

Paper Trails: Documents, Exhibit Lists and Due Process Hearings

by
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At first, most parents, advocates and attorneys view organizing and maintaining documents as overwhelming.

This issue of **The Beacon** includes several articles by experienced attorneys and advocates about how to organize and manage documents generated in special education litigation. All writers agree on the importance of a systematic approach to organizing and maintaining documents.

In this article, I discuss the document management system I developed and how to implement this system.

Step One: Get Copies of Parent's Documents

The first step in the file organization process is to secure copies (never originals) of all the parent's documents. The attorney should also request copies of all documents about the child from schools, agencies, mental health clinics, and evaluators in the private sector and public sectors.

Depending on the child's history, you may have boxes of documents from many sources - and many duplicates.

Step Two: Date and File All Documents

While you are receiving the documents, you can begin the second step of the file organization process. (I recommend that the attorney undertake this work and not delegate it to an associate attorney, advocate, paralegal, or parent.)

Using a pencil, lightly write the date of each document in the lower right corner of the first page of each document (i.e., 12/7/01). Do not examine or read the documents, just date them. (Note: At a later point, you will erase the penciled dates and replace them with black ink.)

With seemingly duplicate documents, compare them to check for alterations. Hold the document up to a bright light. Look for shaded lines that suggest "white-outs" and other inconsistencies.

After you date the documents, sort and file them in chronological order. If you have several copies of the same report or evaluation, select the best-quality document to use as your master document.

Step Three: Examine and Evaluate Documents

After you date and file the documents, it is time to examine the documents. Think about whether this document should be included as a possible exhibit to use at trial.

In most of my due process hearings, we have approximately 100 exhibits. Usually, the case revolves around five to eight key exhibits.

Step Four: Create the Master Document List

Using your word processing program, create a master document list.

Use the Table command to create a table with four columns. In the first column, write the date of the document. In the second column, log in the author of the document. In the third column, enter the type of document (i.e., evaluation, IEP, letter) with a short description of the more critical documents.

Date	Author	Type	Description

Assume you have an educational evaluation completed on August 20, 2001 by Mary Jones, a private sector evaluator. According to this evaluation, the child's reading comprehension score was at the 3.2 grade equivalent (GE) level.

In your document list, you would enter this information into your table:

Date	Author	Type	Description
8/20/01	Jones	Eval Educ	Read Comp GE 3.2

Assume you have a psychological evaluation completed one week later by Deltaville Public Schools psychologist Lisa Smith. On this evaluation, the child received a score of 2.2 GE on the "Letter Word Identification" subtest.

You would enter this information in your table:

Date	Author	Type	Description
8/20/01	Jones	Eval Educ	Read Comp GE 3.2
8/27/01	DPS Smith	Eval Psych	Letter Word ID 2.2

Assume that the September 12, 2001 IEP changed the child's program from LD resource to LD self-contained.

You would enter this information into your table:

Date	Author	Type	Description
8/20/01	Jones	Eval Educ	Read Comp GE 3.2
8/27/01	DPS Smith	Eval Psych	Letter Word ID 2.2
9/12/01	DPS	IEP	Placement changed to SC

Now assume you have a letter written by the parent about this IEP.

You can include this letter in your master list as follows:

Date	Author	Type	Description
8/20/01	Jones	Eval Educ	Read Comp GE 3.2
8/27/01	DPS Smith	Eval Psych	Letter Word ID 2.2
9/21/01	DPS	IEP	Placement changed to SC
9/15/01	Parent	Letter to IEP Team	Question change in placement

Step Five: Incorporate New Documents

New documents will continue to arrive. You will have to decide which documents to exclude and include. You will continue to modify your list as you receive more information.

Using the "sort" feature of your word processing program, you can sort the documents by date, author, or subject line. When you add a document, resort your table by date to place the new entry in the proper place.

Step Six: Prepare Your Exhibits and Exhibit List

As the trial date and exchange of documents nears, you are in the final stage of exhibit preparation.

Add a new column to the left for the exhibit numbers. Use the automatic numbering feature to automatically number each exhibit in the proper sequence. This author adds another small column on the far right to cross-index these documents to the school board exhibit numbers. [Sample exhibit list](#)

On the first page, below the style of the case and above the actual list of exhibits, I add additional information as follows:

child's dob: 1/3/94

Year School

1995-1996 KG - Deltaville Elem

1996-1997 1 - Deltaville Elem

1997-1998 2 Stingray Point Elem

1998-1999 2 Stingray Point Elem (LD Resource)

1999-2000 3 Stingray Point Elem (LDR)

2000-2001 4 Piankatank Elem (LD Self-Cont'd)

2001-2002 5 Piankatank Elem (LDSC)

During the heat of trial, this cross-reference about the child's age and school placement will help refresh the memories of witnesses as they testify.

Step Seven: Send Your Master Exhibit List

Send out your "Master Exhibit List" and documents early. This author usually sends the exhibit list and documents one or two weeks before the required date. You can

add late-arriving exhibits, vita, and journal articles at the last minute, before the mandatory date.

When you submit documents early, this leads to a higher probability of settlement or, in the alternative, the school district and their counsel only supplement the exhibits with others they want to use. When you send exhibits to opposing counsel, send copies to your expert witnesses.

Your final trial exhibit list and documents should also include vita of your expert witnesses, and journal articles that may be relevant to the issues in the case. This author often includes portions of *Back to School on Civil Rights* (published by The National Council on Disabilities in 2000).

You need to have sets of exhibits for the Hearing Officer / Administrative Law Judge, opposing counsel, your clients, yourself, and one for the witness chair. You already provided your witnesses with the exhibits.

Step Eight: Create a Comprehensive Master Exhibit List

When the exhibits are in and the trial date is two to three days away, this author takes the "Master Exhibit List," makes a copy of the file on the computer, renames it the "Comprehensive Master Exhibit List," and, with this new file, adds another larger column to the left of the cross-index column.

This column includes the attorney's confidential notes about specific exhibits, a page number to quote during witness examination, test scores, and other pertinent data. This new document will help you keep track of the theme of the case and important data in specific exhibits during the heat of trial. During the trial, the simpler "Master Exhibit List" is the primary document utilized, but, from time to time, you will find yourself reviewing your "Comprehensive" List.

While parents can view this "Comprehensive Master Exhibit List" before the hearing, do not provide them with a copy of this document. Parents may be inclined to rely on this list to help their recollections while testifying. When a witness refers to a document to refresh their memory while testifying, opposing counsel is entitled to see the document.

Step Nine: Pre-trial Preparation

Learning theory teaches us that we lose ninety percent of what we learn within twenty-four hours. For this reason, it is not sufficient to read and review the Exhibits a day or two before the trial.

Between four to five a.m. on the morning of the first day of the hearing, review each exhibit again. At this time, mark and highlight key exhibits that you will use during the hearing. Add this new information to your "Comprehensive Master Exhibit List" and print the list again.

Step Ten: Cross-Examination

When you review each document a few hours before the Hearing, you will have a

"mind's eye" picture of each exhibit as you conduct direct and cross-examination.

During your cross-examination, witnesses are likely to be intimidated when you ask them to look at Parent's Exhibit 53, "the September 15, 1999 psychological evaluation, please turn to the last page."

"This is your report, right?"

"Johnny was 14 years old when you tested him?"

"Please turn now to page three, second paragraph, first line. Your report states that 'Johnny was reading at the third grade level as measured by the Woodcock Johnson Reading Mastery Test.' You use the Woodcock to measure reading grade level?"

"In the middle of page 5, I believe you reported that Johnny's Full Scale IQ score is 93 and that is in the average range?"

"Do you find that most 14 year old children with average IQs are in the ninth grade?"

"Johnny was in the ninth grade when you tested him, wasn't he?"

"Most ninth graders generally read around the eighth, to ninth to tenth grade levels, right?"

"Johnny is six years behind his peer group, isn't he?"

"If my memory is correct, I believe that he has been in special education for his reading problems for the past five years. Is my recollection correct?"

"Despite the program your system provided, Johnny has fallen further behind his peers, hasn't he?"

"The program has not worked, has it?"

"Thank you, I have no further questions."

During this examination, you did not look at the exhibit, but locked eyes with the witness. By using inflection, the witness is merely agreeing with your "testimony" and responding "yes" to each question. (For more about this technique, see Posner and Dodd's "The Science of Cross-Examination" in the Advocate's Bookstore at Wrightslaw.)

In Summation

When you prepare the "Master Exhibit List" and "Comprehensive Master Exhibit List" as described in this article, you will have a structure and framework that will provide you with excellent pre-trial preparation.

During the trial, you will rely extensively on both of your "Lists." When the evidence is concluded and you are briefing it, either at the due process level or appellate level,

a quick review of your "Comprehensive Master Exhibit List" will jump start the preparation of your brief.

Good luck!

About Pete Wright

Pete Wright represents children with disabilities. He represented Shannon Carter before the U. S. Supreme Court in [*Florence County School District IV v. Carter \(510 U.S. 7\)*](#).

With his wife Pam, Pete co-authored [Wrightslaw: Special Education Law](#) and [Wrightslaw: From Emotions to Advocacy - The Special Education Survival Guide](#).

Pete has written many articles that are available from the Wrightslaw [website](#), including [Representing the Special Ed Child: A Manual for the Attorney and Advocate](#)

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