

HOW I LEARNED TO STOP WORRYING AND LOVE PRIOR WRITTEN NOTICE

CELEBRATING 35 YEARS

Presented By:

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Why is PWN Important?

- ☐ Prior written notice of certain school district decisions is a procedural safeguard
- ☐ Failure to provide prior written notice is sometimes asserted to be the basis of seeking an exception to the limitations period under IDEA. Claims that arose prior to the one year statute of limitations may be permitted if the parent was prevented from requesting the hearing due to the District withholding information from the parent that was it was otherwise required to provide.

Prior Written Notice

- ☐ Prior to what?
- ☐ Notice of what?
- ☐ How is it different from:
 - the ARD committee meeting notice?
 - the ARD report?
 - the deliberations?

PWN: What does the law require?

34 C.F.R. § 300.503(b) provides that PWN 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;

(Continued)

PWN: What does the law require?

34 C.F.R. § 300.503(b) provides that PWN must include (continued):

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.

Some Decisions that Require PWN

- ☐ **Evaluation**
 - including proposals and refusals to evaluate
- ☐ **Eligibility**
 - including related service eligibility or dismissal
- ☐ **Placement**
 - including disciplinary changes of placement
- ☐ **Changes to the IEP or the provision of FAPE**
 - including changes to frequency or duration of related services
 - Including changes to accommodations

Other Situations the Require PWN

- ☐ IEP Amendment
 - Remember placement decisions cannot be made by amendment
- ☐ Following a parent's written revocation of consent for special education services

Some Decisions that Don't Require PWN

- ☐ Changes in methodology
- ☐ Changes in personnel
- ☐ Changes in classroom locations (but distinguish this from changes of placement)
- ☐ Disciplinary removals that are not a disciplinary change of placement

Timelines Related to PWN?

- ☐ IDEA requires PWN to be provided within a reasonable period of time
- ☐ In Texas, "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.

Other Timelines Related to PWN?

- If a parent submits a written request to a school district's director of special education services or to a district administrative employee for a full individual and initial evaluation of a student, the school district must, not later than the 15th school day after the date the district receives the request:
 - provide the parent with prior written notice of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503; a copy of the procedural safeguards notice required by 34 CFR, §300.504; and an opportunity to give written consent for the evaluation; or
 - provide the parent with prior written notice of its refusal to conduct an evaluation consistent with 34 CFR, §300.503, and a copy of the procedural safeguards notice required by 34 CFR, §300.504.

Think Sideways

Proposal or Refusal	Reason	Records	Option Considered	Reason Option Rejected	Other Factors
Decision #1					
Decision #2					
Decision #3					

EXAMPLES

A description of the action proposed or refused by the agency:

The District refused to conduct a Full and Individual Evaluation ("FIE") for Eric.

WE

An explanation of why the agency proposes or refuses to take the action:

The District refused to conduct an FIE for Eric because he is making good progress with his current interventions and is likely to meet grade level TEKS expectations. Based on this progress, the District concluded that there is no indication that Eric has a learning disability that requires specialized instruction through special education.

WE

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

Work samples from September 1, 2018 to December 10, 2019; District benchmarks; grades; attendance records; parent input; teacher observations.

WE

A description of other options that the IEP Team considered and the reasons why those options were rejected:

The District considered Eric's current support and intervention in first grade, including Tier 2 interventions in reading, and continued Eric's current services without change.

WJ

A description of other factors that are relevant to the agency's proposal or refusal:

Following discussion with campus intervention team, Eric's parents are in agreement that Eric should continue in Tier 2 interventions in reading instead of conducting a FIE.

WJ

A description of the action proposed or refused by the agency:

- (1) The District refused parent's request to provide Jack with a Livescribe pen or an iPad.*
- (2) The District proposed an assistive technology evaluation.*

WJ

**An explanation of why the agency proposes
or refuses to take the action:**

(1) The District refused to provide a Livescribe pen or iPad for Jack to use in his classes because Jack is performing satisfactorily with his current accommodations. He is successful grades in his classes with a copy of the class notes provided by the teacher. Jack has passed his grade level STAAR tests and district's benchmarks.

WJ

**An explanation of why the agency proposes
or refuses to take the action:**

(2) The District proposed an assistive technology evaluation to address parent's concern that Jack needs assistive technology for writing and note-taking in the classroom, including a Livescribe Pen and iPad.

WJ

**A description of each evaluation procedure,
assessment, record, or report the agency
used as a basis for the proposed or refused
action:**

*Work samples from September 1, 2018 to December 10, 2019
District benchmarks; grades; attendance records; parent input; teacher
observations, outside evaluation provided by parent.*

WJ

A description of other options that the IEP Team considered and the reasons why those options were rejected:

The ARD Committee considered adding an alpha smart to Jack's current accommodations, but rejected this option because the data collected from Jack's teachers, including current grades and benchmarks, indicates that Jack is successful with class notes provided by the teachers. An assistive technology assessment has been recommended to further explore whether assistive technology is needed for note taking or writing.

WJ

A description of other factors that are relevant to the agency's proposal or refusal:

Additional description of the ARD committee's concerns related to this request may be found in the ARD deliberations for the meeting of December 21, 2019.

WJ

A description of the action proposed or refused by the agency:

The District proposed a change of placement to the Disciplinary Alternative Education Program (DAEP)

WJ

An explanation of why the agency proposes or refuses to take the action:

The District proposed a change of placement because the ARD committee determined that Maria's conduct was not a manifestation of her disability. She will be disciplined in the same manner as any other general education 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.

WJ

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

Full Individual Evaluation; grades; attendance and disciplinary records; Behavior Intervention Plan, witness statements prepared by two teachers and three students, parent input.

WJ

A description of other options that the IEP Team considered and the reasons why those options were rejected:

The ARD committee considered conducting a Functional Behavior Assessment ("FBA") and revising Maria's Behavior Intervention Plan. This was rejected. After review of Maria's behaviors in the classroom and on the playground, the ARD committee determined that the existing behavioral and academic services at the DAEP are designed to appropriately address Maria's behavior violation, and so there was no need for a FBA.

WJ

A description of other factors that are relevant to the agency's proposal or refusal:

The committee reviewed the services in Maria's IEP as determined by her last ARD committee meeting, and determined that the IEP 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.

WE

Language of PWN

- ☐ The notice must be in written language understandable to the general public; and
- ☐ The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

34 C.F.R. § 300.503

Tell me again why this matters...

- ☐ PWN provides the parent a clear explanation of what we are doing, or what we are refusing to do, and why.
- ☐ Thus this is one of the most important vehicles for communication with the parent.
- ☐ The quality of your PWN says a lot about your professionalism.
- ☐ In the difficult situation, checking boxes on your form will not be good enough.

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The information in this presentation was prepared by Walsh Gallegos Treviño Russo & Kyle 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.


