulative removals of greater than 10 days that are found to constitute a pattern?

**Answer:** Prior Written Notice of Action is required when the removals result in a change of placement (more than 10 consecutive days or a series of removals that constitute a pattern). As soon as the LEA determines cumulative removals of more than 10 days constitute a pattern, Prior Written Notice of Action is required. Prior Written Notice of Action should inform the parent that the student has been suspended for greater than 10 days and that the LEA has determined the removals constitute a pattern, resulting in a change in the educational placement for the student. The LEA would also be informing the parent of how special education services are going to be provided. Before the action is implemented, the LEA is required to wait a reasonable amount of time (AR considers seven days to be reasonable) to implement the action unless the parent agrees to more immediate implementation. However, the LEA does have some flexibility as circumstances warrant (e.g., need to change placement to ensure safety).

**Question:** If a student is being recommended for a long-term removal, do we have to wait seven days after the manifestation determination to implement the disciplinary recommendation (i.e. placement in an ALE after determining that it was not a manifestation of the disability)? If that is the case, we will either have to complete the manifestation determination within the first three days of removal (to keep from returning the student to the building until the seven day waiting period is over), or provide services during the additional days of removal (which will mess up our discipline data).

**Answer:** You are not required to wait seven days after the manifestation determination review (MDR) to provide Prior Written Notice of Action. Keep in mind the district has up to 10 school days to hold the MDR after the decision is made to remove a student from school for more than 10 consecutive days due to a violation of a code of conduct. The decision to remove the student from school for more than 10 consecutive days would have already been made by the time the MDR was held, and Prior Written Notice of Action may have already been provided, depending on how quickly the manifestation conference was held.

**Question:** How does the provision of "stay put" apply to Prior Written Notice of Action?

**Answer:** The provision of "stay put" applies if at a manifestation determination, the decision is made that the behavior associated with the disciplinary action is a manifestation of the student's disability. In that case, the student is immediately returned to his educational placement prior to the disciplinary removal (with the exception of the 45 day rule) unless the parent agrees to an alternative placement.

## Prior Written Notice of Action Q & A's

---

**Question:** A functional behavior assessment is only required AFTER the manifestation determination if the behavior is a manifestation of the disability. Why would it not require consent if consent is required for any other functional behavior assessment?

**Answer:** IDEA requires a manifestation determination be done within 10 school days of the decision to remove a child for more than 10 consecutive days (or cumulative days if a pattern has been established). If the behavior is found to be a manifestation of the disability, a functional behavior assessment must be conducted. IDEA regulations do not appear to give parents the right to challenge this requirement. Therefore, Prior Written Notice of Action would not be required.