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**QUESTIONS AND ANSWERS ON
PRIOR WRITTEN NOTICE (NOTICE OF RECOMMENDATION),
THE STATE'S MODEL PRIOR WRITTEN NOTICE FORM
AND RELATED REQUIREMENTS**

**December 2010
Updated May 2011**

The following questions and answers address some of the important issues raised by requests for clarification of the federal and State requirements for prior written notice. This document will periodically be updated. This guidance does not impose any requirements beyond those required under applicable law and regulations. This document supersedes any previously issued guidance on this topic.

If you have questions regarding prior written notice, you may submit them to the following mailbox: speced@nysed.gov.

A. REQUIREMENTS OF PRIOR WRITTEN NOTICE

- 1. Do the regulations indicate that Prior Written Notice must include the Parent's Guide to Special Education?**

A district may provide the Parent's Guide at the same time the district provides the parent with the Procedural Safeguards Notice and prior written notice seeking consent for the initial evaluation. However, there is no requirement that the Parent's Guide to Special Education be provided to a parent at the same time the parent is given prior written notice. Section 4402(7) of the Education Law requires that a copy of the handbook be provided as soon as practicable after the student has been referred for evaluation to the Committee on Special Education (CSE).

- 2. Many districts write goals for students after the initial and annual review meetings and then send a copy of the revised individualized education program (IEP) home. Is that sufficient as the "notice of recommendation?" Is it compliant?**

No. Sending the IEP to the parent is required, but the IEP does not provide all the information that is required in prior written notice (notice of recommendation).

- 3. Can the district meet its requirement to provide the parent with prior written notice and seek parental consent at the CSE or Committee on Preschool Special Education (CPSE) meeting if the:**

- a) prior written notice form is completed at the meeting and given to the parent
AND
b) parent signs consent?**

Yes, if the parent agrees to sign the form at that time. However, the parent has the right to consider the information in prior written notice prior to providing/not providing consent.

- 4. Is prior written notice required when a district does not agree to (i.e., refuses) a request from a parent, including parental requests that arise when parents share their concerns for the education of their child during a CPSE or CSE meeting relating to the development of the IEP?**

Yes, but only if these parent requests are made in writing to the district or at a Committee meeting and relate to the identification, evaluation, educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

- 5. Is prior written notice to be used when a CPSE or CSE meeting is not held?**

Prior written notice is required whenever the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. This would include a district's refusal to conduct a Committee meeting. In addition, if an IEP is amended without a meeting after the annual review, prior written notice is still required to notify the parent of changes agreed to.

- 6. Is prior written notice required for a student who has not received any services and is a referral from a parent?**

Yes.

- 7. Is enclosing the IEP developed for the student with prior written notice required?**

No. While a copy of an IEP must be provided to a parent, there is no regulatory requirement that an IEP must be an enclosure with or part of prior written notice. The notice must describe action(s) proposed or refused by the Committee.

- 8. Examples of completed sections provide information that is much more detailed than our district provides. I am concerned that CSE/CPSE secretaries often are asked to complete and send out these forms but do not have access to this detailed information. How are we to handle the increased manpower needs to complete these forms in such detail?**

While regulations require that prior written notice generated during the 2011-12 school year and beyond use the State's form, the form does not add any new IEP content requirements than were previously required by State law and regulation. It is the district's responsibility to establish procedures to ensure that information required in prior written notice to parents contains all the federal and State required information.

9. Must the prior written notice be translated into the native language of the parent?

Prior written notice must be provided in language that is understandable to the public and in the native language, or other mode of communication, used by the parent (unless not feasible to do so). The Department has translations of the prior written notice form available in several languages.

Each school district is responsible for translating any information they add to the notice into the applicable language.

10. Is it necessary to send prior written notice to parents if there are changes to information included in the present levels of performance, annual goals, frequency and duration of recommended services, modifications, accommodations, supplementary services or assistive technology? (Added 4/11)

Yes, except that a change to the IEP only in the area of the student's present levels of performance would not require prior written notice to the parent. However, it seems reasonable that a change in the student's performance levels would result in some change to the student's goals and services.

11. Is it necessary to provide prior written notice to parents after every Committee meeting, including annual review meetings where there are no recommended changes to the IEP? (Added 4/11)

Each time a Committee meets, it does so to develop or review and if appropriate, revise, a student's IEP. While not every Committee meeting will result in a revision to the IEP, the reasons for the Committee's recommendation should be provided to the parent.

12. Must prior written notice be provided to a parent prior to an annual review if the district proposes to administer standardized assessments in order to update student progress for the meeting? (Added 4/11)

Prior written notice is required prior to conducting a reevaluation of the student. However, if the IEP indicates that the method to assess a student's progress toward annual goals is use of a standardized assessment (e.g., a standardized reading

assessment), then it is not necessary for the district to provide prior written notice and obtain parental consent for these assessments that are used solely for this purpose.

Prior written notice must be provided to a parent after an annual review meeting in order to inform the parent of the outcome of the meeting.

- 13. A few districts have mentioned that a State Education Department representative told them the letters could simply say "refer to the enclosed IEP for information" on several sections of these letters. Is this possible? (Added 4/11)**

The Department has had long-standing guidance that states that, while an IEP does not provide all the information that is required in prior written notice, it may be used in part to meet some of the prior written notice requirements. To document that prior written notice was properly provided to the student's parents, the district must use the State's prior written notice form, but may, as appropriate, reference in the applicable sections of the prior written notice form, specifically citing where in other enclosed documents or sections of documents the required information is provided. Documents that are enclosed with prior written notice that are used to meet some of the prior written notice requirements must also be provided in the native language of the parent.

- 14. Does "changes to special education programs and services" for which prior written notice is always required include changes to: frequency and duration, modifications, accommodations, supplementary services, assistive technology or other items in the IEP? (Added 4/11)**

Yes.

If the answer is yes, then the requirement for prior written notice includes any change to the IEP, unless the change is only in the present levels of performance statements? (Added 4/11)

Prior written notice must be provided to the parents of a student with a disability a reasonable time before the school 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. While a change to the IEP only in the area of the student's present levels of performance would not require prior written notice to the parent, it seems reasonable that a change in the student's performance levels would result in some change to the student's goals and services.

- 15. Must a student's disability classification be included in prior written notice, and if so, when? (Added 5/11)**

Prior written notice must be given to the parents of the student with a disability a reasonable time before the district proposes or refuses to initiate or change the

identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. The purpose of such advance notice is to provide the parent sufficient time to consider the proposal or refusal and respond prior to the implementation of the proposed action or in response to a refusal to take a requested action. If the disability classification is pertinent to the prior written notice (i.e., initial eligibility determination, declassification or change in disability classification) the disability category must be included in prior written notice.

- 16. Can a district include additional enclosures (such as the CSE meeting minutes) with a prior written notice in addition to the required enclosures as listed in Attachment 3? (Added 5/11)**

Yes.

- 17. Who is responsible for completing the prior written notice forms? Is it the individual special education teacher or the CSE? (Added 5/11)**

The decision as to the most appropriate individual responsible to complete and provide prior written notice to a parent is left to local discretion.

- 18. In reviewing your Q&A Related to Special Education Forms document, I noted that there was a statement regarding notices that have been translated into several languages. However, I have been unable to find them. Could you please direct me to a website where they can be found or the department that I could direct my question to? (Added 5/11)**

Spanish, Russian, Haitian Creole, Chinese and Korean translations of the prior written notice form are available in word format on the Department's website: <http://www.nysed.gov/special-education/prior-written-notice-notice-recommendation>

B. TIMELINE TO PROVIDE PRIOR WRITTEN NOTICE

- 1. What is meant by reasonable time to receive notice of recommendation?**

A school district is required to provide prior written notice (notice of recommendation) to the parents of a student with a disability a **reasonable time** before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. Federal and State law and regulations do not define the term "reasonable," since what is 'reasonable' may differ in individual situations, and any one timeline would be too rigid. The school district should consider such factors as: schedules of the student, the school and parent; the nature of the issue; and any extenuating circumstances in individual situations when determining the reasonable time frame for providing prior written notice in each instance. Such time frame must allow the parent time to fully consider the change and determine if he/she has additional

suggestions, concerns, questions, etc., and/or if he/she is going to challenge the recommendations of the CSE or CPSE.

- 2. After a CPSE/CSE meeting, is a district required to send prior written notice to the parent regarding the recommended services before forwarding the recommendation to the Board of Education (BOE) meeting or can the district send the prior written notice after the BOE approves the recommendation of the CSE/CPSE? If the district sends the notice to the parent before the BOE approves, is the district required to send a second letter to the parent indicating that the BOE approved the recommendation?**

Whether prior written notice is sent to the parent before or after forwarding the recommendation to the BOE is a matter of local discretion. The CSE must provide prior written notice to the parent a **reasonable time before** the school district initiates or changes the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The BOE has a role to implement the student's IEP and must, in accordance with Education Law, provide a separate notice to the parent upon a recommendation of the BOE to implement the IEP or to remand the recommendation back to the Committee or to establish a second Committee to develop an IEP for the student.

- 3. If a family requests a full CSE meeting to discuss the current IEP, does a prior written notice need to be sent to the family before the CSE meeting is held or is the prior written notice mailed after completion of the CSE meeting at which time the description of the action proposed or refused is discussed? If the prior written notice is required before the meeting is held, what description is used under the heading "description of the Action Proposed or Refused"? (Added 4/11)**

In the scenario described above:

The parent must receive a meeting notice, as required by section 200.5(c) of the Regulations of the Commissioner of Education, prior to the meeting.

Prior written notice (notice of recommendation) is provided to the parents after the Committee meeting. However, if the Committee proposes to conduct a reevaluation prior to the Committee meeting, the parent must receive prior written notice before the reevaluation is conducted.

C. CONSENT

- 1. Will the State develop a parent consent form to be used with prior written notice when consent is required?**

There is no regulatory requirement that the parent consent form be on a form developed by the Commissioner. The Department will, however, consider developing a model parent consent form.

- 2. To conduct a reevaluation and to receive the required consent from parent(s)... is there still an "implied consent" that exists wherein after repeated notices to parent(s) no response is received? If so, can you explain this? (Added 4/11)**

There is no 'implied consent' when a parent fails to respond to a request to provide consent for a reevaluation. The school district must make reasonable efforts to obtain written informed consent of the parent and it must maintain a detailed record of its attempts and the results of those attempts. However, parental consent need not be obtained if the district can demonstrate that it has made reasonable efforts to obtain the consent and the student's parents failed to respond.

D. INITIAL/REEVALUATION

- 1. On Attachment 3 under the Description of the Proposed Initial or Reevaluation, it states, "if the district is proposing to base its initial or reevaluation on existing information, the form must still identify the evaluations to be considered as part of the evaluation." Does the district need to include this information if no additional information is needed? Is it required that specific assessments be named?**

Section 200.5(a)(5)(i) of the Regulations of the Commissioner of Education states that upon receipt of a referral for initial evaluation or prior to conducting a reevaluation, prior written notice shall include a description of the proposed evaluation or reevaluation. Section 200.5(a)(6)(i) states that if the committee and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's education needs, the school district must notify the parents of that determination and the reasons for that determination.

Based upon these two regulatory citations, a district must provide a description of the initial or reevaluation, whether new data are needed or not. The examples used in Attachment 3 clarify that this description can identify the type of assessment (e.g., language assessment, psychological assessment, etc.), without identifying the specific tests (e.g., Vineland Social Emotional Early Childhood Scale).

- 2. In the situation wherein prior written notice of a proposed initial evaluation is sent prior to the CSE meeting, does the reference to the "committee's recommendations" refer to the CSE Chairperson's receipt of referral and proposed action to evaluate?**

Yes. Prior written notice sent prior to a Committee meeting regarding an initial evaluation refers to the Committee chairperson's receipt of referral and the district's proposed action to evaluate. It could also refer to any recommendations made by the group that includes the CSE, and other qualified professionals, as appropriate, that must review existing evaluation information on the student as part of the district's

proposed initial evaluation, pursuant to section 200.4(b)(5) of the Regulations of the Commissioner of Education.

- 3. For initial evaluation scenarios – What do we write in the section for "Description of Evaluations used in decision . . ." when a parent is the referring agent and does not provide evaluation or report documentation for referral?**

This section of the IEP documents the relevant facts that are the reason/basis for an initial evaluation to occur. There may be cases where there are no prior assessments, records or reports, in which case, that is what would be documented in this section.

E. MISCELLANEOUS

- 1. The *samples of completed forms* (Reevaluation, etc.) are very helpful. Is there a possibility for getting samples of PWN for each of the other possible subjects of the notice? (Added 5/11)**

Yes. Additional samples will be developed for posting.