

65<sup>TH</sup> CONFERENCE ON EXCEPTIONAL CHILDREN

**GRADUATION:**  
**The Measure of Tomorrow**  
**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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**But remember . . .**

- The parent is not filing the complaint with you.
- The parent is filing the complaint with DPI.
- You may not know about the complaint until DPI notifies you, although parents are required to notify the Superintendent.
- You still only have 30 days.
- Even if it is filed July 1.

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**Due Process Petition:**

**STANDARD:**

- **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 Notice of Insufficiency.

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**Due Process Petition (cont.):**

- The LEA has **fifteen (15) days** to conduct a Resolution Meeting or confirm the parents' agreement to go straight to mediation.
- The period to resolve matters raised in the petition expires **thirty (30) days** after the LEA's receipt of the petition.
- Generally, if resolution efforts are not successful within thirty (30) days, a hearing is held at OAH, and a decision is issued to the parties within the next forty-five (45) days.

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### 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.

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### Due Process Hearings (Expedited):

- A parent may also file a due process petition if she/he disagrees with any decision regarding the disciplinary removal and/or disciplinary change in placement of his/her child, or a manifestation determination.
- An LEA may file a due process petition if it believes that maintaining a child in the current placement is substantially likely to result in injury to the child or others.

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### Due Process Hearings (Expedited):

- The filing of such petitions trigger an **expedited due process timeline** under the IDEA.
- In expedited hearings, a meeting must occur within **seven (7) days** of receipt of the due process petition unless the parties agree to waive the resolution meeting.

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### **Due Process Hearings** **(Expedited):**

- If the matter is not resolved within **fifteen (15) days** of receipt of the petition, then the due process hearing may proceed.
- However, the due process hearing must occur within **twenty (20) school days** of the filing of the petition.
- A determination must be made within **ten (10) school days** after the hearing.

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### **Due Process Hearings** **(Expedited):**

- During the pendency of such petition, the child must remain in the interim alternative educational setting (disciplinary placement) until the hearing officer decides the matter, or until the expiration of the disciplinary removal (whichever is sooner).
- The parent and the LEA may agree on the interim alternative educational setting of the child.

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### **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?**

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### **State Complaint:**

- Any violation of a requirement of the IDEA, and/or
- Any violation of N.C. statutes and/or state regulations regarding special education.
- Does not need to allege violations with respect to a specific child.

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### **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'll emphasize the DEC 4 and the IEP goals. Do not underestimate the importance of being prepared.

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A Word About Preparation

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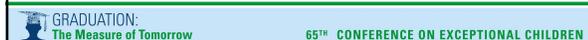
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### Preparing for an IEP Meeting:

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 decisions.



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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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- 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

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### **Before Developing/Revising the IEP:**

- Review current IEP (if one exists).
- Discuss present level of performance, particularly in relation to IEP goals.

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### **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).
- Provide the basis for writing measurable goals and objectives.

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### **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?

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### **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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### **Present Level of Performance Testing Your Knowledge!:**

Complete Pages 3-4 for Each Annual IEP

**INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

Duration of Special Education and Related Services: From:  To:

Student:  DOB:

School:  Grade:

**Present Level(s) of Academic and Functional Performance**  
Include specific descriptions of what the student can and cannot do in relationship to this area. Include current academic and functional performance, behaviors, social/emotional development, other relevant information, and how the student's disability affects his/her involvement and progress in the general curriculum.

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### **Present Level of Performance Testing Your Knowledge! (cont.):**

Is the following PLAAFP appropriate?  
 Why or why not?

“Student can decode unfamiliar words, answer comprehension questions, and identify parts of speech.”

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**Present Level of Performance**  
**Testing Your Knowledge! (cont.):**

This PLAAFP provides no indication as to the levels of reading fluency or reading comprehension from which the student could be expected to proceed. (i.e., there is no **baseline information**, or **helpful starting point** on these skills).

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**Present Level of Performance**  
**Testing Your Knowledge! (cont.):**

How can this PLAAFP be adjusted so that it provides an appropriate baseline?

“Student can decode unfamiliar words, answer comprehension questions, and identify parts of speech.”

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**Present Level of Performance**  
**Testing Your Knowledge! (cont.):**

Is this PLAAFP appropriate? Why or why not?

“The student has difficulty maintaining attention to tasks.”

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

This PLAAFP provides no baseline (**or useful starting point**) for the student's attention from which to measure whether she/he has increased.

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

How can this PLAAFP be adjusted so that it provides an appropriate baseline?

“The student has difficulty maintaining attention to tasks.”

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

Is the PLAAFP appropriate? Why or why not?

“Given randomly selected passages at the third-grade level, R.H. currently reads aloud 65 words correctly per minute.”

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

Again, this PLAAFP provides **no baseline (or useful starting point)** from which to measure whether the student has improved on specific skills.

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

Is the following PLAAFP appropriate? Why or why not?

“Given randomly selected passages at the third-grade level, R.H. currently reads aloud 65 words correctly per minute.”

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**Present Level of Performance  
Testing Your Knowledge! (cont.):**

This PLAAFP is **precise** and **provides a useful starting point for measuring the Student's progress.**

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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.

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**Goals (cont.):**

- 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, 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 cognitive ability.
- 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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### IEP Goals

#### Testing Your Knowledge!:

Is the following goal appropriate? Why or why not?

“Student will increase time and attention to developmentally appropriate tasks and activities.”

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### IEP Goals

#### Testing Your Knowledge! (cont.):

This goal is too vague to be useful; however, you might be able to satisfy the measurability requirement of the IDEA by incorporating measurable short-term objectives.

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**IEP Goals**

**Testing Your Knowledge! (cont.):**

Is the following goal appropriate? Why or why not?

“By November 30, 2016, when given a fourth grade narrative expository passage, student will read text aloud at least 150 words per minute with 85% accuracy in three consecutive trials as measured by observation and student work samples.”



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**IEP Goals**

**Testing Your Knowledge! (cont.):**

Yes; the IEP goal is appropriate!

This IEP goal is **measurable**, and **describes what the student can be expected to accomplish in the coming year**.



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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, but document that.

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### **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.

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### **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.

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