

# How to Defend Your FIE and Survive a Due Process Hearing

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## Parent Requests an Evaluation

<https://www.youtube.com/watch?v=A6fcqUH28Q>

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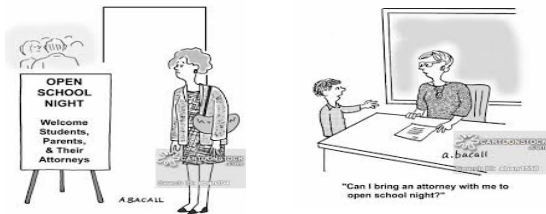
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## Not Your Grandma's SpEd!



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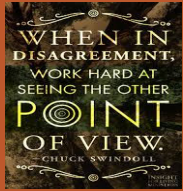
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## An Ounce of Prevention



- Establish and maintain rapport with parents
- If staff member clashes with a parent, maybe they should not attend the ARD
- Understand source of disagreement (swing example)
- Air differences in conference outside an ARD (staffing)

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## FULL Individual Evaluation

- Do not wait for parents to initiate a referral for an evaluation
- Seriously consider all parent and staff referrals for evaluation
- “When there is debate...evaluate”
- Conduct thorough and comprehensive evaluations in *all* suspected areas of need, not just disability.

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- Multi-Disciplinary Team – Share the Load!
- Integrated, Comprehensive Report
- Clearly Identify Review Data and Current Data
- Use of Essentials of FIE Rubric
- Peer Review of FIE




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## Know Your Instruments

- Be Mindful of Selection of Evaluation Instruments
- Design battery to best answer referral question & is fair to child
- Know what subtests measure
- Which form used?
- Adhere to basals and ceilings for all subtests
- Double-check scoring
- Note dates and times of administration



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## DATA



"Numbers have an important story to tell. They rely on you to give them a clear and convincing voice."  
Stephen Few

- Look beyond the scores
- Use all available data to paint most accurate picture of student functioning
- Make sure report more about student performance rather than the test
- Tie all data together in clear, concise summary
- Reconcile discrepant data where possible
- Make determination based on multiple sources of converging data
- State criteria for disability condition(s) in conclusion and data supporting whether or not student meets criteria

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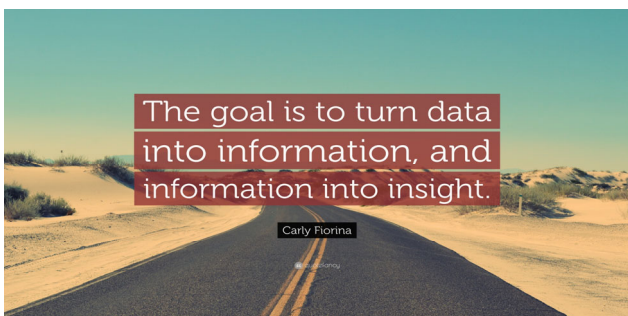
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The goal is to turn data into information, and information into insight.

Carly Fiorina



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## Meaningful Parent Participation

- > Document communication with parent
- > Obtain Informed Consent
- > Communicate with parents throughout evaluation process
- > Offer a feedback on the FIE report several days prior to ARD
  
- > Explain any proposed changes prior to the ARD
- > Share reports, drafts IEP's, etc. before the ARD- No surprises at ARD
- > Ensure parents' opinions are considered

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"It's 'the truth, the whole truth, and nothing but the truth.' It's not a multiple choice question."

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## During the Hearing

- > Ignore the big picture. Do not worry or, as much as possible, even think about the potential impact of your honest answers. If the truth will hurt the district's (or the parents' if you are testifying for parents) case, that is the attorney's problem.
- > I am not part of a school or parent "team" while I testify. I am an expert in special education providing truthful expert testimony.
- > "It's not personal; it's just business." Business to everyone in the room except you and the parent.

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## The LSSP as an Expert Witness

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- Expert Witness- A person who, through learning or experience, has special skills or knowledge concerning a particular subject that the general public does not possess (Schwitzgebel & Schwitzgebel)
- The basic purpose of expert testimony is to provide relevant and accurate information to assist the hearing officer/jury in making a knowledgeable decision
- Thorough preparation is very important. Know your facts. You can be sure the opposing attorneys will

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- You can get past it, it does not happen very often, and it is not the most important part of your valuable job
- Don't take any of it personally. It is the job of the parent's attorney to poke holes in the district's case. Some of them do this by behaving in a way that is as close to bullying as they can get away with without being challenged
- Direct your answers and comments to the hearing officer, not the attorneys. The hearing officer is the one you need to convince, and the one you need to help understand. Watch the hearing officer's body language for indications of confusion, and whether s/he is following you

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- Listen very carefully to the question being asked and answer ONLY what is asked. Don't try to guess what the question really was if it was ambiguous. Ask for clarification. Be literal, don't read in to the questions. If you didn't hear or understand all the words, ask for repetition before you answer
- Don't answer questions that haven't been asked, even if you think the information is really important. If there is a critical piece of information, make sure the district's attorney knows to ask about it before the hearing. There should be at least one witness prep session

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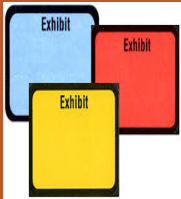
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- You do not have to answer a "yes or no" question with yes or no if neither of those answers make sense to you. If there are shades of grey, you can say that you can't answer it yes or no -- no matter how many times the attorney repeats the question trying to get to you respond yes or no
- Think before you speak. Pauses do not get recorded in the transcript
- The exhibit books are there to use. You don't have to rely on your memory and you SHOULDNT rely on your memory to respond to factual questions if the answers are available to be read from the exhibits

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- If you don't know an answer, say so. Don't guess. If you're paraphrasing, make sure that it's clear you are paraphrasing so can't be accused of misquoting someone or something (i.e., "lying")
- When you answer a question and the opposing attorney asks it again and again (typically with increasingly outraged intonation), become a broken record. What they are doing at that point is relying on people's tendency to react as if they must have gotten it wrong if someone asks again so they change their answers seeking until the listener seems satisfied

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## Remember To BREATHE

- When an attorney objects to a question or point of order, stop talking (even if you are in the middle of a sentence) and wait until the hearing officer resolves the issue and tells you to go ahead
- Remember that you are a professional and have specialized knowledge that the hearing officer doesn't have. Explain your points in layman's terms. The hearing officer was probably trained as an attorney, not an educator
- Remain calm. Breathe.
- Don't take any of it personally. The attorneys don't. They're just doing their jobs.

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## The Red Herring

- A **red herring** is something that misleads or distracts from a relevant or important issue
- The attorney looking for something that was not done exactly right and sometimes the attorney baiting staff
- Canadian norms story



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## References

Havey, J. M. (1999). School psychologists' involvement in special education due process hearings. *Psychology in the Schools, 36*(2), 117-123. doi:10.1002/(SICI)1520-6807(199903)36:2<117::AID-PITS4>3.3.CO;2-4

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