

Questions and Answers
PRIOR WRITTEN NOTICE
(NOTICE OF RECOMMENDATION)

This document provides information regarding the requirements to provide prior written notice to parents. It does not create or confer any rights for or on any person, nor does it impose any requirements beyond those required under applicable law and regulations.

WHAT IS A PRIOR WRITTEN NOTICE?

34 CFR § 300.503¹
 8 NYCRR § 200.1(oo)²

Prior written notice means written statements from the school district that inform the parent(s) about recommendation(s) relating to the initiation or change in the identification, evaluation, educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

WHEN MUST A SCHOOL DISTRICT PROVIDE THE PARENT(S) WITH PRIOR WRITTEN NOTICE?

34 CFR §300.503(a)
 8 NYCRR §200.5(a)(1),
 §200.5(a)(2)

The school district must give the parent(s) prior written notice a reasonable time before the district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of FAPE to the student.

If a proposed action by the school district requires parental consent, the district must give prior notice at the same time it requests the parent's consent.

LANGUAGE REQUIREMENTS OF PRIOR WRITTEN NOTICE

34 CFR §300.503(c)
 8 NYCRR §200.5(a)(4)

The notice must be written in language understandable to the general public and provided in the native language of the parent(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent(s) 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(s) in his or her native language or other mode of communication;
- the parent(s) understands the content of the notice; and
- there is written evidence that the above requirements have been met.

¹ 34 CFR refers to Title 34 of the Code of Federal Regulations

² 8 NYCRR refers to Title 8 of the New York Code of Rules and Regulations

WHAT INFORMATION MUST BE INCLUDED IN EACH PRIOR WRITTEN NOTICE?

34 CFR §300.503(b)
Ed.L. §4402(1)(b)(3)(c)³
8 NYCRR §200.5(a)(3)

At a minimum, **each prior written notice must include** the following:

- description of the action(s) proposed or refused;
- explanation of why the action is proposed or refused;
- description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action;
- description of other options considered and the reasons why those options were rejected;
- description of other factors that are relevant to the proposed or refused action;
- statement that the parent(s) of a student with a disability has protection under the procedural safeguards of federal and State law 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 the parent(s) to contact to obtain assistance in understanding the special education process.

The notice must also inform the parent(s) of their right to address the Committee, either in person or in writing, on the appropriateness of the Committee's recommendations.

ADDITIONAL REQUIRED INFORMATION AND ENCLOSURES

A district must, specific to the subject of the notice, include additional information in the prior written notice to the parent and, in some instances, attach or enclose other documents which must be provided to the parent at the same time that the prior notice is given to the parent.

The additional required information and enclosures are bulleted below corresponding to the subject of the notice.

Proposed initial evaluation or reevaluation:

34 CFR
§300.300(a)(1)(i)
§300.300(c)(1)(i)
§300.304(a)
§300.305(d)(1)

ED.L. §4402(1)(b)(7)

Additional information to include in the notice:

- A description of the proposed evaluation or reevaluation and the uses to be made of the information.
- A statement that the parent(s) may submit evaluation information which, if submitted, must be considered by the Committee as part of its evaluation or review.
- A request for written parental consent to the proposed initial evaluation or reevaluation.
- Upon a determination that the evaluation will be based solely on a review of existing evaluation information and that

³ Ed.L. refers New York State Education Law

8 NYCRR
§200.4(b)(5)(iv)
§200.5(a)(2)
§200.5(a)(5)(i)
§200.5(b)(1)(i)
§200.5(f)(3)(i)
§200.16(h)(2)

additional data are not needed, a statement of that determination and the reasons for it and of the right of the parent(s) to request an assessment to determine the student's eligibility for special education and educational needs.

In addition, for preschool students:

- A statement that the parent(s) has the right to consent or to withhold consent to an initial evaluation of the student.
- Inform the parent(s) that they must select a preschool program to conduct the evaluation and reference the enclosed list containing a description of each preschool program which has been approved by the Commissioner to provide evaluations located within the county in which the preschool student resides and adjoining counties, or, for students residing in the City of New York, within the City of New York and adjoining counties, and the procedures which the parent(s) must follow to select an available program to conduct a timely evaluation of their child.

Enclosures:

- Parent consent form to conduct an evaluation.
- For initial evaluations, a copy of the New York State Procedural Safeguards Notice.
- For preschool students, a list containing a description of each preschool program which has been approved by the Commissioner to provide evaluations located within the county in which the preschool student resides and adjoining counties, or, for students residing in the City of New York, within the City of New York and adjoining counties, and the procedures which the parent(s) must follow to select an available program to conduct a timely evaluation.

The district must provide the parent(s) with a copy of the NYSED's Parent's Guide to Special Education in New York State (or a locally developed handbook) as soon as practicable after the student has been referred for evaluation to the Committee. The handbook may, but is not required to be provided to the parent(s) at the same time as prior written notice.

Initial provision of special education services:

34 CFR §300.300(b)

Additional information to include in the notice:

A statement that written consent of the parent(s) is required prior to the initial provision of special education to a student who has not previously been identified as having a disability.

8 NYCRR
§200.5(b)(1)(ii)
§200.16(h)(2) and (5)

In addition, for preschool students:

- A statement that the parent(s) has the right to consent or to withhold consent to the initial provision of special education services to a preschool student who has not been previously identified as having a disability.
- A statement that in the event the parent(s) does not provide written consent for the initial provision of special education services, no further action will be taken by the Committee until such consent is obtained.

Enclosure - Parent consent form

Initial provision of special education services during the months of July and August

Additional information to include in the notice:

A statement that written consent of the parent(s) is required prior to initial provision of special education services in a 12-month special service and/or program.

Enclosure -Parent consent form

8 NYCRR
§200.5(a)(2)
§200.5(b)(1)(iii)

Declassification of a school-age student

Additional information to include in the notice:

A statement identifying declassification support services, if any, that will be provided to the student, and/or the student's teacher(s), for up to one year.

ED.L. §3602(1)(i)(2)

8 NYCRR
§200.4(d)(1)(iii)

Receipt of an Individualized Education Program (IEP) Diploma

Additional information to include in the notice:

A statement that the student continues to be eligible for FAPE 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, whichever is earlier.

8 NYCRR
§200.5(a)(5)(iii)

Graduation with a local high school or Regents Diploma

Additional information to include in the notice:

A statement that the student is not eligible to receive FAPE after graduation with the receipt of the local or Regents diploma.

8 NYCRR §200.5(a)(5)(ii)