



The Individuals with Disabilities Education Act (IDEA)

NDE 92 NAC 52 (Rule 52) and DHHS 480 NAC 3

Prior Written Notice Guidance Document

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The Individuals with Disabilities Education Act (IDEA), NDE 92 NAC 52, and DHHS 480 NAC 3 contain important procedural safeguards for infants and toddlers with disabilities receiving early intervention services. These safeguards include the requirement that a school district/early intervention provider provide the child's parents with prior written notice a reasonable time before the school district/early intervention provider proposes or refuses to take certain actions. School districts/early intervention providers must provide prior written notice **after** a decision has been made regarding matters affecting the child's IFSP or eligibility for early intervention, but **before** any decision is implemented or changes to the child's program/interventions to take place.

Specifically, 92 NAC 52 (Rule 52) states:

003.19 - *Notice means prior written notice that must be provided to parents a reasonable time before the school district or approved cooperative proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.*

34 C.F.R. 303.421(b); Rule 52-009.03A and B; 480 NAC 3-012 and 3-013 – *Such prior written notice shall include:*

- 52-009.03B2a *The action proposed or refused by the early intervention provider;*
- 52-009.03Bb *The reasons for taking the action;*
- 52-009.03B2c *All procedural safeguards that are available under 92 NAC 52-009, including a description of mediation in 92 NAC 52-009.05, how to file a State complaint in 92 NAC 52-009.06 and a due process complaint in the provisions adopted under 92 NAC 55, and any timelines under those procedures.*
- 480 NAC 3-012.02 *Families must be provided written notice of their right to a timely, comprehensive, multidisciplinary evaluation (to include screening, if applicable) for the child, including assessment activities related to the child, and, if eligible, the provision of appropriate early intervention services.*
- 480 NAC 3-012.03 *Families must be provided written notice of IFSP meetings with adequate time for them to make arrangements to attend.*

Means of Providing Prior Written Notice (PWN)

All forms utilized in the Early Intervention Program are state-mandated to ensure consistency and adherence to Family Rights and all laws/regulations that govern the program. [480 NAC 3-015] State Regulations require state-mandated forms for PWN and Consent be utilized for the following actions:

- Authorization/Consent for Release of Information
- Notice/Consent for Screening
- Notice/Consent for Evaluation
- Notice/Consent for IFSP services
- DHHS Notice of Action regarding denial/termination of EDN Services Coordination

Outside of these Early Development Network required forms, neither federal nor state special education/early intervention regulations specify the format in which prior written notice must be provided. Therefore, any of the following formats are permissible provided they include the required elements:

- formal letter on letterhead;
- form letter;
- fill in the blank form;
- online system generated;
- e-mail;
- child's IFSP.

Providing parents with verbal notice as a substitute for written notice does not fulfill the prior written notice requirements set forth in 92 NAC 52-009.03 and 480 NAC 3-012. Prior Written Notice must be in writing whenever a school district/early intervention provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. While the EIS provider/district may verbally discuss the circumstances with the parent; the proposal or refusal must be in writing, and the contents of the notice must meet the requirements of 92 NAC 52-009.03B.

In Part C, 480 NAC 3 requires the Services Coordinator to provide all Notices/Consents relating to exchange/release of info; Screening; Initial Evaluation/Assessment; IFSP services, and denial/termination of services coordination services. Rule 52 requires districts to provide written notice re: screening results (if applicable); eligibility determination; and refusal to provide FAPE-Early Intervention services.

Timeliness of Prior Written Notice

Prior Written Notice shall be given to the parent(s) of a child with a disability a reasonable time **before** the school district/early intervention provider proposes or refuses to initiate or change an action related to the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.

Neither Federal nor state regulations define “reasonable time”. However, the Federal Office of Special Education Programs (OSEP) and the Nebraska Department of Education has issued guidance on the timeliness of Prior Written Notice:

- “Such notice must be given to parents a reasonable time before the agency implements that action, but after the agency’s decision on the proposal or refusal has been made.”
Letter to Helmuth, 16 IDELR 550, (OSEP 1990)
- “We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time, because we are not aware of significant problems in the timing of prior written notices. In addition, prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable.” *USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.*
- “There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA (local educational agency) actually implements the action. This provides parents, in the event of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented.”
Letter to Chandler, 112 LRP 2763, (OSEP 2012)
- “It is not necessary to explain in the regulations that prior written notice can be provided at the same time as parental consent is requested, because parental consent cannot be obtained without the requisite prior written notice (emphasis added). The removal of this regulatory provision, however, is not intended to prohibit a public agency from giving prior written notice at the same time that parental consent is sought, should the agency choose to do so.”
USED, Analysis of Comments and Changes, 71 Fed. Reg. 46691, August 14, 2006.

Timeliness of Prior Written Notice - When Parental Consent Is An Issue

The IDEA Part C 2011 implementing regulations at 34 C.F.R. §303.7(a) define consent to mean that “the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in 303.25.”

The IDEA Part C 2011 implementing regulations at 34 C.F.R. §303.7(b) and (c) state that “the parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked”).

Prior Written Notice and the IFSP

480 NAC 3-013 states: “The IFSP provides for the written consent of the family to provide services to the child and family. Although the family may accept or reject any part of the early intervention services offered, the child will not receive services until the parents have provided written consent for the service(s) on the IFSP”. Thus, the IFSP serves as PWN and informed consent since both PWN and informed consent is required before the provision of any early intervention services on the IFSP.

Acknowledgement of Receipt

Given the potential ramifications for not sending prior written notice (i.e. denial of access to FAPE-Early Intervention Services), it is necessary to document the provision of the prior written notice and the date it was provided. Additionally, including the date on which the proposed and/or refused action was made provides documentation that the notice was provided within a reasonable time before the school district/early intervention service provider implemented the proposed or refused action.

Federal and state regulations do not require a parent to acknowledge receipt of the prior written notice. In those cases where an early intervention provider/district requests that the parent acknowledge receipt of the prior written notice, such acknowledgement does not relieve the early intervention provider/school district’s responsibility to ensure that the prior written notice satisfies the procedural requirements of state and federal regulations with regards to content and timeliness.

Conclusion

Both Federal and state regulations are clear that prior written notice must be provided to the parents of a child with a disability a reasonable time before the school district/early intervention provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family. When implemented correctly, prior written notice allows parents to fully participate in the early intervention planning process and a reasonable time to fully consider the change and respond to the action before it is implemented.