



We need a compass to navigate

## INCIID *Insights*

Vol. 1, No. 4

February 25, 2015

We are told that we need to navigate the system to get an IEP that actually provides a free and appropriate public education. We are told we need to navigate the system to get a good 504 plan.

The truth is that we cannot navigate unless we have a compass and a map.

Our destination is getting an IEP or 504 plan that actually fits our child's educational and access needs; and does it within the rules.

The map to that destination is the combined federal and state special education regulations as well as the Section 504 regulations.

The compass is how we read and analyze the rules to guide us through the maze of rules and facts that apply to each unique problem or issue that we need to find and fix.

The map varies. We have maps for eligibility, writing an appropriate IEP, discipline procedures, administrative and formal due process complaint, transition, ESY and on and on.

### *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.

The point is that no child’s special education situation is exactly like another child’s situation. But – the rules remain the same for each child.

This edition of INCIID *Insights* is about unzipping your particular set of facts with the regulation(s) that apply.

## SPECIAL EDUCATION UNZIPPED

### How to analyze and come to a conclusion

The IDEA’s procedural safeguards expect that parents will advocate for the student.

That means you—the parent—are the first line of defense for your child’s right to a free and appropriate public education.

Let’s begin by saying that when we have difficulties with the Old Overshoe School Team,<sup>1</sup> our first thought is usually not about asking for a due process hearing. No, we ask for a Team meeting or send an email message or a letter to let the Team know we believe our child is not getting something we believe our child needs.

### **How do we enforce the laws?**

Our enforcement powers reach beyond requests for due process hearing.

Each time we go to a Team meeting we are enforcing the various rights included in the IDEA and, or, Section 504.

Examples of enforcement beyond formal complaints are:

Asking for an independent educational evaluation (IEE)

Asking for changes in the IEP or 504 plan

Asking for changing the placement to an out of district school at public expense

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<sup>1</sup> We use the word Team because some states use the term IEP Team, others use the term Planning and Placement Team (PPT). New York uses the term Committee on Special Education (CSE).

NOTE: The procedural safeguard rights are remarkably different in the IDEA and Section 504.

What are the rights under the IDEA and 504? They are the programs, services, specialized instructions, physical placements, and educational placements contained in an IEP or 504 plan. Section 504 also provides a free appropriate public education. Unlike the IDEA, Section 504 forbids discrimination based on disability against an eligible student.

Those of us who are not attorneys can become bewildered with the “process” and “procedure” that go with getting an appropriate IEP or 504 plan.

We whack away trying to make changes. And, we become discouraged because, we say, the school district stacks the cards against us. But what can we do about it?

We can improve our odds if we understand how to analyze the problem (what we believe is a violation). There may be more than one problem to solve, but we must analyze each individual problem analyzed separately. Then, after we analyze each problem we can then tell the story of your “case” in a way that unfolds in an easy and logical way.

For most of us, the biggest quagmire begins with the statutes and regulations. Having a basic understanding of how to find and then apply our particular facts to the statutes and regulations will help us do at least two things:

- (1) We can increase our ability speak to the Team with authority and,
- (2) We can save many hours and dollars for attorney fees if we know how to organize our thoughts and sort through the basic “issue questions” before we hire an attorney.

The bad news is that school districts generally hire lawyers who specialize in or have a practice concentration in special education law.

The good news is you do not need not be an attorney—or speak legalese—to find your way through the maze.

## The Catch:

You need to know there is a formula. Success or failure depends on how well you understand and follow the procedures set out by the regulations. The real trick here is to learn how to analyze your child's IEP or 504 plan while not adopting the language of an attorney or paralegal. Remember, if you try to act and sound like a lawyer the other side is not going to be kind.

The regulations are in place to insure that not one individual receives benefits under the IDEA or Section 504 who is not eligible to receive them. That means the regulations and procedures are in place to assure that children who are in need of special education get a free and appropriate public education (FAPE). It also meant that children who are not eligible do not have a right to a FAPE.<sup>2</sup>

Disraeli's<sup>3</sup> notion was that justice is but truth in action. From that we can infer justice follows the truthful application of the laws.

Finding the truth in the "legal" sense means applying a set of facts to a rule, statute, or regulation. If the facts fit the rule, then the "truth" is that the rule should apply.<sup>4</sup>

Clean and neat, right?

I'm sorry to say applying the regulations do not always lead to successfully getting appropriate services at the local school district level.

To appreciate how to advocate for services in Team meetings, evaluation planning meetings, negotiations for services, and other similar meetings, we must know how a decision is made by a hearing officer.

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<sup>2</sup> The IDEA and Section 504 provide for a free and appropriate public education.

<sup>3</sup> Benjamin Disraeli, (21 December 1804 – 19 April 1881) was a British politician, writer and aristocrat who twice served as Prime Minister.

<sup>4</sup> (Sometimes a rule has exceptions that may negate some or all of the application of the rule to the facts. This is the "keep reading" rule. Keep reading the rule to see if it has exceptions..

Keep that in mind and you will improve the odds for getting needed services if you have a basic understanding of some important concepts about how formal and informal decisions are made by school districts and hearing officers.

Following the analysis formula helps us organize the way we deal with the school district in our Team meetings, our correspondence, requests for evaluations, and so on. .

### **Applying the facts to the rule**

Applying the facts to the rule is THE PROCESS and THE PROCEDURE that we and the school district must follow.

Remember this: The school district does not have a “Because I said so rule.”

Knowing how formal hearing decisions are made gives us a blueprint, or formula, for everything that happens BEFORE we file a formal complaint.<sup>5</sup>

That might sound weird. Let me explain.

The IEP is the school district’s legal definition of what a free appropriate public education is for the specific student for whom it was written.

School district lawyers advise their clients to write an IEP that is legally defensible. That means the school district lawyer is looking at an IEP as if that IEP is going to wind up in front of a hearing officer.

You do not have to be a lawyer to learn the basic skills to do this. As we said in an earlier article, you just need to know how lawyers think.

Finding the truth in the legal sense means applying a set of facts to a rule, statute, or regulation and reaching a conclusion. If the facts fit the rule, then the “truth” is that the rule should apply.

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<sup>5</sup> A formal complaint includes a request for due process, a state administrative complaint and an OCR complaint for discrimination or retaliation on the basis of disability.

We can make up a situation, analyze it, and use the same formula for analyzing any violation you believe the school district made in your child's IEP or 504 plan.

Let's say the Town of Fertneyville has a local ordinance.

The ordinance reads as follows:

**Rule** (the Town Ordinance):

FVO 01-220-375 § 1095. Handheld use of portable electronic device prohibited

(a) Definition. As used in this section, "hands-free use" means the use of a portable electronic device without use of either hand by employing an internal feature of, or an attachment to, the device.

(b) Use of handheld portable electronic device prohibited. A person shall not use a portable electronic device while operating a moving motor vehicle on a street or state highway within the Fertneyville town limits. The prohibition of this subsection shall not apply:

(1) to hands-free use; (2) to activation or deactivation of hands-free use, as long as the device is in a cradle or otherwise securely mounted in the vehicle and the cradle or other accessory for secure mounting is not affixed to the windshield in violation of section 1125 of the Fertneyville Town Ordinances; and

(3) when use of a portable electronic device is necessary for a person to communicate with law enforcement or emergency service personnel under emergency circumstances.

**NOTE:**

This is a method for coming to an informed conclusion about whether the school district violated your child's right to FAPE or your procedural safeguard rights under the IDEA.

IRAC is an acronym for Issue, Rule, Analysis, and Conclusion. IRAC is just one of many such analysis formulas used for legal analysis of court decisions, statutory interpretation and so on. We are not generally concerned with court decisions at the Team meeting level. Although the IRAC formula isn't normally used for analyzing a student's current situation in special education, I have found that it is one of the easiest ways for parents and advocates who are not attorneys get an objective look at the dispute and reach a conclusion about whether a valid issue is present.

Work all the way through to the end. Skipping around will not work. Remember, all formal decisions handed down by hearing officers and judges are, reached by the same kind of analysis method. This is an orderly and objective method for applying the facts to the rule.

**A completely fictional analysis:**

**Background** (story of the case)

Bubba lives in the town of Fertneyville in the state of your choice. On December 5<sup>th</sup>, 2015 a snowstorm moved in during the night. The storm left three feet of snow on the town streets. The Fertneyville snow plows had not yet plowed the roads when Bubba decided he must go to the grocery store to stock up on beer, bread, milk, and other sundry foodstuffs He had no idea whether the storm would linger or even when the snow plows would clear the streets. So Bubba fired up his snowmobile and gallantly struck out of the grocery store.

Bubba pulled up to a stop at the intersection of 1<sup>st</sup> and 4<sup>th</sup> street. About a half block before he came to a full stop at the intersection, he whipped out his cell phone to call home to see if Dorothy wanted him to pick anything else up at the store.

The Fertneyville Town traffic sergeant Jessy was watching the intersection through his binoculars from his perch on top of a close by residential porch. Sergeant Jessy jumped off the porch and hurried to the intersection in a flash. He was wearing snowshoes.

“Bubba, you are in violation of Fertneyville Ordinance FVO 01-220-375 § 1095 because I witnessed you driving and talking on your cell phone that was squarely in your hand when you was talking on it. I hereby grace you with this citation for driving while operating a portable electronic device.”

**Issues:** (legal questions that are put before a decision maker to decide)

1. Is a snowmobile a motor vehicle under State Law?
2. May a town ordinance supersede the State motor vehicle laws?

**Analysis:** (Apply the rule)

1. The state in which Fertneyville is located requires the owner of a snowmobile to register the snowmobile with the state department of transportation and must be titled by the state department of transportation, and display the license plate on the rear of the snowmobile. The owner of the snowmobile must also have a valid insurance certificate.

2. The State does not include the following in the definition of a motor vehicle

Pull behind trailers, farm tractors, self-propelled manure spreaders, and snowmobiles. State Statute 1492 § (d) and (e)

3. Under the State Constitution, the State has sole authority for regulating all State Highways, Town Streets and Town roads. State Constitution, Article 7 section 15.

**Conclusion:**

Bubba did not violate FVO 01-220-375 § 1095(b) of the Town Ordinances that prohibits using a handheld portable electronic device while operating a motor vehicle.

Take any IDEA you believe deprives your child a FAPE or any violation you believe denied or significantly impeded your parental right to participate. Analyze the violation in the same methodical way. Again, analyze each



violation you find in the IEP separately. This method also applies to a basic analysis of discrimination or retaliation under Section 504

In our next article we will talk about how to use your violation analysis to deal with the school district on an informed and more powerful position.

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*Infertility Information & Support*