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WEBINAR Handout with speaker, Brice Palmer September 3, 2015




Brice Palmer, Speaker

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. Brice also answers questions on the [Advocacy Forum on INCIID](#) or you can
- [Email him.](mailto:brice@shoreham.net) brice@shoreham.net
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>



About the author:

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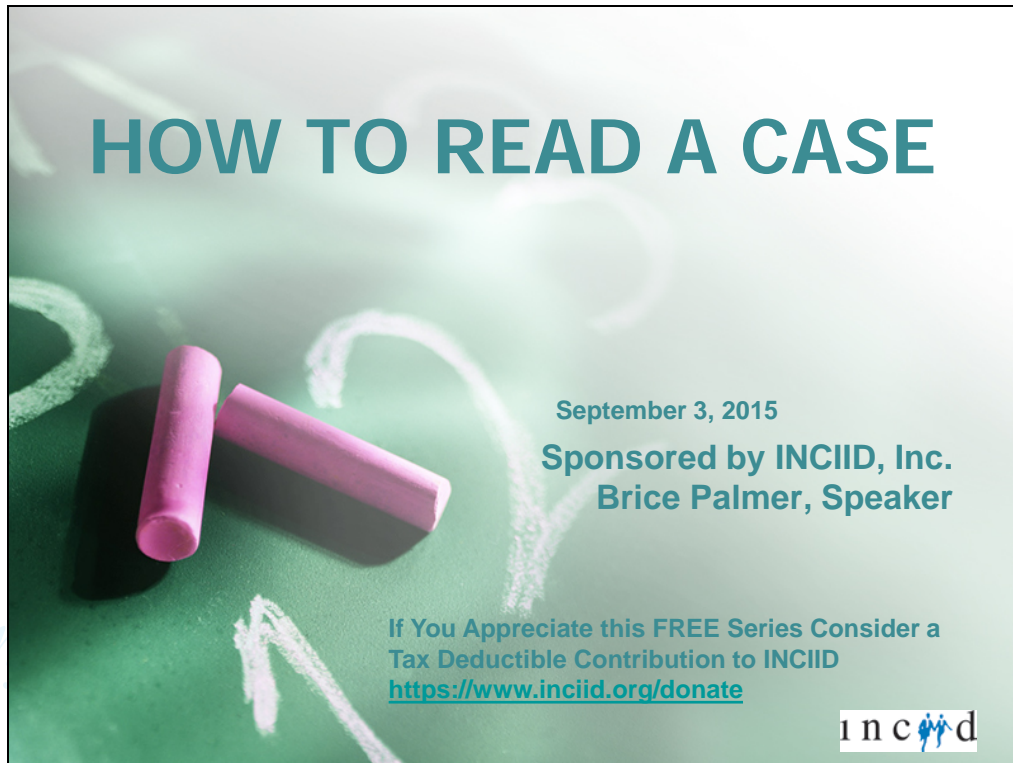
The InterNational Council on Infertility Information Dissemination

Brice also answers questions on the [Advocacy Forum on INCIID](#) or you can [Email him](#).

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](#)

Infertility Information & Support

Slide 2



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*.

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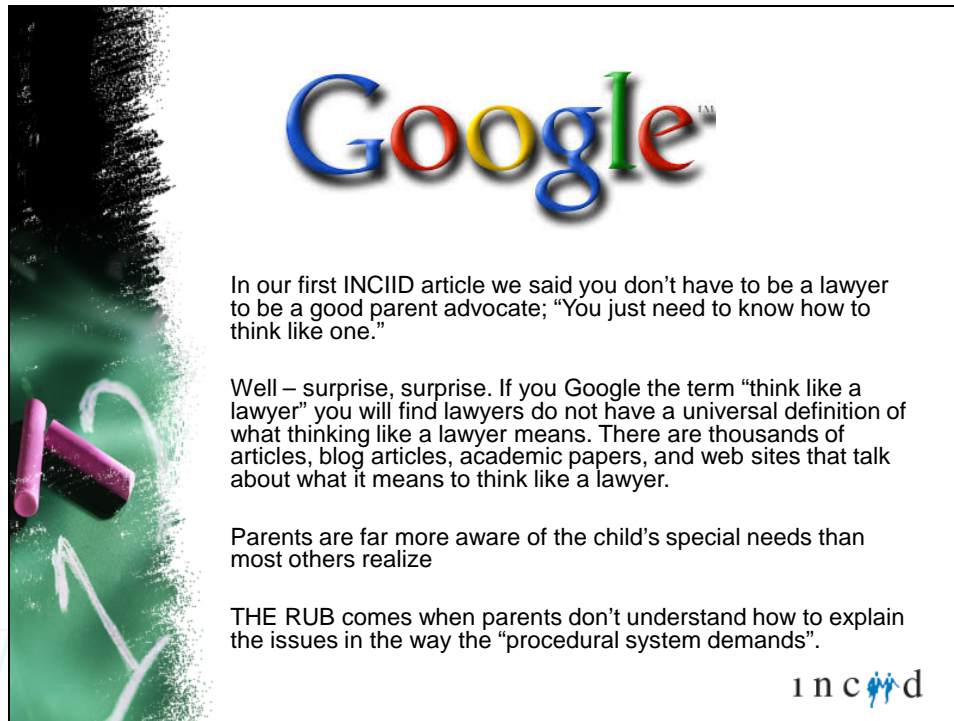


The InterNational Council on Infertility Information Dissemination

We will take your questions throughout the meeting. Please write clearly so I know exactly what it is you are asking. We all tend to have various abbreviations – but remember there are people here from all over the US – some acronyms are specific to different areas of the country – thank you so much for coming.

Infertility Information & Support

Slide 3



Google™

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.

Parents are far more aware of the child's special needs than most others realize

THE RUB comes when parents don't understand how to explain the issues in the way the "procedural system demands".


incid

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.

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 A vertical image on the left side of the slide shows a green chalkboard. Two pieces of pink chalk are lying on the board, and several white arrows are drawn on the surface, pointing upwards and to the right.

ANALYSIS of the BIG DEAL:

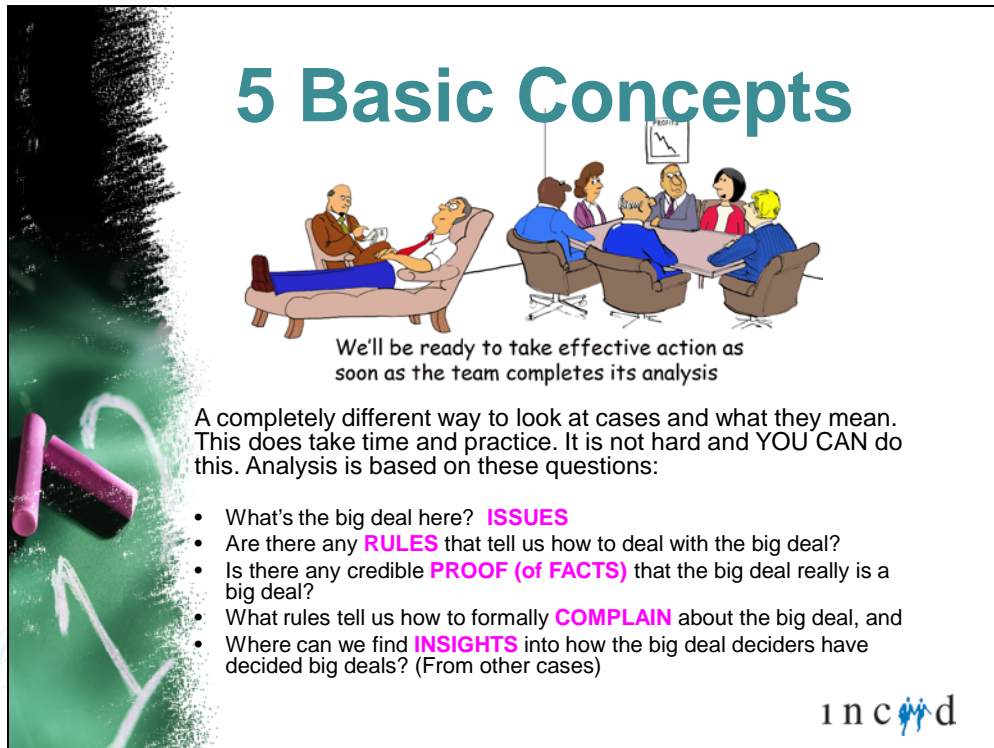
- WHAT is the big deal?
- RULES – are there any rules that tell us how to deal with the big deal?
- PROOF (facts) – what proof is there that the big deal is REALLY the BIG DEAL?
- Which RULE tells us how to formally COMPLAIN about the big deal? And
- INSIGHTS: Where can we find insights into how the big deal DECIDERS have decided others' big deals

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?

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.

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5 Basic Concepts

We'll be ready to take effective action as soon as the team completes its analysis

A completely different way to look at cases and what they mean. This does take time and practice. It is not hard and YOU CAN do this. Analysis is based on these questions:

- What's the big deal here? **ISSUES**
- Are there any **RULES** that tell us how to deal with the big deal?
- Is there any credible **PROOF (of 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? (From other cases)



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.

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?

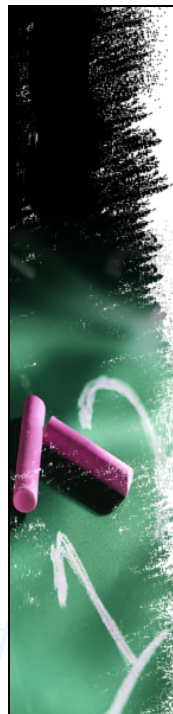
Are there any rules that tell us how to deal with the big deal?

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?

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The BASICS

Look at the structure of the case. (Don't read it word for word). Print the decision

The Structure


1. **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.

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



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.

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History of the Case




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 except of the 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.;[fn1] (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."



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Infertility Information & Support

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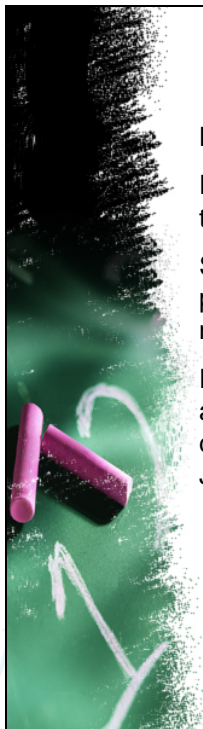
Discussion of Facts

- Facts included are **ONLY** the facts the court found to be relevant
- The Hearing Officer or Judge determines (from both sides) what is relevant to the issue. The judge or Hearing Officer is the **SOLE** determiner



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.

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Background of the Case

BACKGROUND

Factual Background (JD v Pawlet pdf version, Pages 2-4 of the Article)

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



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)

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Discussion of the Case



II. DISCUSSION


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.”



II. DISCUSSION

A. Standard of Review

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

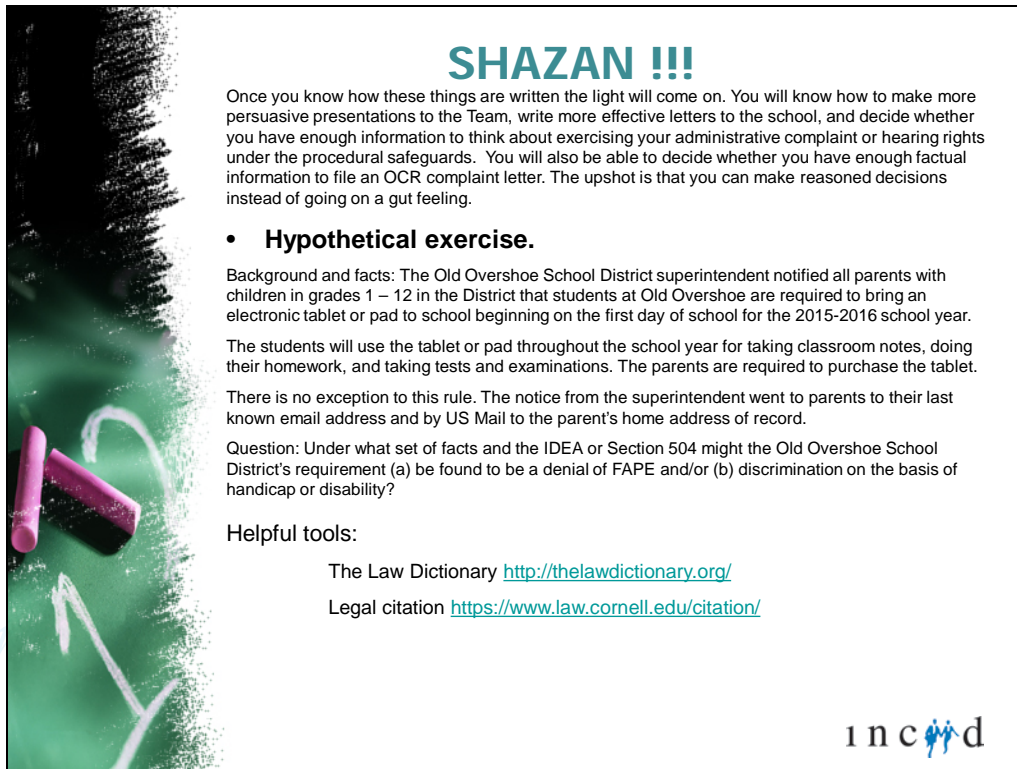
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(JD v Pawlet pdf version, Page 13)

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

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SHAZAN !!!

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/>



Shazam

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Hypothetical exercise.

Background and facts:

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

Have fun.

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Questions Welcome!

Email: Brice@shoreham.net

[Ask the Advocate on the INCIID Forum Anytime](http://www.inciid.org/forum)

<http://www.inciid.org/forum> 

Resources: <https://www.inciid.org/special-needs>

Ask the Advocate Forum – Brice Palmer answers your personal advocacy questions.

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

2015 Article Series Link: <http://www.inciid.org/advocacy-article-series-links>

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Phone: 802-537-3022