

Due Process 2014 Notification

**Prior Written Notice
(PWN)**

- A prior written notice (PWN) is required whenever the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

34 C.F.R. § 300.503(a)(1-2)

Prior Written Notice (PWN)

- Examples of when PWN is required include:
 - Conducting an evaluation.
 - Refusing parental request for an evaluation.
 - Refusing service (or not changing placement) when a student is evaluated and found not eligible.
 - Initiating services through an initial IEP.
 - Changing placement or services as part of an annual IEP.
 - Discontinuing services through exiting or graduating.

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Prior Written Notice (PWN)

- The PWN requirements are the same whether the district is:
 - Proposing or refusing an action.
 - Referring for evaluation or finalizing an IEP.
 - The PWN is a written summary of what was discussed at the IEP or evaluation planning meeting and therefore should be individualized to the student.
 - There is no form or format requirement for the PWN; however it must be in writing and in the student's file.

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Prior Written Notice (PWN)

- The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.
 - Minn. R. 3525.3600
- The notice must include a description of the action proposed or refused by the agency.
 - 34 C.F.R. § 300.503(b)(1)

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PWN- Description of Action

- The PWN for an evaluation documents
 - the actions of proposal or refusal, and
 - the details of the proposal or refusal.
- For example, the “action proposed” may be a 3 year reevaluation. The details of that proposal would include the *specific assessments* to be conducted and *by whom*.

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PWN- Description of Action

Sample of Compliance

- Identify staff conducting the assessment by name and/or title.

Example:

- The district is proposing to conduct a three year reevaluation. Specific data to be reviewed and assessments to be conducted are documented in the attached evaluation plan.
- Intellectual Functioning
- Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV)
- School Psychologist

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PWN- Description of Action

Points of Clarification

- The PWN for an IEP documents the actions of the proposal.
 - For an INITIAL IEP, generally describe the contents of the IEP and reference the date of the initial IEP meeting.
 - For an ANNUAL IEP, the action should describe specific goals, services, or changes from the previous IEP.

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PWN- Description of Action Sample of Compliance

- The district is proposing to implement an initial Individual Education Program (IEP) for Specific Learning Disabilities (SLD) services as discussed at the IEP Team Meeting on October 14, 2011. Please see attached IEP.

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PWN- Description of Action Sample of Compliance

- The district is proposing to provide continued direct instruction in reading to address Johnny's Specific Learning Disability. He will continue to receive services in the resource room as well as accommodations and modifications in the classroom. Please see attached IEP dated October 14, 2011.

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PWN- Description of Action Sample of Compliance

- The district is proposing to discontinue April's direct instruction in reading related to her Specific Learning Disability. She has met her goals and objectives and the team agrees she no longer has a Specific Learning Disability or needs services for reading. She will continue with direct instruction in speech/language. Please see attached IEP dated October 14, 2011.

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PWN- Explanation of Why

- The notice must include an explanation of why the agency proposes or refuses to take the action.
 - 34 C.F.R. § 300.503(b)(2)

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PWN- Explanation of Why

Samples of Compliance

- This is a reevaluation to determine continued eligibility, present levels, and current needs for Claudia's specific learning disability. Due to emerging concerns with communication, the area of language will also be evaluated to determine if Claudia's language needs meets initial eligibility criteria for additional special education and related services.
- Pre-referral interventions were unsuccessful. Jessica's teachers continue to have concerns regarding her academic progress.

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PWN- Explanation of Why

Points of Clarification

- In the PWN for an IEP, the explanation of "why" details the reason the district is proposing this IEP or these particular services.
- The explanation can refer to the IEP in general or specific services proposed in the IEP.

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PWN- Explanation of Why Samples of Compliance

- George has not made sufficient progress on his Individual Education Program (IEP) goals and continues to demonstrate a need for special education and related services to address his Specific Learning Disability in reading.
- Kayla has been identified with a Specific Learning Disability in reading and requires direct instruction in order to make sufficient academic progress.

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PWN-Basis for Proposal Points of Clarification

- The notice must include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.
 - 34 C.F.R. § 300.503(b)(3)
- This is asking what information the team used to formulate the proposed action.
- On a PWN for an evaluation, this is NOT referring to the lists of tests and procedures to be conducted. That list is your *proposed action*.

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PWN-Basis for Proposal

Point of Clarification

- For an evaluation, the basis for the proposed action could include:
 - parent and teacher input,
 - classroom performance,
 - aptitude and achievement tests,
 - results of pre-referral interventions, or
 - progress on previous IEP goals and objectives

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PWN-Basis for Proposal

Sample of Compliance

- The team used data from pre-referral interventions and input from Jessica's parents and classroom teacher to determine the areas to be assessed.

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PWN-Basis for Proposal

Point of Clarification

- For an IEP, the basis for the proposed action could include:
 - parent and teacher input,
 - classroom performance,
 - formal assessment results, or
 - progress on previous IEP goals and objectives.

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PWN-Basis for Proposal

Sample of Compliance

- The team considered the results of Jessica's most recent formal reevaluation report dated April 14, 2010, to determine areas of need and appropriate services.

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PWN-Basis for Proposal

Sample of Compliance

- The team considered input from parents and classroom teachers, Nick's progress on his previous Individual Education Program (IEP) goals, and his daily classroom performance to determine current goals and objectives.

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PWN-Other Options

Points of Clarification

- The notice must include a description of other options that the IEP Team considered and reasons why those options were rejected.
 - 34 C.F.R. § 300.503(b)(6)
- Teams always should be able to identify other options for either an evaluation or for an IEP.
- The options discussed during the IEP or evaluation planning meeting should be documented on the PWN as well as why they were rejected.

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PWN-Other Options

Points of Clarification

- For an evaluation, “other options considered” could include:
 - delaying the evaluation,
 - conducting additional pre-referral interventions,
 - conducting different assessment procedures, or
 - just reviewing existing data.

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PWN-Other Options

Sample of Compliance

- The team considered proposing an additional reading assessment, such as the Test of Early Reading Ability, but in reviewing his scores on the most recent NWEAs and the progress on his reading goal, the team decided that there is enough existing data to determine his educational needs in reading.

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PWN-Other Options

Sample of Compliance

- The team considered delaying the evaluation until another pre-referral intervention was implemented, but decided against that option because the student's behavior has made the need for evaluation urgent.

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PWN-Other Options

Points of Clarification

- For an IEP, "other options considered" could include:
 - placement decisions
 - adding a service or increasing service time
 - discontinuing a service or decreasing service time
 - accommodations and modifications
 - location of service provision

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PWN-Other Options

Sample of Compliance

- The team considered placing Conner back at the setting 3 program at Walden Elementary, as progress reports show increased success at maintaining appropriate behavior, but decided against that option because of the recent incidents of physical aggression toward staff. (He will remain in the setting 4 placement at Walden Lake Learning Center until he reaches behavior objectives listed in his IEP).

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PWN-Other Options

Sample of Compliance

- The team considered reducing Kayla's service time for speech from 20 minutes, 3x per week to 20 minutes, 1x per week for check-in and developing strategies for carryover in the classroom. This option was rejected because the team determined that she will need time to work on maintaining the sounds at the conversational level in the speech room. (A reduction to 2 times per week was decided to be appropriate).

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PWN-Other Factors

Points of Clarification

- The notice must include a description of other factors that are relevant to the agency's proposal or refusal.
 - 34 C.F.R. § 300.503(b)(7)
- In developing the IEP, 34 C.F.R. § 300.324 (a)(2) discusses consideration of special factors which include:
 - Behavior
 - Limited English Proficiency
 - Blind or Visual Impairment
 - Communication Needs
 - Assistive Technology

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PWN-Other Factors

Points of Clarification

- Additional examples:
 - Frequent medical appointments
 - Positioning requirements
 - Distractibility
 - No other factors
 - It is okay to put “None” on the PWN as long as there is no evidence to suggest otherwise.

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PWN-Other Factors

Samples of Compliance

- Ryan has a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) and will need testing sessions broken into smaller segments to obtain optimal results.
- Latisha does not communicate verbally and therefore uses an electronic communication device as her primary means of communication. These factors were considered when developing all aspects of her Individual Education Program (IEP).

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Prior Written Notice

(PWN)

- The notice must include a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
 - 34 C.F.R. § 300.503(b)(4)

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Prior Written Notice (PWN)

- The notice must include sources for parents to contact to obtain assistance in understanding the provisions of this part.
 - 34 C.F.R. § 300.503(b)(5)
- Most PWN or Parental Consent forms have this built in.
 - Here are some agencies that may help you in understanding your child's rights under state and federal special education law:
 - ARC MN (Advocacy for Persons with Developmental Disabilities): 651.523.0823, 1.800.582.5256 or on the web at: www.thearcofMinnesota.org
 - Minnesota Department of Education: 651.582.8689, TTY: 651.582.8201 or on the web at: <http://education.state.mn.us>

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PWN-Understandable Language Points of Clarification

- The notice must be written in language understandable to the general public.
 - 34 C.F.R. § 300.503(c)(1)(i)
- Avoid education or special education jargon and acronyms.
- When describing the proposed action for an evaluation, do not list acronyms for tests; write out the complete title.

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PWN-Native Language

Points of Clarification

- The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is not feasible to do so.
 - 34 C.F.R. § 300.503(c)(1)(ii)
- This applies only if the parent is of limited English proficiency.
 - When there is evidence of the parent's inability to understand or speak English, the forms should be translated, either orally or in writing.
 - When the translation is not written, there should be documentation of the translation and of understanding by the parents.

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PWN-Native Language

Point of Clarification

- Having an interpreter present at the IEP team meeting may not be sufficient. If the PWN is written after the meeting, and is used to summarize what was discussed at the meeting, the PWN should also be interpreted, either orally or in writing, for the parent.

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PWN-Native Language Point of Clarification

- When providing forms in another language, the forms should be completed by the district in that same language.
 - For example: A form translated in Spanish should be completed in Spanish.

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Prior Written Notice (PWN)

- The notice must inform the parents that the school district will not proceed with the initial placement and provision of services...without prior written consent of the pupil's parents.
 - Minn. R. 3525.3600(A)

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Prior Written Notice (PWN)

- [The notice] shall inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent...
 - Minn. Stat. § 125A.091, Subd. 3a(1).

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Prior Written Notice (PWN)

- The notice must inform the parents that if they refuse to provide prior written consent for initial evaluation or initial placement or object in writing to any proposal, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the pupil, the parent may request a conciliation conference.
 - Minn. R. 3525.3600(C)

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PWN-Consent

Points of Clarification

- Once Part B eligibility has been determined by the team, all subsequent evaluations are reevaluations in terms of due process requirements.
- When the team looks at identifying a student under a new disability category, the team is conducting a reevaluation in terms of due process, but the student would need to meet initial eligibility criteria for the new disability category.

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Parental Consent for Evaluation

- The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability ... must, after providing notice consistent with federal regulations..., obtain informed consent, ... from the parent of the child before conducting the evaluation.
 - 34 C.F.R. § 300.300(a)(1)(i)

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Parental Consent for Evaluation

- The team shall conduct an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.
 - Minn. R. 3525.2550, subp. 2

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Ensuring Parent Attendance at Meetings

- Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including scheduling the meeting at a mutually agreed on time and place.
 - 34 C.F.R. 300.322(a)(2)

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Ensuring Parent Attendance at Meetings

Points of Clarification

- As referenced in 34 C.F.R. § 300.322(d), at least *two efforts* by the district to convince parent to participate must be documented in the file.
- Documentation may be found in:
 - Detailed records of telephone calls
 - Copies of correspondence
 - Records of visits made to parents' home

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Notice of IEP Meetings

Points of Clarification

- The notice must indicate the purpose, time, and location of the meeting and who will be in attendance.
34 C.F.R. § 300.322(b)(1)(i)
- The meeting notice must document all required IEP Team members, including:
 - Student with a disability, if postsecondary goals and transition services will be discussed.
 - Any participating public agency likely to be responsible for providing or paying for transition services.

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Parental Consent-Initial IEP

- A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
 - 34 C.F.R. § 300.300(b)(1).

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Parental Consent-Annual IEP

- The school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent...
 - Minn. Stat. § 125A.091, Subd. 3a(1).

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Parental Consent- Annual IEP Points of Clarification

- This is for an annual IEP.
- Compare proposed start date of service on the IEP and the date of the PWN.
 - Cite this if the proposed start date is *less* than 14 calendar days after the date of the PWN and parent signature was received after the proposed start date or not at all.

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Parental Consent- Annual IEP Points of Clarification

- When parental consent is received prior to the proposed start date, services can be started on the date the district received consent.
 - There is no need to change the start date of services on the IEP.
- For an annual IEP, when parental consent is received after the proposed 14 day start date, services start on that proposed start date.

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