

# Your Classroom Guide to Special Education Law

by

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**BROOKES**  
PUBLISHING CO.®

Baltimore • London • Sydney

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## About the Author

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Ms. Johns has 40 years of experience working with students with learning disabilities (LD) and/or emotional and behavior disorders (EBD) within the public schools. She supervised LD and EBD teachers in 22 school districts, was the founder and administrator of the Garrison Alternative School for students with severe EBD in Jacksonville, Illinois, and was later the coordinator for staff development for the Four Rivers Special Education District.

Ms. Johns is the lead author of 13 books and coauthor of four others in the field of education, including the seminal college textbook, *Learning Disabilities and Related Disabilities: Strategies for success (13th Edition)* with Janet Lerner (Cengage, 2015). She has written her first fiction book, *Secrets of the Teachers' Lounge* (Truth Book Publishers, 2014). She wrote and appeared in a DVD for the Association for Supervision and Curriculum Development (ASCD), *Conducting an Effective IEP Meeting Connecting to the Common Core*, and wrote an online course for ASCD, *Role of the Classroom Teacher in Implementing the Common Core for Students with Disabilities*.

She has presented workshops across the United States and Canada and in San Juan, Puerto Rico; Sydney, Australia (keynote); Warsaw, Poland; Wroclaw, Poland (keynote); Hong Kong, China; Lima, Peru; and Riga, Latvia. She chaired the 10th Biennial Conference of the International Association of Special Education, held June 10–14, 2007, in Hong Kong; served as President from 2006 until January 1, 2010; and presided over the 11th Biennial Conference in Alicante, Spain, in 2009. She presented the Inaugural Marden Lecture at The University of Hong Kong in January 2006.

She is the 2000 recipient of the CEC Outstanding Leadership Award from the international Council for Exceptional Children (CEC), Past International President of the Council for Children with Behavioral Disorders (CCBD), Past President of the CEC Pioneers, Past Secretary and Governmental Relations Chair for the Division for Learning Disabilities (DLD), current Secretary for DARTS (the newly formed CEC Division for the arts and special education), and the 2007 recipient of the Romaine P. Mackie Leadership Service Award. Ms. Johns is listed in *Who's Who in America*, *Who's Who of American Women*, *Who's Who in American Education*, and *Who's Who Among America's Teachers*.

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## Understanding the Importance of Documentation



“If it isn’t written down, it wasn’t done.” This is a motto that I utilize frequently to foster understanding that educators must document significant events in their work with students and their families. Word of mouth is simply not enough. It may sound harsh or even overly simple, but if an incident or intervention is not properly documented with date, time, people involved, and response or outcome, then it becomes difficult to prove that it happened. School personnel become busy and forget to write down important facts. For instance, an individual recording information during an IEP meeting does not record what was actually discussed. The special education teacher or the case manager fail to check the IEP for accuracy, and the teacher is held accountable when the IEP does not reflect the decision of the group. The IEP must reflect what is actually being done for the student. This chapter stresses the importance of documentation, explains what appropriate documentation is, and provides the basic rules to remember when documenting the variety of events that occur while working with students with disabilities.

As part of the documentation process, it is critical that educators do not tamper with information that is already in the student records. An article in the South Florida *Sun Sentinel* reported that some of the high school staff at a local school in the area fixed the grades of three football players (Shipley, 2014). Student transcripts were altered by certain staff members to allow the athletes to continue playing football. As a result of the violations, the school stripped access to student records from several employees and reset passwords for access to student records.

Although this case dealt with violations of academic records, it can also happen with IEPs. It is critical that team members are careful about their documentation, especially with web-based IEPs in which numerous individuals have access to those documents. They should not be changing information on an IEP without scheduling a new IEP meeting or seeking permission for an addendum to the IEP. Nothing should be changed on the IEP without the permission of the IEP team members, including the parents. Individuals may want to go into the IEP and add items after the meeting is over, but they cannot do so without consulting the entire team. Similarly, if a member of the IEP team wishes to include data such as addi-

tional test scores about the student prior to disseminating the IEP to participants, then that member must inform the other IEP team members and gain their permission. If such an action is not acceptable to all IEP team members, including the parents, then the data should be prepared and presented for the next IEP meeting for approval by the entire team.

If there is something in a record that you do not believe is accurate, then you should inform your administrator and the **records custodian** of that information. Remember that you must document the conversation with the administrator and records custodian in writing.

## TYPES OF DOCUMENTATION

There are primarily three types of documentation that you will keep. The first type of documentation includes notes and logs that you will write about students as part of your classroom process. You are required to document attendance and progress in class. Many educators write down notes about students as it pertains to their behavior. Some teachers keep logs about students so they can read them later and determine whether there are trends in behavior. For example, a teacher might find that the student is more lethargic on Monday or that the student's absences seem to occur more on Wednesday. Such documentation can assist in targeting areas that require more attention. We get too close to a situation at times, and we cannot always see patterns in behavior unless we document what is occurring. We may be expected to document what students with medical needs eat each day or how many times they have to use the restroom. This information is valuable to you and others who may be working with the student. It is important that the documentation is objective and based on actual data, not personal opinions. It is also important to include the date and time of day so that when you return to the information after a period of time, you know exactly when it was written.

The second type of documentation involves recording communication with parents, colleagues, or community agencies. This documentation may include a parent telephone call. For example, a note goes home to a family about the IEP meeting that is to be held 3 weeks from today. That is followed up with a telephone call the following day. You should always document in writing the results of that telephone call, including the date of the call, time of the call, who you talked to, and what was said; then you should sign it. By doing so, you have proof that you made the telephone call. I recommend that you keep copies of forms for those calls by your desk so that it is easier for you to remember to complete the documentation. If you type a record of these calls on your computer, then remember to print and make copies to file. You should always keep a copy for yourself so that you have documented proof that you talked to the parent.

Recording interactions and communication with colleagues is another example of this second type of documentation. For example, a parent comes in to school and asks for a new evaluation of his child. You tell the parent that you will talk to the principal or special education supervisor about the request. You should then talk to the administrator, review the request, and send a follow-up in writing. You may want to write a note or letter to the principal that states, "As a follow-up to our conversation about (student)\_\_\_\_\_, his father came in to see me on (date)\_\_\_\_\_ and requested a new evaluation for his son. Please let me know the

decision that is made about conducting the evaluation.” Then remember to sign, date, and keep a copy of the documentation. This action protects you from someone stating that he or she did not know the parent asked for an evaluation. It is easy to forget to keep these kinds of records, but it is critical because this can save you problems in the future.

Finally, if you need to make a call to the Department of Children and Family Services or the Department of Health and Human Services for suspected abuse, neglect, or other issues, then you should always document in writing who you talked to, the date of the call, and a summary of the conversation. You may also need to coordinate with the school social worker or psychologist. Taking time to record information about these calls will assist you later in remembering the details about the situation. You also need to have proof that you made the call.

The third type of documentation is related to the IEP or other support plans that are part of the IEP, such as the BIP or a list of appropriate accommodations. For example, the IEP team may have determined the appropriate accommodations for the student on a statewide assessment. You are observing the student take the assessment with the accommodations and note that the student is easily distracted or that the student is putting his or her head down and taking a nap for the first hour of the test, even though he or she has been provided with the extended time line accommodation. You document the results of the accommodation in writing because this is valuable information for the IEP team. You may be working on a specific target behavior for the BIP and need to take baseline data without an intervention and then collect data and document results of the recommended intervention. This is information that is needed when the BIP is reviewed. You will also need to document in writing the results of formal and informal assessments of academic skills.

Some of the documentation will overlap or serve multiple purposes. Some of the general classroom information you collect may be useful for the IEP, and some parent contacts will be needed in the IEP. It is important to check documentation often for accuracy, precision, and objectivity.

## **BASIC PRINCIPLES OF THE LAWS AND REGULATIONS REGARDING DOCUMENTATION**

This section presents some basic principles related to documentation; you can review the exact references cited in the federal regulations for a detailed description. In addition, you can review your state-specific laws and regulations, which are usually found on your state department’s web site.

The **Family Educational Rights and Privacy Act (FERPA)** of 1974 (PL 93-380) is the law that governs the maintenance and release of records and explains the difference between permanent and temporary records. **Permanent records** consist of information such as high school transcripts, grades, and honors received. A permanent record is “maintained without time limitation.” (34 C.F.R. 300.624). **Temporary records** are records that are kept for at least 5 years and consist of items such as special education evaluations, IEPs, and discipline records. References to special education services cannot go into the student’s permanent record. School districts must provide the opportunity for a parent or eligible student to inspect and review the student’s educational records. The school has to respond to reasonable requests for explanations and interpretations of records (FERPA regulations, 34 C.F.R. 99.10).

IDEA 2004 requires that the school district inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child (34 C.F.R. 300.624). A permanent record of a student's name, address, and telephone number; his or her grades; attendance record; classes attended; grade level completed; and year completed may be maintained without time limitation.

Parental consent is required for evaluation, placement, and provision of special education services, and there must be appropriate documentation of that consent. Written parental consent must be obtained for an initial evaluation, and the school district must make reasonable efforts to obtain the informed consent. Likewise, the school system must make reasonable efforts to obtain informed consent for initial provision of services to the child. Finally, the school system must obtain informed consent for a reevaluation unless it has made reasonable efforts to obtain such consent and the parent has failed to respond (34 C.F.R. 300.300).

After a group of qualified professionals, including the parent of the child, has determined whether the child is a child with a disability, the school system must provide a copy of the evaluation report and documentation of determination of eligibility at no cost to the parent. Information to determine eligibility must be gained from a variety of sources and must be documented and carefully considered. An IEP must be developed if it is determined that the child is a child with a disability and needs special education (34 C.F.R. 300.306). Specific requirements are needed for documenting the determination of eligibility for a child suspected of having a specific learning disability, and each group member of the eligibility team must certify in writing whether the report reflects his or her conclusion about a learning disability. If it does not reflect a team member's conclusion, then that member must submit a separate statement that presents his or her conclusions (34 C.F.R. 300.311).

Written notice must be provided to parents whenever the school district proposes to initiate or change the identification, evaluation, or educational placement of the child or if the district refuses to begin or change one of these provisions. That notice must be in understandable language for the parents (34 C.F.R. 300.503). E-mail may be utilized if the school district makes that option available (34 C.F.R. 300.505). Parents must be notified of meetings early enough to ensure that they have the opportunity to attend, and those meetings are to be held at a mutually agreed-on time and place (34 C.F.R. 300.322). Schools must keep a record of attempts to arrange a mutually agreed-on time and place, such as detailed records of telephone calls or attempted telephone calls, copies of correspondence, or detailed records of visits to the home (34 C.F.R. 300.322).

This chapter's mnemonic provides strategies for maintaining consistent and accurate documentation as required by law.

Documentation may seem time consuming, but it should not be taken lightly and should never be an afterthought. This chapter's How Would You Rule? exercise imparts the seriousness of proper documentation and follow-up. In this case, a failure to monitor and accurately document a student's behavior is called into question after a student's death.

### **How Would You Rule?**

A struggling middle school student died by suicide in 2007. The parent argued that the school district had suspicions that the young man had a disability. The student

### Just 3 X 5 It: A Mnemonic to Help You Remember

Remember these key points to keep your documentation from being TOSSED.

- T**—Title: Always remember to put your specific title on the documentation you are providing.
- O**—Objective: Information in any type of incident report should be objective and not reflect an individual’s opinion unless the information is documented as an opinion or the individual cites the source for the information.
- S**—Signature: Always sign any type of written communication and include your specific title and the date you wrote the document.
- S**—Share: Remember that a piece of information that is shared becomes part of the student’s temporary record.
- E**—Evidence: Be sure that evidence-based information is contained in the documentation.
- D**—Date: Any documentation should contain the specific date and year.

had been absent frequently, had behavioral issues, and had faced repeated bullying by other students. The parent contended that these problems should have been documented and should have triggered an evaluation of the student. An evaluation was initiated 18 months after his behavioral issues began. The parent wanted to make a claim against the school district because of the suicide, and the parent claimed that the child had been denied a FAPE.

The student had been in special education at one time, but he exited the program 2 years before his suicide. The parent contended that the district did not conduct any formal evaluations or standardized tests and did not notify the parent before deciding that the student no longer needed services for students with learning disabilities. The district did eventually develop a 504 plan for the student because personnel believed he had ADHD. Would you rule in favor of the parent or the school district?

**Your ruling:**

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**The court’s ruling:**

The U.S. District Court ruled against the school district in *Scruggs v. Meriden Bd. of Educ.* (2007), stating that the student’s absences and behavioral issues should



have resulted in an evaluation. The parent was not notified that special education services had been discontinued, and the district developed a 504 plan without any medical confirmation of its suspicion that the student had ADHD. The plaintiff, the child's mother, successfully argued that the school district did not follow proper procedures in documenting and providing for her son's special education needs, did not adequately train staff, and did not execute appropriate antibullying and harassment policies (Cornell & Limber, 2015).