

# SPECIAL EDUCATION SUCCESS!

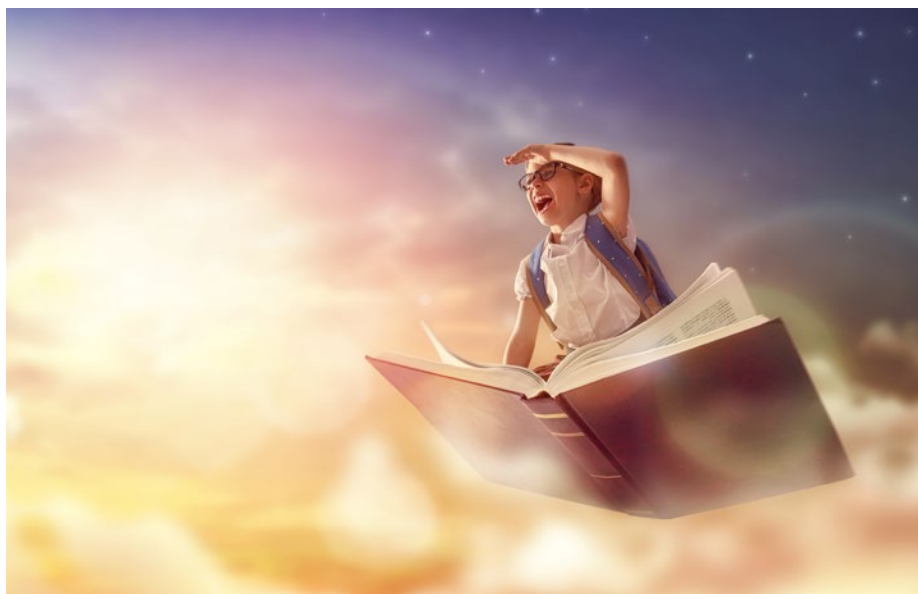


JANE WINDSOR, ESQ.

AND

ROBERT DODIG, ESQ - BOARD CERTIFIED EDUCATION LAW





# SPECIAL EDUCATION SUCCESS!

JANE WINDSOR, ESQ.

AND

ROBERT DODIG, ESQ - BOARD CERTIFIED EDUCATION LAW

## **SPECIAL EDUCATION SUCCESS!**

Copyright 2020 © Jane Windsor, Esq.  
and

Robert Dodig, Esq - Board Certified Education Law

All rights reserved. No portion of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval systems, without written permission from the publisher.

ISBN: 978-1-7356921-0-4

Printed in the United States of America by  
Serbin Print Marketing & Publishing • Sarasota, Florida 34236

# INTRODUCTION

This book was written because we believe that as much as 30% of our student population has some sort of learning exceptionality. We arrived at this statistic from our prior experience as both a classroom teacher, parent's attorney and a school district lawyer for many years. Jane was a non-traditional law student in a law school with a wide front door (accepting nearly every student who applied) and a narrow back door (only allowing those who they believed had a high probability of passing their bar exams to graduate.) Rob is board-certified in education law by The Florida Bar, and formerly the school board attorney for the School District of Lee County in Fort Myers, Florida. Prior to that he was staff attorney for the School District of Lee County for 13 years, and has been an adjunct professor of education law at Ave Maria School of Law, Nova Southeastern University and Florida Gulf Coast University.

We know these students and their families are often in a great deal of distress because of their struggles in school and with their respective school districts. Frankly, it does not have to be so difficult!

Windsor Law exists to assist students and their families navigate these troubled educational waters.

We do this in **four ways**:

1. **Advisory Consultations** – These in-depth meetings with parents and students permit us to thoroughly review school and medical records to determine if there is a matter for which a legal remedy exists. *Often, legal representation is not warranted, in these instances we can frequently guide parents or students with constructive strategies to help them work through the process without threatening litigation.*

2. **Annual Partnerships** allow us to gather school and medical records to provide accurate guidance for follow up testing when needed. This includes acute attention to critical issues such as IEPs, 504 Plans and behavior plans. *These tools allow us to obtain the proper match between the student's disability and the appropriate school services without threatening litigation.*
3. **Hourly Representation** allows us to provide targeted problem solving for highly charged events such as Manifestation Determination Review meetings, improper changes of a student's educational placement, or other complex educational matters. *Again, we are looking to avoid litigation – however, in these matters we make it clear to the school that we are prepared to litigate if necessary.*
4. **Focused Representation with the goal of litigation.**  
Although not a preferred path unless absolutely necessary, we have both the team in place to initiate the litigation process and the skills to do it well. We believe litigation should only be used as a last resort after all less costly solutions have first been attempted and failed. *In extreme situations, this approach may be necessary.*

Our purpose is to help students achieve their maximum potential by assuring that educational institutions provide the appropriate support and accommodations required by law.

We have extensive experience with the myriad of federal, state and local laws and regulations defining the rights of special needs children and adults, and how educational support must be provided.

We always hope for the best; however, many educational institutions lack the resources or knowledge needed to respond adequately to those laws and regulations. Legal action directed by an experienced attorney often ends up as the only remaining solution to obtaining appropriate support.



**We Believe Your Child's Future is Determined Now!**







# TABLE OF CONTENTS

|   |       |
|---|-------|
| 1. What is Special Education? .....   | 1     |
| 2. What other assistance is available besides an IEP or 504 Plan for students with special needs?.....                          | 2     |
| 3. What is Early Intervention? .....  | 3     |
| 4. How much information does my child's school and teacher need to know? .....  | 4     |
| 5. Psycho-Educational Evaluations or Neuropsychological Evaluations.....  | 11-12 |
| 6. How will I know if the school did a thorough job testing my child? How long do they have to get the testing completed? ..... | 13-14 |
| 7. Once the testing is completed, how long before my child gets the services they need? .....                                   | 14    |
| 8. How does Windsor Law go about getting my child the services they need and deserve?.....                                      | 16    |
| 9. Why would a parent of a student with ADHD or a learning disability need to hire an attorney? .....                           | 18    |
| 10. Why would a parent of a student with ADHD or a learning disability choose Windsor Law?.....                                 | 20    |
| 11. Personal Responsibility .....   | 21-22 |
| 12. Annual Partnership – Participating in the Solution .....  | 22    |
| 13. School Accountability – Holding their feet to the fire.....   | 23    |
| 14. Let's Get Started .....   | 24    |
| 15. Prepare to Experience Success! .....  | 25    |



# 1. What is Special Education?

“Special Education” or “Exceptional Student Education” refers to services provided to students with disabilities authorized by the Individuals with Disabilities Education Act, better known as IDEA or Section 504 of the Rehabilitation Act of 1973, better known as Section 504.

Students in special education with an IEP require modifications in their educational programs; such as extensive remediation, smaller-group settings, adaptations to their workload, a slower-paced curriculum, or other adjustments to suit their abilities and limitations as determined by a team of educators and parents working together. The team develops an IEP, or Individualized Education Program (or Plan), a document that spells out exactly what the school is required to do and what goals and objectives have been set for the student. Students in special education may be taught in a general education classroom with supports, a self-contained classroom, or a special school for students with similar disabilities.

Students covered under Section 504 of the Rehabilitation Act of 1973 are likely to need accommodations rather than modifications to their curriculum, such as specially designed instruction. A 504 Plan is put in place to level the playing field so a student with a disability can achieve proportionally to their non-disabled peers.

## 2. What other assistance is available besides an IEP or 504 Plan for students with special needs?

Not all students with disabilities or special needs will require special education. Those with physical disabilities, medical issues, or learning difficulty that do not require a major modification of their educational program may still benefit from a specialized tutor or organizational guidance.

If a 504 Plan is not necessary or obtainable, parents may still get special assistance for their child by providing materials to the teacher, school officials, and by making recommendations as to the best way to keep the student safe and successful. Although the school's cooperation will not be mandated under these circumstances, teachers and administrators will want to be aware of issues and offer what help they can.

Sometimes doing these things will lay the necessary groundwork to later obtaining a 504 Plan or IEP as the student matriculates and the academic demands increase.



### 3. What is Early Intervention?

**Definition:** The term *Early Intervention* refers to services given to very young children with special needs, generally from birth until three years old. These programs are often referred to as “Birth to 3” or “Zero to 3.”

Services provided may include speech therapy, occupational therapy and physical therapy. These services are provided either in an office or in the child’s home. The hope is that these services, provided early, will address any delays in development so that the child will not need services later on. At age 3, if a child still needs assistance, he or she might be referred to the local school district for special-education preschool. Your pediatrician should be able to refer you to early intervention providers in your area. You can also contact your state’s office responsible for early intervention directly.



## 4. How much information does my child's school and teacher need to know?

1. **Find your child's disability.** Go to the index of school information on your school district's website and click on the link for your child's particular diagnosis. If you don't see it on the list, see if you can find something similar and adapt it to your needs. If there is nothing to guide you, then this is the time to familiarize yourself with the governing laws.

There are three bodies of law that have different lists or definitions of disabilities. Typically, we deal with IDEA and Section 504 of the Rehabilitation Act of 1973. There may also be guidance provided by the Americans with Disabilities Act (ADA).

If the IDEA or Section 504 do not cover your child's disability, it may be possible to refer to the ADA in an effort to receive accommodations which will allow your child to access his or her education.

Under the ADA, an individual must have a physical or mental impairment that limits a major life activity. The ADA has a broad definition of disability.

A physical impairment is any medical disorder, condition, or loss that affects the body. Some examples include; neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, endocrine, etc.

A mental impairment is a mental or psychological disorder. Things like intellectual disability, mental retardation, organic brain syndrome, mental illness, and specific learning disabilities. Some examples of physical or mental impairments



covered by the ADA are AIDS, and its symptoms, asthma, blindness or other visual impairments, cancer, cerebral palsy, depression, diabetes, epilepsy, hearing or speech impairments, heart disease, migraine headaches, multiple sclerosis, muscular dystrophy, orthopedic impairments, paralysis, thyroid gland disorders, tuberculosis, loss of body parts, etc.

“Major life activities” include such functions as caring for one’s self, performing manual tasks, walking, talking, seeing, hearing, breathing, learning, and working.

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination on the basis of disability in programs and activities, public or private, that receive federal financial assistance. This law conforms to the definition of disability under the Americans with Disabilities Act Amendments Act (ADAAA). Section 504 does not provide funding for special education or related services, but it does permit the federal government to remove or limit funding to entities that do not comply with the law.



As a general rule, if a child is eligible for services under IDEA, he or she qualifies for protection under Section 504. However, not all students covered by Section 504 are eligible for IDEA-related services. Section 504 has much broader definitions of disability and many more students qualify for accommodations under Section 504 than qualify for services under the IDEA. Generally, it is easier to qualify for accommodations under 504 than it is to obtain an IEP under the IDEA.

The IDEA's disability definitions guide how states define disabilities under their regulations and who is eligible for a free appropriate public education (FAPE) under special education law. Note, in order to fully meet the definition (and eligibility for special education and related services) as a "child with a disability," a child's educational performance must be **adversely affected** due to the disability. The following are the Federal disability classifications:

- Autism
- Deaf-blindness
- Deafness
- Developmental Delay
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disabilities
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment Including Blindness

2. **Make a list of “Important Things Your Child’s Teachers Need to Know.”** Included in this list should be,
  - the name your child prefers to be called
  - the best way to contact you
  - what stimulates and frustrates your child how your child learns (visual, auditory and/or kinesthetic)
  - family situation – i.e., split parenting, fostering, etc...
  - languages spoken in the home
  - academic history – such as an IEP or 504 Plan
  - social and emotional wellbeing of the student
  - outside interests
3. **Add any additional information** that can guide the school or teacher with what is appropriate for your child. You’ll also want to add any of your personal observations and techniques that have worked well in the past.
4. **Medical or psychological testing that shows a need for school support or services.** If an IEP or 504 Plan has already been developed, include that with the accommodations and recommendations highlighted.
5. **Make a final draft of your note to the teacher.** It should be no more than a page long, whether handwritten or typed. Start with a positive sentence about how much you’re looking forward to working with the teacher this year; mention the specific things the teacher needs to know as adapted from our lists. Mention that you will be attaching more information and conclude by providing your phone number and email address. Indicate your eagerness to discuss the material.
6. **Put together an organized package of material.** The more professional you present this material, the more seriously the school and teacher will treat your student’s situation.
7. **Follow up.** If you do not hear anything from the teacher, check back in a few days with a note or a phone call to make sure the teacher received the information. Repeat your offer to discuss it further.

## Tips:

1. Remember, the start of the school year is a hectic time for teachers. Even with the best intentions, teachers may not want to spend their free time reading reams of material. If you can put together a package that looks manageable and well thought out, you'll move to the front of the class.
2. In your note, focus on the strategies appropriate to your child's special needs that will make things easier for the teacher, rather than insisting on rights and obligations.
3. Keep your tone friendly, helpful and no-nonsense — one professional to another. **You are writing as an expert on your particular child and his or her diagnosis, *not as a pleading or pushy parent.***
4. Make a copy of all correspondence for your records. Using a datebook or a contact log, jot down when and what you sent to the teacher, and what follow-ups you made.

### **If your child is struggling in school, you need to find out why.**

If you are concerned about your child's learning style, academic progress, social skills or even their behavior, a comprehensive assessment will both identify the nature of the problem as well as provide guidance for developing a plan.

If your child has a disability, as a parent, you will need objective information about your child's strengths, weaknesses, and his specific needs before decisions can be made about an appropriate educational program - possibly an Individual Education Plan (IEP), Section 504 Plan, etc.

For comprehensive information about tests, how tests measure skills and what the scores mean, you will find many of your answers in ***Wrightslaw: All about Tests and Assessments***. ISBN: 978-1-892320-23-0.

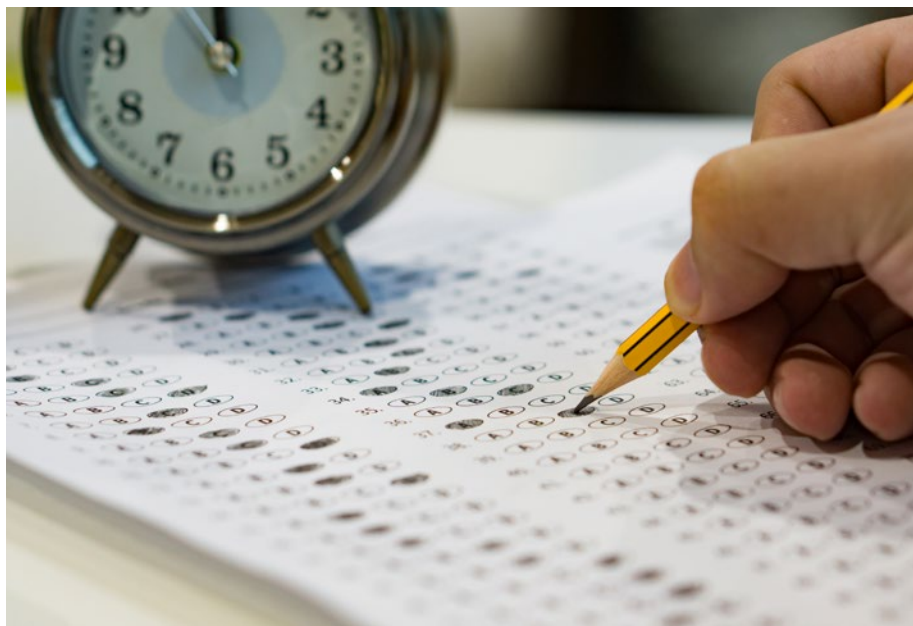
Figuring out why a student is struggling in school is a bit like solving a case. You and/or the school may use a variety of testing and assessments to figure out what is at the root of the child's problem.



Windsor Law carefully reviews student's records to help determine why a student may be struggling in school. We give our clients a letter to use to begin Response to Interventions (RTI) and often write the letter for them. Bottom line, when we are involved, the process is commenced, and deadlines are followed!

The fastest and most thorough way to obtain the help and services a student needs is through the use of a private evaluation. We can guide parents to the most qualified testing professionals to demonstrate the need for assistance and services.





## 5. Psycho-Educational Evaluations or Neuropsychological Evaluations

**Psycho-Educational Evaluations** are usually conducted by an examiner or several specialists who have a master's degree or doctoral degree in education or psychology. The examiner(s) will usually assess your child's:

- language skills
- academic skills in reading, writing and math
- intelligence or cognitive ability
- attention, memory and processing speed
- neurological functioning
- fine and gross motor skills
- social or emotional functioning

Neuropsychological Evaluations are usually broader in scope than Psycho-Educational Evaluations. A Neuropsychological evaluation should be conducted by a licensed psychologist or licensed neuropsychologist who has training or expertise in neuropsychology.

- **A Neuropsychologist** may focus more on processes related to learning and executive functioning - memory, attention, organization, and the ability to regulate behavior.
  - Such an evaluation is helpful if the child's intellectual, cognitive functioning, behavior or learning may be impaired.
  - The following should be included in neuropsychological evaluation:
    - Intelligence
    - Language
    - Attention and memory
    - Perceptual abilities
    - Emotional and personality factors
    - Behavior problems
    - Organization, judgment, planning, or efficiency





6. How will I know if the school did a thorough job testing my child?

How long do they have to get the testing completed?

The answers to these two questions are intertwined.

In our experience we have found that **schools usually have not done a thorough job of testing and have missed identifying the complete problem.** Unless the problem can be articulated properly, there will never be an adequate solution.

Once a proper release is signed by the parent authorizing testing, the school has sixty (60) calendar days to complete the initial evaluation process. If there has been a previous evaluation, then the school has ninety (90) day to complete the re-evaluation.

For this reason, whenever possible, **we recommend that parents first have independent testing completed.** Subsequent testing is invalidated if it is repeated too soon and once the private evaluation is presented to the school the school is on either their sixty (60) or ninety (90) day notice to complete evaluations – so they will usually adopt the recommendations of the private evaluator. Many qualified testing professionals accept insurance. We can guide you to these professionals and can often assist in setting testing appointments up expeditiously.

## 7. Once the testing is completed, how long before my child gets the services they need?

The answer to this question is – **it depends.**

Sometimes schools are good about providing services even before testing is completed. More often than not, this is not the case.

Typically, there is a meeting scheduled to review the results of the school's testing and then a 504 Plan or an IEP is formally put into place. This can take weeks, depending on schedules.

Often by the time an appropriate plan is put into place, the student has already fallen behind and the services may not be adequate. Other times, the testing was inappropriate or fell short of identifying a complete diagnosis. Therefore, the services are not going to fully address the student's problem(s).

This is often when parents contact our office and when we get involved. One of our targeted programs will often fully address the problem.



## 8. How does Windsor Law go about getting my child the services they need and deserve?

After we have met with the client and student and selected the appropriate program targeted to meet the student's needs, we need an agreement in place and a release and authorization signed so we can notify the school district or institution that we have been retained.

When we meet with a prospective client in an advisory consultation, much of our time is spent understanding the problem, discussing possible solutions and determining which of our many programs best match their needs.



Next, we order and analyze school and sometimes medical records.

- Requesting and organizing school and medical records is a complicated process.
  - It is extremely time consuming and labor intensive.
  - Often schools do not respond promptly or properly to the initial records request.
  - Often multiple requests are needed to obtain all the necessary records.
  - At times parents don't know what records are missing or are significant.
  - Student records are vital to understanding the problem as well as advocating successfully.
  - Sometimes if records are not available, we need to fill in the missing pieces from other sources such as from medical \records and or outside testing.

Once we have a clear picture of the child and why there has been a disconnect with the school, we can then begin to properly advocate for the child. Advocacy is unique to each student and situation.

## 9. Why would a parent of a student with ADHD or a learning disability need to hire an attorney?

Here are some statistics you may find interesting:

- If a parent files their own Due Process (DP) complaint they stand about a 5% chance of success.
- The **odds of a parent prevailing at Due Process with legal representation** are still only about **50 to 60%**.
- Filing a DP Complaint and following it through to hearing can be costly.
- If a parent/student loses at DP, the case can be followed up by filing an action in Federal Court. This is also a very costly process.

We believe we have a better and more cost-effective way to get a student the services they need and to which they are legally entitled.

- When parents and students follow our program, using the **Windsor Method**, which is included in our **Annual Partnership Program**, we are able to get our clients the services and plan they need, within one year, about 90% of the time. During this year, the students are actually benefitting from the specialized instruction and accommodations they have in their new education plan.

In addition, when parents also get the student outside-help they also can use programs like our tutoring support. The student will begin to break through and start making enormous progress academically, emotionally and socially.



The Windsor Method not only prepares the school and world for the student, but at the same time, prepares the student for the school and world.





## 10. Why would a parent of a student with ADHD or a learning disability choose Windsor Law?

Often parents who consult with our firm initially want to sue the school district or institution. With very few exceptions, the only remedies that exist when a school district violates a student's educational rights are compensatory education and/or reimbursement of attorney fees and costs associated with litigation.

Typically, these matters settle prior to a hearing in a way that the permits the student to receive what they need to be successful in school without having to waste money to go through a hearing.

Our firm does not need to be all things to all people. We just need to work in a way that we know is right and will bring the best value to those who desire our help. Our clients value helping their child more than they value fighting with the school.



## 11. Personal Responsibility

First, the journey we are beginning together is one of personal responsibility.

We know you have come to us because you already understand personal responsibility.

You care more about the future of your child than anyone.

- Public schools are in the business of delivering a necessary product, a Free and Appropriate Public Education (FAPE) to all students. Often, they are not equipped or sometimes motivated to do what the law requires.
- Private schools sometimes do a capable job educating students, but they often lack the resources or knowledge to provide all the necessary tools.
  - Most parents cannot afford to send their children to private schools.
  - We can often reduce the cost to parents by showing them how to access McKay Scholarship dollars or other scholarships.

Perhaps the most important puzzle piece is a proper **DIAGNOSIS** in order to understand what the student's problem is:

We offer a complete holistic solution to the problem through our **Annual Partnerships**. We refer the student to a qualified testing professional along with a copy of their entire educational records to thoroughly understand the student's strengths, weaknesses and needs. Only then are we able to obtain the best match of services to the student's needs.





When we refer the student out for testing, we make sure and get a complete set of educational and sometimes even medical records to the testing professional in order to make sure the testing is as thorough and complete as possible.

## 12. Annual Partnership - Participating in the Solution

Once we understand why a student is either *not learning* or *not testing well*, then and only then can we begin to work together in order to solve that problem.



Clients ask us all the time, “Why can’t the schools solve this problem on their own?”

Here are some of the typical answers we hear from schools:

- Public schools really have a difficult job to do.
- They operate with an unlimited demand for limited services with limited resources.
- They can’t access those services and resources without both proof of need for those services and resources and proof of a statutory right to those services and resources.
- Often, they can’t do their jobs at all unless or until the parent signs consent forms.
- Often parents don’t even know that they need to sign consent forms to begin the process.

### 13. School Accountability - Holding their feet to the fire

Once we understand why a student has not performed to their capability and the student is working on becoming a better student, then we can begin to hold the school accountable.

- While Windsor Law is *advocating for* the student, *a tutor or learning specialist* is at the same time helping the student develop the skills to become successful students.
  - Sometimes solving the problem is as simple as connecting parents with appropriate subject matter tutors.
  - Often, we still have to notify the school that we suspect a learning deficit or disability and we request the school to step in and join our team through what is called the Response to Intervention or the RTI Process.
- Only after **RTI** has begun, can we actually make a claim for services

*So how can we maximize student potential?*

➤ *By holding the school accountable.*



## 14. Let's Get Started

We use a four-pronged approach in the Annual Partnership that works to get the proper match of services to the student's needs, enforce school compliance and supplement with tutoring support when and if necessary.

1. First, we obtain the proper match up of services to the student's needs in the form of an IEP or 504 Plan through private testing driven by the student's educational and medical history.
2. After identifying the student's educational strengths and weaknesses, we teach the student strategies that allow the student to learn more easily and effectively using their strengths.
3. We then connect our parents and students to outstanding tutors and learning specialists to support their success over a full academic year to give students every possible opportunity to become successful students. The testing, training, tutoring and strategic support will bring out the student's top learning capabilities and produce the best results.
4. We are persistent and effective at advocating for our clients. So much so that eventually it becomes easier for the schools to give the student what we want and need than it is to risk costly litigation.



## 15. Prepare to Experience Success!

If you are currently trying to understand your child's or your own learning struggles, you have come to the right place. Windsor Law is pleased to be your partner and advocate throughout this exciting process.

We believe there are four **important puzzle pieces** necessary to achieve academic success:

**DIAGNOSIS PIECE**- Understanding the issue[s] through appropriate testing.



### **SCHOOL AND OR MEDICAL**

**RECORDS PIECE** – Making a proper request for all school records as well as any relevant medical records prior to testing and providing those records to the testing professional in advance of any testing.



### **ANNUAL PARTNERSHIP PIECE**

– Utilizing unique individualized learning strategies to bring about improved understanding and performance.



### **SCHOOL ACCOUNTABILITY PIECE**

– Creating the necessary learning and testing environment at school so the student can both master the material as well as prove mastery.

**We also believe there is an ideal order to solving this puzzle.**

The **BLUE ANNUAL PARTNERSHIP PIECE** must come first before all else so that we can obtain all of the records. This is the only way we can possibly get those records to the testing professional to have the most comprehensive testing conducted in order to hold the school accountable. we must have the authority to request records, time to review and analyze those records and then advocate on your behalf in order to make a valid claim for services and/or a case against the school for their failure to provide services.

The **YELLOW SCHOOL AND MEDICAL RECORDS PIECE** must come next before testing is conducted. Records review by the private psychologist or neuropsychologist is the key to their being able to select the appropriate testing

The **GREEN DIAGNOSIS PIECE** will come next. Because without first understanding the problem, we can't possibly come up with an appropriate solution for the school to implement.

The **PINK SCHOOL ACCOUNTABILITY PIECE** only succeeds when we have the benefit of all the necessary diagnostic information and the authority to be effective. We believe the benefits of any services or accommodations are maximized when the student is also working to address their part of the problem.

At Windsor Law, LLC, we get these four pieces to fit together by working together as a team.

Our team is comprised of several key players – the parent[s], the student, the testing professional, the Windsor Law team and the school.





We look forward to partnering with you to maximize  
your child's educational potential!



~~The End!~~

THE BEGINNING!





**Antimicrobial Coatings**

For your added safety, this cover is  
treated with an antimicrobial coating.

|   |  |   |
|---|--|---|
| ISBN 978-0-578-73483-5  |  | \$20.00   |
| 5 2 0 0 0   |  |   |
|  |  |  |
| 9 780578 734835   |  |   |