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INCIID *Insights*

What You Need to Know About What You Need to Know

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Education Records, Part II

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In education Records Part I, we talked about the state and federal rules that tell us what our education records rights are and how to write the letter to ask for access to the student's records.

This article is about rolling up your sleeves and going document diving — with a life vest.



INCIID's Pathways to Special Education

Special Education Pathways is published twice monthly. The publication is devoted exclusively to education advocacy skills for parents that every parent should know.

Pathways articles are intended to help you be your child's best advocate even if you have an attorney or lay advocate. INCIID's hope is you will reclaim parental rights for yourself and other parents

Attorneys and lay advocates come and go. You will be your child's parent for the rest of your life.

Following each edition, INCIID schedules a free call-in conference. All of our readers may call in and ask the author of the article questions about the article topic.

You are also invited to participate in INCIID's Forum called Ask the Advocate. .You can join HERE <http://inciid.org/forum/>

The twice monthly Pathways, the call in question sessions, and the INCIID Ask the Advocate forum are provided by INCIID and the article author at no cost to parents.

The articles, call in forum and the Ask the Advocate forum are for information purposes only. Consult an attorney licensed in your state if you are having problems getting your child's rights enforced. The INCIID Pathways articles are not a substitute for legal advice from an attorney licensed in your state.

The articles in INCIID Pathways to Special Education are intended as information and education for parents.

Although the information published in the articles is as accurate on the date of publication, special education and Section 504 law changes from time-to-time. INCIID takes no responsibility for the accuracy of the information in the articles or for whether the information applies to any individual situation.

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Next Month: Getting ready for a meeting.

Before we roll up our sleeves, we need to talk about test protocols.

Are they education records?

The answer is yes.¹

Educational records are records the school (or its agent) keeps and preserves that relate to an individual student.² A test protocol for a test performed on a student is related to that specific student.

The school might tell you that test protocols are personal notes. Or, the school might tell you the copyright laws protect test protocols. Neither of those excuses are true.

Even though you can review the test protocols, the school must supervise the review. And, you may not have a copy of the protocols or reproduce the protocols in any way.

The IDEA regulations allow parents the right to have their representatives inspect and review the records (representatives must have a written parent consent). 34 C.F.R. §300.562(b)(3).



Organizing Your Records

You can organize and keep your records in any way that works for you. Some parents use 3-ring binders. Some use manila folders and some use Banker Boxes. The purpose of keeping your records organized is twofold: One, you will use these records for specific purposes and two, the records tell the chronological history of the student's special education.

¹ The U.S. District Court, Central District of California in Newport-Mesa v. California Dept. of Ed held that a California statute requiring copies of test protocols to be provided to parents of special education students falls within acceptable "fair use" under federal copyright law. You can read the decision at http://www.leagle.com/decision/20051541371FSupp2d1170_11412

² 34 CFR §99.3

Where you will use your records

- IEP Team meetings,
- 504 Team meetings
- discipline manifestation meetings,
- state administrative complaints,
- mediation,
- due process hearings and,
- 504 complaints to the Office of Civil rights (OCR).

Is organizing your records hard to do?

No. It isn't difficult but it does take planning and time.

This is my promise: If you can do it (**and yes you can**) you are going to be way ahead of the curve. Instead of having a "gut feeling" that the school is not providing a free appropriate education, you will be able to know how to prove the school district is or is not giving your student a free and appropriate public education. And, you might be able to do it without having to ask for a due process hearing.

Later, if you do need to hire an attorney, you will have saved yourself time and money because organizing and analyzing records is a major part of putting a persuasive argument³ together.



³ An argument is not a knock down drag out shouting match. An argument is a formal presentation of and an opposition to a stated proposition. The object of our argument is to reach consensus in an IEP meeting or persuade a decision maker through a state administrative complaint, OCR complaint, or a due process hearing. .



Getting organized before your review

Before you go to the school for your record review appointment, these are some things you will need.

Tools

- Plenty of sticky notes for flagging pages that you want to copy,
- Plenty of paper to make personal notes on,
- Patience.

Your review at the school offices

1. If possible, take a friend with you to the review. This person can help you by making the inventory.

If you do take someone with you, it is vitally important to tell the school beforehand that someone is coming with you. It's a good idea to include that information in your request to review records letter.

2. Insist that the school give you a room with privacy. You do not want someone constantly looking over your shoulder to intimidate or frustrate your review.

That said, you can count on the school putting a school employee in the room with you. Believe it not, you can use that person to your advantage. For example, before you begin the review you can say to that person -

The school is obviously concerned about the integrity of the records, so please hand each record to me to review and I will hand it back to you for filing.

3. It is important to keep the school's file in the same order it is given to you to review. Go through the file it page by page. You can get copies of everything in it, so it is not important to read every word on each document while you are at the school.

4. What is important is to make an inventory of every document in the file. Later, your inventory will verify whether the school gave you a copy of all your files and whether the school vacuumed what it gave to you.

To make an inventory during your review:

- List each document's date, who created or wrote it, who it went to, and a very short description of what the document is about. Here is an example:

01/04/2002 Letter from Ms. Tamera Time-Out. Schedule for OT evaluation.

After you finish reviewing each record, ask the school to make a copy of each record in the file.

The District can charge a fee for copies if the fee would not effectively prevent you from accessing the records. No fee can be charged for searching for or retrieving records. 34 C.F.R. §99.11, and 34 C.F.R. §300.617. You can read the regulations here <http://www.law.cornell.edu/cfr/text/34/99.11> and here <http://www.law.cornell.edu/cfr/text/34/300.617>

5. Treat the copy of the records you receive from the school as originals.

Do not mark, write on, spindle, or mutilate your ORIGINAL set of copies from the school.

Exception to the do not write on these records rule:

In the lower right hand corner of the first page of a record, use a PENCIL – NOT A PEN, and write the date of the record.

Example: 3/29/2014.

Later, if you need to copy one or more of these records for hearing exhibits or attachments to a state administrative complaint, you can erase the date. This is a tip Pete Wright has been teaching for many years.

6. Do not begin analyzing the content of the records until you have finished organizing them.

7. File each of the records by category

Examples:

(a) IEPs

- Including IEP or 504 meeting notes, procedural safeguards notices, prior written notices, etc.

(b) Evaluations

Psychoeducational assessments

Annual goal progress reports

Functional assessments

Related Services evaluations and assessments

(c) Behavior records

Functional Behavior Assessments (FBAs)

Behavior intervention plans (BIPs)

Data collection and summary reports

- (d) Student work examples
- (e) Communications with the school

Letters

Email messages

Telephone call log

If applicable copies of correspondence with your advocate or attorney.⁴

Organize your category files

File each document in each category in chronological order, newest on top, oldest at the bottom. (NOTE: A record may have more than one page. If a record has X number of pages, that is one record.

Optional – It is a good idea to record the date, time, and the name of the person at the school who gave you the records. You can do this on a blank piece of paper and make it the first record in your ORIGINALS file.

Arranging and storing the hard copies

There are two basic ways to arrange the hard copies of your records.

- (a) In 3-ring notebooks with tabs
- (b) In manila file folders within topic groups stored in expanding pocket folders. Expanding folders are the brown ones that expand from 3 inches and larger. You can get them at any of the “box stores” such as Staples or Office Depot. You can also get them from Amazon.com

Whichever way you arrange your records, it is a good idea to keep them stored in a Banker’s box. Banker boxes are inexpensive. You can get them at Amazon.com, Staples, Office Depot or a similar store.

⁴ Communications with your lawyer or advocate (in some states) are confidential.



Analyze your records

This is where the rubber hits the road. A thorough analysis is methodical examination of each one of the records. Once you have a firm grasp of what the records do and do not prove, you will “own” your advocacy.

The best way to do it is with forms.

The first document to analyze is the current IEP.

NOTE: Section 504 does not require a written plan. Most schools do write them. Under Section 504, the regulation says “one way” of providing a 504 plan is to write an IEP. That does not mean the student is automatically covered by the IDEA if the school writes the 504 plan as an IEP.

Form for analyzing an IEP

The complete definition of an Individualized Education Program is in at 34 C.F.R. Sec. 300.320. You can read it here:

<http://www.law.cornell.edu/cfr/text/34/300.320>

The good news is that you do not have to memorize that rule because you can make a checklist from Sec. 300.320. That checklist will help you objectively audit your child's IEP, and discuss any part of your child's special education program.

This is how to do it:

- Use the official definitions. Do not assume that you know the definition of anything. The definitions are at 34 C.F.R. § 300.4 through § 300.45. You can read them here: <http://www.law.cornell.edu/cfr/text/34/part-300/subpart-A>

IEP Checklist

Use this checklist to audit an IEP for compliance with all the essential parts of an IEP set out in 34 C.F.R. Sec 300.320 and your state's special education regulations.

IEP Start Date _____

IEP Stop Date _____

IEP Audit Date _____

Yes	No	IEP Ingredients
		Is there a statement of the child's present level of academic achievement? 34 CFR 300.320(a)(1)
		Is there a statement of the child's present level of functional performance? 34 CFR 300.320(a)(1)
		Does the statement of Present Level of Academic Functional Performance include <u>how the child's disability affects his involvement in the general education curriculum</u> ? 34 CFR 300.320(a)(1)(i)
		Does the statement of Present Level of Academic Functional Performance include an explanation about how the child's disability affects his or her participation in suitable activities? — NECESSARY ONLY FOR PRESCHOOL CHILDREN
		Is there a statement of measurable annual goals that include academic achievement and functional performance goals? 34 CFR 300.320(a)(2)
		Do the academic and functional goals meet the child's specific needs that result from his or her disability? Are the academic achievement and functional performance goals written in a way that will allow your child to take part in AND make progress in the general education curriculum? 34 CFR 300.320(a)(2)
		For each educational need your child has because of his or her disability, is there academic achievement and functional performance goal to meet each of those needs? 34 CFR 300.320(a)(2)(i)(a)
		Is there a description of short-term objectives or benchmarks?
		Is there a description of how the school district will measure your child's progress toward meeting his or her annual goals? — This section is necessary only for children who take alternate assessments aligned with alternate achievement standards.
		Is there a statement that specifies when you will receive periodic reports of your child's progress toward meeting the annual IEP goals? 34 CFR 300.320(a)(3)
		Is there a statement of the special education, related services, and supplementary aids and services the school will provide for your child, or for your child? 34 CFR 300.320(a)(4)
		Are the special education, related services, and supplementary aids and services based on peer-reviewed research? 34 CFR 300.320(a)(4)
		Is there a statement in your child's IEP that describes the program accommodations, modifications or school personnel supports the school will provide that will enable your child? 34 CFR 300.320(a)(4)

Yes	No	IEP Ingredients
		<p>Do the program modifications and supports enable your child to:</p> <ul style="list-style-type: none"> • Advance appropriately toward reaching his annual goals; • Be involved in and make progress in the general education curriculum; • Be educated and participate in educational and non-educational activities with other children with disabilities AND with nondisabled children? (Including extracurricular activities)? 34 CFR 300.320(a)(4)(i)
		<p>Is there an explanation of the extent, if any, to which your child <u>will not participate in the regular class and in other activities</u>? 34 CFR 300.320(a)(5)</p>
		<p>Is there a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of your child on state and district-wide assessments? — This section is necessary only for children who take alternate assessments aligned with alternate achievement standards. 34 CFR 300.320(a)(6)(i)</p>
		<p>Is there a statement about why your child cannot participate in regular state and district-wide assessments? — This section is necessary only for children who take alternate assessments aligned with alternate achievement standards. 34 CFR 300.320(a)(6)(i)</p>
		<p>Is there a statement that explains why the particular alternate assessment selected is appropriate for your child? — This section is necessary only for children who take alternate assessments aligned with alternate achievement standards. 34 CFR 300.320(a)(6)(i)</p>
		<p>Is there a projected date for the beginning of the services and modifications? 34 CFR 300.320(a)(7)</p>
		<p>Is the expected frequency of services and modifications stated? 34 CFR 300.320(a)(7)</p>
		<p>Is the location in which the services and modifications will take place stated? 300.320(a)(7)</p>
		<p>Is the duration of the services and modifications stated? 300.320(a)(7)</p>
		<p>Is there a statement of appropriate AND measurable postsecondary goals? —NECESSARY ONLY FOR STUDENTS WHO ARE 16 YEARS OLD OR OLDER (CHECK YOUR STATE LAW) 34 CFR 300.320(b)(1)</p>
		<p>Are postsecondary goals based on age appropriate transition assessments related to</p> <ul style="list-style-type: none"> • training; • education; • employment; • where appropriate, independent living skills? – <p>NECESSARY ONLY FOR STUDENTS WHO ARE 16 YEARS OLD OR OLDER (CHECK YOUR STATE LAW) 34 CFR 300.320(b)(1)</p>
		<p>Is there a statement of transition services (including courses of study) needed to help your child reach his or her postsecondary goals? — NECESSARY ONLY FOR STUDENTS WHO ARE 16 YEARS OLD OR OLDER (CHECK YOUR STATE LAW) 34 CFR 300.320(b)(2)</p>
		<p>Is there a statement in your child's IEP that shows the school told your child about the parental rights under Part B of the IDEA that transfer to him or her when he or she reaches the age of majority under your state law? – NECESSARY ONLY FOR CHILDREN WHO ARE WITHIN ONE YEAR OF REACHING THE AGE OF MAJORITY UNDER YOUR STATE LAW 34 CFR 300.320(c)</p>

Once you have checked off the YES and NO boxes in your audit form, you can analyze the NO sections one at a time.

This is how to do it:

Make a separate Section Analysis IEP Note for each of the NO sections.

Example Section Analysis

IEP: 2013-2014 school year

IEP REQUIREMENT: Example, Present Levels of Academic Achievement and Functional Performance and Functional Performance. 34 CFR 300.320(a)(1) (i)

Does the statement of Present Level of Academic Achievement and Functional Performance include how the child's disability affects their involvement in the general education curriculum?

In your own words, explain why you believe your child's IEP does not meet this requirement. State your explanation with facts that you can prove. Do not vent or attack "they" and "them"

Following your factual explanation, list each document in your child's education record that tends to prove each fact you stated above. Staple a copy of each document to this analysis report.

Example:

1. Letter from Ms. Special Education Director to Me dated May 12, 2007.
2. E-mail message from Ms. X, Occupational Therapist to me dated June 19, 2008.
3. IEP, page 2 (description of Present Level of Academic Functional Performance and description of how (child's name) disability affects her involvement in the general education curriculum).

Date of this analysis report: January 25, 2015.



You can follow this method for any violation and denial of FAPE that you believe exists. You can also use this method to prove whether an evaluation is valid or not. Provable facts control whether you will be persuasive. .

Once you finish analyzing the records you will be more informed about the status of your child's special education program than most of the people who will be at the next IEP meeting. That includes the "compliance officer," or IEP meeting facilitator.

-bp-

