

Guidance on Prior Written Notice in the Special Education Process

May 2013

Acknowledgements

This guidance document could not have been developed without the help and support of many people. Special thanks are extended to the members of the Prior Written Notice Guidance Document Development Committee who provided their expert advice and adept review of this document.

Ms. Sara M. Bright

Director of Pupil Personnel Services
Louisa County Public Schools

Dr. Judith A. Douglas

Former Director, Office of Dispute Resolution and Administrative Services
Division of Special Education and Student Services
Virginia Department of Education

Mr. James Gallagher

Director of Student Services
Amherst County Public Schools

Mrs. Lisa M. Perkins

Special Education Compliance Officer
Chesapeake City Public Schools

Dr. Melinda Robinett

Executive Director of Educational Services
Wythe County Public Schools

Ms. Terri L. Webber

Director of Education
Minnick Education Centers

Mr. Henry J. Millward, Jr.

Coordinator of Complaints Services
Office of Dispute Resolution and Administrative Services
Division of Special Education and Student Services
Virginia Department of Education

Copyright © 2013

This document can be reproduced and distributed for educational purposes only.

No commercial use of this document is permitted.

Contact the Division of Special Education and Student Services prior to adapting or modifying this document for non-commercial purposes.

The Virginia Department of Education does not discriminate on the basis of race, sex, color, national origin, religion, sexual orientation, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups.

Additional content expertise and technical assistance provided by:

Ms. Patricia Haymes

Director, Office of Dispute Resolution and Administrative Services
Division of Special Education and Student Services
Virginia Department of Education

Table of Contents

Introduction.....	1
Purpose of Providing Prior Written Notice	1
Regulatory Requirements Regarding the Provision of Prior Written Notice (PWN)	1
Timeliness of Prior Written Notice	
Generally.....	5
When Parental Consent Is Required	6
Discussion of the Seven (7) Required Elements of Prior Written Notice	7
Means of Providing Prior Written Notice	12
Use of an IEP to Provide Prior Written Notice	13
Parental Disagreement with the Contents of the Prior Written Notice	14
Acknowledgement of Receipt.....	14
Special Circumstances	
Discipline	15
Free Appropriate Public Education (FAPE) – Generally	15
Educational Placement	16
Refusal to Convene Meeting	16
APPENDICES	
Appendix A: Checklist of Instances Where Prior Written Notice is Required	17
Appendix B: Sample Prior Written Notice Form - USED Format	18
Appendix C: Sample Prior Written Notice Form - IEP Format	19
Appendix D: Sample Prior Written Notice Form - Stand-Alone Format	20
Appendix E: Model Written Prior Notice - Revocation of Parent Consent	21

Key To Acronyms and Abbreviations

BIP	Behavioral Intervention Plan
FAPE	Free Appropriate Public Education
FBA	Functional Behavioral Assessment
IDEA 2004	Individuals with Disabilities Education Improvement Act of 2004
IAES	Interim Alternative Educational Setting
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
LEA	Local Educational Agency (referencing local school divisions and State Operated Programs)
MDR	Manifestation Determination Review
ODRAS	Office of Dispute Resolution and Administrative Services
OSEP	Office of Special Education Programs, U.S. Department of Education
PWN	Prior Written Notice
SOP	State Operated Program
USED	United States Department of Education
VDOE	Virginia Department of Education
Virginia Regulations	<i>The Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>

Introduction

This guidance document is intended to assist local education agency (LEA) personnel as they work to address the needs of their students who have been identified as, or are suspected to be, students with disabilities in Virginia. The Individuals with Disabilities Education Improvement Act (IDEA 2004) implementing regulations, at 34 C.F.R. §300.503 and the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (Virginia Regulations), at 8 VAC 20-81-170.C, provide the regulatory requirements which will be addressed in this document. Information contained in this guidance document is intended to address these regulatory requirements and provide best practices to ensure compliance with the provision of prior written notice as required under these regulations. These guidelines should be used in conjunction with existing federal laws and the associated federal and state regulations and are not intended to replace any existing regulation or policy.

Questions and other inquiries related to this document should be directed to staff in the Virginia Department of Education's Office of Dispute Resolution and Administrative Services (ODRAS). ODRAS staff can be reached via telephone, at (804) 225-2013, and via electronic mail, at ODRAS@doe.virginia.gov. Additionally, ODRAS staff can be reached, via voice/relay, (800) 292-3820, and text users may dial 711 for Relay Services.

Purpose of Providing Prior Written Notice

The purpose of providing prior written notice to a parent is to:

- provide **comprehensive** documentation of the proposed and refused actions made;
- make sure the LEA and the parents are “on the same page” about a child’s educational program;
- provide the parents with an opportunity to voice any concerns or suggestions;
- provide sufficient information to ensure that the parent understands the rationale behind an LEA’s decision making regarding a particular proposed or refused action;
- ensure that **informed** parental consent is obtained, as necessary;
- assist the parent in determining the basis for any disagreement(s) with the proposed and/or refused actions addressed in the prior written notice and whether to seek resolution of any dispute through local dispute resolution procedures, a state complaint, mediation or a due process hearing.

Additionally, the U.S. Department of Education (USED) Office of Special Education Programs (OSEP) opined that the purpose for providing prior written notice is:

- to ensure that a parent understands the special education and related services which an LEA has proposed or refused to provide to a student. If a parent does not understand the services being proposed, it follows that the parent could not have agreed to the proposed services.

Letter to Boswell, 49 IDELR 196, (OSEP 2007)

Regulatory Requirements Regarding the Provision of Prior Written Notice

PWN shall be given to the parent(s) of a child with a disability within a reasonable time **before** the LEA proposes or refuses:

- to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced diploma) of the child; or
- the provision of a free appropriate public education (FAPE) for the child.

34 C.F.R. §300.503(a) and 8 VAC 20-81-170.C.1

Examples of When Prior Written Notice IS REQUIRED

Evaluation/reevaluation

- Consent for evaluation¹
- Student is found to be ineligible
- Refusal to evaluate
- Refusal to provide an independent educational evaluation (IEE)

Identification

- Initial categorical identification
- Change in categorical identification
- Termination of categorical identification

Placement

- Initial placement determination
- Change in least restrictive environment along the continuum of placement alternatives
- Change in “private” placement location, even when not in dispute
- Refusal to change placement as requested by the parent
- Change in placement due to parental placement of a student with a disability in a residential facility for non-educational reasons
- When the “brick and mortar” placement location is in dispute²
- Change in placement due to disciplinary reasons, including when initiating a 45 day placement to an interim alternative educational setting (IAES) for special disciplinary circumstances

Provision of FAPE

- After IEP has been proposed by the LEA
- After IEP addendum without a meeting³
- Refusal to provide a specific instructional methodology requested by the parent (e.g., Lindamood-Bell)
- Change in services
- Change in accommodations/modifications
- Changes in transportation arrangements that are required for provision of FAPE
- Change in method of assessment (SOL testing to any alternative assessment method or vice versa, change in alternative assessment method, and any exemption from state and/or divisionwide assessments)
- Provision of “comparable services” when a student transfers into an LEA
- Graduation with Standard or Advanced Diploma
- Termination of services

Other

- Refusal to convene IEP team meeting after parental request
- Revocation of parental consent⁴
- Refusal to provide services to a student who is parentally placed in a private school when the parent requests services that are not provided under what the LEA previously determined to be the “equitable services” that would be provided to such students
- Transfer of rights at age of majority

NOTE:

These lists should not be considered as an exhaustive listing, but rather they should be used as a guide that addresses the most common circumstances that a local educational agency may encounter regarding the provision of prior written notice.

¹ OSEP opined that Part B of IDEA 2004 does not specifically require that the notice include a description of every test to be administered or the qualifications of the evaluators. *Letter to Sutler, 18 IDELR 307* (OSEP 1991).

² The 4th U.S. Circuit Court of Appeals has held that the failure to identify the specific location of the student’s services can amount to a denial of FAPE. *A.K. v. Alexandria City Sch. Bd.*, (4th Cir. 2007), *cert. denied*, 110 LRP 19412 (2008). Additionally, the Assistant Superintendent for Special Education and Student Services issued an instructional memorandum, dated May 7, 2008, which outlines the procedures necessary when there is the potential for a dispute from the parent related to the specific school in which the provision of FAPE will be provided.

³ VDOE FAQ 020-11 IEP Amendment without a Meeting – Providing Meeting Notice recommends that “the prior written notice indicate that an amendment was made without a meeting of the IEP team, what the amendment included, as well as all of the other required components of the prior written notice.”

⁴ See VDOE FAQ 003-10 Revocation of Parent Consent, which provides a model prior written notice when parents revoke consent in accordance with requirements at 34 CFR §300.300.

⁵ Unless these specific items have been included in a student’s IEP as a matter of ensuring FAPE or directly impact on the provision of FAPE, prior written notice is not required in these instances.

⁶ It is reasonable to expect that parents would be provided an opportunity to participate in any decision to change their child’s course schedule and that, prior to affecting a schedule change, consideration would be given to the following: (i) how removing the student from one class and assigning him to another will impact his ability to achieve the student’s IEP goals; (ii) how the local educational agency will meet the student’s needs if he/she no longer attends the class the local educational agency proposes to remove him from; and (iii) whether any supplementary aids and services are needed for the child to be successful in the new class. Thus a change in course schedule could prompt the need for the provision of prior written notice.

⁷ The U.S. Department of Education (USED) Office of Special Education Programs (OSEP) declined to require all IEP team meetings to include a focused discussion on research-based methods or require public agencies to provide prior written notice when an IEP team refuses to provide documentation of research-based methods. It believes such requirements are unnecessary and would be unduly burdensome. (*Analysis of Comments and Changes*, 71 Fed. Reg. 46665, August 14, 2006.)

Examples of When Prior Written Notice Is Not Required⁵

Generally

- Child study activities
- General screenings required under the provisions of the *Code of Virginia*
- Observations conducted for instructional purposes as part of daily activities and related service provider interactions
- Administration of state and/or division level assessments
- Evaluating progress on annual goals
- Use of intervention strategies
- Granting of an independent educational evaluation (IEE)
- After each IEP meeting in a series of meetings
- Change in course schedule⁶
- Change in classroom assignment
- Change in teacher assignment
- Change in school assignment that does not constitute a change in placement
- Disciplinary removal for not more than 10 days, which does not constitute a pattern
- Short-term removals that do not result in change in placement or require the provision of IEP services
- Following meetings with parents that do not result in proposals/refusals related to evaluation/reevaluation, identification, placement, provision of FAPE (i.e., general meeting associated with discipline, academic performance, other school activities)
- Refusal to provide documentation of research-based methods⁷

ADVISORY NOTE

The use of the word “propose” may be confusing because it could be interpreted to mean that prior written notice is required before the school considers or suggests or thinks about proposing an action. However, remember that the purpose of prior written notice is to document decisions made by the LEA and is intended to give parents adequate notice before the decision is implemented. An LEA cannot make any decisions about placement or IEP content prior to an IEP team meeting. USED opined that “a public agency is not required to convene an IEP Team meeting before it proposes a change in the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. The proposal, however, triggers the obligation to convene an IEP team meeting. Providing prior written notice in advance of meetings could suggest that, in some circumstances, the public agency’s proposal was improperly arrived at before the meeting and without parent input. Therefore, we are not changing §300.503 to require the prior written notice to be provided prior to an IEP Team meeting.”

USED, *Analysis of Comments and Changes*, 71 Fed. Reg. 46691, August 14, 2006.

Make sure that staff and parents understand the distinction between a meeting notice and prior written notice.

SPECIAL NOTE Regarding A Series of Meetings

LEA’s often find themselves having to convene more than one, and often several, IEP meetings in order to fully develop, review, and/or revise the IEP of a child with a disability. The development of a child’s IEP certainly falls to the heart of the provision of a free appropriate public education (FAPE) and triggers an LEA’s obligation to provide prior written notice to the parent in accordance with 34 C.F.R. §300.503(a) and 8 VAC 20-81-170.C.1. However, the regulations do not require that prior written notice be provided after every IEP meeting in a series of meetings while the IEP is still under development, no final IEP is being proposed and parental consent is not being sought. Providing prior written notice in such a piecemeal fashion to simply document the discussions, agreements, disagreements, proposed and refused actions that occurred during each of the meetings is not required by state and/or federal special education laws and regulations. The IEP development process is a fluid process, wherein previously discussed and seemingly agreed-upon items may be revisited and altered. Therefore, imposing a requirement that an LEA provide prior written notice any time an IEP team meeting concludes without a proposed IEP and where subsequent meetings are anticipated and/or scheduled, would be premature and plainly unworkable.

Mandated Requirements of Prior Written Notice

The prior written notice provided to the parent(s) **shall** include the following seven elements:

1. a description of the action proposed or refused by the LEA .
2. an explanation of why the LEA proposes or refuses to take action.
3. a description of any other options the IEP team considered and the reasons for the rejection of those options.
4. a description of each evaluation procedure, assessment, record or report the LEA used as a basis for the proposed or refused action.
5. a description of any other factors that are relevant to the LEA 's proposal or refusal.
6. a statement that the parent(s) of a child with a disability have protection under the procedural safeguards of the Virginia Regulations and if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
7. sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements.

34 C.F.R. 300.503(b) and 8 VAC 20-81-170.C.2

CAUTIONARY NOTE

Prior written notice is required following every proposed and/or refused action related to the initiation or change in the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) for a child with a disability, **even if there was no meeting convened to discuss the proposed or refused action.**

For example: an IEP addendum without a meeting or a parental request for an IEP meeting that has been refused triggers the obligation to provide prior written notice.

The prior written notice provided to the parent(s) **shall** be:

- written in language that is 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.

34 C.F.R. §300.503(c)(1) and 8 VAC 20-81-170.C.3.a

If the native language or other mode of communication used by the parent(s) is not a written language, the LEA **shall** take steps to ensure that:

- the notice is translated orally or by other means to the parent(s) in their native language or other mode of communication;
- the parent(s) understands the content of the notice; and
- there is **written evidence** that the preceding two requirements have been met.

34 C.F.R. §300.503(c)(2) and 8 VAC 20-81-170.C.3.b

BEST PRACTICE TIP

If you are questioning whether a specific situation warrants the need for prior written notice, it is recommended that you prepare a properly comprised prior written notice to address the issue. Better to have provided the notice and find that it was not required than to have not provided the notice and find that it was required.

Timeliness of Prior Written Notice - Generally

CAUTIONARY NOTE

When asked to remove the language regarding the provision that the prior written notice be translated orally or by other means to the parent(s) in their native language or other mode of communication if the native language or other mode of communication used by the parent(s) is not a written language, and to substitute a provision in the IDEA 2004 implementing regulations “requiring a public agency to use procedures that involve little or no cost,” the U.S. Department of Education (USED) Office of Special Education Programs (OSEP) declined to remove the language and opined that the rights provided under 34 C.F.R. §300.503 “are essential to ensure that public agencies provide all parents the requisite prior written notice in a meaningful and understandable manner.”

USED, *Analysis of Comments and Changes*, 71 Fed. Reg. 46692, August 14, 2006.

It is reasonable to conclude from this commentary that OSEP places a high standard of compliance on the “unless it is clearly not feasible to do so” provision in 34 C.F.R. §300.503(c)(1). Furthermore, OSEP makes it clear that any financial cost of complying with this standard does not excuse the LEA from providing prior written notice if the native language or other mode of communication used by the parent(s) is not a written language.

As previously noted in the mandated requirements section, prior written notice shall be given to the parent(s) of a child with a disability within a reasonable time **before** the LEA proposes or refuses an action related to the identification, evaluation, educational placement, or provision of FAPE to a child with a disability. Federal and/or state special education laws and regulations do not define what would be deemed as a reasonable time. However, OSEP opined that:

- “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)

The regulations require prior written notice for **all** proposed and/or refused actions. Therefore, even if everyone agrees to everything proposed and/or refused, the LEA must provide the parent with prior written notice of the

BEST PRACTICE TIP

It has been the longstanding position of the VDOE, and the standard by which a local educational agency’s compliance is measured, that, in cases where consent is not an issue, a period of ten (10) business days would constitute satisfaction of the reasonable time mandate. This should not be taken to mean that in all instances an LEA is in noncompliance with the provision of prior written notice in cases where consent is not required, and the school division exceeds the ten business day standard. It then is important for the school division to document the unique circumstances that warranted or caused the delay, such as, the extended closing of schools due to natural disaster.

BEST PRACTICE TIP

Neither the IDEA or its implementing regulations, nor the Virginia Regulations require that an LEA date the prior written notice document or obtain written confirmation that the parents of children with disabilities have received the requisite prior written notice. However, because an LEA's failure to provide prior written notice can result in a determination that the LEA denied a child with FAPE, it is wise to document the date the prior written notice was provided to the parent in some fashion. If a parent is asked to sign acknowledgment of receipt of the prior written notice, the parent's documentation of receipt does not constitute agreement with the proposed or refused action or with the content of the prior written notice. Therefore, parental acknowledgement of receipt of the prior written notice does not obviate the LEA from ensuring that what the parent receives satisfies the procedural requirements of state and federal special education laws and regulations related to the provision of prior written notice, including its content and provision within a reasonable time.

proposed and refused actions within a reasonable time of the proposal or refusal. OSEP opined that:

- a parent's agreement with a change to the student's identification, evaluation, placement, or services does not relieve an LEA of its obligation to provide prior written notice of that change.

Letter to Lieberman, 52 IDELR 18, (OSEP 2009)

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

The IDEA 2004 implementing regulations, at 34 C.F.R. §300.9(a), and the Virginia Regulations, at 8 VAC 20-81-10, define consent to mean that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication." Additionally, the IDEA 2004 implementing regulations, at 34 C.F.R. §300.300, and the Virginia Regulations, at 8 VAC 20-81-170.E, outline when **informed** parental consent is required and identify, among other things, the actions for which prior written notice is required. The regulations defining consent do not state that the means by which the parent is "fully informed" must be through the provision of a prior written notice. However, the IDEA 2004 implementing regulations, at 34 C.F.R. §300.300(a)(1)(i), state that, with regard to pursuing an initial evaluation an LEA must **"... after providing notice consistent with [34 C.F.R. §300.]503 and [34 C.F.R. §300.]504, obtain informed consent ..."** Additionally, in response to a few commenters' recommendation that the IDEA 2004 implementing regulations retain the language from the previous IDEA implementing regulations, which provided that if the prior written notice was for an action that also requires parental consent, the agency may give notice at the same time it requests parental consent, OSEP opined that:

- "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.

Therefore, it is reasonable to determine from this commentary that OSEP intended that informed consent be preceded by the provision of prior written notice in all cases, not just for the initiation of an initial evaluation. It is important to note that OSEP further opined that:

- The parent need not have an in-depth understanding of all of the services a child's IEP might provide, or every aspect of a proposed evaluation. Rather, for consent to be "informed," the parent must merely have a general understanding of the activity for which he or she is providing consent.

Letter to Johnson, 56 IDELR 51, (OSEP 2010)

Discussion of the Seven (7) Required Elements of Prior Written Notice

The timely submission of prior written notice is only the **first** step in ensuring that an LEA complies with the mandated requirements. A prior written notice which is not adequate in content, even if the notice is timely, is insufficient to meet compliance standards.

While it is important to ensure that the prior written notice document is comprehensive enough to address each of the LEA's proposed and/or refused actions, it would be inappropriate to define what satisfies "comprehensive" in this guidance document. The prior written notice, *when properly written*, eliminates all doubts and/or misunderstandings. Notice the qualifier, "when properly written." As discussed above regarding the timeliness for prior written notice, the length of the prior written notice is dependent upon the unique circumstances triggering the document.

It is important to provide support for decisions communicated within the notice. While it might be tempting to write a brief prior written notice to save time, it is important to specify the reasoning behind any proposed and/or refused action. For example, the IEP team may have proposed changing the placement of a behaviorally challenged student because of disruptive behaviors in the general classroom and on the prior written notice document list certain behavior rating scales that led to its proposal. However, the prior written notice should also note additional sources of information that helped form the basis for the team's proposal, such as teacher input and observation. Otherwise, should the parent decide to pursue a due process hearing to dispute the proposed change in placement and the team's rejection of alternative placements, the parent's attorney may be able to argue that the rating scales were conducted inappropriately, incorrectly scored, or otherwise not designed to evaluate the specific behavior problem exhibited by the child.

The prior written notice provided to the parent does not have to capture every word uttered by the meeting participants. However, it must include and describe the facts of the meeting in a neutral tone and should be void of emotional, judgmental, or speculative statements. It should also avoid the use of acronyms, such as, IDEA, LRE, and IEE, without proper explanation. While there are many acronyms used in special education, it may be some parents' first exposure to these terms and could lead to uncertainty and/or misunderstanding of the information being provided. Also, the use of terms and phrases that could potentially confuse parents and raise more questions should be avoided. For parents to make an informed decision, they must know what was proposed and/or refused. Additionally, the names of any assessments, such as WISC IV, WJ III, BASC, etc. that are mentioned in the prior written notice should be spelled out so that the parent knows precisely to which assessment the IEP team is referring.

1. A description of the action proposed or refused by the LEA.

This mandated requirement appears to imply that a separate notice be completed for each proposed or refused action – however, there is nothing in the federal and or state special education laws and regulations which would prohibit an LEA from including all of its proposed and refused actions into a single prior written notice, as long as there is a description of **each** action that was proposed or refused. The description provided should be written as a statement that is factually grounded or informative, rather than being written in a vague, generic, and normative format.

EXAMPLES

- As you are aware (student) has been receiving instruction and interventions based upon (his/her) needs through a response to intervention (RtI) process. Based upon the response data we are recommending that a comprehensive evaluation be conducted. The evaluation process is required to determine if (student) is a child with a disability requiring special education services. If eligible, an individualized education program (IEP) will be written addressing the skill areas affected by the disability.

- This notice is to inform you that (student) is on track to graduate with an advanced or standard diploma. We would like to meet to discuss and develop a summary of performance that (student) will have for future use along with discussion of (student) transitioning away from special education services. He is scheduled to graduate on (date) at which time the school division will no longer be responsible for (student's) educational program.
- Per our conversation on (date), we reviewed and agreed the IEP developed in the (name of the transferring LEA) will be implemented as written. Comparable services will be provided in the area of articulation. (30 minutes once per week instead of 15 minutes two times per week.) All other services will remain the same.

2. An explanation of why the LEA proposes or refuses to take action.

This section of the prior written notice is where the LEA will detail its rationale for its proposed and/or refused actions. It is from this section that the parent should understand how the LEA reached its decision on a specific action. The prior written notice document must specify the reasoning behind the school division's decision to reject the opinions of individuals or providers outside of the school division. Alerting parents that the child's IEP team has decided

not to adopt the parent's private provider's recommendations may not be enough to guard the school division in a due process hearing. In many cases, the IEP team may believe it has considered all of the parent's requests at an IEP team meeting, but because it did not document its consideration and rationale for rejecting the private provider's recommendations in the prior written notice document, the IEP team is not able to effectively prove that they considered the recommendations if the issue is challenged in a due process hearing. Stating the reasoning behind the IEP team's decisions can also give the school division one more chance to reflect on its decision. Additionally, if there was more than one reason for each decision, the IEP team should include **each** reason why it is proposing and/or refusing a specific action. While including the "main" reason for the proposed and/or refused action may technically satisfy the requirements for provision of prior written notice, it may prove insufficient when defending the IEP team's decision during a due process hearing.

EXAMPLES

- An evaluation process is required to determine if (student) continues to be a child with a disability requiring special education services and if eligible, to develop an individual education program addressing the skill areas affected by the disability. In order to begin the reevaluation process, we will need your written consent. As soon as this signed consent form is returned to the school

division, we will begin conducting the evaluations. All reevaluations will be completed in a manner that will ensure that the evaluation components are completed **and** a determination of eligibility is made prior to the triennial anniversary date of the last eligibility.

- In discussing your request with (student's) teachers, the team could see no appropriate reason for moving her from the general classroom setting to the resource room for math as requested. She is currently working at grade level (4.2) and is receiving a grade of C+ for the quarter. She has some difficulty with fractions, but is provided a conversion chart to use as a guide. (Student) is very willing to ask for assistance from the paraprofessional and/or teacher when having difficulty. The school division members of the team have determined it would not be in (student's) educational interests to remove her from the general education classroom setting at this time.
- In order to determine if (student) continues to be a student with a disability and what new skills to target for the next few years, we need to conduct a comprehensive reevaluation. As discussed on the phone, (date), you requested that Anytown Public Schools conduct additional behavior evaluations. After discussing

this request with (student's) teachers, there was no evidence of interfering behaviors in the educational setting; therefore, we cannot support the need for additional evaluation in this area. However, your concerns regarding behavior will be considered at the IEP meeting.

3. A description of any other options the IEP team considered and the reasons for the rejection of those options.

In this section the school division must describe in "detail" any other options which were considered and "why" they were rejected. There may be instances in which no other options were considered, if so, avoid using the phrases "no other options considered," "none," or "not applicable" without an explanation.

EXAMPLES

- The IEP team considered your request for residential placement at a State supported facility; however, (student) does not meet the entry criteria for such placement at this point in time. Admission will be pursued at (location(s)). If denied at these other locations, placement can be pursued for (student) at the State supported facility.
- The IEP team has considered and rejected placement in a 24 hour residential setting. (Student) has adequate skills to acquire and maintain employment. Activity of daily living skills

such as cooking, laundry, shopping, and cleaning are also adequate to live independently. Since assistance with budgeting and financial management can be provided through outside sources, it would not be in (student's) best interests to be placed in a 24 hour residential placement.

- Many strategies have been implemented at school to assist (student). He has a stabilizing chair in the classroom, has attended reading recovery and receives direct instruction to develop his reading skills. Direct assistance is provided to (student) to promote his understanding and completion of his classroom assignments. Colored overlays are used when he reads; however, (student) continues to struggle with academics and speech despite the use of these strategies. The team will discuss new or additional strategies needed for (student) to demonstrate increased performance and progress.

- The school division's evaluation team considered administering a new cognitive assessment for use in determining continued eligibility. However, the scores from the two previous evaluations were very consistent and remain timely. Therefore, we do not feel another evaluation in this area is necessary at this time.

4. A description of each evaluation procedure, assessment, record or report the LEA used as a basis for the proposed or refused action.

Without identifying "*each*" evaluation procedure, assessment, record or report used as a basis for the proposed or refused action, the school division is fundamentally excluding critical information that the parents need in order to form the basis for providing their consent for a proposed action requiring their consent and/or filing a complaint, seeking mediation and/or a due process hearing to dispute the

BEST PRACTICE TIP

Be sure to document any oral or written information provided by the parent from a private provider, including identifying the provider by name and somehow ensuring that the written documentation can also be easily identified, such as, the type of information being provided (i.e., psychological evaluation, observation, recommendation), the date the document was prepared and/or provided, or the date that it was signed by the provider.

Example: The IEP team considered a psychological evaluation from Dr. Ima Q. Expert, which was completed on January 12, 2012. The evaluation was provided by the parents during an IEP meeting convened on January 23, 2012.

rationale for the proposed and/or refused action.

EXAMPLES

- Information documented on the incident report of (date), which summarized the events that took place, teacher statements, interview with individuals present and (student's) personal statement, about the event, were all considered in the IEP team's decision.
- Thank you for providing copies of the medical information for the team's consideration when determining continued eligibility. We will also use the scores from the current cognitive, achievement, and behavior evaluations to support continued eligibility. We will review appropriate identification criteria when completing the eligibility document. If eligible, the skills and disability related deficits identified through the evaluation process will be used to develop (student's) individualized education program.
- The school division reviewed all educational records received from (name of the LEA from which the student transferred) to include (student's) evaluation reports, eligibility document and current IEP. Based upon a review of this data, the school division has determined that it must initiate a reevaluation to determine if (student) meets the Virginia eligibility

BEST PRACTICE TIP

To avoid predetermination arguments, especially when the IEP team has refused a request made by parents, include a definitive statement regarding their request and explain how the IEP team considered their request, their written and/or oral input, and any concerns they expressed, before reaching its decision to refuse their request. Also be sure that the local educational agency documents that it considered any information provided by the parents from an outside resource such as their private physician, tutor, or advocate.

requirements for special education services.

5. A description of any other factors that are relevant to the LEA's proposal or refusal.

Other factors that may affect an LEA's proposed and/or refused action include, but are not limited to, language and/or cultural issues, communication concerns, health concerns, behavior concerns, consideration of the harmful effects of the program or placement proposed and/or refused, and assistive technology. Similar to the ***"description of any other options the IEP team considered and the reasons for the rejection of those options"*** of the prior written notice discussed above in section #3, in this section the school division must describe in "detail" any other relevant factors that were used by the IEP team or other such committee (e.g., eligibility committee), in formulating its decision to propose and/or refuse an action. There may be instances, however, in which no other factors were relevant to the proposed and/or refused action that were not already addressed in the other elements of the prior written notice. If so, avoid simply writing "not applicable." The

use of a complete statement will provide the parent with strong documentation that this question was reviewed in completing the prior written notice and, if there were no other relevant factors considered, remove any doubt.

EXAMPLES

- There were no other factors, outside of those listed above, that were considered by the IEP team. Neither the parents, nor any LEA personnel participating in the meeting, presented any other factors that needed to be considered.
- Per our conversation on (date), you said that the testing we discussed and evaluation plan for (student) was sufficient and there were no other areas of concern that you wanted to have addressed at this time.
- At (student's) parent/teacher conference, you expressed concerns with (student's) organizational skill and his inability to sit still at home. You also indicated that he does not bring home his take-home reading books to practice.

- (Student) is currently receiving (medication) to assist in managing (his/her) behavior. (Student) has been on this medication since (date).
- After evaluations are completed and reports have been received, the school's special education coordinator will contact you to set up a time to meet, go over the evaluation results, determine eligibility and if individualized instruction is required. Please be prepared to bring any concerns and/or recommendations that you may have for your child's education to the meeting.

6. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards of the Virginia Regulations and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.

If the prior written notice is being provided as the result of an initial referral for evaluation, an LEA must, in addition to **advising** the parent that they have rights under the procedural safeguards, **provide** the parent with a copy of the procedural safeguards document. Otherwise the regulations only require that the parent be advised as to how they can obtain a copy of the procedural safeguards document.

BEST PRACTICE TIP

While the procedural safeguards document may be made available via the school division's website, it is recommended that, if that is the case, the prior written notice contain the complete website address and not just a statement that the procedural safeguards document can be found on the website. Additionally, the LEA should not limit the means for obtaining procedural safeguards to website access, but rather, the prior written notice should also contain the name of an individual and/or office within the local educational agency, along with the contact information (i.e., telephone number and/or e-mail), where the parent can reach out to obtain a copy of the procedural safeguards document.

7. Sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements.

Each prior written notice provided to the parent must include sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements. While the provision of the procedural safeguards notice may be made available via a local website, this section of the prior written notice explicitly requires that the school division identify specific sources for the parent to contact should they need assistance. Therefore, the names of the individuals and/or the office within the school division that is most appropriate for the parent to contact should be clearly identified.

BEST PRACTICE TIP

Neither state or federal special education laws nor regulations specify what source or sources by which the parent can contact the local educational agency must be included in the prior written notice. Therefore, providing the name and telephone number for the individual or office to be contacted would satisfy compliance on this requirement. However, it is recommended that more than one source be indicated in the prior written notice (i.e., a second individual and/or an e-mail address).

Means of Providing Prior Written Notice

Except for requiring that the notice be in writing, neither federal nor state special education regulations specify the format in which prior written notice must be provided. Therefore any of the following formats are permissible: (i) formal letter on letterhead; (ii) form letter; (iii) fill in the blank form; (iv) online system generated; (v) e-mail; or (vi) use of the IEP.

Additionally, neither the federal nor state special education regulations require that the prior written notice indicate who prepared the prior written notice and/or who provided it to the parent. Therefore, prior written notice can be prepared and provided by: (i) the child's case manager; (ii) the IEP team chairperson; or (iii) an individual from the LEA's central office. However, it is recommended that someone who has "firsthand" knowledge of what was discussed during the decision-making process prepare the prior written notice associated with any proposed and/or refused actions.

BEST PRACTICE TIP

Avoid leaving blanks and/or using terms such as, "not applicable," "none," and "NA" when completing the prior written notice document. Additionally, if the LEA is not using a "template" that contains all of the required elements already written into it, ensure that the document addresses all of the required elements. The use of the referenced terms fails to provide any substantive information and could be misinterpreted.

BEST PRACTICE TIP

If using an online program to prepare the prior written notice document, do not let the prescribed allowance of characters limit the content and/or length of the document. Ensure that the program allows sufficient province for capturing all of what needs to be written into the notice. If it will not provide for sufficient completion of the prior written notice, then utilize a supplementary document to accompany the online document or complete the entire document as a separate action.

BEST PRACTICE TIP

Avoid "cutting and pasting" from previously completed prior written notice documents, especially when it involves another child, and have someone "proofread" the prior written notice document prior to issuing it to the parents to ensure that the school division avoids common mistakes, such as referring to a child by the wrong gender, misspelling names, or entering other "incorrect" information. While errors such as these may not be substantial enough to result in a denial of FAPE, they could give the parents the impression that the student's IEP team either does not know their child or that it did not base its proposed or refused actions on information relevant to their child. Additionally, it could indicate that the school division does not value the importance of the prior written notice and could also compromise privacy.

Use of An IEP To Provide Prior Written Notice

The VDOE provides technical assistance on IEP development on its website page titled IEP & Instruction Individualized Education Program (IEP), which can be found at http://www.doe.virginia.gov/special_ed/iep_instruct_svcs/iep/index.shtml. The information on this website includes sample IEP documents which contain a section titled Prior Notice And Parent Consent, as indicated below:

PRIOR NOTICE AND PARENT CONSENT

Student Name _____

Date ___/___/___ Page ___ of ___

Student ID _____

PRIOR NOTICE

The school division proposes to implement this IEP. This proposed IEP will allow the student to receive a free appropriate public education in the least restrictive environment. This decision is based upon a review of current records, current assessments and the student's performance as documented in the Present Level of Academic Achievement and Functional Performance. A statement of other options considered, if any, and the reason(s) for rejection is attached, or can be found in the Placement Decision section of this IEP. Additionally, other factors, if any that are relevant to this proposal are attached. Parent and adult student rights are explained in the Procedural Safeguards. If you, the parent(s) and adult student, need another copy of the Procedural Safeguards or need assistance in understanding this information please contact _____ at (____) _____ or e-mail _____ or _____ at (____) _____ or e-mail _____.

When taken in context with the requirements associated with the need to obtain informed parental consent before implementing a proposed IEP, it is logical to use the IEP document itself in satisfaction of the mandated requirement to provide prior written notice of what was proposed and/or refused during the development of the IEP. However, if the IEP is used, all of the required elements of prior written notice must be included in or attached to the IEP document.

CAUTIONARY NOTE

OSEP opined that “[t]here is nothing in the Act or these regulations that would prohibit a public agency from using the IEP as part of the prior written notice so long as the document(s) the parent receives meet all the requirements in § 300.503.”

USED, *Analysis of Comments and Changes*, (71 Fed. Reg. 46691 (August 14, 2006)
Letter to Lieberman, 52 IDELR 18 (OSEP 2008)

It is important to note that language in the “sample” IEP documents provided by VDOE is designed to ensure that the required elements are included. For example: the statement “as documented in the Present Level of Academic Achievement and Functional Performance” is a trigger to ensure that the assessment data used in developing the IEP is included in the IEP. Additionally, the statement “... is attached, or can be found in the Placement Decision section of this IEP” is a trigger to ensure that other options considered, if any, and the reasons for their rejection are documented, as does the statement other factors, if any that are relevant to this proposal are attached. It is the observation of the VDOE Office of Dispute Resolution and Administrative Services (ODRAS) that LEAs do well in documenting in the IEP what was “agreed” upon to provide the student with FAPE, but fail to document, as examples, the other options considered, refused accommodations and/or services, and explanations of why something was proposed and/or refused. Therefore, it is imperative that someone from the LEA who participated in the meeting review the IEP to ensure that all of the required elements are included, either in the IEP or as an attachment, **even if everyone was in agreement with the IEP as it is was proposed for consent.**

Parental Disagreement With the Contents of the Prior Written Notice

The prior written notice is completed by the LEA, not the parents. It is based on the information which was provided by the parent, along with other members of the team, orally and/or written, during the decision-making processes associated with the evaluation, identification, placement, and provision of FAPE for their child. Therefore, parents do not have the right to require that something be included in the prior written notice that the division has chosen not to include. Neither do the parent(s) have an overriding veto regarding what the division has chosen to include in the prior written notice. In plain language, parents cannot require an LEA to add, subtract, or otherwise include information in the prior written notice if the LEA does not deem it necessary. Therefore, the LEA is left to its own discretion and judgment in deciding what is important enough and necessary to include in the prior written notice document.

CAUTIONARY NOTE

Parents often agree to certain proposed and/or refused actions, but then change their minds after taking a step back from the process to further evaluate their decisions. Therefore, the LEA is cautioned that the fact that a parent did not make an issue out of a particular decision during an eligibility meeting or IEP meeting does not necessarily mean that the decision will not at some point in the future be the basis for a state complaint, mediation, and/or a due process hearing. Therefore, it is important to ensure that the prior written notice is comprehensive and encompasses all proposed and/or refused actions and any other relevant factors considered, which could include documenting the concerns expressed by the parents and/or including a statement about how the LEA considered their request before reaching any decision. A well written prior written notice is good documentation that the parents were fully aware of the rationale behind any proposed or refused action.

Acknowledgement of Receipt

Neither the IDEA or its implementing regulations, nor the Virginia Regulations, require that a prior written notice be dated or that the LEA obtain written confirmation that parents of children with disabilities have received the prior written notice. Nor does it obligate the parents to acknowledge the receipt of prior written notice. However, given the potential ramifications for not sending notice, including that, in some circumstances, a LEA's failure to provide prior written notice can result in a determination that the LEA denied a child with access to FAPE, it would be wise to document the provision of the notice in some fashion and to ensure that the prior written notice is dated as to when 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 LEA implemented the proposed and/or refused action. A parent's documentation of receipt does not obviate the LEA from ensuring that the prior written notice the parent receives satisfies the procedural requirements of state and federal special education laws and regulations with regards to content and timeliness.

Special Circumstances

Discipline

Students can be short-term removed for violations of a student code of conduct the same way students without disabilities are removed when the removals: (i) are less than ten days in duration; (ii) do not constitute a pattern; (iii) do not culminate in more than 10 days within the school year; (iv) do not constitute a pattern of behavior; and (v) do not otherwise result in a change in educational placement unless agreed to by the student's IEP team. In these instances there is no requirement that the parent be provided with prior written notice of the removal. However, there may be instances where a student has accumulated a series of short-term suspensions within the school year that go beyond 10 days and present a pattern of removals constituting a change in placement. In such instances, prior written notice would be required because the child has a change in placement during the period of short-term removal, even if a manifestation determination review (MDR) was not required.

In the special education process, when a student is removed from his or her designated program as a result of a violation of the student code of conduct, the IDEA and its implementing regulations require a specific set of protections. The discipline process clearly outlines and requires a prior written notice when the LEA seeks to change the educational placement of a student because of a violation of the student code of conduct and the removal of the student is for: (i) more than ten consecutive school days; or (ii) removing the child for more than ten cumulative days in a school year as a

result of violations that constitute a pattern of behavior.

In all instances where the student's violation of the student code of conduct results in a recommendation for a change in placement (i.e., long-term removal of more than 10 consecutive school days, expulsion), the special education discipline process requires that, within 10 school days of any decision to change the placement, the parent and relevant members of the IEP team conduct a manifestation determination review (MDR) to determine: (i) if the violation was a manifestation of the disability; and/or (ii) the failure of the LEA to properly implement the student's IEP. If the determination made by the MDR team is that the student's behavior was **not** a manifestation of his/her disability and, as such, the student is subject to disciplinary removal then prior written notice is required.

The purpose of the prior written notice at this point is to outline for the parent the decision of the MDR team with respect to whether or not the behavior exhibited by the student was a manifestation of his/her disability or resulted from a deficit in IEP implementation. The prior written notice should further serve to outline the decisions of the IEP team regarding the services, location, and actual change of placement for the child. For instance, if the student was found to have violated the student code of conduct and the team determined that it was **not** a manifestation of the disability, then that **must** be noted along with the administrative decisions to pursue long-term suspension or expulsion and where the child would be served to continue to receive FAPE.

On the other hand, a student who violated the same student code of conduct may have been found by the team to have done so under a manifestation of his/her disability. If this results in no change of placement or removal, then no prior written notice is necessary. However, in light of the behavior demonstrated by the student, if the IEP team determines that the IEP needs to be revised to include goals to address the behavior or that behavioral supports/interventions need to be added to the IEP, such changes must be made at a properly noticed and constituted IEP meeting, and any proposed and/or refused changes to the IEP would then trigger the need to provide the parent with prior written notice of the proposed/refused changes.

Free Appropriate Public Education - Generally

The IDEA 2004 implementing regulations and the Virginia Regulations define FAPE to mean special education and related services that: (i) are provided at public expense, under public supervision and direction, and without charge; (ii) meet the standards of the Virginia Board of Education; (iii) include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and (iv) are provided in conformity with an IEP that meets the requirements of state and/or federal special education laws and regulations.

A prior written notice must summarize the actions proposed and/or rejected that relate to the provision of FAPE (or the provision of special education services). The prior written notice must also contain the actions and options that were

proposed and considered at the meeting, but that were determined not appropriate for the child.

For the initial placement in special education, the IEP team must first determine what constitutes FAPE for the child. Next, the parent must consent to the placement outlined in the student's IEP. The prior written notice provided in this step of the special education process must include the decisions for both proposals and/or refusals in the development of the IEP and the decision to place the student into special education.

One prior written notice document may serve several purposes. It may document an eligibility decision, a FAPE decision, and an initial placement decision if all of the decisions occur within the same meeting. Each of these three actions, proposed or refused, should be outlined on each area of the notice. The intent of the prior written notice is to provide parents with notice of an action that affects their child that has been decided upon **but not yet** acted upon. The notice allows the parents to take steps to stop the action, such as filing a state complaint, seeking mediation and/or requesting a due process hearing, before implementation if they have objections to the proposed/refused actions.

Educational Placement

When a child has been evaluated and found to be eligible for special education, the appropriate educational placement for that child cannot be determined until decisions have been made about the child's needs and the services that the public agency will provide to meet those needs. Thus, the

initial IEP must be developed before any placement decision concerning special education can be made. Stated another way, after determining that a child is eligible for special education, i.e., the child has a disability **and** needs special education, the child's IEP team must then develop an appropriate IEP to meet the child's educational needs. The IEP team must then make the proposal to place the child in special education in order to implement services. The prior written notice must include the decisions for any proposals/refusals in developing the proposed IEP and the decision to place the student in special education. At this time, the parent must provide informed consent through the provision of a prior written notice for initial placement before any special education services may be delivered.

Subsequently, any time a change of educational placement for that child occurs, a prior written notice must be given to the parents. For example, if a child requires a significant change in placement, such as changing from a resource placement to a self-contained placement, a prior written notice must be given. As another example, if a child is graduating with a regular diploma, prior written notice must be given.

The intent of the prior written notice is to provide parents with information related to the LEA's proposal/refusal to carry out an action that affects their child. The LEA's proposal/refusal is a decision that has been reached **but not yet** acted upon. The notice allows the parent time to seek resolution, through mediation and/or a due process hearing, if they disagree with the LEA's decisions.

CAUTIONARY NOTE

Any time a change is proposed to a student's services or placement, regardless of who proposed it, the local educational agency must provide prior written notice to the parents.

*Letter to Lieberman,
52 IDELR 18, (OSEP 2008).*

Refusal to Convene Meeting

There is nothing in the IDEA 2004 implementing regulations or the Virginia Regulations that obligates a student's IEP team to convene a meeting every time a parent requests a change in the identification, evaluation, placement, or provision of FAPE to their child. School divisions are often faced with increasing caseloads which makes it difficult to find a mutually agreeable time to meet and are sometimes tempted to send out a prior written notice explaining why they propose or refuse to take the action the parent requested instead of holding a meeting. Although it is permissible to refuse to convene a meeting, as long as a properly comprised prior written notice of the refusal to do so is provided to the parent **within a reasonable time** of their request for a meeting, do not simply replace meetings with notices as doing so can trigger predetermination claims. However, if the school division finds it appropriate to refuse to convene a meeting, the notice that it provides should include a statement about how it considered the parent's request in reaching its decision and provide a full explanation as to why the LEA is refusing to convene the requested meeting.

APPENDIX A

Checklist of Instances Where Prior Written Notice Is Required

Events Requiring A Prior Written Notice	YES	NO
IDENTIFICATION		
Child find activities		X
Screening		X
School-based team activities		X
Use of intervention strategies (i.e., Response to Intervention (RtI), Tiered instructional model)		X
Referral for initial evaluation	X	
Change in/addition of categorical identification	X	
EVALUATION		
Collection of new data for initial evaluation and reevaluation	X	
Review of existing data		X
Evaluation of progress on the annual goals		X
Administration of statewide or divisionwide assessments		X
Request for an Independent Educational Evaluation (IEE)		X
Refusal of request for an IEE	X	
Determination of eligibility upon completion of an initial evaluation or reevaluation	X	
Eligibility issues	X	
Refusal to conduct an evaluation	X	
Observation for evaluation purposes	X	
Observation by related service providers, teacher, others as part of daily duties and activities		X
Evaluations used in the performance of a Functional Behavioral Assessment (FBA)	X	
EDUCATIONAL PLACEMENT		
Initial educational placement into special education	X	
Relocation of the special education program		X
Any change in educational placement/least restrictive environment	X	
Termination of special education and related services	X	
Transfer of student to another school or division		X
Graduation with a regular diploma	X	
Disciplinary removal for more than 10 consecutive school days	X	
Disciplinary removal for not more than 10 school days		X
A change in placement due to a series of disciplinary removals that constitute a pattern of removals	X	
Disciplinary removal to an interim alternative educational setting (IAES) for not more than 45 school days	X	
PROVISION OF FAPE		
Deletion or addition of a related service	X	
Change in annual goals on an existing IEP	X	
Increase or decrease in special education services or related services	X	
Change in how a student will participate in statewide and divisionwide assessments	X	
Any revision of the IEP	X	
Increase or decrease to supplementary aids and services or supports to school personnel listed in the child's IEP	X	
Refusal to increase or decrease a related service	X	
Consideration of ESY	X	
Implementation of a Behavioral Intervention Plan (BIP)	X	

NOTE: This checklist should be seen as a guide and not as an exhaustive list.

APPENDIX B

Sample Prior Written Notice Form (U.S. Department Of Education (Used) Format)

Prior Written Notice Under Part B of the IDEA

- Description of the action that the school division proposes or refuses to take:
- Explanation of why the school division is proposing or refusing to take that action:
- Description of each evaluation procedure, assessment, record, or report the school division used in deciding to propose or refuse the action:
- Description of any other choices that the Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected:
- Description of other reasons why the school division proposed or refused the action:
- Resources for the parents to contact for help in understanding Part B of the IDEA:
- If this notice is not an initial referral for evaluation, how the parent can obtain a copy of a description of the procedural safeguards:

APPENDIX C

Sample Prior Written Notice Form (IEP Format)

PRIOR NOTICE AND PARENT CONSENT

Student Name _____

Date ___/___/___ Page ___ of ___

Student ID Number _____

PRIOR NOTICE

The school division proposes to implement this IEP. This proposed IEP will allow the student to receive a free appropriate public education in the least restrictive environment. This decision is based upon a review of current records, current assessments and the student's performance as documented in the Present Level of Academic Achievement and Functional Performance. A statement of other options considered, if any, and the reason(s) for rejection is attached, or can be found in the Placement Decision section of this IEP. Additionally, other factors, if any that are relevant to this proposal are attached. Parent and adult student rights are explained in the Procedural Safeguards. If you, the parent(s) and adult student, need another copy of the Procedural Safeguards or need assistance in understanding this information please contact _____ at (____) _____ or e-mail _____ or _____ at (____) _____ or e-mail _____.

APPENDIX D

Sample Prior Written Notice Form (Stand-Alone Format)

PRIOR NOTICE

Student Name _____ Date ____/____/____

Student ID Number _____

Description of the action proposed or refused by the local education agency:

Explanation of why the local educational agency proposes or refuses to take action:

Description of any other options the IEP team considered and the reasons for the rejection of those options:

Description of each evaluation procedure, assessment, record or report the local educational agency used as a basis for the proposed or refused action:

Description of any other factors that are relevant to the local educational agency's proposal or refusal:

Statement that the parent(s) of a child with a disability have protection under the procedural safeguards of the Virginia Regulations and if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained:

Sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements:

APPENDIX E

Sample Prior Written Notice Form

(When parents revoke consent in accordance with requirements at 34 CFR § 300.300)

1. A description of the action proposed or refused by the local educational agency.

Provide information about the student's eligibility for special education and related services. Examples follow:

- The local educational agency determined on (date) that (student's name) is a child with a disability in need of special education and related services. [Parent's name(s)], the parent, provided (or refused to provide) consent for eligibility or continued eligibility on (date).
- The last agreed upon IEP (individualized education plan) was developed at an IEP meeting on (date), and the parent provided consent on (date). The IEP detailed annual goals and the special education and related services that the team determined were needed in order for the child to receive a free appropriate public education. The parent was a member of the team.
- On (date), the parent revoked consent for the student to be determined a child with a disability and be provided special education and related services.

Provide information that is specific to the student and describe how the student will be affected. Examples follow:

- Per the parent's revocation of consent, the local educational agency will cease delivering services in accordance with the IEP on (date). By revoking consent, the student will no longer receive special education and related services of any kind, including accommodations and modifications. The student will no longer be protected by the disciplinary procedures included in the federal and state special education requirements in the event of a violation of the code of conduct.
- By revoking consent, the student's status on the Modified Diploma Track will no longer be valid and the student will have to meet all requirements of the regular diploma (standard or advanced studies) in order to earn a diploma.

2. An explanation of why the local educational agency proposes or refuses to take the action.

Address each bullet listed in #1. An explanation may address more than one action listed, so there may not be a separate explanation for each action. Below are examples that address the bulleted actions provided above:

- Based on a multidisciplinary evaluation that included (fill in the type of evaluations such as psychological, sociological, educational, review of the student's file, etc.), the local educational agency determined that the child met the criteria as a child with a disability who also needs special education and related services in order to be provided a free appropriate public education. An individualized education plan was developed by a team that included the parent to meet the identified educational needs of the student.
- In accordance with the federal and state special education requirements, when a parent revokes consent for eligibility, the local educational agency is obligated to cease delivering special education and related services.
- Because the Modified Standard Diploma is only available to students with IEPs, this option cannot be used once services per the revocation of consent cease.
- By revoking consent, the federal and state special education requirements for discipline do not apply if the student violates the code of conduct.

3. A description of any other options the IEP team considered and the reasons for the rejection of those options.

If the parent provided a reason for the revocation of consent and the local educational agency attempted to resolve the dispute, those attempts should be documented. Examples are as follows:

- The local educational agency informed the parent of their rights to use the state complaint system, mediation, and/or request a due process hearing if their reasons for revocation of consent were related to disagreements with the local educational agency regarding the student's FAPE.
- The local educational agency offered to hold an IEP meeting that would provide an opportunity for the team to address issues that the parent may have; however, the parent refused. Consequently, an IEP team meeting was considered but not held due to the parent's rejection of meeting.

4. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action.

Briefly include a summary of information that supported the local educational agency's decision that resulted in the eligibility of the student and the decisions made at an IEP meeting. An example follows:

- Evaluations conducted for the determination of eligibility or continued eligibility for special education resulted in a conclusion that the student has a specific learning disability, and the evaluations included:
 - an educational evaluation that indicated that the child's educational achievement was significantly below what would be expected;
 - a psychological evaluation that found that the child's ability was within the average range but with significant discrepancies between verbal and performance areas;

- classroom observations that revealed that the student had difficulty staying on task; and
- review of earlier response to intervention reports that indicated the student needed more intensive and specialized academic services.

- During a review of performance at the last IEP meeting, it was determined that the special education and related services were providing the student with educational benefit and that (student's name) was demonstrating success in all academic areas except math. In the area of math, the IEP team included additional goals and services to further address this particular need.
- The parent(s) was provided information about the state complaint process, mediation and due process hearings to resolve any conflicts about special education and related services provided to her child.

5. A description of any other factors that are relevant to the local educational agency's proposal or refusal.

Summarize each effect that revocation of consent will have on the services to be provided to the student.

Examples include:

- Revocation of parental consent will mean that (student's name) will no longer receive special education and related services and will not be protected by the disciplinary procedures of federal and state special education requirements if there is a violation of the code of conduct.
- Revocation of parental consent will mean that the secondary transition services currently included in the IEP will not be provided.
- Revocation of parental consent will mean that the accommodations provided in after school activities may not be provided.
- Revocation of parental consent will mean that (student's name) will no longer receive the accommodations listed in the IEP for standardized testing such as SOL testing.

- The parent was informed that the local educational agency is willing to participate in mediation to resolve any dispute that the parent may have with the local educational agency.
- Revocation of parental consent will mean that any special transportation provided for (student's name) will cease.
- Revocation of parental consent may affect (student's name) graduation status without standardized testing accommodations or special diploma status.

6. A statement that the parent(s) of a child with a disability have protection under the procedural safeguards associated with federal and state special education requirements and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.

- Based on the eligibility determination on (date of last eligibility), (student's name) was found to be a child with a disability with protection under the procedural safeguards associated with the federal and state special education requirements and the provision of a free appropriate public education. The parent was provided a copy of these safeguards.
- Parental revocation of consent means that once the local educational agency implements the revocation of consent, these rights and protections will no longer be available to the parent(s) of the student.

7. Sources the parent(s) may contact in order to obtain assistance in understanding the provisions of these rights.

- Provide the name, title, contact information of someone who is knowledgeable about the procedural safeguards and the requirements related to revocation of consent.

This Model Written Prior Notice was developed by the Virginia Department of Education and disseminated to Directors of Special Education, Directors of State Operated Programs and the Virginia School for the Deaf and the Blind, Staunton, and VDOE staff in the Division of Special Education and Student Services in February 2009.

CAUTIONARY NOTE

While VDOE has provided guidance on what is required upon a parent's revocation of consent, it is reasonable to expect that a simple form with "boilerplate" language will not satisfy compliance in each instance. The prior written notice should inform the parent, as plainly as possible, that the student will no longer receive special education services of any kind and no longer enjoy the protections of the disciplinary procedures in the event of a violation of the code of conduct. The school division will need to conduct an individual analysis of the impact of the student's dismissal from special education, and give the parent prior written notice that is clear and specific to their child's unique situation.

*VDOE FAQ 003-10 **Revocation of Parent Consent***



© 2013, Commonwealth of Virginia Department of Education

The Virginia Department of Education does not discriminate on the basis of race, sex, color, national origin, religion, sexual orientation, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups.