



Having Your Ducks in a Row BEFORE a Due Process Challenge

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Polling the Audience:

- Superintendent or Assistant Superintendent?
- Central Office Personnel?
- Principal or School Administrator?
- E.C. Teacher?
- Served as the LEA Representative in an IEP meeting?
- Had a state complaint or a due process petition filed “under your watch?”
- Participated in a due process hearing?

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Begin With the End in Mind:

- *To begin with the end in mind means to start with a clear understanding of your destination. It means to know where you're going, so you better understand where you are now; and the steps you take are always in the right direction.*

-Stephen Covey

7 Habits of Highly Effective People

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Timelines for Special Education Litigation





One Year:

Parents have one year to file a state complaint with the Department of Public Instruction (“DPI”) or a due process petition with the Office of Administrative Hearings (“OAH”).

Which means parents have:

- One year to prepare their case;
- One year to gather evidence; and
- One year to find experts.



State Complaints:

- When a parent files a complaint with DPI, the sixty (60) day clock starts ticking for DPI to conduct an investigation and issue a decision.
- The LEA has thirty (30) days to gather all the documentation and submit a response to the allegations in the complaint from the date the parent filed the complaint.



But remember . . .

- The parent is not filing the complaint with you.
- The parent is filing the complaint with DPI.
- You won't know about the complaint until DPI notifies you.
- You still only have 30 days.
- Even if it is filed July 1.



Due Process Petition:

- **One (1) day** from the date the LEA receives the petition, the LEA must fax a date stamped copy to DPI and OAH.
- **Ten (10) days** from the date the LEA receives the petition, the LEA's first response to parents is due.
- The LEA has **fifteen (15) days** to submit a motion for insufficiency.



Due Process Petition (cont.):

- The LEA has **fifteen (15)days** to conduct a Resolution Meeting or confirm the parents' agreement to mediation.
- The LEA must notify DPI and OAH of the results of the mediation or Resolution Meeting within **thirty (30) days**.
- If mediation is not successful, then a hearing is held at OAH during the next forty-five (45) days.



Due Process Hearings:

- These hearings generally involve taking depositions, witnesses, expert testimony, etc. and can be very costly.
- If the parents win—even a partial win—they may be entitled to recover attorneys’ fees.
- A written decision must be issued by (not “written by”) OAH within **forty-five (45) days**.



Appeal Process:

Both the parents and the LEA have the right to appeal:

- OAH's decision to a State Review Officer;
- The State Review Officer's decision to Federal district court;
- The district court's decision to the Fourth Circuit Court of Appeals; and
- The Fourth Circuit's decision may be appealed to the United States Supreme Court.

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Don't try this alone



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What Can Be Challenged?





State Complaint:

Any violation of a requirement of the IDEA and/or

Any violation of N.C. statutes and state regulations regarding special education.

Does not need to allege violations with respect to a specific child.



Due Process Petition for a Contested Case Hearing:

- Identification.
- Evaluation.
- Placement.
- Denial of FAPE.

Almost every aspect of every meeting is subject to legal challenge.

Today, we're focusing on the DEC 4 and the IEP goals but do not underestimate the importance of being prepared.

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A Word About Preparation





Preparing for an IEP Meeting:

1. Follow the correct process to arrange the meeting with the parents.
2. Gather the necessary information before the meeting.
3. Assemble an appropriate team.
4. Conduct a Pre-Meeting Planning Session.
 - DO NOT make any final decisions.

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Beginning the IEP Meeting



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- Do your best to begin on time.
- Ask everyone present to introduce themselves and explain their relevance to the IEP meeting.
- Make sure the Invitation to Conference is accurate.
- Remember the general ground rules for IEP meetings.
- Review any concerns/suggestions/topics that parents have submitted in preparation for the meeting.

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Preliminary Matters



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- IEP duration.
- Area of eligibility.
- Actually consider each of the special factors.

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Writing IEP Present Levels of Performance, Goals, and Benchmarks/Objectives



Before Developing/Revising the IEP:

- Review current IEP (if one exists).
- Discuss present level of performance.



Present Level of Performance:

- Be specific.
- Contrast present level now versus present level in current IEP.
- Discuss progress since last IEP meeting.
- Provide data (grades, test scores, behavioral data collected).
- Provides the basis for writing measurable goals and objectives.



Present Level of Performance (cont.):

- Should accurately describe effect of disability on child's performance in any area of education affected (academic or non-academic).
- Should be written in objective measurable terms.
- For example: Annual Goal---Lose 50 pounds.
 - What must the present level of performance include?



Present Level of Performance (cont.):

- Should be direct relationship between present performance and other components of IEP.
- Problems identified in present performance should be addressed by goals and objectives and served with special education and related services.

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Use the Same Unit of
Measurement for Present
Levels of Performance, Goals,
and Objectives

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Goals:

- Child placement (i.e. Resource room) or curriculum standards should not drive IEP development.
- Administrative convenience should not drive IEP development.
- IEP should address the skills the student needs to access the general curriculum.
- Should address weakness(es) set out in present level of performance.
- **Must be measurable.**
 - Reveals what to do to measure whether goal/objective has been accomplished.
 - Yields the same conclusion if measured by several people.
 - Allows calculation of how much progress it represents.
 - Can be measured without additional information.

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Goals (cont.):

- School system not liable for student's failure to reach the goal if the goal is reasonable in light of what should have been known about the student, present level of performance and effectiveness of services provided, and a good faith effort is made to help the student accomplish the goal.
- Do not set a goal of less than one school year's progress where student is of average intelligence.
- IEP team more likely to be faulted for setting goals too low than for setting goals too high, but goals must be reasonable.

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Service Delivery Discussions



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Do Not Rush Through:

- Anticipated frequency, location, and type of services.
- Related Services.
- Consider continuum of placements.
- Make sure decisions are accurately recorded on DEC 4.
- Extended School Year (ESY) services.
- Get signatures - if parents refuse to sign, don't argue about it.



Finishing Tasks:

- Thoroughly complete and sign all necessary paperwork (including DEC 5).
- If it was determined additional information should be gathered, get any required parental consent in writing.
- Discuss scheduling next meeting.



After the IEP meeting:

- Do what you said you were going to do!!
- **DOCUMENT** that you did what you said you were going to!!
- Address deferred issues!!
- Collect **DATA** about the child's progress!!
- Keep parents informed about their child's progress.

A close-up, slightly blurred photograph of a crowd of people. Many individuals have their hands raised in the air, suggesting an interactive session like a Q&A period or a public meeting. The focus is on the hands and forearms, with some people wearing watches or jewelry. The background is out of focus, showing more people and what appears to be an outdoor setting.

Questions?