

PRIOR WRITTEN NOTICE: LEGAL COMPLIANCE AND PRACTICAL POINTERS

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Federal law requires prior written notice whenever a district proposes or refuses to initiate or change identification, evaluation, educational placement, or the provision of FAPE to a child with a disability. But knowing the decisions that trigger this requirement can be tricky – and potentially troublesome if not recognized. Attorney Elena Gallegos will review guidance and case law, and navigate you through the practical when, what, and how a district should provide prior written notice. She'll identify the everyday scenarios that require notice and explain the provisions you need to include in your notice to avoid legal trouble.

1. *When is prior written notice required?*

Prior 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. ***What must 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 is relevant to the agency's proposal or refusal. 34 C.F.R. § 300.503(b).

3. ***What does “identification” mean?***

“Identification” refers to the identification of a child as a child with a disability, including the specific disability category or categories.

4. ***How does prior written notice work within the identification context?***

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46661 (August 14, 2006). “The eligibility group should work toward consensus, but under § 300.306, the public agency has the ultimate responsibility to determine whether the child is a child with a disability. Parents and school personnel are encouraged to work together in making the eligibility determination. If the parent disagrees with the public agency’s determination, under § 300.503, the public agency must provide the parent with prior written notice and the parent’s right to seek resolution of any disagreement through an impartial due process hearing, consistent with the requirements in § 300.503 and section 615(b)(3) of the Act.”

Letter to Atkins-Lieberman, 56 IDELR 141 (OSEP 2010). “In the case of a proposal to identify a child as having a disability under 34 CFR § 300.8 (eligibility for special education and related services []), OSEP would expect that the prior written notice, in order to fully explain the actions being proposed would include the proposed category of disability, if applicable (some States have no categorical identification), along with the proposal to initiate services or placement in special education. Additionally, if the parent requests a change in

identification (category of disability or from a child with a disability to a child without a disability) and the public agency refuses the parent's request.”

Costello v. Mitchell Pub. Sch. Dist. 79, 266 F.3d 916; 35 IDELR 159 (8th Cir. 2001). “The IDEA contemplates that the parents of a child in any stage of the verification process receive prior written notice of all initiations or refusals of action by the agency. Mitchell identified and evaluated Sadonya, but it refused to institute an educational placement that included special education services. This is a refusal within the meaning of the IDEA. Thus, Sadonya's parents should have received the written notice required by § 1415(c), which details the specific information an educational agency must include in the notice.”

5. ***What does “evaluation” mean?***

“*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.

6. ***How does prior written notice work within the evaluation context?***

School districts are not obligated to grant every parental request for an evaluation. However, a refusal to evaluate triggers prior written notice.

OSERS Questions and Answers on Response to Intervention and Early Intervening Services, 47 IDELR 196 (January 1, 2007). “If an LEA declines the parent's request for an evaluation, the LEA must issue a prior written notice as required under 34 CFR § 300.503(a) (2) which states, written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The parent can challenge this decision by requesting a due process hearing to resolve the dispute regarding the child's need for an evaluation.”

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46640 (August 14, 2006). “[W]e believe the regulations are clear that the public agency must provide the parents with written notice of the agency's refusal to conduct a reevaluation, consistent with § 300.503 and section 615(c)(1) of the Act.”

7. ***Do we have to give prior written notice for a child transitioning from Part C (ECI) to Part B?***

OSEP Early Childhood Transitions Frequently Asked Questions, 53 IDELR 301 (December 1, 2009). “If a child who has been served in Part C is referred to Part B, the LEA is responsible for giving the parents of the child a copy of the procedural safeguards notice. 34 CFR § 300.504(a) (1). If the LEA suspects the child has a disability, the LEA must initiate the evaluation process to determine whether the child is a child with a disability. 34 CFR § 300.301(b). Before conducting an initial evaluation under Part B, the LEA must, after providing the parents prior written notice consistent with 34 CFR § 300.503, obtain informed consent, consistent with 34 CFR § 300.9, from the parent of the child. 34 CFR § 300.300(a).”

8. ***What does “placement” mean?***

“Placement” refers to a particular level on the continuum of alternative placements such as instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. See 34 C.F.R. § 300.115 Continuum of Alternative Placements.

Indep. School Dist. No. 281, v. Minn. Dep’t. of Education, 48 IDELR 222 (Minn. App. 2007). When a school district did away with their entire Developmental-Adapted-Physical-Education (DAPE) swimming program for a group of special education high school students, the parents filed suit. Among other things, the parents asserted a failure to provide prior written notice. Although the parents were informed, the “notices” provided to the parents were not individualized for each student and did not contain all the required elements. The court noted that “adequate notice is critical to ensuring parents’ participation in the process”, and “[u]nless school systems apprise parents of their procedural protections ... parental participation will rarely amount to anything more than parental acquiescence, because parents will assume they have no real say and the participatory function envisioned by *Rowley* will go unfulfilled.” (Internal citations omitted.) The court acknowledged that the school district could have changed methodologies (how it offered the service of adapted P.E.) but it could not delete adapted P.E. from the student’s IEPs without complying with IDEA’s procedural safeguards.

Manuel P. v. Anchorage Sch. Dist., 265 P.3d 308; 58 IDELR 17 (Alaska 2011). In this case, the school district failed to provide prior written notice before implementing a proposed change in placement. Specifically, the student’s writing instruction was changed from a regular to special education setting. In a footnote, the court stated: “We echo the hearing officer’s and superior court’s concerns that immediate implementation of IEP amendments before issuance of a prior written notice seems to negate the ‘prior’ in prior written notice.”

M.B. v. Hamilton Southeastern Schools, 112 LRP 6281 (7th Cir. 2011). prior written notice was required when the district refused to provide full-day (double-session) kindergarten, and instead offered a half-day kindergarten.

9. ***What about disciplinary changes of placement?***

Prior written notice is required a reasonable time before the district proposes to initiate a disciplinary change of placement. A disciplinary change of placement occurs if:

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern—
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. 34 C.F.R. § 300.536.

Additionally, IDEA requires that notice of procedural safeguards be given “on the date on which the decision is made to make a removal that constitutes a change of placement.” 34 C.F.R. § 300.530(h).

10. ***What about when a student graduates?***

“Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.” 34 C.F.R. § 300.102(a)(3)(iii).

Moseley v. Board of Educ. of Albuquerque Pub. Schs., 483 F.3d 689; 47 IDELR 211 (10th Cir. 2007). The court concluded that the student had been validly graduated, and the parent did not contest the graduation. Therefore, all other claims were moot. “When a school district intends to graduate a student before the student has reached the age of twenty-one, it must give prior written notice to the student's parents regarding this pending change in ‘educational placement.’ ...The student's parents may then file a ‘complaint’ with the school, contesting the graduation. ...The filing of such a complaint entitles the parents to an ‘impartial due process hearing’ at the administrative level, where they may present arguments as to why continued education is necessary for the student to receive a FAPE. ... Following exhaustion of an administrative appeal...the parents may then challenge the proposed graduation by bringing an action in federal district court...” (Internal citations omitted.)

11. *Is “placement” the same as location?*

White v. Ascension Parish School Board, 343 F.3d 373 (5th Cir. 2003). “‘Educational placement’, as used in the IDEA, means educational program—not the particular institution where that program is implemented.”

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46588 (August 14, 2006). “Historically, we have referred to ‘placement’ as points along the continuum of placement options available for a child with a disability, and ‘location’ as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child’s special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement. It also should be noted that, under section 615(b)(3) of the Act, a parent must be given written prior notice that meets the requirements of § 300.503 a reasonable time before a public agency implements a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Consistent with this notice requirement, parents of children with disabilities must be informed that the public agency is required to have a full continuum of placement options, as well as about the placement options that were actually considered and the reasons why those options were rejected. While public agencies have an obligation under the Act to notify parents regarding placement decisions, there is nothing in the Act that requires a detailed explanation in children’s IEPs of why their educational needs or educational placements cannot be met in the location the parents’ request. We believe including such a provision would be overly burdensome for school administrators and diminish their flexibility to appropriately assign a child to a particular school or classroom, provided that the assignment is made consistent with the child’s IEP and the decision of the group determining placement.”

In *Veazey v. Ascension Parish School Board*, 42 IDELR 140 (5th Cir. 2005), the parents argued that the transfer to a “cluster” school constituted a change in his “educational placement,” requiring the district to provide them with prior written notice. The Fifth Circuit noted that “a change in the particular school site at which a disabled student’s [IEP] is implemented does not constitute a change in ‘educational placement.’” Accordingly, the prior written notice requirement was not triggered.

12. ***What does “the provision of FAPE” mean?***

The provision of FAPE is broad. The federal regulations define “free appropriate public education” as follows:

Free appropriate public education or FAPE means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

34 C.F.R. § 300.17.

13. ***Isn't FAPE what we determine in an IEP meeting?***

Yes. And for that reason, your IEP Team decisions trigger a duty to provide prior written notice.

Letter to Lieberman, 52 IDELR 18 (OSEP 2008). “Under 34 CFR § 300.17(d), FAPE means, among other things, special education and related services that are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324. Therefore, a proposal [or refusal] to revise a child's IEP... would trigger notice under 34 CFR § 300.503.”

14. ***So how specific do we have to be regarding IEP Team actions? For example, does "provision" of FAPE refer to the type/amount/location of the services?***

Letter to Lieberman, 52 IDELR 18 (OSEP 2008). It appears we are talking about the elements of an IEP. “[A] proposal to revise a child's IEP, which typically involves a change to the type, amount, or location of the special education and related services being provided to a child, would trigger notice under 34 CFR § 300.503.”

15. ***Do we have to give prior written notice to change an elective?***

It depends on whether the particular elective is part of the IEP. Examining the Goals will give insight as to whether a proposed change will substantially or materially affect the composition of the educational program. For example, in the case of *In re: Student with a Disability*, 110 LRP 54899 (SEA Wyo. 2010), a Wyoming Hearing Officer ruled against a district when it unilaterally transferred the student from P.E. to art without holding an IEP meeting and providing prior

written notice. The Hearing Officer found that although students generally have the option of which elective class to enroll in, they are not interchangeable where a student's IEP goals are tied to his attendance in a particular course. Specifically, P.E. corresponded to a goal that the student would maintain his gross motor skills.

16. ***What about a change in the school calendar?***

Department of Educ., State of Hawaii v. N.D., 58 IDELR 76 (D. Haw. 2011). Parents requested a due process hearing when the State of Hawaii implemented furlough days for all students as a cost-saving measure. Among other things, the parent complained that the district failed to provide prior written notice of the change. The court acknowledged that “[t]he child's parents are entitled to participate in any meetings regarding the IEP, and must receive prior written notice of any proposed changes in the IEP. *Id.* (citing § 1415(b)(1) & (3)). Under the IDEA, the child is entitled to have an education implemented in conformity with the IEP.” However, the court reversed the hearing officer's decision, holding instead in favor of the school district. In so holding, the court relied on the Ninth Circuit case, *Van Duyn v. Baker School Dist.* 5J, 502 F.3d 811; 107 LRP 51958 (9th Cir. 2007). As noted by the court, “[t]he Ninth Circuit held that furloughs did not constitute a change in the educational program of the students because, while the IEPs assume five day weeks, they also assume some four day weeks for holidays.” Therefore, the court held that prior written notice was not required since there was no change in educational placement or provision of a FAPE to the child.

17. ***What about when a parent revokes consent for services?***

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).

18. ***Do we have to provide notice of procedural safeguards with the prior written notice?***

As stated above, the prior written 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).

Additionally, the procedural safeguards notice must be given to the parent at least once per year and under the following circumstances:

- (1) Upon initial or parent request for evaluation;
- (2) Upon receipt of the first State complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
- (3) In accordance with the discipline procedures in §300.530(h); and
- (4) Upon request by a parent. 34 C.F.R. § 300.504(a).

19. ***We always send a notice before the meeting, is that the same thing?***

There are two types of notices that must be given to the parent in connection with an IEP meeting.

First, there is a notice of the IEP meeting that serves as an invitation to the meeting and is designed to ensure the parent's participation.

The notice of the meeting must contain the following elements:

- (A) The notice required under paragraph (a) (1) of this section must—
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 - (ii) Inform the parents of the provisions in §300.321(a) (6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
- (B) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—
 - (i) Indicate—
 - (1) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - (2) That the agency will invite the student; and
 - (ii) Identify any other agency that will be invited to send a representative. 34 C.F.R. §300.322(b).

Second, there is prior written notice of the decisions that are made in the meeting.

The prior written notice is not given to the parent until after the IEP Team has made its decisions. The prior written notice serves to inform the parent of the IEP Team's decisions.

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46691 (August 14, 2006). "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."

20. ***Are there 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.

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46691 (August 14, 2006). "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."

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46691 (August 14, 2006). "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."

21. ***I thought we only have to provide prior written notice when the IEP Team does not reach consensus.***

The Office of Special Education Programs, U.S. Department of Education, is clear that prior written notice is not limited to non-consensus IEP meetings.

Letter to Lieberman, 52 IDELR 18 (OSEP 2008). "Nothing in the statute or regulations indicates that the notice is related to a parent's attitude toward any changes proposed or refused by the public agency."

Letter to Lieberman, 52 IDELR 18 (OSEP 2008). "If, during an IEP meeting, the team, including the parent, agrees to a change in the, child's services, the public agency must provide written notice in accordance with 34 CFR § 300.503. Providing such notice following an IEP Team meeting where such a change is proposed -- or refused -- allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth."

22. ***Is a prior written notice required regarding a change that is requested by a parent? In the circumstances where a school district is not proposing a change but rather agreeing with a change that has been proposed by a parent, would the school district be required to provide a notice?***

Letter to Lieberman, 52 IDELR 18 (OSEP 2008). “Yes. Under 34 CFR § 300.503, public agencies are required to give the parents of a child with a disability written notice, that meets the requirements of 34 CFR § 300.503(b), a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child. The purpose of the written notice requirement is to inform parents of a public agency's final action on a proposal or refusal to initiate or change the identification, evaluation, or educational placement, or the provision of FAPE to a particular child. Regardless of how a change to the above factors is suggested, it is the responsibility of the public agency to make a final decision and actually implement any determined change. Therefore, in the circumstances where a public agency is not proposing a change, but rather agreeing with a change that has been proposed by a parent, the public agency would be required to provide prior written notice to the parent, consistent with 34 CFR § 300.503.”

23. ***Can we use the IEP as the prior written notice?***

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 466691 (August 14, 2006). “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.”

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

24. ***Can we use our minutes as the prior written notice?***

Some states discourage minutes. In states where minutes are an acceptable practice, we think that well-written minutes may provide much of the information required in a prior written notice. However, you must ensure that the document(s) the parent receives meets all the requirements of prior written notice. Therefore, we recommend that instead of drafting minutes during the meeting AND preparing a prior written notice following the meeting, you consider drafting structured minutes that satisfy the elements of prior written notice.

25. ***Do you have a sample form?***

The New Mexico Public Education Department, Special Education Bureau has developed a form that is designed to be completed during the IEP Team meeting and provided to the parent at the conclusion of the meeting. That form is part of the Department’s Technical Assistance Manual: Developing Quality IEPs (Revised August 2010) located at:

<http://www.ped.state.nm.us/SEB/technical/DevelopingQualityIEPs.pdf>.

The form begins with a description of each evaluation procedure, assessment, record, or report the IEP Team used as a basis for the proposed (“accepted”) or refused (“rejected”) action. The proposals and refusals are documented using the following format:

All Items Proposed All Options Considered	Proposed By	Accept (√)	Reject (√)	Reason for Acceptance or Rejection (Must include a description of each evaluation procedure, assessment, record or report used as a basis for the proposed or refused action)

The U.S. Department of Education also has a sample form. *See attached.* You can also locate this form at: <http://idea.ed.gov/static/modelForms>.

26. ***Do we have to give a prior written notice when the parent and district agree to amend the IEP without a meeting?***

OSERS Questions and Answers on Individualized Education Programs, Evaluations, and Reevaluations, 47 IDELR 166 (January 1, 2007). “The regulations require, at 34 CFR § 300.503(a), that written notice that meets the requirements of 34 CFR § 300.503(b) must be given to the parents of a child with a disability a reasonable time before the public agency -- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. This provision applies, even if the IEP is revised without convening an IEP Team meeting, pursuant to 34 CFR § 300.324(a)(4).”

See attached sample adapted from U.S. Department of Education Model form.

27. ***Do we have to give prior written notice if the parent refuses to consent to a reevaluation and the district determines, based on a review of existing evaluation data, that the child no longer qualifies for special education services?***

“If the public agency chooses not to pursue the reevaluation by using the consent override procedures described in 34 CFR § 300.300(a) (3), and the public agency believes based on existing data that the child does not continue to have a disability or does not continue to need special education and related services, the public agency may determine that it will not continue to provide special education and related services to the child. If the public agency determines that it will not continue to provide special education and related services to the child, the public agency must provide the parent with prior written notice of its proposal to discontinue the provision of FAPE to the child consistent with 34 CFR § 300.503(a)(2).” *OSERS Questions and Answers on Individualized Education Programs, Evaluations, and Reevaluations*, 47 IDELR 166 (January 1, 2007).

28. ***What defenses may a district assert when it fails to provide prior written notice and a parent sues?***

Communication with parents is the key.

Manuel P. v. Anchorage Sch. Dist., 265 P.3d 308; 58 IDELR 17 (Alaska 2011). When the student’s writing instruction was changed from a regular to special education setting without prior written notice, the court concluded: “We echo the hearing officer’s and superior court’s concerns that immediate implementation of IEP amendments before issuance of a prior written notice seems to negate the ‘prior’ in prior written notice.” However, the court concluded that because the parents “were not deprived of the opportunity to participate in Manuel’s education planning as a result of the untimely prior written notice. First, Madeline knew amending Manuel’s IEP to reflect the new writing instruction location would be discussed because Schofield listed it on an agenda that was sent nine days prior to the meeting. Second, Madeline attended the January 19 meeting when the IEP was amended and participated in the discussion.”

M.B. v. Hamilton Southeastern Schools, 112 LRP 6281 (7th Cir. 2011). This case centered on a dispute over whether the child required full-day (double-session), rather than half-day kindergarten for FAPE. The school failed to provide prior written notice of its refusal of a full-day (double-session) kindergarten. The court concluded that such failure did not deny the student a FAPE since the parents were fully aware of the school’s decision. The court reasoned as follows:

Moreover, M.B.'s parents claim that the School's failure to provide them with prior written notice of its decision to deny a double-session kindergarten placement denied them an opportunity meaningfully to participate in crafting M.B.'s IEP. See 20 U.S.C. § 1415(b)(3)(B) (requiring written prior notice to be provided when the school district "refuses to initiate or change"). But the purpose of this requirement is to ensure that parents are aware of the decision so that they may pursue procedural remedies. See, e.g., *J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 459 (9th Cir. 2010) (suggesting that formal notice of a proposed placement "will greatly assist parents in presenting complaints" regarding that placement); *A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 682 (4th Cir. 2007) (noting that the policies served by prior written notice include "creating a clear record of the educational placement" and "assist[ing] parents in presenting complaints"). Here, M.B.'s parents were well aware of the School's refusal to provide double-session kindergarten, as evidenced by their decision to initiate a due process complaint. The lack of prior written notice did not impair the parents' ability to participate in the process, and the hearing officer did not clearly err when he determined that this omission "in no way resulted in harm to the Student." (A.R. at 3415.)

Costello v. Mitchell Pub. Sch. Dist. 79, 266 F.3d 916; 35 IDELR 159 (8th Cir. 2001). In this case, the parent's own conduct negated the procedural error of failing to provide prior written notice. The court explained:

Not all procedural errors result in a loss of educational opportunity. See *J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 69 (2d Cir. 2000); *Heather S. v. Wisconsin*, 125 F.3d 1045, 1059 (7th Cir. 1997) (quoting *W.G. v. Bd. of Trustees*, 960 F.2d 1479, 1483 (9th Cir. 1992)). Despite the failure to provide the notice required by § 1415, Mitchell requested, both orally and in writing, a current medical report. In response to these requests, the plaintiffs provided only outdated diagnoses that did not describe any current health impairment. In light of their failure to provide information that might well have helped Mitchell in its continuing efforts to evaluate Sadonya's condition, the plaintiffs will not now be heard to complain of Mitchell's failure to comply literally with the terms of the relevant statutes. Accordingly, we conclude that the court properly granted summary judgment to the defendants on the IDEA claim.

[School District]

Date: _____

**IDEA
Part B**

**PRIOR WRITTEN NOTICE OF AGREEMENT TO
AMEND IEP WITHOUT A MEETING**

[Student Information]

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. The school district must provide the notice in understandable language (34 CFR §300.503(c)).

In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the school district may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. 34 C.F.R. § 300.324(a)(4)(i). The requirements of prior written notice apply even if the IEP is revised without convening an IEP Team meeting.

PRIOR WRITTEN NOTICE UNDER PART B OF THE IDEA

- Description of the action that the school district proposes or refuses to take:

_____ (Parent) and _____ (District) conferred on _____ by telephone and agreed to amend [student]'s IEP without a meeting as permitted by 34 C.F.R. § 300.324(a)(4)(i). The District proposed the following actions (amended IEP):

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- Explanation of why the school district is proposing or refusing to take that action:

- [insert]



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PRIOR WRITTEN NOTICE **2**

- Description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action:
- Description of any other choices considered and the reasons why those choices were rejected:
- Description of other factors:

In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the school district may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. 34 C.F.R. § 300.324(a)(4)(i). The annual IEP meeting was held on _____ and is still current. These amendments modify amend or modify the child's current IEP. The due date for the child's annual review is _____.

"If changes are made to the child's IEP ... the public agency must ensure that the child's IEP Team is informed of those changes." 34 C.F.R. §300.324(a)(4)(ii). The person responsible for informing the IEP Team and those responsible for implementing the IEP of the changes is: [Insert].
- Resources for the parents to contact for help in understanding Part B of the IDEA:
- If this notice is not an initial referral for evaluation, how the parent can obtain a copy of a description of the procedural safeguards:

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Part B PRIOR WRITTEN NOTICE

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. The required content under 34 CFR §300.503(b) is listed below in this model form. The school district must provide the notice in understandable language (34 CFR §300.503(c)).

This model form provides a format that States and/or school districts may choose to adopt to construct the form that they will use to provide that notice. The school district will need to insert the required child- and situation-specific information, and must inform parents, as part of the notice, that they have protection under the procedural safeguards of Part B of the IDEA.

PRIOR WRITTEN NOTICE UNDER PART B OF THE IDEA

- Description of the action that the school district proposes or refuses to take:

- Explanation of why the school district is proposing or refusing to take that action:

- Description of each evaluation procedure, assessment, record, or report the school district used in deciding to propose or refuse the action:

- Description of any other choices that the Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected:

- Description of other reasons why the school district proposed or refused the action:

- Resources for the parents to contact for help in understanding Part B of the IDEA:

- If this notice is not an initial referral for evaluation, how the parent can obtain a copy of a description of the procedural safeguards: