PRIOR WRITTEN NOTICE:
May We Have Your Attention Please?

Audio Conference
January 6, 2011

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&

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SO WHAT’S NEW?

On October 14, 2010, the Texas Education Agency (TEA) directed our attention to PWN by publishing the following on its website:

“One of the greatest challenges currently facing Texas in regard to the delivery of services for disabilities is the prevalence of inconsistent and inaccurate information. A frequently-asked-questions document has been created to provide information and guidance to parents, district staff, and other interested stakeholders with regard to Prior Written Notice.”

The TEA Q&A document pertaining to PWN can be found at https://www5.esc13.net/speechlang/docs/meetings_materials/10_11/SLP/Nov11/PriorWrittenNotice.pdf.

So what is new? TEA wants us to pay more attention to Prior Written Notice (PWN), what must be included, when it must be issued, and reminds us that PWN must be issued following an ARD committee meeting even in those instances when all parties agree.

You may be thinking that you already comply with recent TEA guidance through issuance of an ARD meeting invitation, through use of software-created ARD documentation and through use of ARD minutes. You may think that this recent guidance must apply to those few who do not use software or who do not keep minutes.

We predict that if you look very closely at the ARDC documentation created with your software combined with the minutes written for your most recent ARDC meetings, you may find your paperwork lacking. More importantly, many districts have only been issuing PWN in instances where the ARD committee refused a parent’s request. Those districts will now have to adjust to issuing PWN in situations where all parties agree.

Part One: Contents of Prior Written Notice

1. **What should be included in the prior written notice?**

The prior written notice must include:

(1) A description of the action proposed or refused by the agency;
(2) An explanation of why the agency proposes or refuses to take the action;
(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
(4) 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;
(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
(7) A description of other factors that are relevant to the agency’s proposal or refusal.
34 C.F.R. § 300.503(b).

If the documentation you create through use of your district’s software combined with your minutes does not clearly satisfy each of the 7 factors listed above, your ARD documentation is not in compliance with IDEA or recent TEA guidance. If you discover that your documentation is not in strict compliance, we recommend use of a separate form for issuance of Prior Written Notice.

2. Do sample forms exist?

Yes, the Department of Education has a sample form located at http://www.ed.gov/policy/speced/guid/idea/modelform-notice.doc.

A form is also available to directors in the documentation toolbox for the Legal Framework for the Child-Centered Special Education Process located at http://framework.esc18.net/.

We have also developed a proposed form attached to our handout as Appendix 1 which you are free to use or revise.

Note that our proposed form adds the date PWN was prepared, the date PWN was provided to the parent, and the method of delivery. Experience has taught us that disputes develop about when and how PWN was prepared or delivered. We advise dating your forms and indicating the method of and date of delivery.

We have also included four sources for additional information for the parent to contact if he or she has questions about PWN. The list of sources is simply a suggestion.

Please also note that best practice is to always offer a copy of the Notice of Procedural Safeguards to the parent(s) and to note in the minutes if they accepted (or rejected) their copy.

3. May we use the ARD record (printout of our software-assisted documentation plus written minutes or tape-recorded minutes) as the Prior Written Notice?

Yes, but only if that documentation meets all of the elements of PWN listed above. The U.S. Department of Education wrote:
“There 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.”

More recently, the Office of Special Education Programs (OSEP) agreed and wrote:

“Written notice required under 34 CFR § 300.503 must meet the content requirement in 34 CFR § 300.503(b). The Analysis of Comments and Changes to the regulations indicate that nothing in the IDEA or the regulations 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 meets all the requirements in 34 CFR § 300.503.”
Letter to Lieberman, 52 IDELR 18 (OSEP 2008).

Part Two: Circumstances Requiring Prior Written Notice

1. Under what circumstances are schools required to give parents prior written notice?

IDEA states that written notice must be given to a parent:

A reasonable time before the public agency—
(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
34 C.F.R. § 300.503(a).

2. I thought prior written notice was only required when the school refused to do something the parent requested?

No, IDEA (and more recently TEA) is clear that PWN is required not only when the district refuses to initiate or change educational programming, but also when the district proposes (decides) to initiate or change educational programming in any way.

Some school districts have been issuing PWN only after “disagreement” ARD committee meetings based on the following Texas Commissioner’s Rule:

“When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR § 300.503.” 19 T.A.C. § 89.1050(h)(6).

Recent TEA guidance is clearly intended to remind us that the duty to issue PWN is much broader than the “disagreement” ARD committee meeting. For example, see these TEA Frequently Asked Questions – Prior Written Notice issued in October 2010:
**Question 4:** Must an LEA provide a parent or an adult student with prior written notice in every instance where a student’s IEP is changed?

**Response:** Yes. Prior written notice is required whenever a student’s IEP is changed.

**Question 5:** Must an LEA provide prior written notice to a parent or an adult student even if the parent or adult student has agreed to the proposed change?

**Response:** Yes. An LEA must provide prior written notice regardless of whether the parent agrees or disagrees with the change."


3. **If PWN is required before we “propose” an action, does that mean before we suggest an action?**

No. The use of the word “propose” may be confusing because it could be interpreted to mean that PWN is required before the school considers or suggests or thinks about proposing an action. However, we believe that in recent TEA guidance, “propose” means “decided.” Remember that the purpose of PWN is to document decisions made by ARD committee and to give parents adequate notice before the decision is implemented. The district cannot make any decisions about placement or IEP content prior to an ARD meeting. The Department of Education explains it like this:

Providing prior written notice in advance of meetings could suggest, in some circumstances, that 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. 71 Fed. Reg. 46691.

Make sure that you understand the distinction between the ARD committee invitation and PWN.

The invitation is not a PWN and must satisfy the following requirements:

1. Make it likely that one or both parents are present at the meeting or have an opportunity to participate.
2. Give sufficient notice of the meeting (5 school days in Texas) so that parents can arrange to attend.
3. Schedule the meeting at a mutually convenient time and place.
4. Indicate the purpose, time and location of the meeting and who will attend.
5. Inform the parents about who will attend the meeting including any other agencies that the school district has invited and whether the district plans to be represented by legal counsel.
6. If the student is 16 or older, the invitation must notify the parent that postsecondary goals and transition services will be considered and that the student is invited. 
34 C.F.R. § 300.322; 19 TAC § 89.1045

4. When is PWN required by IDEA?

TEA reminds us that PWN is required before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. Each of those terms is discussed in more detail below.

a. “Identification” of the student.

Although the word “identification” is not defined in the IDEA, it refers to the process of identifying a child as a “child with a disability,” meaning a child that has one of the enumerated list of conditions and “who, by reason thereof, needs special education and related services.” 34 CFR § 300.8(a). Identification, refers to a child’s eligibility status and category. Thus, PWN is required any time a district proposes to initiate or change a student’s eligibility status or category, or refuses to initiate or change the student’s eligibility status or category.

“Identification” Example #1: Jose’s mother calls the principal and indicates that she needs an ARD meeting to discuss a recent medical evaluation. The pediatrician, Dr. Smith, indicated that Jose (currently eligible for special education as learning disabled) should also qualify for special education as ADHD and ASD (autism spectrum disorder). The district issues an invitation to the ARD committee meeting giving 5 school days’ notice and describes the topics to be discussed at the meeting in the invitation.

After a several hour discussion, the ARD committee and Jose’s mother reach an impasse concerning the proposed disabilities of ASD and ADHD/OHI. During the ARD committee meeting, the school district asked for a signed consent to contact Dr. Smith to discuss the issue in more depth, but Jose’s mother did not sign the consent form. The school district offered a 10-day postponement ARDC meeting but Jose’s mother declined. Prior Written Notice is required because the district is refusing to initiate or change the student’s identification or category of eligibility.

Here is our suggested PWN form:
PRIOR WRITTEN NOTICE

Name of Student: Jose
Date PWN prepared: January 4, 2011
Date PWN provided to parent/student/guardian: January 4, 2011
Method of delivery: U.S Mail___ Email____ In Person XX Via Student____

Description of action(s) proposed or refused: The ARD committee refused to determine that Jose was eligible for special education based on ADHD/OHI or ASD.

Reason(s) why action(s) proposed or refused: Jose is currently eligible as Learning Disabled, and his mother requested that the ARD committee add another category of disability. The ARDC had insufficient information and wanted to discuss the medical diagnoses with Dr. Smith. Due to privacy laws, the ARD committee requested a release to speak to Dr. Smith, but Jose’s mother declined to provide the release. The ARDC determined that without a discussion with Dr. Smith, it did not have enough information to accept Jose’s mother’s requests. The two proposed disability categories were refused.

Other option(s) considered by ARDC and reasons for rejection: The ARD committee offered to set another meeting to consider the request if Jose’s mother signed the consent to speak with Dr. Smith.

List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s): Most recent FIE; input provided by Jose’s PE teacher, reading teacher, and special education teacher; Jose’s report card grades; TAKS scores for 2010; Dr. Smith’s letter; concerns expressed by Jose’s mother about his behavior at home and in public.

Other factor(s), if any, relevant to the action(s) proposed or refused: Mrs. Jenkins, Jose’s math teacher, was ill and was not at school on the day of the ARDC meeting. Although there was a general education teacher at the meeting (Mr. Brown) Jose’s mother said that Mrs. Jenkins had information about Jose’s conduct in math class that would be relevant to her requests. The ARD committee agreed to be sure to invite Mrs. Jenkins to the next ARD meeting.

Sources to contact to obtain assistance in understanding the information in this Notice:

1. The special education director, ___________, who may be reached at ______________.
2. The principal, ___________, who may be reached at ______________.
3. The local Educational Service Center (ESC) which may be reached at ______________.
4. The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business hours.

Procedural Safeguards Assurances: A child with a disability who is eligible for special education is entitled to the protections described by the Notice of Procedural Safeguards published by the U.S. Department of Education. A copy of the Notice of Procedural Safeguards is attached to this notice or was made available to you during an Admission, Review, and Dismissal Meeting (ARD) held to discuss the information in this notice. Copies of the Notice of Procedural Safeguards are available at http://framework.esc18.net.
“Identification” Example #2: About a week after the ARD meeting, Jose’s mother signed the consent permitting the district nurse to talk to Dr. Smith by phone. A second ARDC meeting was held about a month after the first ARDC meeting. Jose’s mother continued to ask for eligibility as ASD and OHI/ADHD in addition to LD. Here is our suggested PWN to be issued following the meeting:

PRIOR WRITTEN NOTICE

Name of Student: Jose  Date PWN prepared: January 28, 2011
Date PWN provided to parent/student/guardian: January 28, 2011
Method of delivery: U.S Mail___ Email____ In Person XX Via Student___

Description of action(s) proposed or refused: The ARD committee proposed to classify Jose eligible based on OHI/ADHD in addition to his current eligibility, LD. The ARD committee refused to classify Jose eligible based on Autism Spectrum Disorder (ASD).

Reason(s) why action(s) proposed or refused: Jose’s mother previously requested that Jose’s eligibility be changed to include the disability categories of OHI/ADHD and Autism Spectrum Disorder (ASD). District nurse talked to Dr. Smith and read the special education definition of Autism to him and explained that Jose’s teachers reported no difficulties in verbal and nonverbal communication or social interaction. Dr. Smith indicated that OHI/ADHD was appropriate but changed his opinion about the autism diagnosis at least for special education.

Other option(s) considered by ARDC and reasons for rejection: The ARD committee considered changing the category of eligibility to ASD, but it was determined to be inappropriate after discussing it with Jose’s doctor and teachers.

List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s): FIE; teacher reports; grades; district nurse’s phone conversation with Dr. Smith; Dr. Smith’s letter.

Other factor(s), if any, relevant to the action(s) proposed or refused: Mrs. Jenkins did attend the ARDC meeting. She reported that Jose showed no difficulties in social interaction or verbal communication but that Jose’s short attention span caused him to get behind in math.

Sources to contact to obtain assistance in understanding the information in this Notice:
(1) The special education director, __________, who may be reached at ______________.
(2) The principal, __________, who may be reached at ______________.
(3) The local Educational Service Center (ESC) which may be reached at ____________.
(4) The Texas Education Agency Parent Information Line at 1-800-252-9668.

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b. “Evaluation” of the student.

*Evaluation* means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15. Thus, PWN is required any time a district proposes to initiate or change an evaluation of a student, or refuses to initiate or change an evaluation of the student.

**“Evaluation” Example #1:** Emily, a first grader, was in RTI, Tier 2 for reading. She was meeting all benchmarks and her teacher tried to assure her mother that she was making expected progress. However, in January 2011, after Emily received two months of Tier 2 interventions, her mother called the principal and asked that Emily be referred for evaluation by the special education department for suspected learning disability.
PRIOR WRITTEN NOTICE

Name of Student: Emily  Date PWN prepared: January 11, 2011
Date PWN provided to parent/student/guardian: January 11, 2011
Method of delivery: U.S Mail Email In Person Via Student

Description of action(s) proposed or refused: District refused to conduct full and individualized evaluation for special education.

Reason(s) why action(s) proposed or refused: The RTI Team concluded that there is no indication that Emily has a learning disability or any other suspected disability that would qualify her for special education.

Other option(s) considered and reasons for rejection: The district considered mother’s request, but rejected it due to lack of any indication that Emily has a learning disability.

List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s): The RTI Team and the diagnostician looked at Emily’s work samples from September 1, 2010 to January 10, 2011. Benchmarks showing acceptable progress had been obtained regularly and were reviewed. Grades and attendance records were reviewed.

Other factor(s), if any, relevant to the action(s) proposed or refused: Emily is responding well to Tier 2 interventions. A copy of the Notice of Procedural Safeguards was provided to the parent along with this Notice.

Sources to contact to obtain assistance in understanding the information in this Notice:
(1) The special education director, _______, who may be reached at ______________.
(2) The principal, __________, who may be reached at ______________.
(3) The local Educational Service Center (ESC) which may be reached at ______________.
(4) The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business hours.

Procedural Safeguards Assurances: A child with a disability who is eligible for special education is entitled to the protections described by the Notice of Procedural Safeguards published by the U.S. Department of Education. A copy of the Notice of Procedural Safeguards is attached to this notice or was made available to you during an Admission, Review, and Dismissal Meeting (ARDC) held to discuss the information in this notice. Copies of the Notice of Procedural Safeguards are available at http://framework.esc18.net.

Note that the above PWN form was not prepared during an ARDC meeting. It could have been prepared by any number of district staff including a campus principal, a RTI team member, a diagnostician, or the special education director. Our point is this: although we tend to think of the PWN form as a document issued after an ARDC meeting, there are instances, such as the one above, when the form must be issued and yet the ARDC did not meet. In this instance, for example, it was the RTI Team that considered the request and rejected it. The RTI Team was acting on behalf of the district—its decision is the district’s decision. Therefore, PWN is called for.
“Evaluation” Example #2: Erika, another first grader, was in RTI, Tier 3 for reading. She was not meeting all benchmarks and was struggling despite interventions. Erika’s mother asked the teacher whether Erika should be held back. The teacher told Erika’s mother about special education testing and provided her with the contact information. The RTI Team considered all relevant information and agreed with the mother that it was time to conduct a full individual evaluation to determine Erika’s eligibility for special education. A PWN is called for in this situation, but in addition to the customary elements of PWN the document must also describe “any evaluation procedures the agency proposes to conduct.” 34 C.F.R. § 300.304(a). The Notice of Initial Evaluation or Reevaluation forms customarily used by districts currently satisfy these requirements.

c. “Educational Placement” of the student.

“Placement” means educational program. See e.g., White v. Ascension Parish Sch. Bd., 343 F.3d 373, 379 (5th Cir. 2003). The regulations discussing Least Restrictive Environment indicate that “placement” means a continuum of environments including regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. See 34 C.F.R. §300.115. Thus, PWN is required any time a district proposes to initiate or change the educational program or placement of the student, or refuses to initiate or change the educational program or placement of the student.

“Educational Placement” Example #1: Daniel, a first grader and eligible with an intellectual disability, was attending a general education first grade. Due to his struggles, Daniel was provided a one-to-one aide. Daniel’s teacher informed Daniel’s mother that a self-contained, lifeskills placement would be more appropriate. Daniel’s mother immediately requested an ARDC meeting. During the ARDC meeting, the teacher repeated the recommendation for a self-contained, lifeskills placement. After much discussion, the ARD committee determined that the recommended placement was appropriate. Daniel’s mother disagreed with the placement and requested a 10-day recess. The ARDC committee agreed to reconvene on February 7, 2011.

Query: Is PWN required after the initial recessed or postponed ARDC meeting?

Answer: No. Remember, PWN is required after the district makes a decision. The purpose of the 10-day recess is for both parties to gather additional information and reconvene. It would be inappropriate (and possibly a sign of predetermination) for the district to issue PWN before the 10-day reconvened ARDC meeting.

At the next meeting, the ARD committee reviewed additional information and determined that the placement in lifeskills was Daniel’s Least Restrictive Environment even though Daniel’s mother disagreed. Here is our sample PWN to be issued after the February 6 meeting:
PRIOR WRITTEN NOTICE

Name of Student: Daniel Date PWN prepared: February 6, 2011
Date PWN provided to parent/student/guardian: February 6, 2011
Method of delivery: U.S. Mail Email XX In Person Via Student

Description of action(s) proposed or refused: District proposed placing Daniel in a self-contained lifeskills classroom.

Reason(s) why action(s) proposed or refused: Teacher initiated change in placement; lifeskills is necessary for Daniel due to his need for more attention to pre-academic skills. ARD committee determined this placement is Daniel’s least restrictive environment (LRE). Education in the regular classroom, even with the use of supplementary aids and services, cannot be achieved satisfactorily as evidenced by the fact that Daniel is not on track to satisfy annual goals. Teaching staff believes that student is receiving little benefit from existing services due to the nature and severity of the disability and will achieve more academic and non-academic benefit from a more structured setting. A more structured setting is required, with a smaller ratio of students to staff for all core curriculum classes.

Other option(s) considered by ARDC and reasons for rejection: Continuation in first grade class with one-to-one aide requested by Daniel’s mother. Rejected because even with an aide, Daniel still needs focus on pre-academics. The first grade class is not Daniel’s LRE as Daniel is not making adequate progress and is unlikely to satisfy annual goals with existing services and placement.

List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s):
FIE conducted in July 2010; observations made by first grade teacher and paraprofessional; observations in first grade classroom by diagnostician; arguments made by Daniel’s mom against placement in lifeskills.

Other factor(s), if any, relevant to the action(s) proposed or refused: Daniel needs an evaluation by the OT to evaluate fine motor skills and his mother signed the consent. Daniel will continue in general education classes for art, music and physical education which will provide both academic and non-academic benefit.

Sources for parent to contact to obtain assistance in understanding the information in this Notice:
(1) The special education director, ___________, who may be reached at ______________.
(2) The principal, ________________, who may be reached at ________________.
(3) The local Educational Service Center (ESC) which may be reached at ________________.
(4) The Texas Education Agency Parent Information Line at 1-800-252-9668.

Procedural Safeguards Assurances: A child with a disability who is eligible for special education is entitled to the protections described by the Notice of Procedural Safeguards published by the U.S. Department of Education. A copy of the Notice of Procedural Safeguards is attached to this notice or was made available to you during an Admission, Review, and Dismissal Meeting (ARD) held to discuss the information in this notice. Copies of the Notice of Procedural Safeguards are available at http://framework.esc18.net.
5. **Why wasn’t PWN required after the initial ARDC meeting (which was recessed for 10 days) or with the ARD invitation? Wasn’t the district “proposing” a change in placement before the first ARDC meeting?**

Remember that in the context of PWN, “proposal” means **action**. The ARD committee did not make the final determination until the reconvened ARDC meeting. TEA addressed this potential area of confusion and provided us with this guidance:

“When an LEA and a parent or an adult student cannot reach agreement about all of the required elements of an IEP, the LEA must offer the parent or adult student one opportunity to have the ARD committee recess for a period not to exceed 10 school days. If the parent or adult student refuses the offer to recess the meeting or if the ARD committee still cannot reach agreement after reconvening, the LEA must provide the parent or adult student with prior written notice that it will implement the IEP that it has determined to be appropriate.”


The school district is free to move Daniel to a self-contained lifeskills classroom after the second ARDC meeting but must give PWN and wait 5 school days before actually making the change.

6. **Are there other circumstances in which prior written notice is required?**

Prior written notice must also be given to a parent following the parent’s written revocation of consent for special education services, as follows:

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services.

34 C.F.R. §300.300(b)(4)(i).

While this notification is called “Prior Written Notice,” most school districts use a specialized notification form when a parent revokes the right to special education.

7. **Is prior written notice required before a disciplinary change of placement?**

Yes. A disciplinary change of placement is a change of placement—therefore, PWN is definitely required. But in the disciplinary context there are other, more specific “notice” requirements that come into play. Specifically, the IDEA regulations at 34 C.F.R. §300.530(h) state that “[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student
conduct, the LEA must **notify** the parents of that decision, and **provide** the parents the procedural safeguards notice described in §300.504.” Accordingly, IDEA requires notice to be sent on the day the decision is made by an administrator. We know that in the disciplinary context, the principal must also give the parents notice of an ARD meeting to consider a manifestation determination.

Consider what should happen, then, in a typical situation. Suppose that Sophie has committed an offense that would call for a long term DAEP placement. This occurred on January 6, 2011. The principal, on that day, decides to institute a removal that will constitute a change of placement. Therefore, the principal is required by federal law to give the parent notice of that decision on that day, and to provide a fresh new copy of the Notice of Procedural Safeguards. The principal also needs to give the parent notice of an ARD meeting to consider the manifestation determination. The parent is definitely entitled to five days notice of that ARD meeting.

We suggest that the principal should provide the PWN prior to the ARD meeting, but referencing the ARD and what may happen as a result. Here is an example.

**“Discipline” Example #1:** Sophie, 5th grade and eligible as LD, assaulted another student on the playground on School Day 1. On School Day 1, the principal decided that Sophie’s consequence should be a 30-day assignment to DAEP. On School Day 1, the principal asked Sophie’s mother to pick her up at school and the principal gave Sophie’s mother three documents:

1) Prior Written Notice that the principal intended to assign Sophie to 30 days in the DAEP pending the manifestation determination ARDC meeting. The notification said that Sophie should report to DAEP on School Day 2 and should report there every day thereafter pending outcome of the manifestation ARDC meeting.

2) An invitation to a manifestation determination ARDC meeting for School Day 6 (thus giving Sophie’s mother 5 school days’ notice of the potential 30-day assignment to DAEP and 5 school day’s notice of the ARDC meeting).

3) A copy of the Notice of Procedural Safeguards.
PRIOR WRITTEN NOTICE (Before manifestation ARDC meeting)
(Given by principal on Day 1)

Name of Student: Sophie __________________ Date PWN prepared: January 6, 2011
Date PWN provided to parent/student/guardian: January 6, 2011
Method of delivery: U.S Mail____ Email____ In Person XX Via Student____

Description of action(s) proposed or refused: Principal proposes change of placement to DAEP for 30
days subject to outcome of manifestation determination review.

Reason(s) why action(s) proposed or refused: Sophie violated the student code of conduct by hitting
another student. The Student Code of Conduct states that such conduct requires removal to DAEP for not
less than 30 days. This is the consequence that would be applied to a non-disabled student who engaged
in similar behavior.

Other option(s) considered by the ARD Committee and reasons for rejection: Other options will be
considered by the ARD Committee. The ARD Committee will conduct a manifestation determination,
and determine appropriate services for the student. If behavior is not a manifestation, the change of
placement to DAEP will take place. If behavior is a manifestation, the student will be returned to her
prior placement, unless the ARD Committee and the parent agree on a change of placement. In either
event, the ARD will consider and propose any and all necessary changes, or adjustments to ensure
appropriate services for the student.

List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed
or refused action(s): Witness statements by two classmates and three teachers who saw the misconduct.

Other factor(s), if any, relevant to the action(s) proposed or refused: Sophie is eligible for special
education. Thus the ARD Committee will meet to conduct a manifestation determination and consider
appropriate services. A copy of the Notice of Procedural Safeguards is provided to the parent along with
this notice.

Sources for parent to contact to obtain assistance in understanding the information in this Notice:
(1) The special education director, ____________, who may be reached at _________________.
(2) The principal, ____________, who may be reached at _________________.
(3) The local Educational Service Center (ESC) which may be reached at _________________.
(4) The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business
    hours.

Procedural Safeguards Assurances: A child with a disability who is eligible for special education is
entitled to the protections described by the Notice of Procedural Safeguards published by the U.S.
Department of Education. A copy of the Notice of Procedural Safeguards is attached to this notice or was
made available to you during an Admission, Review, and Dismissal Meeting (ARD) held to discuss the
information in this notice. Copies of the Notice of Procedural Safeguards are available at
http://framework.esc18.net.

On School Day 6, the district held a manifestation ARD meeting. The ARD committee
members determined that the conduct was not a manifestation of Sophie’s disability (LD). The
parent disagreed. The school refused to recess the meeting because recess is not required when a
student has committed an offense calling for DAEP placement.
Here is an example of the PWN that Sophie’s mother would receive after the manifestation determination ARDC meeting.

**PRIOR WRITTEN NOTICE (After manifestation ARD meeting)**

<table>
<thead>
<tr>
<th>Name of Student: Sophie</th>
<th>Date PWN prepared: January 14, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date PWN provided to parent/student/guardian: January 14, 2011</td>
<td></td>
</tr>
<tr>
<td>Method of delivery: U.S Mail ___ Email ____ In Person XX Via Student ___</td>
<td></td>
</tr>
<tr>
<td>Description of action(s) proposed or refused:</td>
<td>Assignment to DAEP for 30 days.</td>
</tr>
<tr>
<td>Reason(s) why action(s) proposed or refused:</td>
<td>The ARDC determined that Sophie’s conduct was not a manifestation of her disability, therefore she will be disciplined in the same manner as a general education student.</td>
</tr>
<tr>
<td>Other option(s) considered by ARDC and reasons for rejection:</td>
<td>The ARDC committee considered conducting a Functional Behavior Assessment and revising Sophie’s Behavior Intervention Plan. The committee decided that the existing behavioral and academic services at the DAEP are designed to address the behavior violation appropriately.</td>
</tr>
<tr>
<td>List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s):</td>
<td>FIE; grades; attendance and disciplinary records; Behavior Intervention Plan, witness statements prepared by two teachers and three students.</td>
</tr>
<tr>
<td>Other factor(s), if any, relevant to the action(s) proposed or refused:</td>
<td>The committee reviewed the services in Sophie’s IEP and determined that they can be provided at the DAEP in such a way that the student will continue to participate in the general curriculum and continue to progress toward satisfying her IEP goals.</td>
</tr>
<tr>
<td>Sources for parent to contact to obtain assistance in understanding the information in this Notice:</td>
<td>(1) The special education director, _________, who may be reached at ______________.</td>
</tr>
<tr>
<td></td>
<td>(2) The principal, __________, who may be reached at ___________.</td>
</tr>
<tr>
<td></td>
<td>(3) The local Educational Service Center (ESC) which may be reached at ______________.</td>
</tr>
<tr>
<td></td>
<td>(4) The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business hours.</td>
</tr>
<tr>
<td>Procedural Safeguards Assurances:</td>
<td>A child with a disability who is eligible for special education is entitled to the protections described by the Notice of Procedural Safeguards published by the U.S. Department of Education. A copy of the Notice of Procedural Safeguards is attached to this notice or was made available to you during an Admission, Review, and Dismissal Meeting (ARDC) held to discuss the information in this notice. Copies of the Notice of Procedural Safeguards are available at <a href="http://framework.esc18.net">http://framework.esc18.net</a>.</td>
</tr>
</tbody>
</table>
Part Three: Timing of Prior Written Notice

1. How can we provide PWN of a proposal or refusal if we haven’t proposed or refused anything yet?

The prior written notice of the ARD committee’s decisions is not given to the parent until after the ARD committee has made its decisions:

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, in some circumstances, that 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.


Prior written notice is required before an action (the proposal or refusal) is implemented, not before it is discussed. The Department of Education explains it this way:

A public agency meets the requirements in §300.503 so long as the prior written notice is provided a reasonable time before the public agency implements the proposal (or refusal) described in the notice.


2. Does IDEA include specific timelines for providing a prior written notice?

Except in the context of a due process hearing request, the IDEA and its implementing regulations do not specify a timeline, other than a “reasonable time” before the school district proposes or refuses to initiate or change. The US DOE was asked to add a specific timeline to the regulations but declined:

“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.”


Texas has substituted a specific timeline as follows:

“Reasonable time” required for the written notice to parents under 34 CFR §300.503 is defined as at least five school days, unless the parents agree otherwise.
19 T.A.C. § 89.1015.

The Texas Education Agency (TEA) provided additional guidance regarding prior written notice in its Frequently Asked Questions available on the TEA website located at http://ritter.tea.state.tx.us/special.ed/guidance/pwnfaq.pdf.

“An LEA must provide prior written notice at least five school days before it implements the proposal or refusal described in the notice, unless the parent or adult student agrees otherwise. This means that a student’s new or revised IEP cannot be implemented until at least five school days after the LEA provides the prior written notice.”

Frequently Asked Questions response to Question #2.

3. How does that work in the discipline context? If PWN is given at the end of the ARDC meeting, does the district have to hold off on a disciplinary penalty for another five days?

We do not think so. If the district follows the federal rules regarding disciplinary procedures the parent will have received plenty of notice of the proposed disciplinary action before the ARD Committee meets. Remember that the principal is required to give the parent notice of a proposed change of placement “on the day” that decision is made—which is at least five school days prior to the ARD meeting. Best practice appears to be to provide two documents that would satisfy the PWN requirement—one given by the principal before the ARD and one given by the ARD to document the decisions made at the meeting.

Furthermore, remember that IDEA provides that if the student’s behavior is determined not to be a manifestation of his or her disability, “school personnel may apply the relevant disciplinary procedures…in the same manner and for the same duration as the procedures that would be applied to children without disabilities.” 34 C.F.R. §300.530(c).

Finally, parents of disabled children have the right to request expedited due process hearings related to disciplinary removals. 34 C.F.R. §300.532. After a due process complaint is filed, students must remain in the disciplinary setting (stay put does not apply) unless the hearing officer determines otherwise. 34 C.F.R. §300.533.

4. What happens if the ARD decides that behavior is a manifestation of disability?

In that case the district must either conduct a FBA and develop a BIP or review and revise the existing ones. As to placement, the student must either be returned to the prior placement or moved to a different placement by agreement with the parents. Here is what PWN might look like in such a case:

“Discipline/Timing” Example: David is eligible as emotionally disturbed and is in the 8th grade. Recently, during his resource classes, David became aggressive towards several fellow students and a paraprofessional. David has a Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP). After David’s third aggressive episode, the campus principal
proposed moving David to DAEP for 30 days for violating the Student Code of Conduct. The principal sent the required forms (including PWN) prior to the manifestation ARDC meeting.

The ARDC determined that David’s behavior was a manifestation of his disability. During the ARDC meeting, when it became apparent that the DAEP placement would not be practical, the principal suggested moving David to a self-contained behavior class for at least two months. The ARD committee reviewed the data and agreed that this was an appropriate placement. David’s mother was offered a 10 day re-set ARDC meeting but she declined and said that she too agreed with the change of placement to the behavior class. See the following proposed PWN.
**PRIOR WRITTEN NOTICE (After manifestation ARDC meeting)**

<table>
<thead>
<tr>
<th>Name of Student: <strong>David</strong></th>
<th>Date PWN prepared: <strong>January 12, 2011</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date PWN provided to parent/student/guardian: <strong>January 12, 2011</strong></td>
<td></td>
</tr>
<tr>
<td>Method of delivery: U.S Mail___ Email____ In Person ____ Via Student XX (in backpack)</td>
<td></td>
</tr>
</tbody>
</table>

**Description of action(s) proposed or refused:** Change of placement from resource setting to self-contained behavior unit for at least 60 days.

**Reason(s) why action(s) proposed or refused:** David’s behavior is impeding his and others’ ability to learn. David would benefit from a more structured environment with fewer students and a higher adult to student ratio.

**Other option(s) considered by ARDC and reasons for rejection:** DAEP placement was considered and rejected because David’s behavior is a manifestation of his disability. Adjustments to behavior intervention plan in lieu of change of placement were considered insufficient to help David control his recent aggressiveness. Maintaining the previous placement was considered and rejected because of David’s need for more structure. Parent agreed with the change of placement to self-contained behavior unit.

**List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s):** FIE of February 2009; report from private psychiatrist dated January 4, 2011; FBA and BIP; documentation of aggressiveness and antecedent behaviors in resource classroom.

**Other factor(s), if any, relevant to the action(s) proposed or refused:** David’s mother indicated that his psychiatrist is experimenting with various combinations of medications to help decrease his urge to be aggressive when he gets angry. David’s mother agreed to the placement in the behavior class.

**Sources for parent to contact to obtain assistance in understanding the information in this Notice:**
1. The special education director, __________, who may be reached at ______________.
2. The principal, ___________, who may be reached at ______________.
3. The local Educational Service Center (ESC) which may be reached at ______________.
4. The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business hours.

**Procedural Safeguards Assurances:** A child with a disability who is eligible for special education is entitled to the protections described by the *Notice of Procedural Safeguards* published by the U.S. Department of Education. A copy of the *Notice of Procedural Safeguards* is attached to this notice or was made available to you during an Admission, Review, and Dismissal Meeting (ARDC) held to discuss the information in this notice. Copies of the *Notice of Procedural Safeguards* are available at [http://framework.esc18.net](http://framework.esc18.net).
## Appendix 1

### PRIOR WRITTEN NOTICE

| Name of Student:  | _________________________ |
| Date PWN prepared: | ________________________ |
| Date PWN provided to parent/student/guardian: | ________________ |
| Method of delivery: | U.S. Mail___ Email___ In Person____ Via Student____ |

**Description of action(s) proposed or refused:**

**Reason(s) why action(s) proposed or refused:**

**Other option(s) considered by ARDC and reasons for rejection:**

**List of relevant evaluation procedures, tests, records, or reports used as the basis for the proposed or refused action(s):**

**Other factor(s), if any, relevant to the action(s) proposed or refused:**

**Sources for parent to contact to obtain assistance in understanding the information in this Notice:**

1. The special education director, _____________, who may be reached at ________________.
2. The principal, _____________, who may be reached at ________________.
3. The local Educational Service Center (ESC) which may be reached at ________________.
4. The Texas Education Agency Parent Information Line at 1-800-252-9668 during normal business hours.

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*Developed by Walsh, Anderson, Brown, Gallegos & Green, P.C., January 2011*
## Appendix 2

### Circumstances Requiring Prior Written Notice

<table>
<thead>
<tr>
<th>Proposal or refusal to initiate or change something related to:</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Identification of the Student</strong></td>
<td></td>
<td></td>
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<tr>
<td>Screening</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Response to Intervention</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Eligibility for special education</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Category of eligibility</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Evaluation of the Student</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of new data for initial evaluation and reevaluation</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Reevaluation of Existing Data (REED)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Parent requests a Full and Individual Evaluation (FIE)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Parents requests an Independent education evaluation (IEE)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Parents requests an Independent education evaluation (IEE)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>and the district agrees (must also file for due process to defend FIE)</td>
<td></td>
<td></td>
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<tr>
<td>Refusal to evaluate</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Educational Placement of the Student</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial educational placement into special education</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Relocation of the special education program (placement is not the same as location)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Move to more restrictive environment</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Move to a less restrictive environment</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Dismissal from special education</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Graduation with a regular diploma</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Disciplinary removal for more than 10 consecutive school days (but notice may be provided the day of removal, prior to manifestation)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Disciplinary removal for not more than 10 school days (provided after manifestation review)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Relocation to DAEP for more than 10 days</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td><strong>Provision of FAPE to the Student</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deletion or addition of a related service</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Increase or decrease in special education services or related services</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Refusal to increase or decrease a related service</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Changes to the IEP</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Changes, additions, or deletions to classroom accommodations</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Changes, additions or deletions of annual goals and objectives</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Change in how a student will participate in statewide assessment</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Consideration of the 11 Autism Strategies</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

*The information in this handout was created by Walsh, Anderson, Brown, Gallegos & Green, P.C. It is intended to be used for general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.*