

# The IEP is NOT a Contract!:

DISPELLING COMMON MYTHS

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# DISCLAIMER:

All materials are intended for general information and educational purposes. The information presented is NOT actual legal advice, is not to be acted on as such, may not be current, and is subject to change without notice. Consult with a qualified attorney for such advice.

	<b>LAW- originally published as Act. Later published in:</b>	<b>REGULATION- Guides the implementation of IDEA</b>
Federal	United States Code  U.S.C.	Code of Federal Regulations  C.F.R.
State	Louisiana Revised Statues  La.R.S.	Louisiana Bulletins  La. Bulletin

**The only state regulations we will cover in this presentation is Louisiana**

**Myth#1:**



**The IEP is a  
Contract**

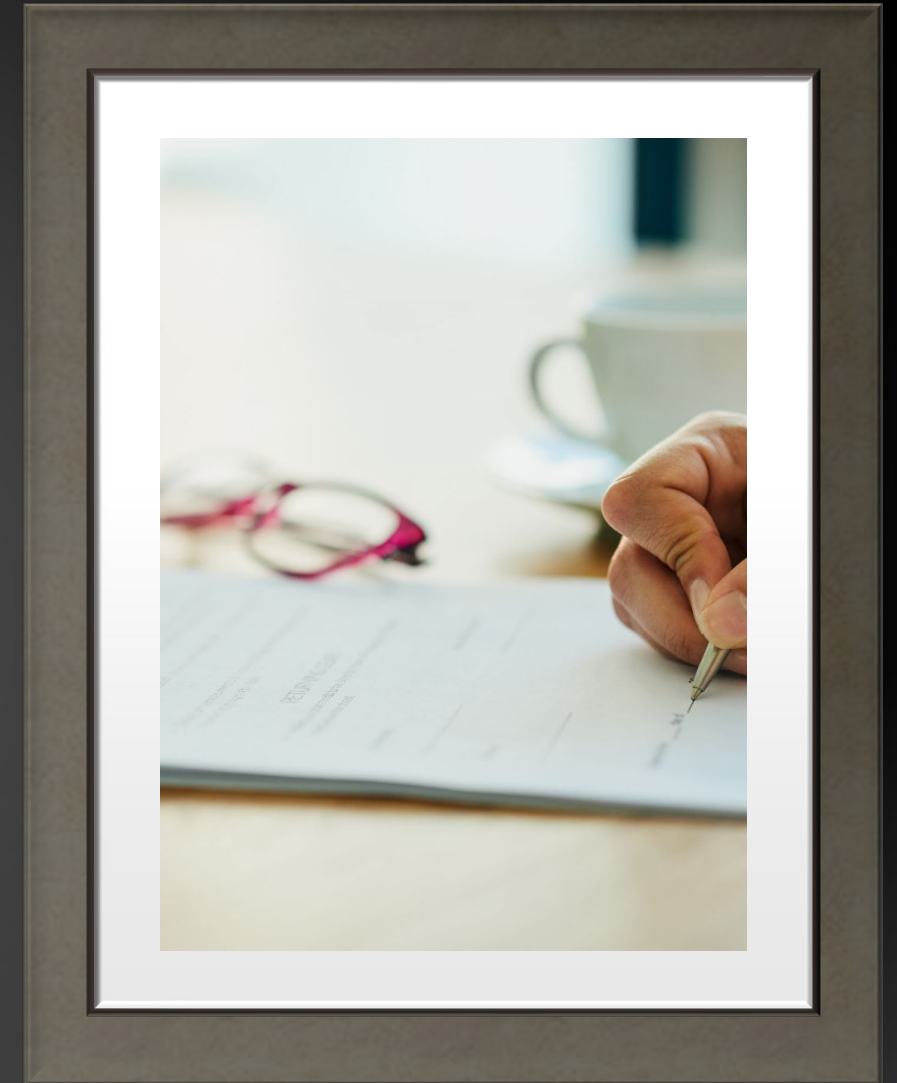
# CONTRACT vs IEP

Contract: Legally enforceable agreement that creates, defines, and governs mutual rights and obligations among its parties

vs

IEP (Individualized Education Program):  
“Written statement for each student with a disability that is developed, reviewed, and revised in a meeting in accordance with” certain requirements of law and regulations

(Louisiana Bulletin 1706 §320)



# Elements of a contract

1. **Offer** : Promise from one party to another that they will perform an action or avoid performing an action
2. **Acceptance**: Unequivocal acceptance of the offer
3. **Mutual Assent**: Meeting of the minds between both parties where both parties fully understand the terms of the agreement
4. **Consideration**: One party must be given something of value in exchange for their action or inaction (i.e. set amount of money or performance of service)
  - Case law supports the absence of consideration alone is sufficient to conclude that an IEP is not a contract

## B. Contract elements

[¶6] The elements of a contract are offer, acceptance, and consideration. *Parkhurst v. Boykin*, 2004 WY 90, ¶ 18, 94 P.3d 450, 459 (Wyo. 2004). While the district court found that each of these elements was lacking, we address only the element of consideration, whose absence alone is sufficient to conclude that the IEP is not a contract. We have defined consideration as “a legal detriment [that] has been bargained for and exchanged for a promise.” *Moorcroft State Bank v. Morel*, 701 P.2d 1159, 1161-62 (Wyo. 1985). It can consist of

# Components of an IEP

- 1. Statement of present levels of academic achievement and functional performance**
- 2. Statement of measurable annual goals**
- 3. Description of student's progress**
- 4. Statement of special education and related services and supplementary aids and services**
- 5. Explanation of the extent, if any, to which student will not participate with students without disabilities**
- 6. Statement of any individual accommodations and statement of why student cannot participate in the regular State or districtwide achievement assessments, if applicable**
- 7. Projected date for beginning of services and modifications**

A close-up photograph of a Sasquatch (Bigfoot) with a tearful expression. The creature has brown, shaggy fur and a large, wrinkled face. A single tear is visible on its right eye. An orange speech bubble is overlaid on the right side of the image, containing the text "No worries, I'm a myth too!".

No worries,  
I'm a myth  
too!





**MYTH#2: SCHOOL DISTRICTS MUST  
SCHEDULE IEP MEETINGS ON A  
SATURDAY IF PARENTS PREFER TO  
ATTEND THE IEP MEETING ON A  
SATURDAY**

**IEP MEETINGS SHOULD BE HELD AT A “MUTUALLY AGREED UPON TIME AND PLACE.” A WEEKEND IS NOT LIKELY AN AGREEABLE TIME FOR SCHOOL STAFF**

## MYTH#3:



**PARENTS SHOULD INVITE JUST AS MANY PEOPLE TO AN IEP MEETING AS THERE ARE SCHOOL STAFF AT THE MEETING SO THAT THE PARENTS ARE NOT OUT-VOTED ON DECISIONS BY THE SCHOOL**

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**While it is appropriate for parents to invite individuals who have knowledge or special expertise regarding the child or individuals who may provide support to the parent during the meeting, it may not be effective to invite an excessive number of people to the meeting for the sole purpose of trying to overrule decisions of the school staff**

## MYTH#4:

**THE SCHOOL DISTRICT IS OBLIGATED TO INCREASE SERVICE MINUTES OR RELATED SERVICES WHENEVER PARENTS MAKES A REQUEST FOR IT**

**PARENTS' DESIRE FOR MORE SERVICES IS NOT BY ITSELF SUFFICIENT TO JUSTIFY MORE SERVICES. RATHER, IF A CHILD IS NOT MAKING MEANINGFUL PROGRESS IN THE AREA BEING ADDRESSED BY THE SERVICE, THAT INFORMATION WOULD SUGGEST A NEED FOR MORE INTENSIVE SERVICES, DIFFERENT INTERVENTION STRATEGIES TO DELIVER THE SERVICE, OR BOTH**

## **Myth#5:**

**It is appropriate for parents to file  
Due Process because they are tired  
of fighting with the school district  
and they want to set a precedent for  
all other parents having the same  
problem**

\*\*\*In our opinion, these reasons alone are not appropriate for filing Due Process. Parents should consider filing due process when there is/are:

- Clear noncompliance
- Clear regression of skills
- School district fails to offer or define placement
- Denial of *substantive* rights under IDEA
- Clear denial of FAPE
- Denial of eligibility

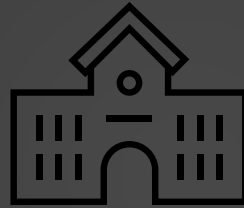
Other mechanisms such as a formal state complaint or complaint with the Office of Civil Rights may be more appropriate to tackle wide-spread issues. We encourage parents to do research and, or consult with a qualified attorney before filing Due Process





## Myth#6:

*When parents disagree with the annual IEP, they should not sign it so that the IEP does not go into effect*



A school that is responsible for making FAPE available to a student with a disability shall obtain informed consent from the parent for the initial provision of special education and related services to the student. In Louisiana, the parent's signature is not required on an annual or amended IEP, only the initial IEP.

Whenever parents disagree, they should determine which of the dispute resolution options is the most appropriate for their situation

## MYTH #7:

# THE SCHOOL MUST PROVIDE PARENTS WITH THE PRIOR WRITTEN NOTICE IMMEDIATELY AFTER AN IEP MEETING

In Louisiana, written notice must be given to parents within a reasonable amount of time before the school:

- Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student
- or
- Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student

**Louisiana Bulletin 1706 §504**



**We encourage parents to request the PWN immediately after each meeting. Parents should become informed on what steps to take if the PWN is not received within a reasonable amount of time or is insufficient.**

**It is also important that parents become informed on the difference between a Prior Notice Letter (PNL) and a Prior Written Notice (PWN)**

# MYTH #8

WHEN THE SCHOOL FAILS TO SEND A PRIOR WRITTEN NOTICE, PARENTS HAVE A SLAM DUNK CASE AND COULD EASILY PREVAIL AT DUE PROCESS ON THIS ISSUE ALONE!



- FAILURE TO SEND PWN IS A PROCEDURAL VIOLATION
- PROCEDURAL VIOLATIONS DO NOT AUTOMATICALLY EQUATE TO A DENIAL OF FAPE
- WE ENCOURAGE PARENTS TO BECOME INFORMED ON THE DIFFERENCES BETWEEN PROCEDURAL AND SUBSTANTIVE VIOLATIONS, AND WHEN DOES A PROCEDURAL VIOLATION RESULT IN A SUBSTANTIVE DENIAL OF FAPE

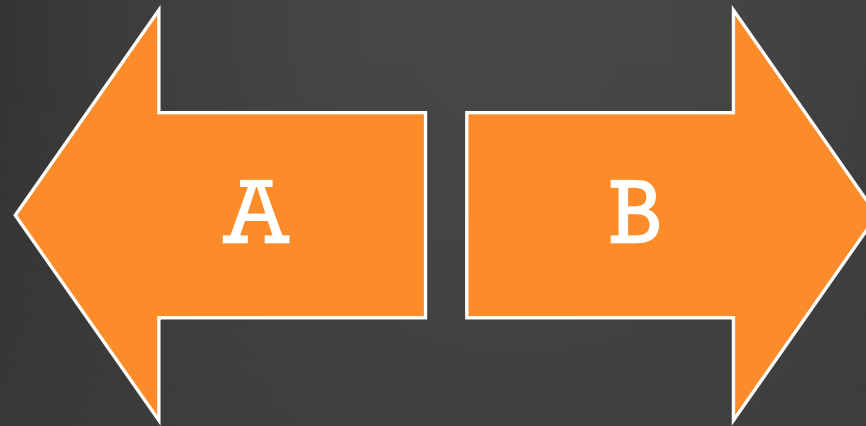


# YOU ARE DRIVING 44 MPH...

WHICH IS MOST LIKELY BE CONSIDERED A SUBSTANTIVE VIOLATION



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**Lights are flashing**

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## MYTH# 9:

MY CHILD IS ENTITLED  
TO THE BEST  
EDUCATION POSSIBLE  
TO REACH THIER  
MAXIMUM POTENTIAL

# FAPE

A **f**ree **a**ppropriate **p**ublic **e**ducation shall be available to all students residing in the state between the ages of 3 and 21, inclusive, including students with disabilities who have been suspended or expelled from school...

Louisiana Bulletin 1706 §101



**Myth #10:**

**Parents can sue the school district at due process for the pain and suffering of having to deal with the school district**

**GENERALLY, REMEDIES THROUGH DUE PROCESS ARE COMPENSATORY AND NOT MONETARY**

**\*\*\*\*\***

**PARENTS ARE ENCOURAGED TO SEEK THE ADVICE OF A QUALIFIED ATTORNEY TO DETERMINE WHAT LEGAL REMEDIES ARE AVAILABLE IF THE PARENT IS CONSIDERING FILING FOR DUE PROCESS**

PLEASE SHARE IN THE CHAT:

HOW MANY MYTHS WERE DISPELLED FOR YOU TODAY?



## NEXT STEPS

- Become **I**NFORMED.
- Informed parents are more **E**MPowered.
- Empowered parents can expect **P**ROGRESSION.



# RESOURCES

## National Resource

- COPAA – Council of Parent Attorneys & Advocates  
[www.copaa.org](http://www.copaa.org)
  - \*Scholarships are available
  - \*Free parent training

## Louisiana Resources

- Local parent training center  
Families Helping Families  
or  
Pyramid Community Parent Resource Center  
[www.pyramidparentcenter.org](http://www.pyramidparentcenter.org)

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**PYRAMID COMMUNITY PARENT RESOURCE CENTER**

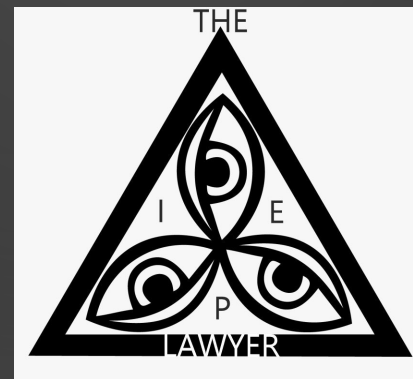
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Using the gift of skilled  
advocacy to serve our  
Families, with grace and by  
Grace

Our home office is located in Denham Springs, La.