

Informed Notice of Refusal to take a Specific Action

The Individuals with Disabilities Education Act (IDEA) and federal regulations at CFR §300.503 (a)(1)(ii) requires the public agency to provide written notice 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 (free appropriate public education) to the child. When a parent of a child with a disability makes a request that the school district provide a service that the IEP committee determines is inappropriate and/or unnecessary, the school district **must** respond to the request in writing as mandated. The form, **Informed Notice of Refusal to take a Specific Action (ESE-062)**, was developed to provide the required prior written notice of the school district's final decision regarding **refusal** to implement the parent's request.

The form, **Informed Notice of Refusal to take a Specific Action (ESE-062)** includes the following components required by IDEA regulations at 34 CFR § 300.503(b) Content of notice. The notice required under paragraph (a) of this section 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 any other options that the agency considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, test, record, or report the agency used as basis for the proposed or refused action;
- (5) A description of any other factors that are relevant to the agency's proposal or refusal;
- (6) 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; and
- (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

The school district must determine when prior written notice of refusal is required. The primary question to ask when making the determination is whether the decision constitutes **refusal to initiate or change** the *identification, evaluation, placement, or the provision of a free appropriate public education (FAPE)* to the student.

- When the parent makes a request and the IEP committee agrees that the parent's request is necessary for the student to receive FAPE, then notice of refusal is not required.
- When the parent makes a request for a service and the IEP committee disagrees with the request but during the meeting the parent and the IEP committee reach an agreement, then notice of refusal is not required.
- **Written notice of refusal would only be necessary when the parent and IEP committee cannot reach an agreement concerning the parent's request.**

Regarding the provision of FAPE, the IEP committee should consider whether the parent requested *that something be added to or discontinued from* the student's educational program or Individual Educational Plan (IEP) and whether the IEP committee agreed to that request. Generally the requests regarding the provision of FAPE are tangible and can be addressed specifically, rather than general or abstract issues. When the IEP committee and the parent cannot reach an agreement regarding the provision of FAPE, the **Informed Notice of Refusal to take a Specific Action (ESE-062)** form must be completed.

The IEP/staffing committee makes a similar determination regarding the refusal to initiate or change the identification, evaluation or placement of a student in response to parental request to do so. When the IEP/staffing committee and the parent cannot reach an agreement, the **Informed Notice of Refusal to take a Specific Action (ESE-062)** form must be completed.

Procedures for responding to a parent's request:

1. When the parent of a child with disabilities makes a request (may be verbal or written) for a change in their child's program and/or IEP, an IEP meeting should be scheduled to consider the request. The Parent Invitation Notice of Meeting form should be used to document the scheduled meeting. It is best practice to invite the principal to participate as the LEA representative and if unable to attend, he/she should be fully informed of the parent's request and the final IEP committee decision. ESE district staff may be invited, as appropriate.
2. The IEP committee must review all available information and then based on the student's needs, determine if the parent's request is necessary for the provision of FAPE. If additional information is needed, the committee may request a re-evaluation before making the final decision. The IEP committee may implement the parent's request, develop alternate strategies or determine that the request is not appropriate or necessary at this time for the provision of FAPE. The IEP committee makes the final decision, not the parent alone. If the IEP committee and the parent cannot reach an agreement and an ESE district representative did not attend the meeting, it is appropriate to adjourn the meeting, ask to reschedule and invite ESE district staff to assist with mediation.
3. If the parent participates in the meeting but refuses to sign the IEP and/or Summary of Re-evaluation Assessments, this is documented on the parent signature line.
4. The **Informed Notice of Refusal to take a Specific Action (ESE-062)** form must be completed when the IEP committee and parent do not reach an agreement concerning the parent's request. The IEP committee must address **ALL** sections (#1-5) on the form by providing the appropriate information for each. There is no requirement to complete the form at the IEP meeting but if an ESE district representative participates, the form may be completed at the end of the meeting and given to the parent with the Procedural Safeguards and Mediation in Special Education pamphlet. **When an ESE district representative doesn't participate in the meeting, the completed form must be sent to the appropriate ESE Subject Area Specialist before the end of the next business day.**

5. The ESE Subject Area Specialist will review the Notice of Refusal form and sign as the district representative or may make a recommendation to schedule another IEP/conference meeting. After the ESE Program Area Specialist signs the completed Notice of Refusal, the original will be sent with the procedural safeguards and mediation in special education pamphlet to the parents within five business days. The cumulative copy of the form will be sent to the school for placement in the ESE cumulative file. The central file copy will be placed in the student's file in central files.

Examples:

- A student who has a speech/language impairment is receiving speech/language therapy two times a week as specified in the current IEP. The parent makes a request that the student be dismissed from the SLI program. The IEP committee meets to discuss the parent's request and obtains parental consent to conduct a re-evaluation to consider dismissal. The IEP committee meets again to review the results of the re-evaluation. The results indicate that the student continues to need speech/language therapy and does not meet dismissal criteria. The IEP committee recommends that the student continue placement in the SLI program with the same amount of service. The parent does not agree with the other IEP committee members' conclusion and refuses to sign the Summary of Re-evaluation Assessments. The parent's participation in the meeting and disagreement with the recommendation is noted on the parent signature line. The district has refused to dismiss the student from the SLI program and **must provide the parent with written notice of this refusal.** The "Informed Notice of Refusal to take a Specific Action" form would be completed and given to the parents with procedural safeguards and the mediation in special education pamphlet.
- A parent has communicated a concern about the amount of time their child is receiving physical therapy (PT). At an IEP meeting, the therapist proposes to further decrease the time the student receives PT. The parent is opposed to the student's receiving less time and disagrees with the proposal, however the other IEP committee members support this decrease in time. The student's IEP, which the parent refuses to sign, is revised to reflect the decreased time in PT. A note is placed on the IEP indicating the parent's participation in the meeting and disagreement with the IEP as written. The district has refused the parent's request to maintain the original amount of time the student spends in PT. **Notice of the district's refusal to change the student's IEP to reflect the parent's request is required.** The "Informed Notice of Refusal to take a Specific Action" form would be completed and given to the parents with procedural safeguards and the mediation in special education pamphlet.
- At an IEP meeting a parent makes a request that their child, who has a specific learning disability, be served through consultation in the general classroom rather than with direct services, which the student is currently receiving. After discussion, the parent agrees that such a placement would not benefit the student at this time and agrees with the IEP committee that the student needs to continue to receive direct services. The district has not refused the parent's request for a change in placement because the parent and the IEP committee reached an agreement. **Notice of refusal is not required.**