

WRIGHTSLAW

From Emotions to Advocacy

Second Edition

*The Special Education
Survival Guide*

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Introduction

Many parents want to advocate for their child but hold back. If you want to advocate or need to advocate or believe you should advocate for your child but have excuses or reasons why you cannot, this book is for you. We will help you attack obstacles and learn the skills you need to be an effective advocate for your child.

From Emotions to Advocacy

As you read this book, you will experience an array of emotions – fear, sadness, and anger, to excitement, relief, and hope. You will make mental lists of things to do. Write your ideas down on a sheet of paper. Tuck your list into this book and use it as a bookmark. As you learn, your ideas and priorities will change.

You may be tempted to put this book aside and act on your ideas. Try to resist this urge. You have not yet learned what you need to know.

Our advocacy program teaches information and skills, step by step. When you know the information and skills you need to learn, you can make good use of your time. As you complete each step, you will acquire information and polish skills that you will use later.

Skim through the book. When you understand the program, you will know where to focus your energy. You will not allow urgent issues take precedence over important issues.

In the beginning, the process of advocating for your special needs child will feel overwhelming. This is normal. If you follow this program, you will learn how to organize, plan, and use your emotions to become an effective advocate for your child. You will not regret your journey from emotions to advocacy. Because of you, your child's life will change for the better.

1 Learning About Advocacy

“If you think education is expensive, try ignorance.” – Benjamin Franklin, inventor

In this chapter, you will meet children with disabilities. You will learn that there are different kinds of advocates for children with disabilities and why parents are natural advocates for their children. We provide a quick overview of advocacy skills. Finally, you will discover how advocacy helps parents use their emotions to become empowered.

Marie, a ten-year-old child from Maryland, had several strokes. She uses an electric wheelchair to get around and assistive technology to communicate. When Marie’s parents asked their school district for support and services, the district refused, saying, “The Individuals with Disabilities Education Act doesn’t apply to your child.”

In Indiana, a blind child wanted to attend his neighborhood school. The school district refused and sent Joshua to a residential school for the blind, 25 miles away from home. Josh’s parents objected, initiated a special education due process hearing, and prevailed.

Nancy is a bright child with dyslexia. Her New Jersey school district placed her in a special education resource room. Two years passed, but Nancy did not learn to read. Her parents wanted the district to train teachers in effective educational practices so children with dyslexia could be taught to read. The district refused. Nancy’s parents advocated for her and prevailed.

In California, the parents of a seven-year-old child with mental retardation wanted their daughter to be educated in a regular classroom. When the school district refused, Rachel’s parents spent five years fighting for her right to attend regular classes. After the court ordered the district to support Rachel, so she could attend school with her peers, the school district appealed – all the way to the U. S. Supreme Court. Rachel’s parents were her advocates. Today, Rachel Holland is a high school student in regular education classes.

As a first grader in Washington, D.C. public schools, Sandra was misdiagnosed with mental retardation. After 12 years of special education, Sandra was functionally illiterate. Sandra did not have an advocate. “The school system has not given me what I needed,” she says. “I feel as though no one really cares.”

2 Creating Your Master Plan

"Failing to prepare is preparing to fail." —John Wooden, UCLA basketball coach

In this chapter, you will learn about planning. We explain how a master plan helps you focus, anticipate problems, and prepare for the future. We describe the five components of a master plan. We discuss how to find and use private sector evaluators and educational consultants. You will learn about the benefits of joining a parent support group or advocacy group.

The Need to Plan

What do you want your child to achieve this year? What are your long-range goals for your child? What do you want your child to be able to do when he or she leaves the public school system? What steps do you need to take to help your child meet these goals?

What are your child's strengths and weaknesses? How does your child's disability affect his or her ability to learn? You need to plan for your child's future.

Can you imagine building a house without a blueprint? You do not know where to situate the house, what types of materials to use, or when to schedule work by subcontractors.

You do not know how large the house will be, how many rooms it will have, or what it will cost to build. You are not aware of obstacles you may encounter, legal requirements, contracts, or permits. Is it reasonable to think that you will figure this out as you go along?

Can you imagine starting a business without a business plan? You have not decided what products you will sell, how you will market your products, or how to fill orders. You do not know what services you should offer.

You have not done research into your market or your competition. You do not know what start-up expenses to anticipate, how much your business will earn, or when you can expect to break even. You do not know about obstacles, legal requirements, or contracts. Is it reasonable to think that you will figure this out as you go along?

3 The Parent as Project Manager

“A good education is the next best thing to a pushy mother.” —Charles Schulz, cartoonist

In the last chapter, you learned that your child’s special education is a long-term project and that you need a master plan. In this chapter, you will learn about project managers who organize, plan, monitor progress, anticipate problems, and keep the team focused. As your child’s parent and advocate, you are the logical candidate for this job. We describe the attitude, knowledge, and skills you need to act as your child’s special education project manager.

Contractors and Project Managers

If you build a house, you may have a general contractor manage the project. Contractors manage schedules, deal with people, anticipate problems, and ensure that jobs are done. Contractors are project managers.

In the business world, project managers plan, organize, monitor progress, and ensure that projects are completed. Project managers remove obstacles and resolve conflicts between people. On long, complicated projects, project managers are invaluable.

The Special Education Project Manager

As the parent of a child with a disability, you have learned that you need to make long-range plans for your child. Schools do not make long-term plans for students. Although your child may have a case manager, this individual is not responsible for your child’s education after your child leaves the public school system. If your child has an Individualized Educational Program (IEP), the IEP addresses your child’s needs for one year or less.

You are the constant factor in your child’s life. You represent your child’s interests. If your child does not receive an appropriate education and master the skills necessary to be an independent, self-sufficient member of the community, you will deal with the outcome.

4 Learning the Rules of the Game

"In the first place, God made idiots. That was for practice. Then he made school boards."

—Mark Twain, writer

As you begin to advocate for your child, you need to learn about school systems and how your district resolves problems and makes decisions. In this chapter, you will learn that your district is a bureaucracy with rules, customs and traditions and a chain of command. You will learn about Gatekeepers and One-Size-Fits-All (OSFA) special education programs.

When you learn the rules, you will be a more effective advocate and negotiator for your child. It's time to learn the rules of the game!

The Rules

"Those who play the game do not see it as clearly as those who watch."

— Chinese Proverb

Do you remember your first weeks on a new job? During those weeks, you felt insecure and uneasy. You did not know what to expect. You did not know how problems were handled and how decisions were made in this new environment. The fear of the unknown made you feel anxious.

In time, you found answers to your questions. When you learned what to expect, you felt comfortable. Your anxiety dropped.

When you begin to advocate, expect to feel anxious and insecure. As an outsider, you do not know how problems are solved and how decisions are made. As with new job jitters, your anxieties are caused by the fear of the unknown. During your first school meetings, expect to feel insecure and anxious. These jitters are normal reactions to your new role and the unfamiliar environment. As you gain experience, you will know what to expect and you will feel less anxious.

5 Obstacles to Success

"Nothing in the world is more dangerous than sincere ignorance and conscientious stupidity."
—Martin Luther King, civil rights activist

In this chapter, we describe obstacles you may encounter as you advocate for your child. When you recognize obstacles, you can take steps to prevent problems. You will learn about school obstacles, including inaccurate information, myths, and school culture. We will describe common parent obstacles including isolation, lack of information, and emotions.

You will learn to recognize personality styles, from Pit Bulls to Wet Blankets, and strategies you can use to deal with difficult people. We describe emotional traps you need to avoid. This chapter ends with strategies to help you build a working relationship with school personnel.

Obstacles to Advocacy

When you advocate for your child, common obstacles include inaccurate information and myths about how children learn. You are likely to get conflicting answers to your questions.

Inaccurate Information

Never assume that legal advice or information you receive from school personnel is accurate. In most cases, school people who offer legal advice have not read the law. Their advice is based on information they received from sources within the school system.

Here are a few examples of inaccurate information and bad advice that parents and teachers receive.

From parents:

"I was told my child is not eligible for services because he is passing."

"My child is in fifth grade and can't read. The IEP team will not include a goal about teaching my child to read. They said IEP goals must relate to the curriculum."

6 Resolving Parent-School Conflict

“If you only have a hammer, you see every problem as a nail.” —Abraham Maslow, psychologist

In this chapter, you will learn why conflict between parents and schools is normal and inevitable. We will discuss the impact that beliefs, perceptions, and interests have on conflict and identify six issues that increase parent-school conflict. You will learn about the high cost of conflict, including loss of trust, damaged relationships, and emotional and financial stress.

You will learn that your goal is to build a healthy working relationship with the school. If you build a working relationship with the school, it will be easier to negotiate for special education services and supports. This does not mean you will never have conflict!

The Nature of Parent-School Conflict

“I am so frustrated! The IEP team did not meet with us in good faith. The team members did not read the new private sector evaluations on our son. How can an IEP team make recommendations about a child’s special education when they do not read the evaluations about the child?”

Conflict between parents and schools is not new. For 150 years, public schools decided who could attend school and who had to stay home. During these years, the schoolhouse doors were closed to many children with disabilities.

When Congress passed Public Law 94-142 in 1975, they knew about the tradition of excluding children with disabilities from school. For the special education law to work, this tradition had to end. Congress added procedural safeguards to the law. The purpose of procedural safeguards is to protect the rights of children and the interests of their parents.



You will learn about procedural safeguards in Section 4.

When Congress reauthorized the Individuals with Disabilities Education Act of 2004, they focused on improving educational results and accountability. Congress

7 Emergency, Crisis, Help!

“In Chinese, the word crisis is composed of two characters. One represents danger and the other represents opportunity.” —John F. Kennedy, President

In the last chapter, you learned that parent-school conflict is normal, predictable and inevitable. In this chapter, you will learn how to manage a crisis. We will describe typical parent-school crises that cause parents to seek outside help. You will learn that the crisis has two sides: danger and opportunity. We will describe how to avoid common pitfalls and will provide strategies you can use to weather a crisis.

Help! Events That Trigger Crises

Here are common events that trigger crises and requests for help from parents. The school:

- Placed the child in a less desirable program, despite objections by the parents;
- Refused to change the child’s program and placement, despite recommendations from a private sector professional that the program is not appropriate;
- Refused to consider or include private sector test results and recommendations in the child’s IEP;
- Refused to provide accommodations and modifications so the child failed high-stakes tests;
- Decided the child is not learning disabled but is emotionally disturbed or mentally retarded, and unilaterally changed the child’s label and placement;
- Decided the child is not emotionally disturbed, but has a conduct disorder and is not eligible for special education services;
- Decided the child is not mentally retarded, but is a slow learner and is not eligible for special education services;
- Caused the child to be arrested at school and suspended or expelled the child for behavior that is related to the child’s disability;
- Sent the child home because they do not have an appropriate program and do not want the child in school;

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Evaluations and Your Child's Disability

"Parents have become so convinced that educators know what is best for children that they forget that they are the experts." —Marian Wright Edelman, educator

In this chapter, you will learn about the comprehensive evaluation and how to use information from the evaluation to design an appropriate educational program. You will learn how to do research about your child's disability, educational needs, and your legal rights and responsibilities.

Help! My son has dyslexia. He can barely read and write. The school will not put anything in his IEP about teaching him how to read and write. What can I do?

Help! My daughter has a cochlear implant. She can listen and speak. The school placed her in a class with deaf children where they are teaching her sign language and lip reading. What can I do?

Help! The school took my son out of special education. He is failing. When I asked them to put him back in special education, they said he does not qualify. What can I do?

Many parents feel powerless in their dealings with their school. Although you may feel powerless, *you are not powerless*. The best antidote to helplessness is information. Knowledge is power!

Get a Comprehensive Evaluation

Until you know where you are and where you need to go, you cannot develop a master plan. A useful master plan for your child's special education uses information about your child's present levels of functioning. When you have accurate information, you can develop realistic goals and objectives.

Base your master plan on a comprehensive evaluation of your child by an expert or experts who are independent of your school district. You cannot always rely on the school district to do a quality evaluation of your child.

9 | **The File: Do It Right!**

“Do the hard jobs first. The easy jobs will take care of themselves.”

– Dale Carnegie, motivational speaker

As the parent of a child with a disability, you know the special education system generates mountains of paper. Some information is important so you are afraid to throw anything away. The mountain of paper grows higher every year. What do you do with it? How do you organize this information?

You need a simple, foolproof document management system. In this chapter, you will learn how to organize your child’s file. After you organize the information about your child into a file, you will have a clearer understanding of your child’s disability and educational needs.

Document Management System

Think about the last school meeting. Did the IEP team members have a complete copy of your child’s file? Did you have a complete copy of your child’s file? How can the IEP team make decisions about your child’s special education program if they do not have complete, accurate information about your child?

Schools keep records in different places. Information and reports are misplaced. When you organize your child’s file, you will have all the information about your child in one place. With our document management system, you can track your child’s educational history. When you use this parent-tested system, you can quickly locate any document in your child’s file.

When you take your organized file to the next school meeting, you will understand the power of getting organized. You will gain a sense of control.

Gather Information About Your Child

Follow these steps to get information about your child.

10 Tests and Measurements 101

“If something exists, it exists in some amount. If it exists in some amount, it is capable of being measure.” — Descartes, philosopher

To be a successful advocate, you must learn about tests and measurements—statistics. Statistics allow you to measure your child’s progress or lack of progress (regression) using numbers.

In this chapter, you will learn how to use statistics to measure change. You will learn about the bell curve and how to use the bell curve to measure educational progress. You will learn about percentile ranks and standard scores, composite scores, and subtest scatter.

Mike

Assume you have an eleven-year-old child who is in the sixth grade. In third grade, Mike was found eligible for special education services as a child with a specific learning disability. He has not made much progress in reading, spelling, or writing since he entered special education three years ago. Mike is angry and depressed and says, “I hate school.”

You are afraid. What if Mike never masters the basic academic skills? What kind of future will he have?

At the next IEP meeting, you share your concerns about Mike’s lack of progress. You want the school to provide a different program. The IEP team disagrees. One member says Mike is getting all the help he needs. Another member says your expectations are too high. The psychologist says if you do not accept Mike’s limitations, you will damage him.

The IEP team offers accommodations and modifications for his special education program. They want to reduce his assignments and give him “talking books.” They do not propose to teach Mike to read, write, spell, and do math. You know what is happening. The IEP team is lowering the bar.

What can you do? How can you get the IEP team to listen? How can you persuade the IEP team to develop a different educational program for Mike? You need to learn what Mike’s test scores mean and how to chart these scores.

11 Tests and Measurements 102

“Underlying all assessments are a respect for children and their families, and a desire to help children. A thorough assessment should allow us to learn something about the child that we could not learn from simply talking to others about the child, observing the child, or reviewing the child’s records.” —Jerome Sattler

In this chapter, you will learn about composite scores and how to use pre- and post-tests to measure progress. You will learn about norm-referenced and criterion-referenced tests, standard deviations, and standard scores. You will learn how to convert standard scores into percentile ranks, and how to convert percentile ranks into standard scores.

You will learn about the Index and subtest scores of the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) and other measures of intellectual functioning. You will also learn about screening tests, single-subject tests, comprehensive educational achievement tests, personality tests, behavior rating scales, speech and language tests, vocabulary tests, and neuropsychological tests. You will learn how to chart test scores, how to use computer software programs to create progress and regression graphs, and how to incorporate objective scores in your child’s IEP.

Katie

Katie is a fourteen-year old ninth grader who is failing several subjects. Katie is angry and sullen, and wants to quit school. Katie’s desperate parents take her to a child psychologist. Before the psychologist diagnoses Katie’s problems and develops a treatment plan, she administers a complete comprehensive psychological and educational test battery to Katie.

When the psychologist meets with Katie and her parents to discuss the evaluation results, she explains that Katie scored two standard deviations above the mean on the Similarities subtest of the Intelligence Scale for Children, Fourth Edition (WISC-IV). She says Katie scored two and a half standard deviations below the mean on the spontaneous writing sample of the Test of Written Language, Third Edition (TOWL-3).

What do these test scores mean? Do they explain Katie’s academic problems? Do they account for her moodiness and dislike of school?

12 SMART IEPs

"If you're not sure where you're going, you're liable to end up someplace else. If you don't know where you're going, the best made maps won't help you get there."

—Robert Mager, psychologist, writer, educator

If you are like many parents, you feel anxious and insecure at IEP meetings. What do you know? What can you offer? What should you do?

Some parents believe that if they are not educators, they have nothing of value to offer in planning their child's educational program. Other parents realize that their child's IEP is not appropriate but do not know how to resolve the problem. Diane belongs to this group:

I do not think my son's IEP is appropriate. The only goal is 'Commitment to academic success.' I imagine 'Commitment to academic success' is appropriate for all students. If 'Commitment to academic success' is not appropriate, what should I propose?

How are measurable goals defined? Can you give me an example of a well-written IEP? (Diane, parent of 15-year-old special education student)

Diane represents countless parents who are confused about IEP goals and objectives. If you are the parent of a child with a disability, you are probably confused too. How do you write IEP goals and objectives? Do you agree with Diane when she says, "Commitment to academic success is not an appropriate goal?"

Learning About SMART IEPs

The term SMART IEPs describes IEPs that are specific, measurable, use action words, are realistic and relevant, and time-limited.

S Specific

M Measurable

A Use Action Words

R Realistic and relevant

T Time-limited

Let's examine each of these concepts.

13 IDEA – Overview and Legislative Intent

“In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

—*Brown v. Board of Education*, 347 U.S. 483 (1954)

In this chapter, you will learn about the factors that led Congress to enact the special education law in 1975 and the most recent amendment in 2004. You will also learn about statutory law, regulatory law, case law, and the Supremacy Clause.

Legislative Intent

On November 19, 1975, Congress enacted Public Law 94-142, also known as **The Education for All Handicapped Children Act of 1975**.

In May 1972, this legislation was introduced after several:

. . . landmark court cases establishing in law the right to education for all handicapped children . . .

In 1954, the Supreme Court of the United States (in *Brown v. Board of Education*) established the principle that all children be guaranteed equal educational opportunity.

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms.

Congress described the high social and economic costs that society paid for failing to provide an appropriate education:

Yet, the most recent statistics provided by the Bureau of Education for the Handicapped estimated that of the more than 8 million children . . . with handicapping conditions requiring special education and related services, only 3.9 million such children are receiving an appropriate education. 1.75 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education.

The long-range implications of these statistics are that public agencies and taxpayers will spend billions of dollars over the lifetimes of these individuals to

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IDEA– Section 1400: Findings and Purposes

“If the children are untaught, their ignorance and vices will in future life cost us much dearer in their consequences than it would have done in their correction by a good education.” —Thomas Jefferson

The most important statutes in the Individuals with Disabilities Education Act are Findings and Purposes in Section 1400. The history and findings that led Congress to pass the Education for All Handicapped Children Act of 1975 (Public Law 94-142), now called the Individuals with Disabilities Education Improvement Act, are in Section 1400(c).

The most important statute in IDEA is Purposes in Section 1400(d): “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to **meet their unique needs and prepare them for further education, employment and independent living**” and “to ensure that the **rights of children with disabilities and parents** of such children are protected ...” When you are confused about a term or section in the law, go back and re-read Section 1400, especially Purposes in Section 1400(d).

Note: When you see this * * * it signifies that a portion of the statute is not included. For the full text of a specific statute in IDEA 2004, you will want to refer to *Wrightslaw: IDEA 2004* or *Wrightslaw: Special Education Law, 2nd Edition*.

A Wrightslaw discussion of these issues follows Section 1400.

20 U.S.C. § 1400 Congressional Findings and Purposes

(c) Findings.

Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. **Improving educational**

15 IDEA–Section 1401: Definitions

“Loyalty to a petrified opinion never broke a chain or freed a human soul.” — Mark Twain, author

Six new definitions were added to IDEA 2004: core academic subjects, highly qualified teacher, homeless children, limited English proficient, universal design, and ward of the state. In this chapter, you will become familiar with the legal definitions of eight of the 36 terms defined in the reauthorized law. This chapter will help you understand, apply, and use these terms used in the statute.

Note: When you see this * * * it signifies that a portion of the statute is not included in this book. For the full text of a specific statute in IDEA 2004, you will want to read *Wrightslaw: IDEA 2004* or *Wrightslaw: Special Education Law, 2nd Edition*.

A Wrightslaw discussion of these issues follows Section 1401.

20 U.S.C. § 1401 Definitions

Except as otherwise provided, in this title:

* * *

(3) Child With A Disability.

(A) **In General.** The term ‘child with a disability’ means a child–

(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as ‘emotional disturbance’), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

(B) **Child Aged 3 Through 9.** The term ‘child with a disability’ for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child–

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IDEA—Section 1412: LRE, ESY, Child Find, Private Placement, Assessments

“Most schools function – with stunning efficiency – to stop real learning.”

—George Leonard, author

Section 1412 about State Eligibility is often called the “Catch-All” statute because it includes such diverse topics: child find, least restrictive environment, transition to preschool programs, equitable services to children in private schools, unilateral placements in private programs, tuition reimbursement, new requirements about participation in assessments, accommodations guidelines, and alternate assessments.

Although Extended School Year (ESY) is not cited in the IDEA statute, the special education regulations that interpret Section 1412 clarify ESY.

To receive federal funds, States must provide assurances to the U. S. Department of Education that they have policies and procedures in place to ensure that all children with disabilities receive a free appropriate public education. The right to a free, appropriate public education extends to children with disabilities who have been suspended or expelled from school.

Note: When you see this * * * it signifies that a portion of the statute is not included in this book. For the full text of a specific statute in IDEA 2004, you will want to read *Wrightslaw: IDEA 2004* or *Wrightslaw: Special Education Law, 2nd Edition*.

A Wrightslaw discussion of these issues follows Section 1412.

20 U.S.C. § 1412: State Eligibility

(a) **In General.** A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

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IDEA–Section 1414: Evaluation, Eligibility, IEPs, and Placement

“The greatest danger for most of us is not that we aim too high and we miss, but that we aim too low and we reach it.” —Author unknown

In this chapter, you will learn about requirements for evaluations, reevaluations, parental consent, eligibility, Individualized Educational Programs (IEPs), IEP teams, review and revisions of IEPs, and decisions about placement.

The new requirements for initial evaluations, parental consent, the new 60-day timeline to complete evaluations, and new limits on reevaluations are in Section 1414(a). Section 1414(b) includes new requirements for evaluation procedures, determining educational needs, and the movement away from using discrepancy models to identify children with specific learning disabilities.

Congress also made significant changes in Section 1414(d) about Individualized Education Programs (IEPs), IEP team attendance, and how to review and revise IEPs. Section 1414(e) clarifies that the parent is a member of any group that makes decisions about a child’s educational placement.

Note: When you see this * * * it signifies that a portion of the statute is not included in this book. For the full text of a specific statute in IDEA 2004, you will want to read *Wrightslaw: IDEA 2004* or *Wrightslaw: Special Education Law, 2nd Edition*.

A Wrightslaw discussion of these issues follows Section 1414.

20 U.S.C. § 1414. Evaluations, Consent, Eligibility, Individualized Education Programs, Placements

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IDEA–Section 1415: Procedural Safeguards, Due Process, Discipline, etc.

“. . . whether the IEP and the FAPE requirements were put there out of mistrust of the parents, or out of mistrust of school authorities. It seems to me they were put there to make sure that the school authorities did not give the disabled child second-rate treatment. ”

– Transcript of Oral Argument, statement by Supreme Court Justice,
Florence County School District IV. v. Shannon Carter (October 6, 1993)

In Section 1415, you will learn about the safeguards designed to protect the rights of children with disabilities and their parents. These safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation (IEE) of the child. You will learn about prior written notice, procedural safeguards notice, mediation, legally binding mediation agreements, the new Resolution Sessions, due process hearings, “stay put,” the new two-year statute of limitation, appeals, attorney’s fees, discipline, and age of majority.

IDEA is like other laws, with rules of procedure and issues that relate to substance. In many cases, both issues are present. Substantive issues usually involve eligibility and the adequacy of the child’s IEP. Procedural issues focus on notice, timelines, and remedies if the school district fails to obey the law.

The discipline statute is in Section 1415(k). This statute includes manifestation determinations, placement as determined by the IEP team, appeals, authority of the hearing officer, and transfer of rights at the age of majority.

Unless your child is labeled with an emotional disturbance, behavior disorder, or ADD/ADHD, or is facing suspension or expulsion, you are advised to skim “Placement in Alternative Educational Setting” about the rules for suspending and expelling children with disabilities.

Note: When you see this * * * it signifies that a portion of the statute is not included in this book. For the full text of a specific statute in IDEA 2004, you will want to read *Wrightslaw: IDEA 2004* or *Wrightslaw: Special Education Law, 2nd Edition*.

A Wrightslaw discussion of these issues follows the statute.

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Section 504 of The Rehabilitation Act of 1973 and the Americans with Disabilities Act

Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless. — Martin Luther King, civil rights activist

In this chapter, you will learn about Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, as contrasted with the Individuals with Disabilities Education Act (IDEA).

The key portion of **Section 504 of the Rehabilitation Act** states:

Section 794. Nondiscrimination under Federal grants and programs

(a) Promulgation of nondiscriminatory rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in Sec. 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service . . .

The Americans with Disabilities Act, as it applies to public entities, is identical. The Americans with Disabilities Act states:

Section 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

20 No Child Left Behind Act of 2001 (NCLB)

“Education is a critical national security issue for our future, and politics must stop at the schoolhouse door.” — Bill Clinton, former president, in his 1997 State of the Union Address

When you read the Findings and Purposes of the Individuals with Disabilities Education Act, you learned that the Purpose is the most important statute in a law.

Read the Purpose of the No Child Left Behind Act:

The purpose of this title is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. (emphasis added) (20 U.S.C. § 6301)

For the full text of the No Child Left Behind statute, see *Wrightslaw: No Child Left Behind*.

The No Child Left Behind Act requires schools and school districts to meet the educational needs of all children, including children with disabilities, English language learners, minority and migratory children, and other neglected groups of children, and to publicly report their progress in educating these children every year.

The key requirements of the law include annual proficiency tests in grades 3-8, highly qualified teachers in every classroom, research-based instruction, increased parental rights, public school choice, and public reporting of progress by states, school districts and schools. These requirements are all strategies to accomplish the purpose of the law.

No Child Left Behind is not a new law. When Congress reauthorized the Elementary and Secondary Education Act of 1965 (ESEA), they gave that law a new name — the No Child Left Behind Act.

21 | The Rules of Adverse Assumptions

“It’s not the will to win, but the will to prepare to win that makes the difference.”
– Bear Bryant, University of Alabama football coach

If you are like most parents, you want the school to provide your child with quality special education services and supports—and you want to avoid a due process hearing. When you think about requesting a due process hearing, you feel anxious so you push these thoughts out of your mind. You will hope for the best.

Assume you ask the school to provide services for your child. The school refuses. You try to resolve your dispute informally and through IEP meetings. Nothing changes. What will you do? Give in? Press on?

Assume you request services for your child. Assume the school responded by requesting a special education due process hearing against you. That is what happened to Lisa:

I just had a due process hearing for my son. I do not have a lawyer. I am doing this on my own and I am being killed. The school asked for the due process hearing against me. The school psychologist lied about things I said. The district’s attorney trashed me personally. The experience has been awful.

When the school district requested a due process hearing against Lisa, she was not prepared.

You need to prepare for a “worst case scenario.” If you work for a company that recently merged with another company, you may prepare for a layoff. If your spouse becomes distant, begins to stay out all night, you may prepare for a separation.

If you live in earthquake country, you will prepare for an earthquake. If you live in hurricane-prone areas, you should prepare for a hurricane. When you prepare for a disaster, you are more likely to survive a disaster.

If you prepare for a due process hearing, you are more likely to prevail if a hearing is necessary. If you prepare for a due process hearing while maintaining good relationships with school personnel, your child is likely to receive good services and you will probably not have to request a due process hearing.

22 Creating Paper Trails

"If it was not written down, it was not said. If it was not written down, it did not happen."

—Pete Wright

In the last chapter, you learned that if you have a dispute with the school, you must have independent evidence that supports your position. In this chapter, you will learn how to use logs, calendars, and journals to create your paper trail. When you write things down when they happen, you are taking steps to protect your child's interests. In this chapter, you show you how to document problems and handle telephone calls.

Why Document?

Good records are essential to effective advocacy. When you deal with a bureaucracy like the Internal Revenue Service or your state tax office, you understand that you need to keep detailed records. Many parents do not realize that their school districts are bureaucracies.

Keep a log of your contacts with the school. In addition to meetings, your log should include telephone calls and messages, conversations, and correspondence between you and the school. (You will learn how to write effective letters in Chapter 23).

Keep copies of all letters, reports, and consent forms.

Train yourself to write things down! If you have a dispute with the school, your contact log is independent evidence that supports your memory.

Documentation that supports your position is a key to resolving disputes. Your tools are simple:

- Logs
- Calendars
- Journals

23 | How to Write Good Evidence Letters

“There are no secrets to success. It is the result of preparation, hard work, and learning from failure.”
— Colin Powell, soldier and statesman

In the next two chapters, you will learn how to write effective letters to the school. In this chapter, you will learn about the five purposes of letters and how to use the letter’s purpose to guide you. You will learn strategies to ensure that your letters accomplish their purpose. We provide advice about how to write business letters and letter-writing tips. At the end of these chapters, you will find several sample letters that you can adapt to your own circumstances.

Why You Write Letters

You write letters to:

- Request information
- Request action
- Provide information or describe an event
- Decline a request
- Express appreciation

You also use letters to build relationships, identify and solve problems, clarify decisions that are made or not made, and motivate people to take action.

When you write a letter, be guided by your purpose. What is your purpose? What do you want your letter to accomplish?

Focus on one issue or two issues at most. Do not use one letter to accomplish several purposes. Long letters about several issues are confusing. If the reader is confused, your letter will not accomplish its purpose. Let’s look at the five purposes for writing letters.

24 Writing the “Letter to the Stranger”

“If you would persuade, you must appeal to interest rather than intellect.”

— Benjamin Franklin, inventor

In this chapter, you will learn about two approaches to letter writing – the Blame Approach and the Story-Telling Approach. You will learn about the Sympathy Factor and why you must not write angry letters to the school. Your goal is to use the Story-Telling Approach to write persuasive letters.

At the end of this chapter, you will read a series of letters that tell the story of a parent’s attempts to get services for her child. As events unfold, she becomes increasingly aware that a “Stranger” may have to resolve her dispute with the school.

The Blame Approach

A father wrote this letter after an IEP meeting. This father is a businessman who writes letters in his work. This letter was a trial exhibit and an issue in his child’s case. When you read his letter, pay attention to your reactions.

Dear Dr. Smith:

You asked that I advise you about my objections to the IEP that your staff of “professional educators” wrote for my daughter. Despite my own lack of training, I can say that the IEP developed by your staff was preposterous. Let me share a few observations with you.

Your staff FAILED to include anyone on the IEP team who thoroughly understands my daughter’s background.

Your staff FAILED to perform an observation on my daughter before they developed the IEP.

Your staff FAILED to include information from the most recent testing by the private evaluator and relied on out-dated testing that is nearly two years old.

Your staff FAILED to target her specific needs and unique abilities.

25 Preparing for Meetings: Taking Control

“If you’re sure you can’t, you won’t. If you think you can, you might. If you know you can, you will.”
— Fable

If you are like most parents, you feel confused, frustrated and intimidated at school meetings. How can you get the school to answer your questions? How can you get the school to respond to your requests? How can you get the school to provide the services and supports your child needs? What is your role?

As a parent, you negotiate with the school for services on your child’s behalf. In this chapter, you will learn about negotiating and problem solving. You will learn about organizing the file, knowing what you want, anticipating obstacles, and presenting your requests.

The pre-meeting worksheet will help you identify needs, clarify concerns, anticipate problems, and make requests. (You will learn how to use the IEP worksheet in the next chapter.) You will learn how to use a parent agenda to express concerns, describe problems, and make requests. If your relationship with the school is strained or damaged, these steps will help you mend fences and build healthy working relationships with school personnel.

You are a Negotiator

If you are like many parents, you did not realize that you negotiate with the school for special education services and supports. When you attend meetings about your child’s special education program, you are representing your child’s interests.

When you understand that you are negotiating, the process begins to make sense. Think about other situations where you negotiate. You may have more experience as a negotiator than you realize.

You negotiate with co-workers about work schedules. You negotiate with your employer about your salary. You negotiate with family members about housework and

26 Meeting Strategies: Maintaining Control

“Winning is getting what we want, which also means helping others get what they want.”
— Gerry Spence, Trial Lawyer and Author

You have learned that preparation and planning are the keys to successful advocacy. In the last chapter, you learned how to use the pre-meeting worksheet to clarify issues and identify problems and the parent agenda to present problems, offer solutions and make requests. In this chapter, you will learn strategies to control the outcome of meetings, including the problem resolution worksheet and the post-meeting thank you note.

School Meeting Anxiety

This is how one father, a successful salesman, describes school meetings:

I always feel anxious when I go to the school for a meeting. I start to feel anxious before I get there. By the time I drive into the parking lot, my stomach is in knots. I feel intimidated. When they ask me what I think, I do not know what to say.

If you have a child in special education, you know about school meeting anxiety. Many factors contribute to school meeting anxiety, including your life experiences, fears about your child, uncertainty about your role, and your interpersonal style.

Your personal experiences will affect your feelings about school meetings. When you walk into your child’s school, you are transported back to your own earlier years in school. For many parents, memories of school are painful and unpleasant. If you had school problems, school meetings may bring back old feelings of guilt, shame, and anxiety.

Your reaction to school meetings is also influenced by your interpersonal style. If you are a conflict-avoider, your motto is “peace at any price.” You may keep your concerns about your child’s education to yourself until you cannot avoid conflict any longer. If you are eager to please, your desire to be liked may cause you to agree to

27 In Summation

“Revenge is the bastard child of justice.

If we or our argument are perceived as a threat, we will never be heard.”

– Gerry Spence, trial lawyer and writer

In this final chapter of *Wrightslaw: From Emotions to Advocacy*, we will offer advice and issue a warning about pitfalls to avoid. First, we will summarize the components of effective advocacy.

Learn about your child’s unique needs. Think about the skills your child must learn to be an independent, self-sufficient member of society: communication skills, social skills, and reading, writing, and mathematics skills. Ensure that your child acquires these skills.

Learn about research based instructional methods and “proven methods of teaching and learning for children with disabilities. (20 U.S.C. § 1400(c)(4)). Learn about assistive technology and how technology can help your child master essential skills.

Learn how to find answers to your questions in the laws, regulations and legal decisions. Do not learn the law so you can threaten or browbeat school personnel.

Get your state special education regulations and *Wrightslaw: Special Education Law, 2nd edition* (to be published in Spring 2006). When you cross-reference these publications, you will understand the relationships between the rules of procedure (as discussed in Section 1415) and substantive issues (as discussed in Sections 1412 and 1414). Because you are familiar with the Individuals with Disabilities Education Act (IDEA 2004), you will know that the statutes about IEPs are in Section 1414(d).

But learning the law is less important than learning about evaluations and test results. You cannot be an effective advocate until you know how to use test scores to measure progress or lack of progress. You learned about standard scores, percentile ranks, standard deviations, and subtest scores. When you look at your child’s test scores, you will know if your child is acquiring skills or is falling further behind.

The IEP drives your child’s educational program. You have learned about SMART IEPs that are Specific, Measurable, use Action words, are Realistic and Time Specific. Work with school personnel to develop SMART IEPs that relate to the purposes of the IDEA.

Understanding the School

What do you know about your child's school? What do you know about your school district? How are parents of children with disabilities perceived by the teachers at your child's school? How are parents of children with disabilities viewed in your school district? Who wields power in your school district? When you have answers to these questions, you will be able to advocate effectively for your child.

If you are like many parents, school meetings are confusing and frustrating. When you ask questions, you don't get answers.

Your child's team is a small part of a large system. School districts have a chain of command. If you have an unusual request, your child's school team may not have the authority to grant your request. An invisible administrator may be the person who answers your request.

School Bureaucracy Rules

Bureaucracies are created to fulfill missions. The mission of public schools is to provide a standardized education to all children. Public schools offer a standardized curriculum that children are expected to learn.

Schools are modeled after factories. The principal runs the school building, teachers provide the labor, and children are the raw material. Parents are outsiders. Power flows from the top. Teachers and parents do not have the authority to make decisions that involve a commitment of resources.

Special Education Rules

When you advocate for your child, you will learn about special education rules. You will learn about gatekeepers and one-size-fits-all (OSFA) programs. When you understand how the special education system operates and how decisions are made, you will be a more effective advocate.

Gatekeeper Rules

When you advocate, you are likely to meet gatekeepers. Gatekeepers limit the number of children who have access to special education services and limit the services children can receive. If you have health insurance through an HMO or managed care firm, you know about gatekeepers.

Gatekeepers may tell you that your child is not entitled to:

- An evaluation
- Any change in the IEP
- More services
- Different services

The Gatekeeper's job is to say "No!" One of your jobs is to persuade the gatekeeper that your child's situation is different and requires a different approach.

“We Can’t Make Exceptions”

School districts have elaborate systems of rules that govern how decisions are made and by whom. When you try to develop an appropriate program for your child, you may run into the “We can’t make exceptions” rule. “We can’t make exceptions” is related to “We have never done that before.” When you prepare and plan, you can defeat both arguments.

“One-Size-Fits All” (OSFA) Programs

Many school districts have standardized “One-Size-Fits-All” (OSFA) special education programs. If your district is creative, you may have two program options: OSFA #1 and OSFA #2. In a typical OSFA program, decisions about the child’s program and placement are based on the child’s disability category or label, not on the child’s unique needs.

If you have a four-year-old child with autism, your child’s program and placement may be the school’s standardized OSFA preschool program for all children with autism. If your child has dyslexia, the child’s program and placement is likely to be the district’s standardized program for all children with learning disabilities.

What is wrong with this?

The school district is required to provide each child with an individualized special education program tailored to that child’s unique needs. Standardized OSFA programs are not tailored to any child’s unique needs. Schools design OSFA programs for the convenience of the adults in the system.

Individualized Programs

Individualized programs are labor-intensive and more difficult to administer. If you are trying to develop an individualized program for your child, expect to run into resistance. You are negotiating with a system that uses categories and labels to make decisions. If you plan and prepare, you can prevail.

When parents plan and prepare, they can design appropriate individualized programs. What is the secret to their success? They know what their child needs, and they know how the system operates—they know the rules of the game.

Learning About Your School District

What do you know about your school district? Who is in charge? What is the school’s perception of parents of children with disabilities? To negotiate and advocate, you need to know the answers to these questions.

Learning About School Climate

Climate is a term that describes the learning environment created by teachers and administrators. What is the climate of your child’s school?

If your child's school has a positive climate, you will be encouraged to play an active role in your child's education. Teachers and parents build healthy working relationships.

Learning About School Teams

If you are like many parents, you may not realize that your child's school team has invisible members whom you may never meet. These invisible members are school administrators who have the power to make decisions about special education programs.

If you request a special education program that is different from the district's standardized program, the team may not have the authority to grant your request. The team has to consult with invisible members who make these decisions. These invisible members may not know you or your child.

Who are your invisible team members? How will these people respond to your request?

Rules of the Game

To negotiate on your child's behalf, you need to be able to analyze your strengths and weaknesses and the school district's strengths and weaknesses. You need to learn the rules of the game. What are these rules?

Table 4-1 | ***Ten Reasons Why Schools Say No!***

1. The school does not want to change long-standing procedures.
2. The school does not want to make exceptions to existing policies or practices.
3. The school is afraid of setting a precedent.
4. The school does not have the staff to meet the child's needs.
5. The staff is not trained to meet the child's needs.
6. The school does not have a program to meet the child's needs.
7. The school is committed to their one-size-fits all service delivery models.
8. The school believes the services your child needs are too expensive.
9. The school is overwhelmed by the complexity of your child's needs.
10. The school does not understand the legal requirement to provide your child with an individualized program.

If you know the rules of the game, you are on time for meetings. You prepare. You present your concerns and problems in writing. You work to develop “win-win” solutions to these problems. You keep your emotions under control and shake hands at the end of the meeting. You take steps to protect the parent-school relationship.

When parents do not know the rules of the game, they show up late for meetings. Some assume that school personnel always make good decisions about educating their children with disabilities. Others fight battles over issues they cannot win. Some lose their tempers, throw down the bat and go home.

When parents do not know the rules of the game, they do not understand the need to protect the parent-school relationship.

When you negotiate for your child, you will prevail on some issues. You will not always prevail. You need to identify your key issues and those issues that are less important. If the school refuses to negotiate on an important issue, you do not give up. You find other ways to tackle the problem and get your child the services he or she needs.

If you keep an open mind, you will learn from experience. After each school meeting, think about what you learned. When you have negative experiences, remember that you can learn from these bumps in the road.

As a parent, you represent your child’s interests. If you do not represent your child’s interests, no one else will. Special education is expensive. Resources are limited. School personnel act as gatekeepers, and limit access to expensive services.

These are the rules of the game.

In Summation

In this chapter, you learned about the rules of the game. You learned that schools are governed by rules and chains of command. You learned that invisible team members make important decisions. When you learn the rules, you will be a more effective advocate for your child.

In the next chapter, you will learn about obstacles to success. These obstacles include myths, emotions, and school culture. When you recognize these obstacles, you can prevent problems.

Your Notes Here