



Weathering the storm

INCIIID *Insights*

Pathways to knowing about what you need to know

I don't know why school districts put off thinking about ESY until the last part of the school year.

But just because your school district Team puts it off is no reason why you should put it off if your student needs Extra School Year Services. The key is being prepared before you confront the Team with your request for ESY (or any other change you want in the IEP).

In our last article we mentioned that knowing how a hearing officer analyzes a complaint is important for improving your chances of success at Team meetings. What it all means is that we must be well prepared before the Team meeting begins. That's just smart advocacy.

Well, ok, but how do we prepare, or get ready to advocate when the crunch begins?

Allow me give you a personal experience with preparation.

INCIIID'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. INCIIID'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, INCIIID 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 INCIIID'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 INCIIID Ask the Advocate forum are provided by INCIIID and the article author at no cost to parents.

Caution

No two IDEA or Section 504 cases are exactly alike. The INCIIID 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. INCIIID 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.

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The photograph in this issue is a picture taken through the window of my little office space. In fact, about a month ago the snow was about 5 feet deep and the temperature plunged to -17 degrees – for three days in a row. The water well froze.

You can imagine the trouble and inconvenience. No running water for a couple of months. But this wasn't my first rodeo. It happens almost every winter.

So late in the summer, I make sure that there are a couple of hundred gallons of potable water stored to take care of the necessities. Without that preparation, the dog and I would be in dire straits because every winter we get snowed in. I cannot get out and go anywhere until the last of April or the first weeks of May.

The amazing thing is that the frozen water well thing could have been prevented if I had thought of building an insulated well house. It just didn't cross my mind until a friend suggested it.

I tell this personal story only to emphasize that all of us can survive if we do the right things to get ready for the storms – and special education presents us with an abundance of storms.

What I am suggesting here is that you are not just a parent. I know, school districts love to tag you with that characterization. No. You are your child's first and most powerful advocate. The catch is that your ability to fill that role is 100 percent dependent on your ability to be ready for the storms.

In earlier articles we covered getting and organizing your education records, how to decide what is and what is not a legal issue, and we covered how to read and apply your facts to a regulation.¹

Those are the basic skills you need for everything you do to become a persuasive advocate. Applying these skills will put damper on he said, she said Team meetings.

What are the odds for success?

The word odds implies a game of chance; a gamble.

All of us know the voice behind the curtain whispers—"There is no such thing as a level playing field."

Don't listen to that voice behind the curtain

¹ If you missed those articles you can download them from www.INCIID.org

Why would we want to gamble when the odds are stacked against us? We wouldn't. We must deal with the school from a position of strength. Your strength will be greater if you understand some important concepts about how administrative agencies² implement the law and make formal and informal decisions.

Due process hearings, State administrative complaints, and OCR complaints get a lot of attention because they are the big sticks you have in your pocket. But are they truly the big sticks? I don't think so. The IDEA and Section 504 presume that parents and schools will first try to resolve their differences at Team meetings.

What follows here is about ESY. You can use same formula for any IEP or 504 problem.

Practical Application.

Let's set up a hypothetical issue that we want to resolve during a Team meeting.

Extra School Year Services (ESY).

First we need to know what ESY is.

According to the U.S. Department of Education and Rehabilitation, ESY is special education and related services provided to a student beyond the normal school year. Typically ESY is provided during the summer months. ESY is provided if the IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. ESY services must be provided at no cost to parents in accordance with the standards of the State educational agency (SEA). 34 CFR §300.106.

1. Describe in your own words WHY (the reasons) the student needs ESY. **Use the word Because.**

My child needs ESY because.(describe the reason)

2. Find the rule (regulation) that controls ESY decisions.

ESY services are special education and related services that are provided to a child with a disability beyond the normal school year of the school district typically during the summer. Each school district must ensure that ESY services are available to children with disabilities, including highly mobile children, if the IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child. ESY services must be provided at no cost to

² A public school Team is part of an administrative agency – the state department of education.

parents in accordance with the standards of the State educational agency (SEA).³ 34 CFR §300.106.

3. Locate the education records that prove the student needs ESY to receive a FAPE.

Your documents (evidence) must prove that without ESY, the student will be denied a FAPE.

4. Apply the facts from your education records to the rule.

You can read the federal rule here:

<https://www.law.cornell.edu/cfr/text/34/300.106>

Be certain to compare your state department of education regulation to the federal regulation.

5. Reach a conclusion – the student does or does not meet the requirements for ESY (leaners don't count anywhere except in the game of horse shoes)

Hypothetical conclusion: Extra School Year services are not limited to the summer months. Calene must have ESY for speech and language because she is not making adequate yearly progress in her speech and language annual goals. She is not getting the educational benefit we all agreed that she needed when we wrote her IEP.

6. Develop your story of the issue. That is, write your script for presenting and justifying your request for ESY. The ideal time to tell the story is at the beginning of the Team meeting – or – at your first opportunity to speak at the meeting. Get the elephant in the room.

Hypothetical story of the issue (or case). This is similar to an opening statement an attorney would make at the beginning of a due process hearing or a court trial.

My son Nizel is struggling and we are all aware of it. He is struggling because he is not making adequate yearly progress in his IEP annual goal for reading. If he does not have an opportunity to catch up between now and next year he will flounder.

I am here to formally ask this Team to include ESY for him during this school year (and/or during the summer months) because without it, the District will be denying Nizel a free appropriate public education. I came to this conclusion by

³ OSEP, Letter to state directors of special education, July 19, 2013.

looking at the ESY rule and Nizel's education records, I have Nizel's records with me to prove that he is struggling. I will answer any questions you have, Thank you.

Tip: Once you finish your opening statement – stop talking. Wait for the District to respond even if the wait seems to last an hour. If you talk first, you release the pressure from the District.

Put your evidence together and practice making your opening statement with a trusted friend. Do not mock the school district. Do it just as if you were standing in front of a hearing officer making your opening statement.

Once you become comfortable making your opening statement you next practice showing your documented proof. Do this with your trusted friend. Do not mock the school, Let your friend critique your performance.

Yes, I know this sounds like a bunch of boring stuff. Yet, keep in mind that your boring stuff delivered live in front of the Team might turn into the District's not so exciting stuff.

One last thing.

Although you are presenting your case to the Team, the primary audience is the school district's attorney. We want that attorney to recognize that you have a solid case and the District might lose on this issue at a due process hearing.

Brice