

Prior Written Notice

Introduction & Intent

Prior Written Notice (PWN) serves as a vehicle of communication between *Early On* and families. It is very important that parents are always well informed about specific actions *Early On* intends to take (or not take). Through PWN, *Early On* ensures that parents are up to date on actions being proposed or refused as early as possible so that parents can fully participate in the early intervention process.

This section includes information regarding:

- Purpose
- Content
- Language Requirements
- Timing
- Delivery
- Circumstances
- Screening
- Evaluation
- Eligibility
- Service(s) and Placement
- Exit and/or Transition
- Format
- Related Forms, Documents and Resources

Purpose

PWN is one of the many procedures that must be in place as a safeguard to protect families. Although provided at many different times during the *Early On* process, the purpose of PWN is always the same—to ensure that a parent is fully informed regarding specific actions the local lead agency or service coordinator/provider is proposing to take (or not take) with the child or family.

The federal requirement for PWN talks about when *Early On* is proposing or refusing an action. The use of the word “propose” may be confusing because it could be misinterpreted to mean that prior written notice is required whenever *Early On* considers or suggests or thinks about proposing an action. However, in the context of PWN, the word “propose” indicates that a decision to take an action has been made by *Early On*. The word “refuse” indicates that a decision to not take an action has been made by *Early On*.

Throughout this section, when a reference is made to an action having been proposed, it is referring to a decision that has been made by *Early On*. The purpose of PWN is to document decisions made by *Early On* and is intended to give parents adequate notice before the decision is implemented.

Early On must give the parent PWN before:

- Proposing to conduct a screening,
- Proposing (decision to take an action) to initiate or change:
 - o Evaluation
 - o Identification
 - o Services
 - o Placement
- Refusing (decision to not take an action) to initiate or change:
 - o Evaluation
 - o Identification
 - o Services
 - o Placement

PWN is needed regarding **Evaluation** when a decision has been made regarding conducting or not conducting an evaluation for Part C eligibility based on developmental delay. PWN is also needed regarding evaluation when a decision has been made regarding conducting or not conducting an evaluation for Michigan Mandatory Special Education (MMSE) eligibility. For service areas using post-referral screening to make decisions about whether or not to conduct an evaluation, PWN is required.

PWN is needed regarding **Identification** when a decision has been made related to a child's eligibility status for Part C under developmental delay or established condition. PWN is also needed when a decision has been made related to a child's eligibility for MMSE.

PWN is needed regarding the decisions made concerning the provision of Part C **Services** and the **Placement** (service location).

PWN provides a parent a written summary of specified actions that are being proposed or denied, along with the reasons for the decision of action or inaction. PWN also provides the parent with information regarding procedures available if the parent does not agree with the decision. The decisions of action or inaction documented in PWN mirror those for which a family may file a due process complaint. PWN serves as documentation of specified discussions and decisions between the parent and *Early On*, capturing information that may not show up on any other paperwork. This is particularly relevant in the instances when *Early On* is refusing to take an action requested by the parent. Having this documentation is beneficial for both the parent and *Early On* in the event that a concern is raised or need arises for a parent to initiate dispute resolution options.

Content

PWN must include:

- The action that is being proposed or refused;

- The reasons for taking that action; and
- A statement that the family has protection under the procedural safeguards of federal law and state policy and the means by which a copy of documents with information regarding rights and procedural safeguards may be obtained. The information available to parents must include a description of mediation, how to file a State complaint or due process complaint challenging the decision, and any timelines to be followed.

When PWN is for screening, an additional content requirement is to include a description of the parent's right to request an evaluation at any time during the screening process.

Language Requirements

The content of PWN must be written in a way and use terminology that can be easily understood by the general public.

Unless not clearly feasible to do so, PWN must be provided to the parent in his/her native language or mode of communication (such as oral, written, sign, or Braille).

When the native language or mode of communication is not a written language, *Early On* must provide an oral translation or present the information by other means appropriate to the parent. *Early On* must take steps to ensure that the parent understands the content of the notice. Written evidence that this requirement was met must be documented.

Timing

Federal regulations require *Early On* to give PWN a reasonable length of time in advance of specific actions being proposed or refused by *Early On*. It is important for the local service area to take family needs and situations into consideration when determining what constitutes a reasonable length of time. Through PWN, *Early On* ensures that parents are up to date on decisions made by *Early On* as early as possible so that parents can fully participate in the proposed actions or respond to refusals.

When a proposed action requires written parental consent, PWN must be provided before a parent is asked to consent to the next steps. Ultimately, this creates a pause before the decision is implemented. This pause allows the parent an opportunity to consider the proposed action and express any questions about proposed changes or to challenge a decision regarding evaluation, identification, placement, or services for the child and the child's family. The parent is then able to make an informed decision about whether to provide consent.

Sometimes the parent may be ready to move forward by providing written parental consent immediately after PWN is provided, while other times a longer pause may be necessary

before a parent is comfortable with moving on to the next step. In the event that a parent desires additional time before moving forward, a discussion may be held about when and how *Early On* should check back with the parent and perhaps set an appointment to come back together. If a parent needs additional time before providing consent and meeting a timeline may be impacted, then documentation of the circumstance is necessary.

In some instances, a decision is made about a child's or family's involvement in *Early On* which does not require parental consent. Parental consent is not needed for identification (eligibility determination) or a refusal by *Early On* for evaluation, services or placement. In these situations, PWN is simply provided after the decision has been made.

Delivery

PWN may be mailed, emailed, or handed to the parent. Obtaining a signature of receipt of PWN is not required. A copy of the completed form should be kept as documentation in the child's file. No matter how PWN form is delivered, service coordinators/providers should take steps to ensure that the parent understands the content of the notice. This typically involves a conversation.

Circumstances

PWN is tied to a specific decision and provides information to the parent about that specific circumstance.

Typically, a separate PWN is needed for each circumstance. When PWN is regarding the proposal of an action, implementation of the action may result in another decision requiring an additional PWN. For example, when PWN is provided for proposal of an evaluation, the evaluation must be conducted before an eligibility decision can be made. Once the eligibility decision is made a new PWN will be needed regarding that decision.

Occasionally, decisions may be made about more than one circumstance simultaneously. One PWN can then cover both circumstances. Examples include:

- Proposing both an evaluation for *Early On* and an evaluation for MMSE to be conducted simultaneously;
- Eligibility determination for *Early On* and MMSE if done simultaneously; and
- Decisions about services and placement.

The following situations delineate the circumstances in which PWN is or is not required.

Screening

PWN is required prior to post-referral screening. PWN is given before requesting a parent signature consenting to a screening.

PWN for screening must include a description of the parent's right to request an evaluation at any time during the screening process.

PWN is also needed after conducting a post-referral screening if the result indicates that there is not a suspicion of a developmental delay.

If the result indicates that there is a suspicion of a developmental delay, the PWN requirements for proposing an evaluation apply.

For additional information, please see the "Screening (Post-Referral Screening)" section of the **Individualized Family Service Plan (IFSP) Process** chapter in this manual.

Evaluation

PWN is needed anytime an evaluation will be conducted to determine initial or continuing eligibility for *Early On* and/or MMSE. PWN is given before requesting parent signature on an *Early On* Parental Consent form. It is important for the parent to understand that if an evaluation is conducted, the results of the evaluation may impact eligibility of the child for *Early On* and/or for MMSE.

On rare occasions when the service area is not going to conduct an evaluation because there is not a clear suspicion of a delay, the parent must be provided with PWN explaining why an evaluation is not being conducted.

Eligibility

When a child is determined to be either eligible or ineligible for *Early On* services, PWN must be provided. PWN must be used for eligibility decisions for *Early On* and/or MMSE.

For children found ineligible, PWN documents the ineligibility decision and the reasons for that decision. There is no need to hold an IFSP meeting for children found ineligible for *Early On* and/or MMSE.

For eligible children, PWN documents the eligibility decision and the reasons for that decision. *Early On* would move forward with convening an IFSP meeting.

Service(s) and Placement

During an IFSP meeting, the team develops the IFSP by discussing choices and making decisions. PWN form should be filled out during this process to document the service and placement (service location) decisions that the team is proposing or denying, and the reasons for those decisions. This PWN is given before requesting a parent's signature on the IFSP. The parent signature on the IFSP is Michigan's method for meeting the federal requirement of parental consent for services.

Sometimes a parent may decline a service being proposed by *Early On*. PWN documents this proposal, capturing information that would not be identified on the IFSP.

Initial IFSP meetings: PWN is required for all decisions concerning service and placement made during an initial IFSP meeting. This includes type of service, frequency, length, method, intensity, and location.

Subsequent IFSP meetings: PWN is required whenever any change in services or placement is proposed or denied during a subsequent IFSP meeting. This includes type of service, frequency, length, method, intensity, and location. The only time PWN is not required at subsequent IFSP meetings is when services remain exactly the same on the IFSP and no service changes were denied during the IFSP discussions.

Exit and/or Transition

If a parent elects to discontinue *Early On* services prior to the child turning three years of age, *Early On* would change the child's status to "exited" in the data system. PWN is needed to document the decision to end the provision of *Early On* services.

Occasionally *Early On* may determine, prior to a child turning three years of age, that the child no longer meets eligibility criteria. When this happens PWN must be given to document the ineligibility decision and the reasons for that decision.

Michigan allows children to transition from Part C to Part B Preschool Special Education at any time between two and a half (2 ½) and three (3) years of age. A parent must be fully informed about the option of a child remaining in Part C until three (3) years of age, or transitioning early to Part B Preschool Special Education. If a child transitions during that time period, *Early On* would need to provide PWN indicating that although the child is still eligible for Part C, a decision has been made to discontinue *Early On* services because the child will be receiving services under Part B Preschool Special Education.

PWN is not needed for a child exiting *Early On* at age three.

A table summarizing PWN requirements by circumstance has been developed. A link to this document is available in the Resources section below.

Format

The Michigan Department of Education, along with *Early On* Training & Technical Assistance, has developed prototype PWN forms. Local service areas may choose to use the prototype forms. Local forms may also be developed as long as all required content is included. It is also possible to embed PWN into letters, IFSPs or other documents. When embedding PWN into other documents, it is important to be cognizant of the timing of PWN.

Related Forms, Documents and Resources

Early On Michigan Prior Written Notice: Birth to Three Years

Prior Written Notice Circumstance Chart

Federal Statute

[§ 639 \(a\) \(6\) Written Prior Notice](#)

[§ 639 \(a\) \(7\) Native Language](#)

Federal Regulations

[§ 303.320 Screening procedures](#)

[§ 303.421 Prior written notice and procedural safeguards notice](#)

State Level Expectation/Guidance**Early On Michigan Part C of IDEA State Plan****Section E Procedural Safeguards**

Prior written notice and procedural safeguards notice

A. General

- a. Prior written notice must be given to the parents of an infant or toddler a reasonable time before a local lead agency proposes or refuses to initiate or change the identification, evaluation, or placement of the child. Prior written notice must be given to the parents of a child eligible for *Early On* a reasonable time before a local lead agency proposes or refuses to initiate or change the provision of appropriate early intervention services to the child and the child's family.

B. Content of Notice

The notice must be in sufficient detail to inform parents about—

1. The action that is being proposed or refused;
2. The reasons for taking the action; and
3. All procedural safeguards that are available under this subpart, including a description of mediation in § 303.431, how to file a State complaint in §§ 303.432 through 303.434 and a due process complaint in the provisions adopted under § 303.430(d), and any timelines under those procedures.

C. Native language

The notice must be—

1. Written in language understandable to the general public; and
2. Provided in the native language, as defined in § 303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
3. If the native language or other mode of communication of the parent is not a written language, the local lead agency must take steps to ensure that—
 - a. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - b. The parent understands the notice; and

- c. There is written evidence that the requirements of this paragraph have been met.

Thus, if a parent is deaf or blind or has no written language, the mode of communication must be that normally used by the parent (e.g., sign language, Braille, or oral communication) and the parent shall have the right to an appropriate interpreter and explanation of the notice by a professional staff person.

Section D Child Find, Evaluations and Assessments, and Individualized Family Service Plans

Screening Procedures (optional)

- A. Local lead agencies may adopt screening procedures for those children who have been referred to Part C to determine whether they are suspected of having a developmental delay. If the local lead agency proposes to conduct post-referral screening of a child, it must do the following:
 - B. Provide the parent prior written notice of its intent to screen the child.
 - C. Include in the prior written notice that consent is required to conduct such screening; that the parent has a right to request an evaluation at any time during the screening process; and that the parent has a right to receive notice of the screening results.
 - D. Obtain parental consent before conducting the screening procedures.

If the parent consents to the screening and the screening or other information indicates that the child is suspected of meeting the *Early On* eligibility definition, after prior written notice is provided and once the parental consent is obtained, an evaluation of the child must be conducted. If the child is not suspected of meeting the *Early On* eligibility definition, the local lead agency must ensure that prior written notice of that determination is provided to the parent and describes the parent's right to request an evaluation. If the parent requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted. The screening process does not extend the 45-day timeline from referral to initial IFSP meeting.

Eligibility Determination

When a child is determined eligible, *Early On* will inform the family, including prior written notice, and will discuss with the family whether any additional child assessment information on one or more of the five developmental domains is needed to develop the IFSP, for which consent has not yet been obtained. No additional child assessment requiring parental consent will be pursued until such parental consent is obtained.

Determination that a child is not eligible

If, based on the evaluation, the local lead agency determines that a child is not eligible for *Early On*, the local lead agency must provide the parent with prior written notice and include in the notice information about the parent's right to dispute the eligibility determination through the dispute resolution process. Although not required, the family may be provided information about community resources.

Procedures for IFSP development, review, and evaluation

The contents of the IFSP are fully explained to the parents, prior written notice is given, and informed written consent from the parents is obtained prior to the provision of early intervention services.