



# INCIID *Insights*

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## 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.



### **Disclaimer:**

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 articles in INCIID *Pathways to Special Education* are intended as information and education for parents of children who need of special education under the IDEA or are protected under Section 504.

The information in these articles is not legal advice. 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. The articles are general in nature. The information here is not a substitute for legal advice from an attorney licensed in your state.

Thank you.

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### About the author

Brice is a full time working advocate. If you want to know more about Brice and what he does, go to his website at [www.bricepalmer.com](http://www.bricepalmer.com) and click on the Our Story tab near the top of the page or, just click here: [Who Is This Guy](#) .

Photo attributions: All of the photographs that appear in this edition came from the Morgue file, the free photo archive at <http://www.morguefile.com/>

## The Gordian knot.

During the second millennium BC, the king of Phrygia tied a knot that only one person could undo. The prize? The one who could undo the knot would become the ruler of Asia. Many tried and failed.

It came to pass that Alexander the Great was the one who undid the knot—by cutting it instead of untying it.

In the months ahead this year *Insights* will present some effective and essential advocacy techniques that will help you cut through the Gordian knot that special education has become.

All the advocacy techniques and skills in *Insights* are useful whether your child has an IEP or a Section 504 plan.<sup>1</sup>

*I'm going to surprise you by saying that you don't need to be a lawyer to be an effective advocate — you just need to learn how to think like one.*

Even average advocates can learn about the regulations. The good ones use them to tell a vivid story. That's why they're good.

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<sup>1</sup> There are significant differences between the IDEA and Section 504. Section 504, though, was amended and now provides for a (real) free appropriate public education.

## What is advocacy, anyway?

The Oxford Dictionary defines advocacy as public support for or recommendation of a particular cause or policy.<sup>2</sup> For us, our particular cause is a free appropriate public education for our children.

Sounds nice, but what does it mean?

The deep meaning of advocacy, and especially special education advocacy, is using a mixture of skills that include knowing

- How to manage your child's special education program or 504 plan,
- How to communicate effectively with the people at the school,
- Something about the laws,
- How to recognize a denial of a free appropriate public education (FAPE),
- and,
- How to put a strong argument together and present it to the school district.

## Education Records



Your knowledge bank is your student's education records.

As Pete Wright<sup>3</sup> and others say, "if it isn't written – it didn't happen."

The problem is that student records are next to useless until we realize one important fact.

The education records are critical and have meaning.

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<sup>2</sup> [http://www.oxforddictionaries.com/us/definition/american\\_english/advocacy](http://www.oxforddictionaries.com/us/definition/american_english/advocacy)

<sup>3</sup> [www.wrightslaw.com](http://www.wrightslaw.com)

Each record is part of the foundation for every decision about how the Team writes and puts the IEP or 504 plan into effect. The records include each decision the Team makes, each evaluation, and each action the Team or school takes concerning your child.

The written history of your child's special education is in those records.

I can hear you saying to yourself, "Yeah, I know that. When are we going to get down to the juicy stuff about records?"

*It is important to know how to do something.*

*It is just as important to know why to do it.*

Hang in there with me.

Let's look at some juicy stuff about education records you might not know about. Then, in the January 25<sup>th</sup> article, we will cover the roll up your sleeves record diving routines and protocols.

## FERPA

First: Let's talk about your right to have access to your child's education records and second, define what an education record is.

The United States Congress gave you a parent's right to your child's education records.

"[P]arents and students should have access to everything in the institutional records maintained for each student in the normal course of business and used by the institution in making decisions that affect the life of the student." 120 Cong. Rec. at 39858-39859

There is an exception to the access to student records rule:

Personal or private notes or records made and kept by educational personnel, which are kept in the sole possession of the individual educational personnel AND are not revealed to or used by any other person (except a substitute for that person) You can find that rule at USC Section 1232g(a)(4)(B)(i) [Emphasis mine]

Second: What is an education record?

Any record that is "directly related" to a student and maintained by the institution or an agent for the institution, it is an "education record" for purposes of FERPA and is subject to the "inspect and review" right unless it falls within one of the two narrow exceptions. Directly related means personally identifiable information such as the student's name and date of birth, student ID number, and so forth.

Sometimes parent's want to know if an email message can be an education record. FERPA does not distinguish between paper and electronic records. So the answer is yes, an email could be an education record – if the email message contains the student's name or even the student's ID number.

ON THE OTHER HAND, any important written correspondence with the school district, or any of the district's employees, is a business letter. That includes email messages.

We tend to write email messages with informality – Don't. No emoticons, no smiley faces created by your keyboard :) or ☺

Do not use email for anything that has to do with your child's special education – and yes, that includes asking for a meeting and confirming that you will be at a meeting.

Why? Because a well written letter has a sense of formality and importance. And, because we need to train the school Team members to treat us with dignity and respect. On the flip side of that, we also must treat the school Team members with dignity and respect even if they don't deserve it.

Yes, I know that is a tough concept to accept. Do it and it will pay dividends. Don't do it and you will hear about it through the school district's witnesses at the due process hearing.

Make certain that all your email messages and letters to the school become education records. This is an example of how to do it:

To: Ms. Special Education Teacher

Subject:

Team meeting schedule

Reference: (student's name),D.O.B. x/x/xxxx,S Student ID No. xxxxxxxxxx

Dear Ms. Special Education teacher, I am writing today to find out just when it is that the district intends to . . . . Please let me know as soon as possible so I can arrange my schedule accordingly.

Respectfully,

X's mother or father

## **Do you know . . .**

The school district has an obligation to give you interpretations of the records when you make a reasonable request for it? That obligation is placed on the school district under FERPA (Family Education Records Privacy Act) in the FERPA regulations at Section 99.10 (c). You can read it here - <http://www.law.cornell.edu/cfr/text/34/99.10>

Knowing that, you should never hesitate to ask the school district to give you an explanation for any of its evaluations by the evaluator who performed the evaluation – and – you should not hesitate to ask for this to happen in private. NOTE: A sample request for education records letter is located in the addenda to this article.

Up until now, you may have only been given an explanation of the district's evaluations at the Team meeting. Well now, we both know how ineffective that explanation can be, don't we?

You also should consider having an expert that you hire to explain the district's evaluations to you. Your expert might find flaws and weaknesses in the evaluations and make recommendations to you for additional evaluation procedures.

What if you have a sinking feeling that you were not given all of the records? There is a cure for that. What you should do is submit another request to review the records AND specify which records you believe are missing.

Sometimes all of the student records are not in the student's cumulative file (CUM file). Examples are disciplinary records, the principal's files, service providers such as the occupational therapist, speech and language therapist, school nurse's records, paraprofessional's records, and so on. Be certain that you make it clear to the district that a file includes hard copies as well as computer files kept on the student.

## Getting access to the education records

FERPA:

By letter (not an email or telephone call), ask the school to provide access to your child's entire education record. A sample letter to request access to the education records is located in the addendum to this article.

Under FERPA, schools have 45-days to give you access to the records after you ask to see them.

It is not unusual for a school to put you off until the last of the 45 days.

However, you are entitled to have access to the records before the 45-day limit if you are going to attend

- a Team meeting,
- an evaluation meeting
- a due process hearing
- a mediation conference

## Sample letters for asking for education records

### Simple Letter

Principal of School

Address

Request for Records

Reference: Student: (name and student ID number)

School District: \_\_\_\_\_

Name of School your child attends: \_\_\_\_\_

Dear \_\_\_\_\_,

I am writing to schedule a time to review all of my child's education records, which includes the cumulative and confidential records

My child's name is ..., his/her grade is ..., and his/her teacher is...

I will be at the district office on (specific date, and time) at which time I would like to review my child's records. If this time is not convenient, please call me at (home or work phone) to reschedule.

Your full name

Street Address City, State Zip Code and Daytime telephone number

## Detailed Letter

NOTE: We wish to thank Attorney Doreen Philpot from whom we stole this request letter idea fair and square. Doreen practices special education law in Texas and Indiana.

Date:

Principal of School

Address

Request for Records

Reference: Student: (name and student ID number)

School District: \_\_\_\_\_

Name of School your child attends: \_\_\_\_\_

Dear \_\_\_\_\_,

I am writing today to request an appointment to review (your child's name) complete education records. Please let me know the time and date of the appointment by email at (your email address) or by letter to my home address, which is \_\_\_\_\_).

**NOTE:** The school has 45 days to give you access to the records UNLESS you want the records for an upcoming IEP meeting or you have asked for a due process hearing.

Documents requested:

1. Report cards or progress reports
2. Transcripts.
3. Notices of any unsatisfactory performance, however labeled.
4. All results of any group administered tests.
5. Attendance records, including any notices related to attendance problems.
6. Any records related to discipline.
7. All communications requesting IEP meetings (or 504 Team meetings).
8. All communications to schedule IEP meetings, parent-teacher conferences, student study team meetings, or any other meetings between the District personnel and me that are related to (your child's name).



9. All IEP documents, including drafts of IEPs and completed, approved, and implemented IEPs. (**NOTE: If your child has a 504 plan, substitute 504 plans for IEPs**).
10. All documents relating to (your child's name) progress in meeting the IEP goals and objectives.
11. All medical and other school health records of any type.
12. All correspondence, memoranda, and notes relating to the student.
13. All notes of any telephone calls relating to the student.
14. Copies of all assessment plans and all assessment reports prepared by any District personnel at any time.
15. Complete protocols for all assessments administered at any time by the District or any other State agency personnel. I understand that test protocols that contain no personally identifiable student information are not copyright protected.
16. All notes from any school employee regarding the provision of services to the student, including copies of all records showing the dates and times on which the student was provided with any related service.
17. All logs showing persons who accessed student records and all logs of services provided.
18. All tape or video recordings with regard to the student.
19. Any and all other school records pertaining to the student.
20. Any emails or copies of electronic transfers that concern the student.
21. Curriculum Vitae of the Special Ed director, teachers and aides in the classes that Student is attending along with all other documents that show the education, training and experience in special education of the Student.
22. All other documents in any part of the school file.

Sincerely,

Your full name

### **You can ask about school personnel qualifications**

If you are concerned about the education, training or experience of the teachers and other people providing a special education to your child, you can add the following information:

Federal law, 20 USC Section 1413(a)(3) provides that the local education agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 20 USC Section 1453(c)(4)(D)

20 USC Section 1453 concerns grants to States, and how the funds will be used. It specifically requires a State to address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills.

The Federal IDEA Regulations 34 C.F.R. Section 300.156 provides that the State must have in effect, consistent with the purposes of this part and with section 20 U.S.C. 1412(a)(14)), a comprehensive system of personnel development that – is designed to insure an adequate supply of qualified special education, regular education and related services personnel.

**NOTE: the link here does not go into your letter Read the regulation here Read the regulation here:** <http://www.law.cornell.edu/cfr/text/34/300.156>

Qualified personnel is defined in 34 C.F.R. Section 300.156. “Qualified personnel means personnel who have met SEA-approved or SEA-recognized certification, licensing, registration or other comparable requirement that apply in the area in which the individuals are providing special education or related services. (Authority: U.S.C. 1412(a)(14). )).

**[NOTE: the link here does not go into your letter Read the regulation here:** [http://www.law.cornell.edu/uscode/text/20/1412#a\\_14](http://www.law.cornell.edu/uscode/text/20/1412#a_14)

Depending on your state laws, physical therapists and occupational therapists must have graduated from an accredited school. Some states require school physical therapists and occupational therapists must be licensed by either the state board of professions or the state department of education. Check with your state department of education about this requirement.

34 CFR Section 300.320(a)(4) provides that an IEP must include “a statement of the program modifications or supports that will be provided for the child . . . “ This support should be to assist the teacher in meeting the unique needs of the child. Authority: 20 U.S.C. 1414(d)(1)(A) and (d)(6)). Emphasis mine.

**[NOTE: the link here does not go into your letter Read the regulation here:]** <http://www.law.cornell.edu/cfr/text/34/300.320> ]

This is a request for all documents that the (name of your school district) has that shows the District has complied with these rules with respect to (name of your child).

Thank you,  
(your signature)

### **A bit of humor**

Ok. So we have talked about dignity and respect, working with the Team as an effective advocate, and all with a bit of formality.

Here's the letter we all would like to write;

Dear School District.

The newly revamped IEP arrived with a resounding thud.

Not only is it bloated with semi-literate words and puffed up descriptions of various somethings or anothers, we also discovered that our child's services and specialized instructions have been trimmed with a buzz saw.

We do not intend to blend in with the wallpaper and not be seen for what we are; integral members of our child's IEP team.

If the school district IEP team members are in over their heads with our child's IEP and educational needs, then let's get the state department of education directly involved and get the IEP written as something that actually provides a free appropriate public education.

Thank you.  
Ms. Parent

So go ahead. Write your snarky letter and get it out of your system. Then, write the letter you should write.

Brice

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Use this page for your notes and questions for the call in conference.