

# INCIID *Insights*

What you need to know about what you need to know

Vol. 1 August 15, 2015

In our first INCIID article we said you don't have to be a lawyer to be a good parent advocate; "You just need to know how to think like one."

Well – surprise, surprise. If you Google the term "think like a lawyer" you will find lawyers do not have a universal definition of what thinking like a lawyer means. There are thousands of articles, blog articles, academic papers, and web sites that talk about what it means to think like a lawyer.

Experience taught me that parents are far more aware of what their child's special education problem is than others realize. The rub comes when parents do not know how to explain the problems in a way the procedural system deals with resolving problems.

The one word that appears in all the articles I read about thinking like a lawyer is the word analysis.

Analysis goes like this –

- What's the big deal here?
- Are there any rules that tell us how to deal with the big deal?
- Is there any credible proof (facts) that the big deal really is a big deal?
- What rules tell us how to formally complain about the big deal, and
- Where can we find insights into how the big deal deciders have decided big deals?

## 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 on the 15<sup>th</sup> and 25<sup>th</sup> of each month..

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

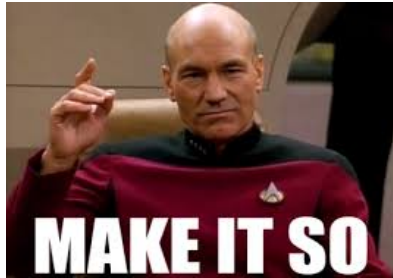
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This article is intended to introduce you to the first basic concepts about how to read a case. There is a hypothetical practice exercise on the last page 5 of this article.

You will find this is a completely different way to look at cases and what they mean. It takes time and practice. Isn't easy – and you can do it.

Raise your hand and say I can do it.



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Basics:

1. Do not read the opinion word for word. Look for the structure. Once you fully understand the structure you can then learn how to read an opinion or decision. Once you master the structure your life will change when it comes to planning for a Team meeting or writing a state administrative complaint or a request for a due process hearing.

2. Print the decision. A printed page is much easier to read than reading text on a screen.

The structure

## 1. The Caption

At the top of the first page of any legal opinion is the caption. The caption is comparable to a title. It tells us who is who is complaining against whom (the parties to the dispute) which court or hearing authority issued the decision, and the dates.

Example:

J.D. EX REL. J.D. v. PAWLET SCHOOL DIST., 224 F.3d 60 (2nd Cir. 2000)

J.D., by his parent, J.D., Plaintiff – Appellant, v. Pawlet School District, Bennington-Rutland Supervisory Union, Vermont Department of Education, and Mark Hull, in his official and individual capacity, Defendants – Appellees.  
No. 99-9263.

United States Court of Appeals, Second Circuit.

Argued June 30, 2000.

Decided August 15, 2000.

You can read J.D. v Pawlet online and download a pdf copy here:

<http://caselaw.findlaw.com/us-2nd-circuit/1295784.html>

Full disgraceful disclosure: I was the advocate who conducted the due process hearing, found a lawyer for the review by the US District Court and the appeal to the Second Circuit. I cannot adequately describe all of the mistakes I made in that case. Feel free to ask.

Though the style might change slightly from jurisdiction to jurisdiction, the information in the caption remains the same.

Next, the decision contains a short history about how the case came to the court or administrative hearing officer or judge. The short history or background information may include the procedural history of the dispute. It might also include some factual information. You can recognize this section by its position just below or near the caption. This is the short history from JD v Pawlet School District:

“J.D., by his parent J.D., appeals from a final judgment of the United States District Court for the District of Vermont (Jerome J. Niedermeier, Magistrate Judge), granting the

defendants-appellees' motion for summary judgment dismissing the complaint in its entirety. The district court held that: (1) J.D. failed to meet the "adverse effect" eligibility criterion of the Vermont Department of Education Special Education Regulations ("VSER"), which implement the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq.;<sup>[fn1]</sup> (2) the defendants-appellees did not discriminate against J.D. in violation of § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; and (3) J.D. was not entitled to relief based on alleged violations of certain procedural safeguards in the IDEA. We affirm.”

Following the procedural history you will find a discussion of the facts. The facts are only the facts the court found as relevant to JD’s claims. All special education cases under the IDEA that wind up in a court are decided without a jury. That means the judge (and for that matter a hearing officer or law judge) determines which facts presented by both sides are facts that are relevant to the issue complained about by the parent or the school district (if the district files the request for a hearing). It also means the judge or hearing officer is the sole determiner of the applicable law for the case.

This section of the decision is generally labeled Facts or something like that. In JD v Pawlet School District the sub-title of the fact section is

## **I. BACKGROUND**

### **A. Factual Background**

(JD v Pawlet pdf version, Pages 2-4)

Some decisions describe the facts of the case in numbered paragraphs. Others write the facts in paragraphs without numbers.

Following the facts as determined by the judge or administrative hearing authority, the author of the decision describes the laws that apply to the case in great detail. In JD v Pawlet School District, the court sub-titled this section

## **II. DISCUSSION**

### **A. Standard of Review**

(JD v Pawlet pdf version, Pages 4-12)

In this section the court meticulously described the claims JD made in his complaint and applied the law to each of those claims. At the end of each of the claims discussion the court published its ruling for that particular claim.

## **III, Conclusion**

(JD v Pawlet pdf version, Page 13)

“For the reasons explained above, the judgment of the district court is affirmed.”

Shazam

Once you know how these things are written the light will come on. You will know how to make more persuasive presentations to the Team, write more effective letters to the school, and decide whether you have enough information to think about exercising your administrative complaint or hearing rights under the procedural safeguards. You will also be able to decide whether you have enough factual information to file an OCR complaint letter. The upshot is that you can make reasoned decisions instead of going on a gut feeling.

### **Hypothetical exercise.**

Background and facts:

The Old Overshoe School District superintendent notified all parents with children in grades 1 – 12 in the District that students at Old Overshoe are required to bring an electronic tablet or pad to school beginning on the first day of school for the 2015-2016 school year.

The students will use the tablet or pad throughout the school year for taking classroom notes, doing their homework, and taking tests and examinations. The parents are required to purchase the tablet.

There is no exception to this rule. The notice from the superintendent went to parents to their last known email address and by US Mail to the parent’s home address of record.

Question: Under what set of facts and the IDEA or Section 504 might the Old Overshoe School District’s requirement (a) be found to be a denial of FAPE and/or (b) discrimination on the basis of handicap or disability?

Helpful tools:

The Law Dictionary <http://thelawdictionary.org/>

Legal citation <https://www.law.cornell.edu/citation/>

Have fun.

*.Brice*

You are invited to post a question for Brice about this article or any other special education question on the INCIID Ask The Advocate Forum by going to

<http://www.inciid.org/forum/forumdisplay.php?51-Ask-the-Educational-Advocate>