

CASE SCENARIO EXERCISE

NYSED IDEA IMPARTIAL HEARING OFFICER TRAINING
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I. INTRODUCTION

- A. Today's session builds upon the prior trainings that have addressed prehearing conference preparation, issue specification, identifying the appropriate standard to determine an issue and updating significant Second Circuit, New York and national case law on important, relevant issues. The training material sets forth a hypothetical scenario, notes case law relevant to various issues imbedded in the hypothetical scenario, and tasks participants with applying the appropriate legal standard to those issues.
- B. With regard to each substantive or procedural issue presented in the scenario, the exercise consists of four steps in keeping with appropriate, standard, legal practice.¹ Specifically, participants will be required to: 1) neutrally frame the specific issue to be decided; 2) after review of the relevant case law, state the applicable legal standard to determine the issue; 3) identify additional facts not in the scenario that would need to be found based on the record to apply the standard; and 4) when presented with fact variations in the scenario, discuss how the determination of the issue might change given the relevant case law.

II. ISSUE SPECIFICATION

- A. The IHO should identify the issue(s) listed in the due process complaint notice as modified, if at all, during the prehearing conference. The issue is the question of law or fact on which resolution of the case turns.

¹ An IHO must possess knowledge of, and the ability to: 1) understand, legal interpretations of IDEA by federal and state courts; 2) conduct hearings in accordance with appropriate, standard legal practice; and, 3) render and write decisions in accordance with appropriate, standard legal practice. *See* 34 C.F.R. § 300.511(c)(1)(B).

- B. The IHO has the authority to require specification of the issues raised in the due process complaint, even in the absence of a sufficiency challenge pursuant to 34 C.F.R. § 300.508(d).²
- C. Identifying the issues presented is critical to effective and efficient management of the hearing process. When the issues in the due process complaint notice are clear and specific, the responding party is able to prepare for the hearing, there is meaningful opportunity for resolving the complaint during the resolution meeting or thereafter, the IHO is able to better determine whether s/he has jurisdiction over the specific issues,³ and the evidence presented at hearing is more focused, which should lead to a sharper decision.
- D. Factors to consider include:
 - 1. The issue(s) should be stated succinctly, neutrally, and in question format.
 - 2. Multiple issues should be presented in logical sequence. However, the IHO should collapse multiple issues into one issue when there is duplication (i.e., variation of the same issue).
 - 3. In addition to stating the issue(s), the IHO might state each party's position concerning the issue(s).

² See *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1096 (9th Cir. 2002) (holding that the parents' due process rights were not violated when the IHO, in her written decision, formulated the issues presented in words different from the words in the due process complaint); *J.W. v. Fresno Unified Sch. Dist.*, 611 F. Supp. 2d 1097 (E.D. Cal. 2009), *aff'd*, 626 F.3d 431 (9th Cir. 2010) (ruling that the ALJ's slight reorganization of the issues by consolidating the assessments claims into a single issue was inconsequential to the student); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003) (holding that the IHO's restatement and reorganization of the issues still addressed the merits of the parent's issues); *cf. K.E. v. Indep. Sch. Dist. No. 15* (D. Minn. 2010) (concluding that the ALJ did not err in failing to clarify the issues stated in the amended due process complaint before the hearing).

³ See *Letter to Wilde*, 113 LRP 11932 (OSEP 1990) ("Determinations of whether particular issues are within the hearing officer's jurisdiction ... are the exclusive province of the impartial due process hearing officer who must be appointed to conduct the hearing.").

EXERCISE STEP 1 – FRAMING THE ISSUE(S)

Based on the claim(s)/request(s) set forth in the scenario, participants are asked to specify the issue(s) for determination. Various alternative but appropriate approaches to stating the issue(s) will be discussed.

III. APPLICABLE LEGAL STANDARD

- A. Just like the parties and/or their representatives are expected to prepare for the prehearing conference/hearing, the hearing officer too must prepare for the prehearing conference/hearing. An initial step is for the hearing officer to carefully review the due process complaint and any response. When doing so, the hearing officer should tentatively identify questions intended to help clarify the issue(s) and/or the relief sought included in the due process complaint. To the extent possible, the hearing officer should draft a rough outline of the issue(s), as well as the standard(s) – and the elements within each standard – to be applied in deciding each issue.

This simple exercise allows the hearing officer to generally identify the evidence needed to decide each issue and determine relief, should the hearing officer find a denial of a free and appropriate public education. In the prehearing stage, understanding the applicable legal standard when discussing the issue(s) helps the IHO set expectations of what evidence is required to decide an issue and determine relief, if any.

- B. The IHO must set out the applicable legal standard for each disputed issue and apply the law to the facts.⁴
- C. Consideration should also be given to whether issues that need not be determined per se, because the disposition of other issues does not require the additional issues to be reached, should, nonetheless, be addressed. For example, in a tuition reimbursement dispute, the IHO might want to indicate how s/he would have decided the subsequent steps of the *Burlington/Carter* multi-step test despite his/her finding that the school district offered the student a free appropriate public education. Such indication might avoid a

⁴ The use of prefatory boilerplate (with customizations to the case) language is permissible.

remand from a reviewing court, should the hearing officer be reversed on the initial issue.

EXERCISE STEP 2 – DETERMINING THE APPLICABLE STANDARD

For this step, the relevant case law regarding the applicable standard(s) of law for each issue will first be presented and discussed.

Next, participants will be asked to state the applicable standard of law to determine the subject issue. Possible differing applicable standards presented by the case law will be discussed.

IV. FACTS NEEDED TO APPLY THE STANDARD

- A. As noted above, in preparation for the prehearing conference/hearing after tentatively outlining the issues presented and applicable standards to determine each issue (and the elements within each issue), the hearing officer is in a position to generally identify the evidence needed to decide each issue (and determine relief should the hearing officer find a denial of a free appropriate education).
- B. Ultimately, the written decision must set forth only those facts determined to be relevant and relied upon to decide the identified issue(s).
- C. The written decision must include both evidentiary and ultimate facts. Ultimate facts are those required to establish the legal conclusions. In contrast, evidentiary facts are subsidiary facts required to establish ultimate facts.⁵
- D. The IHO should not simply recite in the written decision all testimony and documentary evidence included in the record. Rather, the IHO is tasked with assigning weight to the various pieces of evidence in the record and resolving competing versions of the same event in order to determine those specific and material facts needed to apply the IHO's ultimate determination(s) regarding the appropriate criteria/standard(s). Courts accord "little

⁵ *Woodard v. Mordecai*, 67 S.E.2d 639 (N.C. 1951).

deference” to a written decision that simply restates various facts without making specific findings about the facts.⁶

EXERCISE STEP 3 – APPLICATION OF FACTS TO APPLICABLE STANDARD

For each identified issue (step one), apply your stated standard (step two) to the facts in the scenario and determine what additional facts, if any, you need to apply the standard. Whether any additional facts are necessary to apply the standard(s) and, if so, which facts will be discussed.

V. FACT VARIATIONS OF THE SCENARIO

EXERCISE STEP 4 – POSSIBLE IMPACT OF FACT VARIATIONS ON DETERMINATION

As the final step, various facts will be altered or added to those in the scenario. The possible impact the change in facts might have on your determination will be discussed.

⁶ *Kerkam v. District of Columbia*, 931 F.2d 84 (D.C. Cir. 1991); see also *M.H. v. New York City Dep’t of Educ.*, 685 F.3d 217 (2d Cir. 2012) citing *Walczak v. Florida Union Free Sch. Dist.*, 142 F.3d 119 (2d Cir. 1998) (“Determinations grounded in thorough and logical reasoning should be provided more deference than decisions that are not.”); *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105 (2d Cir. 2007) (concluding that the district court owed the findings of the IHO deference because the IHO considered the testimony and issued a decision that was reasoned and supported by the record); *Cnty. Sch. Bd. v. Z.P.*, 399 F.3d 298 (4th Cir. 2005) (concluding that the district court should have given due weight to the IHO’s findings of fact because his decision was thorough and supported by numerous citations and references to the record evidence).

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