

Using Prior Written Notice as a tool

By Doug Goldberg

How many parents attended IEP's recently where you requested changes to your child's IEP only to be met with resistance and ultimately the School District refused to make the change. This happens often and many times the parents leave the meeting unsatisfied and not understanding why their request was not approved. If that is the case the School District is not adequately following the requirements under Prior Written Notice (PWN). Not only are decisions about your child's IEP supposed to be Team decisions BUT they are also supposed to be fully thought out, based in facts and put in writing. This is why the Prior Written Notice requirement was put in place. It's easy for a School to say no, it's not always so easy for them to articulate why they said no. It becomes increasingly more difficult for the School to explain if the real reason they said no was not based on your child's individual needs but based on budget concerns or other monetary issues.

Under 34 CFR §300.503(a), the school district must give you a written notice (information received in writing), whenever the school district: (1) Proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or (2) Refuses to begin or change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.

Prior Written Notice must include:

1. A description of the action that the school district proposes or refuses to take;
2. An explanation of why the school district is proposing or refusing to take that action;
3. A description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action;
4. A description of any other choices that the Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected;
5. A description of other reasons why the school district proposed or refused the action:

While Prior Written Notice is a legal requirement of the Individuals with Disabilities Education Act (IDEA) I rarely see School Districts use it properly when it comes to requests made by the parents. Most School Districts that I have dealt with in my advocacy business are adept at using Prior Written Notice when they want to make a change but try to avoid giving Prior Written Notice when they are turning down a request made by the Parents. The question Parents need to ask themselves is, "how can I use this to my advantage?" Yes, I said it, how can they use it to their advantage. You see, the School Districts that are

not providing PWN or providing PWN with limited information are doing this on purpose. As the old saying goes, "If it's not in writing it doesn't exist." **Any School District trying to avoid providing PWN on a Parent request is trying to hide something. They are most likely trying to limit documentation that can hurt them later in a due process hearing because their decisions were not based on the individual child's needs.** If you work for a School District that religiously provides PWN for Parent requests including all necessary information you work for one of the good ones and I applaud you. For all those Parents who can't get PWN out of their School District this is what you do:

- Put all of your requests in writing;
- Make sure each request is discussed at the IEP meeting and for those requests that the School District turns down ask for PWN in writing on the IEP;
- During your discussion with the IEP Team regarding requests that were not approved or tabled ask the 5 PWN questions listed above. Write down all of the answers the School District gives you;
- After the IEP meeting go home and write a letter to the School outlining all of your requests that were not approved and your understanding of why they were turned down using their answers to the questions you asked at the IEP. If the School did not provide adequate answers to your questions state that as well;
- At the end of the letter ask the School District to respond to your letter if they disagree with your description of events. If they never respond to your letter or provide their own PWN it becomes very difficult for them to later change their reasoning in a due process hearing.

This process makes it increasingly challenging for the School District to ignore parent requests without fully considering them. When I use this method it either, 1) spurs the IEP Team to fully consider each request and its implications in the IEP meeting, or 2) creates documentation for the Parents to use in a due process hearing. In either event PWN is an effective tool for Parents trying to make sure their children are provided FAPE.

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