

Do the Documents Speak for Themselves?

by
Brice Palmer

Editor's Note: This article is primarily intended for non-attorney advocates who assist parents and attorneys in preparing to present a child's case at an IEP meeting, mediation or a formal due process hearing. Regardless of the forum, these concepts about evaluating and using documents are the same.

So - there they are - boxes, three-ring binders, school records, and other stuff written on paper - paper that is occupying a disproportionate amount of floor space.

There they sit, growing as if the little monsters have some sort of expansionism population policy. Sometimes the little monsters obstruct pathways to other parts of the room in which they reside. I like to use them as footstools or convenient places to set a coffee cup. At least they have some utilitarian value. Over time, they take on a comfortable patina.

They sit on the floor, occupying space, while we concentrate on the more interesting aspects of the case. We know these papers contain some sort of mystical potential. But, we rationalize, we will dig around and find what we need when the "right time" presents itself.

Everyone knows the real stuff of advocacy is doing battle with "them" - right?

During the "real" battle, we will rely on our hottest documents and our superior argumentative skills to zing the other side because the documents speak for themselves, right?

Addressing the "document speaks for itself" concept in his decision in *Mid-Continent Resource Recovery, Inc. v. Shred Pax Corp.*, No. 94 C 6689, 1995 WL 12229 (N.D. Ill. Jan. 10, 1995), Judge Shadur noted that the "Court has been attempting to listen to documents for years in the forlorn hope that one would indeed give voice."

Witnesses and trial advocates give voice to the evidence contained in documents. The experienced trial advocate artistically weaves these silent documents into compelling testimonial evidence through sound planning and tactical choices.

Finding the Battle-Winning Theme

Almost without exception, current deficiencies with regard to the appropriateness of a child's IEP, placement, or classification are related to early events that followed the initial evaluation of the student. Sometimes the problem relates to the initial contact at a new school after the child transfers from another school, town, or state.

Because human memories are fallible, we must rely on information contained in the child's education records. To unravel the facts and to develop a compelling and easily understood theme for the story that we will eventually present to a decision-maker, we must learn to love reading documents.

Organizing the Documents

There they sit. Fourteen billion pieces of paper stuffed into boxes or notebooks designed to hold only a tiny portion of fourteen billion pieces of paper.

"Well," you say, "the school district's attorney will not look at each one of these papers. Besides, everyone knows that school district attorneys do not look at the records until a week or so before the hearing."

Let me dispel this myth.

The school district's attorney, unlike the you and me folks out here, have legal assistants and paralegals who sift, sort, put into chronological order, categorize, summarize, copy, identify, and neatly store the stuff in numbered boxes and folders.

Some school attorneys even have former special educators, nurses, and other professionals on their staff who can help them analyze these fourteen billion documents. Some school district attorneys have lower level associate attorneys who do preliminary legal research (uninteresting work for grunts).

If you and I had that kind of support, we too could blow into a meeting room looking like Perry Mason.

We do not, so we must even the odds by making fact-finding one of our top priorities.

- **Organize documents and other potential evidence that supports and diminishes the value of your case.** Become knowledgeable about every possible defense that the school district has available.
- **Know the strengths and weaknesses of your case.** This knowledge is the key to formulating a credible argument. Good advocates do not enter into serious discussions with the other side without knowing both sides of the issues in question.
- **Organize your information in a usable, easily referenced manner.** If you do not do this, your case is doomed to spend its natural life in a quagmire of petty argument.
- **Use a method to organize and analyze information in the file.** Special education matters are paper intensive.
- **Pare down your evidence documents to a precious and lovely few.**

Recognizing Common Fact-Finding Blunders

We want to trust other folks, and we generally do. We learned to trust good old "Dr. Says." When we trust Dr. Says, our trust manifests itself in dangerous behavior if we skim over reports.

Train yourself to read every line of every document or report. Read the documents without a preconceived notion of what those papers contain. Look at them with child - like enthusiasm. Hunt for inconsistencies, obscure conclusions supported with mostly subjective reasoning. Learn to look for patterns of "cut and paste" observations, conclusions, etc.

Often, evaluators carry forward erroneous information from early parent or teacher comments. When these "cut and paste" statements are included in a critical evaluation or report, we need to be able to show that the information is erroneous - and where it came from.

Correctly identify the date of the document. Who among us has not mistaken the date of the report for the date of the evaluation? You can eliminate these kinds of mistakes by careful reading and use of checklists.

In our society, we learn to trust Mr. or Ms. School Says. I do not want to suggest that all school folks are untrustworthy individuals - far from it.

For a moment, let's play "what if." What if a parent is beginning to have a dispute with the school, and Mr. School Says asks for a release so the school can bring its records up to date? Consider the following excerpt from ***Special Education Law and Practice***, published for school attorneys by LRP Publications:

Frequently, documents that have been previously released by third parties to the district are those that were selected by the third party for release that relate only to "education." Typically, however,

there is additional information contained in the third party's files, including psychiatric and other medical information that could be significant to the defense of the school district's case. Thus, it is extremely important that all documentation is obtained from third parties to the extent possible.

If the parents have not yet initiated a due process hearing and the parties are in the process of discussing parental concerns, it is important for district representatives, not the attorney, to request that the parents execute a release that would allow the district to obtain copies of all of the child's records from third parties. Obviously, the district would assume the responsibility for securing the documents, copying the documents and providing copies of the documents to the parents if requested.

Special Education Law and Practice: A Manual for the Special Education Practitioner, Chapter 9, Section II (A), ((2001 Ed.) Gary M. Ruesch, Editor, LRP Publications, Horsham, PA.

When parent attorneys read these two paragraphs, I suspect most expressed a few "Hmmmms".

Mistaking a Document That Appears Identical for a Useless Copy

We often assume that two identical appearing documents are indeed identical. Look carefully. Do not do a screening peep to determine if two documents are identical.

Look carefully. You will often find text differences. Sometimes a handwritten notation appears on one document, but not on the other. These differences turn what appear to be identical documents into documents that are different. Compare the dates. Look for evidence of the creative "white out" snooker. Only by developing a discipline will we be able to be certain that the document we are relying upon is actually the document we believe it to be. Analyzing documents is a learned skill.

Organizing those fourteen billion documents is the first step to understanding what is in the documents.

There are too many methods for organizing documents to list here. I suggest that you look at how successful advocates and attorneys do this. You need to devise a way to know where your evidence is and how to retrieve it when you need it. Nothing makes weary bones quicker than realizing that you spent two hours to find a document that required only 10 minutes to use.

Here are some tips:

- **Make working copies** of documents that you will use for study or note taking.
- **Review documents with total objectivity.** Do not look for what you would like to find. Look for what is there.
- **Purchase and use a good dictionary** if you do not own one.

I recommend the ***Oxford American English Dictionary and Thesaurus*** a combined work that is not expensive. Get the paperback version of this dictionary. Carry it with you. Add yellow stickies, write in it, circle stuff. Above all, check every word, term, concept, or utterance that you hear or the school district uses.

Do not - Do not - Do not assume that you understand a term, no matter how familiar you THINK you are with the meaning of the term.

Collecting All Records

Schools often tell us that all the records are in one folder. Consider this excerpt from the ***Special Education Law and Practice Manual***:

As an initial step, the school attorney should request that the client collect all school files relating to the child. Caution must be exercised in this area because many schools maintain separate files, e.g., the "main file," the attendance file, the school file, the teacher's file, the psychological services file, the health services file, the special education file, etc. Thus, the school attorney should ensure that the district has identified all files generated or maintained that relate in any way to the child and/or to the child's family.

In addition to educational records, the files maintained in a particular case frequently contain documentation from third parties, such as physicians, hospitals, residential and private treatment centers, or other public schools. Because documentation from third parties often contains information critical to the district's case, it should be determined whether and how such documentation can be obtained.

Special Education Law and Practice: A Manual for the Special Education Practitioner, Chapter 9, Section II (A), ((2001 Ed.) Gary M. Ruesch, Editor, LRP Publications, Horsham, PA.

Get your eyes and your hands on the entire educational record. Provide the school with a written request for access to the records. After you have access to records, use these steps to review and copy records:

WARNING: What follows sounds like a lot of work and a lot of time - and it is. If you can do this, you may be able to prove your claims without much expense. If you need to hire an attorney later, you have saved yourself a wad of money because organizing documents is a major pre-hearing expense.

If you do this, you may get hooked on document peeping and find that you have volunteered to help other parents prepare their files.

- **Approach school personnel as if they want to help.** Give them a chance to help you. Do not go in with an attitude of blame and hostility - they have not let you down yet.
- **Ask the school for a private room.** You do not want someone who is looking over your shoulder to intimidate or frustrate your review. Have these tools: plenty of sticky notes for marking pages you want to copy; plenty of paper for your personal notes; patience.
- **Keep the file in order.** Go through the file, page by page. You do not need to read every document while you are at the school because you can get copies of everything.
- **Make an inventory of all documents in the file.** When school provides you with a copy of the file, you will know if the file has been vacuumed or sanitized.
- **Examine all documents in the file.** School people often make notes on stickies and attach these notes to documents. Make a note all documents that have sticky note attached to them. Make a note of what was on the sticky note. A copy machine may not pick up or show highlighted portions of documents. Or the highlighted portion may turn into a black, opaque unreadable mark on your copy.
- **Examine the file folder.** You will often find handwritten notes on the front, back, or inside covers of the file. Make a note of everything written on the file. A telephone number or obscure comment may correlate with a nice piece of evidence later.
- **Look for a contact log.** Education records often include a contact log or record of incoming and outgoing telephone calls, letters, etc. relating to the student. These logs often contain interesting information. Note the "tone" of comments. For example, you may find an entry that reads, "Ms. Gripealot called AGAIN and was told you were NOT available."
- **Look for letters to or from the school's attorney.** If you find correspondence with the school attorney, there are several things you can do. You may put flags on this correspondence and ask that this not be copied for your use. The information in these letters

or other communications may be protected by a privilege. Unless you are a lawyer, you may not know how to determine this. Do make a note for yourself about each of these letters. Your note should contain the date, the author, the recipient, and the subject (not a word-for-word recitation) of the letter(s). If you follow this practice, you will demonstrate to the school board attorney that you are honest and worthy of respect.

- **Never assume that the school provided you with the entire record.** Schools file documents in different places. You may find files in the office of the 504 coordinator, the school nurse, the special education director, and so forth. These files may include documents that are not in the child's "main" or cumulative file. (Refer to the quotation from the LRP publication above).
- **Determine which support staff seems to be the ramrod support person.** Before you leave, ask this person if you can have a copy of the school's 504 policy, attendance policy, and other policies that you know about. These documents are the stuff of which due process dreams are made.
- **Look at posters, inspirational quotes, and brochures.** You may find delightful quotes or policy statements that run counter to how school personnel are handling your child's education. Look for warm, fuzzy statements that are printed and displayed for all to see. Write down what the poster says, where it was displayed, and the date you saw it. Don't forget to pick up brochures about the school or school district. The people who write these things tend to go overboard when they say "No student is left behind," etc.

What To Do When Your Documents Arrive

- **Make a second set of copies to use as your working copies.** Bind the original copies with a rubber band. Attach a note that includes the date you received the copies and from whom you received them. Do not mark, write on, spindle, mutilate or otherwise disturb these original documents from the school. If you need to prepare for a hearing, these are the documents you will use.
- **Organize your working copies chronologically.** File the oldest document on top, most recent document on the bottom.

Do not organize documents by category. Do not file IEPs, letters, or evaluations together. Instead, file documents in chronological order. This will give you a clean picture of events.

Some documents have more than one page. For example, most IEPs have many pages. These pages may have different dates. Find the date of agreement or execution that relates to the entire document or set of pages. Use this as the date for the document or set of pages.

- **Use documents to make a timeline.** Make an index of the documents by listing the date, author, and a brief description of the subject matter of the document. For example, a letter may be described as follows: Letter, dated ***, written by ***, sent to ****, subject: notice of IEP meeting date. This process will save you many hours. When you use this process, you avoid the headaches that you would get if you had to dig through piles of papers to find the "smoking gun" document you recall seeing several months ago.
- **Examine each document carefully.** Look at the dates. Are there discrepancies? Do the date sequences follow the rules?

For example, if the document about the initial placement decision is dated **before** the initial evaluation report, BINGO. Is the date on the IEP before or after the date on the notice of the meeting?

Check everything. Take nothing for granted. We have fallen into the trap of reading

documents with an uncritical eye when we assume that all evaluators are qualified and all dates are correct.

Regardless of whether your claim will be resolved informally by mediation or negotiation or in a formal due process hearing, you must understand the basis of the claim and prepare to present your claim.

Having to plow through and understand hundreds or thousands of documents is time-consuming and exasperating. But the payoff comes when you know the real facts and issues and how to prepare, when you can show evidence that supports your perception of how the facts apply to your issues.

Avoiding Case-Killer Arguments

Above all, this process provides parents and non-attorney advocates with the tools you can use to avoid case-killer arguments. What are case-killer arguments?

- "I feel"
- "I always"
- "They lied"
- "The evaluator was a bozo"
- Anything that looks like Latin and is not a misspelling of a perfectly good word or words.

Finally, may I suggest that learning how to evaluate and use documents takes great patience and discipline? Others can help you with the learning process.

Join organizations like the [Council of Parent Attorneys and Advocates \(COPAA\)](#).

Read articles about these and other topics by attorneys and advocates on [Wrightslaw.com](#)

"Self-advocacy begins by understanding that rights are never bestowed; they are claimed." - Tony Coelho, author of the Americans with Disabilities Act

About Brice Palmer

Brice Palmer lives in Benson, Vermont. In addition to his work as an active non-attorney advocate, Mr. Palmer is managing editor of **The Beacon** and pens [Observations from the Transom](#).

Mr. Palmer has written many articles about advocacy, including:

[How to Prepare Your Case](#)

[Learning to Negotiate is Part of the Advocacy Process](#)

[How and Why to Tape-Record Meetings](#)