



Fitting the pieces together

INCIID *Insights*

What you need to know about what you need to know

Vol. 1, No. 3
February 15, 2015

CONTENTS

Overview	2
How do you use this stuff?	2
The Method	3
Have a written strategy	4
A personal story.....	4
Getting ready for meetings	6
Talking points.....	7
Practice pointers.....	8
When push comes to shove.....	8
About the author	9

INCIID's Pathways to Special Education

Special Education Pathways is a twice-monthly series of special education advocacy skills articles written exclusively for parents.

Every parent is their child's first advocate. That is why the first purpose of the articles here is to contribute information about advocacy skills 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.

Pathways is published twice monthly.

Following each edition, INCIID schedules a 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.

Caution

No two IDEA or Section 504 cases are exactly alike. The INCIID articles are written to provide parents and lay advocates with a wide understanding about how to be an exceptional special education advocate for your own child. These articles do not include every aspect of the various special education laws. INCIID strongly encourages you to get a legal opinion from an attorney licensed to practice law in your state about your specific facts and issues with the school.

Overview

Today we are going to talk about creating an advocacy strategy for your next event—or any other issue—with the school. It could be an IEP or 504 meeting. It could be mediation. It could be writing a state administrative complaint. It could be any event or issue that is happening in the future that is connected to your child’s special education.

The first question you must answer is “What needs to be fixed or resolved?”

”

In the first two articles you learned how to get your education records, sort them, and store them. And you learned how to use the IEP checklist to document what you found out of compliance in your child’s IEP.¹

The next question is:

How do you use this stuff?

That is the question you should always ask before any IEP meeting because becoming an effective advocate has to be more than an “if they do this, you do that” strategy.

When it comes to getting ready for a meeting or anything else that happens in special education, showing up to vent and argue with the school district is not enough. Without a plan, school districts can reduce your meeting to a distasteful, dehumanizing event that depersonalizes your child, you, and the pieces parts of the IEP.

From the IEP checklist in the last article, you can identify each section of the IEP that you believe denies a free appropriate public education. And, if you used the record (document) forms, you have located the education records that prove the separate section violations you found in the separate IEP sections in the IEP checklist.

It goes like this for EACH section of the IEP checklist:

(A) IEP Section: Present Levels of Academic Achievement and Functional Performance

(B) The record, or records, that prove the statement of present levels are either too vague, contain no measurable information (data), etc. NOTE: sometimes a school will put the measurable PLOP information in the annual goal or the annual

¹ The IEP audit form we published in the January 1, 2015 article. You can get it here: <https://www.inciid.org/sites/default/files/IEP-checklist.pdf#overlay-context=sped-records-2-Jan2015>

goal's objectives. Putting the measurable information in an annual goal's objectives section of the IEP is permissible.

This method has two strong advantages. First, it forces you to analyze the IEP from the relevant (applicable) evidence and second, courts and hearing officers routinely rule that the appropriateness of an IEP must be reviewed by what the IEP contained at the time it was written. I presume that would also apply to the time an IEP is amended by the team during the school year for which the IEP was written.

Practice Pointer.

Use a separate manila folder for each section of the IEP checklist that you believe is out of compliance or denies a free appropriate public education for your student. Write the section name on the front cover of the folder. This will keep all of your claims (alleged violations) separate and easy to find. Reminder: Education records also include email exchanges and hard copy letter exchanges with the school if the email or letter contains personally identifiable information about your student.

The next step is to treat your evidence as if you are going to ask for a due process hearing. Why? Even if you have no intention of asking for a hearing, preparing as if you will forces you to identify the provable denials of FAPE, the proof for why you need an independent education evaluation, why your student needs a para, why your student needs a change of educational placement, and so on. This is a powerful way to structure your persuasive reasoning to the school district during a meeting.

Too, if you ask for mediation (which you can do without asking for a hearing) you will have everything neat and orderly for the mediation conference.

A good mediator will appreciate your organization because the mediator will be able to sift through the blah, blah during the mediation and get the heart of the dispute.

Another benefit: School districts are hiring independent facilitators or have staff "facilitators" attend IEP meetings. If you have your evidence and have stated (framed) your issues concisely you will be far more likely to impress the facilitator with your credibility.

A variation on the staff facilitator is an individual called the Compliance Officer or Compliance Coordinator. Beware. The school district often gives these people LEA (Local Education Agency) status for the meeting. The school can name whomever it chooses as the LEA.²

As an aside, I am seeing this thing with compliance officers and coordinators being abused more and more in some states. Whether an independent facilitator or a staff

² 34 CFR § 300.321(4), You can read it here: <http://www.law.cornell.edu/cfr/text/34/300.321>

facilitator, that person is not going to be able to easily shut you down during the meeting if you are organized and prepared.

Effective advocates have a written strategy

No, I don't have any high dollar scientific study to verify that. I've simply been taking note of it for many years while working in special education.

What is clear is the positive correlation between having a written strategy and not having one. It is the difference between getting something done and being ignored by a school district.

Is it difficult?

No, but even if it is hard as nails, the effort will pay dividends now and in the future.

Advocacy is a day in – day out necessity.

All of our contacts with the school district are about asking for or creating change of one kind or another. Our goal is getting an IEP or 504 plan that works as the rules say they should work. Call it advocacy or parental participation, our challenge is to change the school district's behavior, viewpoints and yes, even feelings and opinions.

Forward-looking advocacy will help you do that. It isn't magic. It is mostly just applying some skills that will separate your advocacy from what the school district expects.

It's easier to have a positive effect on the Team members who want to listen than it is to persuade those who are reluctant to change their preconceived beliefs.

You may be saying to yourself "Well, Brice, that sounds yummy good and all Kumbayah — but what does that have to do with hardnosed advocacy?"

That's a good question.

Indulge me for a moment for a personal story.

It all started for me when the school district kicked my teeth in all the way to the 2nd Circuit Court of Appeals. The case was *JD v. Pawlet School Dist.*, 224 F.3d 60 (2d Cir. 2000).

We began working with JD's IEP and his school district in 1997. My advocacy was woefully clumsy – and that was the reason the school district could kick my teeth in.

And, my advocacy was woefully clumsy because I did not stop to think about whether the traditional advocacy information on what was then a fledgling dial-up Internet was good information or just hunches and war stories from parents and advocates. With a few exceptions, special education related websites and chat rooms were not strategically and tactically sound. One remarkable exception to this statement was, and still is, Wrightslaw.com. Worse, it isn't as if I didn't know better. You see before special education accidentally came into my life I spent four years as a law clerk in litigation firms. Four years of training and courtroom experience just temporarily went poof.

JD forced me to look inward and change my perspective about special education issues and advocacy. It was looking me right in the face.

We have to see the IEP meetings and other special education procedures from a mixed, or twofold perspective. First there are the relevant facts, the rules that control the procedures, and issues. We then make judgment calls about them. Next, we must decide what story these things tell about the individual student.

In other words, the relevant facts and the rules simply create the background tools we use to tell the student's story — and prove it. Looking back, I have little doubt that we could have resolved JD at the IEP table. The problem was that I did not use the stuff I learned before stumbling into special education.

You have probably been in a similar situation. You go to a special education workshop, conference, or seminar, you write copious notes, you listen attentively, you pack your bags, go home, face the pile of mail on your workspace, there is a ton of other stuff you have to do when you get there and then wham — it hits you —

“How do I use the stuff they talked about?”

- You do not have to be an ace advocate.

- You do not have to memorize the regulations. That's why the department of education wrote the regulations instead of making an audio tape of them.
- You do have to know how to prepare for whatever you are going to face. Preparing in advance can be called forward-looking advocacy.

In forward-looking advocacy, the education records research is your architecture; advocacy is applying your art.

Research is an overused and highfalutin word. The essence of research for your advocacy in special education is more along the lines of an investigation. Think of something between Lieutenant Columbo, the Pink Panther's Chief Inspector Jacques Clouseau,³ Agatha Christi's characters Hercule Poirot,⁴ and Miss Marple.⁵

Getting ready for meetings

The Method:

1. Work out a sound strategy that emphasizes the facts, not your anger, emotions, impressions or guesswork.
2. Write it down.
3. Reduce your strategy to an outline.
4. Use your outline to write your talking points.
 - Issue 1: An IEE is necessary because (regulation number), proof from education records a, b, and c).

³ Clouseau is an inept and incompetent police detective in the French Sûreté, whose investigations are marked by disorder. Nevertheless, Clouseau successfully solves his cases and finds the correct culprits, entirely by accident.

http://en.wikipedia.org/wiki/Inspector_Clouseau

⁴ A description of the Hercule Poirot character is at

http://en.wikipedia.org/wiki/Hercule_Poirot

⁵ Another Agatha Christi character, Miss Marple solves difficult crimes because of her shrewd intelligence. http://en.wikipedia.org/wiki/Miss_Marple#Character

- Issue 2: ESY is necessary because (regulation number), proof from education records a, b, and c.
 - Etc.
5. Several days before the meeting, practice your presentation with your advocate or a trusted friend.

How to deliver each one of your talking points:

This is a mini-story. Say it just as if you were telling the Team a part of the story.

“My daughter needs ESY because (regulation number) says blah, blah. And because (name of record No. 1 admits blah blah, blah. And (name of record No. 2 admits (or proves) blah, blah, blah.”

As you can see, you can hit all of the right elements of the reason you believe your daughter needs ESY in a short statement.

You can do this for each of the things in the IEP you believe must be changed.

So --- Make a reasoned decision about what needs to be fixed.

In an IEP, for instance, several parts of the IEP might need fixing. That means you should arrange the list of things that need fixing by beginning with the least important, then the next important thing, and so on.

Putting what needs to be fixed in order of priority forces you to make your talking points and meeting presentation in an organized way. The other advantage is momentum. That is, if you get agreement on your first talking point you will have momentum when you go to talking points number 2.

Practice pointer:

Present the least controversial issue first because this is an issue you think the school is likely to agree to. This will give you some “yes” momentum for the more difficult issues a better chance.

Practice pointer:

Pay close attention to each school district member of the Team. Watch their faces, their reactions, whether any of the members make a slight nod in agreement. When you decide which of the school members seems to silently agree with you, then you talk to that person for the remainder of the meeting. No, you don't use their name. You just glance at them for much of your presentation of your talking points.

Practice pointer:

If you ask the Team for a decision, do it affirmatively. Sales people call this a closing question. Instead of making your presentation and hoping the school will agree, say something like "From what we have talked about, will the school provide ESY for my daughter?" As you deliver your closing statement, slightly nod your head up and down in the way that indicates agreement. That might sound silly to you. Just remember that you are there to sell a deal. Use any ethical tool you have to close the deal. Practice this with your trusted friend or advocate.

Practice pointer:

Take someone to the meeting with you. I learned this from the very best special education attorney I've ever worked with: Barbara Ebenstein. Here's the deal. Ask a friend to go to the meeting with you. Have that person wear business cloths and carry a brief case. This person says nothing at the meeting. Just sits there quietly taking notes on a legal pad. Trust me. This is effective.

Push comes to shove moments

Nobody has a magic strategy or formula for prevailing in IEP or 504 meetings. Sometimes our plan just does not work. That's when push comes to shove raises its head to look around the terrain. And, that's also when all of your preparation and analysis will sustain you as you decide what your alternatives are. In the coming months we will write about writing emails and letters; how to put together a credible state administrative complaint; OCR complaint letter; mediation techniques, and due process hearings. If you have a topic you would like to see us do an article about, contact Nancy at INCIID and let her know.

About the author:

Brice is a special education advocate who works with parents across the country. He has practiced, taught and written about special education advocacy since 1995. His articles have appeared in *The Beacon Journal*, published by Harbor House Law Press, *Autism Asperger's Digest*, published by Future Horizons, Inc., *Family Focus*, the quarterly newsletter published by Families for Russian and Ukrainian Adoption (FRUA), and various articles appearing at www.wrightslaw.com. Some of the Wrightslaw articles are: *Do the Documents Speak for Themselves?*, *How to Prepare Your Case*, *Learning To Negotiate Is Part of the Advocacy Process*, and *How and Why to Tape Record Meetings*.

Brice lives out in the woods near Benson, Vermont. You can reach him by phone at (802) 537-3022.

Infertility Information & Support