

## MNCIMP:SR Record Review Training

### Notification Standards

#### Highlights Overview

- Five Prior Written Notice (PWN) requirements for evaluation
- Five PWN requirements for Individualized Education Program (IEP)
- PWN and procedural issues
- Reevaluation and due process
- Parental consent
- IEP meeting notice

#### Highlights: PWN for evaluation

- *Action proposed* includes the specific evaluation procedures and evaluators (typically the “list of tests”).
- *Why* describes why the district is proposing this evaluation.
- *Basis* is not the list of tests, it is the information used to determine which tests are in the list.
- *Other options considered and why rejected* are always required.
- *Other relevant factors* must be addressed, but there may not be other relevant factors.

#### Highlights: PWN for IEP

- *Action proposed* is what is new in the proposed IEP (outline changes if it is an annual IEP).
- *Why* describes why the district is proposing those specific services or changes.
- *Basis* is the underlying information informing the changes.
- *Other options considered and why rejected* are always required.
- *Other relevant factors* must be addressed, but there do not have to be other relevant factors.

#### Highlights: PWN and procedural issues

- Undefined acronyms within a notice should be cited as language not understandable to the general public.

- Providing PWN in the “native language” of the parent only applies if the parent is unable to understand English, regardless of whether English is the parent’s *first* language.
- PWN must be written, unless the parent is illiterate.
- If the district provides an interpreter for materials or for meetings it must be documented.

**Highlights: Reevaluation and due process**

- Once Part B initial eligibility is established, including those under Developmental Delay (ages three to six years) or district-specific waivers, all subsequent evaluations are reevaluations in terms of due process requirements.
- Determining eligibility for a new disability category still is considered a reevaluation for the purposes of due process requirements. (However, the student must meet initial eligibility criteria for the new disability category.)

**Highlights: Parental Consent**

- Note there are two citations regarding parental consent for evaluations: the first applies to consent for initial evaluations and the second for reevaluations.
- Note there are also two citations regarding parental consent for IEPs: the first applies to consent for initial IEPs and the second to consent for annual IEPs.
- For initials in either circumstance, ensure consent was provided before any testing took place or any services were initiated.
- Parental consent for reevaluations: if there is no evidence of consent, ensure 14 calendar days elapsed from the PWN to the date the first test was administered.
- Parental consent for annual IEPs: if there is no evidence of consent, ensure 14 calendar days elapsed from the PWN to the proposed service start date.
- Day counting: start the 14 days with the day after you provided the parent with PWN. Include all holidays and weekends unless they are the 14<sup>th</sup> day.

**Highlights: IEP meeting notice**

- Adequate notice is assumed if the parent(s) were in attendance.
- Look for two documented efforts to ensure parental attendance and participation is parent did not attend.
- If the parent orally agreed to a meeting time and place, that serves as one notice even if the parent does not actually then attend.
- If the parent has not responded to notices, document at least two notice efforts and the district may proceed with the meeting.
- The student must be invited if postsecondary goals and transition will be discussed.

## Review Quiz

1. If the parent does not speak, read, or write in English, but does in Spanish, having an interpreter provide oral translation at the IEP Team meeting is sufficient to meet the due process requirements. True or False
2. Documentation of parental consent is always required before conducting an initial evaluation or providing initial services. True or False
3. If you have documentation in an email that the parent agreed to a meeting date and time, and documentation of the Notice of a Team Meeting sent to the parent, and the parent does not show for the meeting the district can proceed with the meeting without the parent. True or False

## Notification Standards

### Notification is comprised of the following areas:

- (Prior Written) Notice of Evaluation
- Parental Consent for Evaluation
- Ensuring Parent Attendance at Meetings
- Contents of Prior Written Notice for Individual Educational Program
- Notice of IEP Meetings and Subject Matter for IEP
- Parental Consent for IEP

## Prior Written Notice (PWN)

### *Legal Authority*

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

See 34 C.F.R. § 300.503(a)(1-2)

Examples of when PWN is required include:

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

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

### **Legal Authority**

The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

Minn. R. 3525.3600

### **PWN- Description of Action**

- The notice must include a description of the action proposed or refused by the agency.

34 C.F.R. § 300.503(b)(1)

### **Points of Clarification for PWN Description of Action in Evaluation:**

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

### **Sample of Noncompliance**

Three-year reevaluation, see attached evaluation plan.

### **Sample of Compliance**

The district is proposing to conduct a three-year reevaluation. Specific data to be reviewed and assessments to be conducted are documented in the attached evaluation plan.

### **Points of Clarification:**

- In describing the proposed action, be clear and specific.
- Do not use “and/or” or “as needed” when listing tests in your evaluation plan, unless it is clear what would trigger the test's use.

- Identify staff conducting the assessment by name and or title. Identifying “SPED staff” or “Staff” is too generic.

**Points of Clarification for PWN Description of Action in IEP:**

The PWN for an IEP documents the actions of the proposal.

- For an INITIAL IEP, generally describe the contents of the IEP and reference the initial IEP meeting.
- For an ANNUAL IEP, the action must describe specific goals, services, or changes from the previous IEP.

**Sample of Noncompliance**

See attached IEP.

**Sample of Compliance**

The district is proposing to implement an initial Individualized Education Program (IEP) for Specific Learning Disabilities (SLD) services as discussed at the IEP Team Meeting on October 14, 2014. Please see attached IEP.

**Sample of Noncompliance**

Annual IEP

**Sample of Compliance**

The district is proposing to provide continued direct instruction in reading to address Johnny’s Specific Learning Disability. He will continue to receive services in the resource room as well as accommodations and modifications in the classroom including shortened assignments and the option of having tests read to him in a quiet setting. Please see attached IEP dated October 14, 2014.

**Sample of Compliance**

The district is proposing to discontinue April’s direct instruction in reading related to her Specific Learning Disability. She has met her goals and objectives and the team agrees she no longer has a Specific Learning Disability or needs services for reading. She will continue with direct instruction in speech/language. Please see attached IEP dated October 14, 2014.

**PWN- Explanation of Why**

- The notice must include an explanation of why the agency proposes or refuses to take the action.

34 C.F.R. § 300.503(b)(2)

**Points of Clarification for PWN Explanation of Why in Evaluation:**

- For an evaluation, the action is often proposed to determine initial or continued eligibility for special education.
- PWN must also be used to describe a reevaluation in response to a student’s changing educational needs that may be evidenced by behavior issues or lack of progress.

**Sample of Noncompliance**

It's time.

**Sample of Compliance**

This is a reevaluation to determine continued eligibility, present levels, and current needs for Claudia's Specific Learning Disability. Due to emerging concerns with communication, the area of language will also be evaluated to determine if Claudia's language needs warrant additional special education and related services.

**Sample of Compliance**

Pre-referral interventions were unsuccessful. Jessica's teachers continue to have concerns regarding her academic progress so the district is proposing an evaluation to determine eligibility for special education services.

**Points of Clarification for PWN Explanation of Why in IEP:**

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

**Sample of Noncompliance**

It's time for a new IEP.

**Sample of Compliance**

George has not made sufficient progress on his Individual Education Program (IEP) goals and continues to demonstrate a need for special education and related services to address his Specific Learning Disability in reading.

**Sample of Noncompliance**

Elizabeth qualifies for special education.

**Sample of Compliance**

Kayla has been identified with a Specific Learning Disability in reading and requires direct instruction in order to make sufficient academic progress.

**PWN-Basis for Proposal**

- The notice must include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.

34 C.F.R. § 300.503(b)(3)

**Points of Clarification for PWN for Basis for Proposal in Evaluation:**

- This is asking what information the team used to formulate the proposed action.
- On a PWN for an evaluation, this is NOT referring to the lists of tests and procedures to be conducted. That list is your proposed action.

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

**Sample of Noncompliance**

We are proposing to conduct the assessments listed in the attached plan.

**Sample of Compliance**

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

**Point of Clarification for PWN for Basis for Proposal in IEP:**

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

**Sample of Noncompliance**

3-year reevaluation

**Sample of Compliance**

The team considered the results of Jessica’s most recent formal reevaluation report dated April 14, 2014, to determine areas of need and appropriate services.

**Sample of Noncompliance**

No formal evaluation has been completed.

**Sample of Compliance**

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

**PWN-Other Options**

- The notice must include a description of other options that the IEP Team considered and reasons why those options were rejected.

**Points of Clarification:**

- Teams must always be able to identify other options either for an evaluation or for an IEP.
- The options discussed during the IEP or evaluation planning meeting must be documented on the PWN as well as why they were rejected.

**Points of Clarification for PWN for Other Options in Evaluation:**

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

**Sample of Noncompliance**

The team considered all relevant options.

**Sample of Compliance**

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

**Sample of Noncompliance**

No other options considered.

**Sample of Compliance**

The team considered delaying the evaluation until another pre-referral intervention (allowing time out of seat, accompanied by classroom paraprofessional) was implemented, but decided against that option because the student’s behavior has made the need for evaluation urgent.

**Points of Clarification for Other Options in IEP:**

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

**Sample of Noncompliance**

The team considered increasing or decreasing service time, but determined the services proposed in the IEP are best to meet the needs of the student.

**Sample of Compliance**

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

**Sample of Compliance**

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

**PWN-Other Factors**

- The notice must include a description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. § 300.503(b)(7)

**Points of Clarification:**

- In developing the IEP, 34 C.F.R. § 300.324 (a)(2) discusses consideration of special factors which include:
  - Behavior
  - Limited English Proficiency
  - Blind or Visual Impairment
  - Communication Needs
  - Assistive Technology
- Additional examples:
  - Frequent medical appointments
  - Positioning requirements
  - Distractibility
  - No other factors
- It is okay to put “None” on the PWN as long as there is no evidence to suggest otherwise.

**Sample of Noncompliance**

If this section is left blank, it is not in compliance. It must be addressed; simply writing “None” is acceptable.

**Sample of Compliance**

Ryan has a diagnosis of Attention Deficit/Hyperactivity Disorder (ADHD) and will need testing sessions broken into smaller segments to obtain optimal results.

**Sample of Compliance**

Latisha does not communicate verbally and therefore uses an electronic communication device as her primary means of communication. These factors were considered when developing all aspects of her Individualized Education Program (IEP).

**PWN-Procedural Safeguards**

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

34 C.F.R. § 300.503(b)(4)

**Points of Clarification:**

- Most PWN have this statement built in.
- “You are protected by procedural safeguards and can get a description of the procedural safeguards by asking for them from:

*First Name, Last Name, Position Title, phone number”*

**PWN-Sources to Contact**

- The notice must include sources for parents to contact to obtain assistance in understanding the provisions of this part.

34 C.F.R. § 300.503(b)(5)

**Points of Clarification:**

- Most PWN have this built in.

*Here are some agencies that may help you in understanding your child’s rights under state and federal special education law:*

[The ARC of Minnesota](#) (Advocacy for Persons with Developmental Disabilities):  
651.523.0823, 1.800.582.5256

[Minnesota Department of Education](#): 651.582.8689, TTY: 651.582.8201

### **PWN-Understandable Language**

- The notice must be written in language understandable to the general public.

34 C.F.R. § 300.503(c)(1)(i)

#### ***Points of Clarification:***

- Avoid education or special education jargon and acronyms.
- When describing the proposed action for an evaluation, do not list acronyms for tests; write out the complete title.
- Use clear and concise language.

### **PWN-Native Language**

- The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is not feasible to do so.

34 C.F.R. § 300.503(c)(1)(ii)

#### ***Points of Clarification:***

- This applies only if the parent is of limited English proficiency.
- When there is evidence of the parent's inability to understand or speak English, the forms should be translated, either orally or in writing.
- When the translation is not written, there should be documentation of the oral translation and of understanding by the parents.
- Having an interpreter present at the IEP team meeting may not be sufficient to meet this requirement. The PWN is typically written after the meeting and is used to summarize what was discussed at the meeting. The PWN should also be interpreted, either orally or in writing, for the parent.
- When providing forms in another language, the forms must be completed by the district in that same language.
  - For example: A form translated in Spanish must be completed in Spanish.

### ***PWN-Notice of Parental Consent***

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

Minn. R. 3525.3600(A)

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

Minn. Stat. § 125A.091, Subd. 3a(1)

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

Minn. R. 3525.3600(C)

**Points of Clarification:**

- These components are generally built in to most due process forms; often as a check box.
- These components are all required, regardless of whether the proposal is for the initial placement or provision of services or continued placement or provision of services.
- Once Part B eligibility has been determined by the team, all subsequent evaluations are reevaluations in terms of due process requirements.
- When the team looks at identifying a student under a new disability category, the team is conducting a reevaluation in terms of due process, but the student would need to meet initial eligibility criteria for the new disability category.

**Parental Consent for Initial Evaluation**

- ❑ The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability ... must, after providing notice consistent with federal regulations..., obtain informed consent, ... from the parent of the child before conducting the evaluation.

34 C.F.R. § 300.300(a)(1)(i)

**Points of Clarification:**

- This pertains to initial evaluations.
- Look at the date the signature was received by the district and compare to the dates the assessments were conducted.
- This is a citation if any assessments were conducted prior to obtaining consent or if no consent was received at all.

**Parental Consent for Re-evaluation**

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

Minn. R. 3525.2550, subp. 2

**Points of Clarification:**

- This pertains to reevaluations.

- Look at the date of the PWN, date parent signature was received, and dates that assessments were conducted.
- This is a citation, if any assessments were conducted prior to 14 days after PWN date *without* signature permission from parents.

### Ensuring Parent Attendance at Meetings

- Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying parents of the meeting early enough to ensure that they will have the opportunity to attend.

34 C.F.R. § 300.322(a)(1)

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

34 C.F.R. § 300.322(a)(2)

### Points of Clarification:

- When the parent is in attendance, it can be assumed they were given sufficient notice and the time and location were mutually agreed upon.
- Documentation of the parent's attendance at a meeting may include:
  - Team meeting sign-in
  - IEP meeting notes
  - IEP
- As referenced in 34 C.F.R. § 300.322(d), at least *two efforts* by the district to convince parent to participate must be documented in the file.
- Documentation may be found in:
  - Detailed records of telephone calls
  - Copies of correspondence
  - Records of visits made to parents' home
- Cite this if parent is not in attendance and there is no documentation of at least two efforts to arrange a mutually agreed upon time and place.
- The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

34 C.F.R. § 300.322(e)

**Points of Clarification:**

- The district would need to arrange an interpreter for the parent.
- Look for documentation in Team Meeting Notice, a sign-in sheet, or meeting notes indicating the presence of an interpreter.
- This would be cited if there is evidence of the need for an interpreter, but no interpreter was provided by the district.

**Notice of IEP Meetings and Subject Matter for IEP/IIIP**

**Notice of IEP Meetings**

- The notice must indicate the purpose, time, and location of the meeting and who will be in attendance.

34 C.F.R. § 300.322(b)(1)(i)

**Points of Clarification:**

- The notice must include who, what, when, where, and why.
- The meeting notice must document all required IEP Team members, including:
  - Student with a disability, if postsecondary goals and transition services will be discussed.
  - Any participating public agency likely to be responsible for providing or paying for transition services.

**Parental Consent for IEP**

**Parental Consent-Initial IEP**

- A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

34 C.F.R. § 300.300(b)(1)

**Points of Clarification:**

- This is for an initial IEP.
- Cite this if there is no documentation of parental consent received for initiation of services.

**Parental Consent-Annual IEP**

- The school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent...

Minn. Stat. § 125A.091, Subd. 3a(1)

***Points of Clarification:***

- This is for an annual IEP.
- Compare proposed start date of service on the IEP and the date of the PWN.
- Cite this if the proposed start date is *less* than 14 calendar days after the date of the PWN and parent signature was received after the proposed start date or not at all.
- When parental consent is received prior to the proposed start date, services can be started on the date the district received consent.
  - There is no need to change the start date of services on the IEP.
- For an annual IEP, when parental consent is received after the proposed 14-day start date, services start on that proposed start date.