

**WEBINAR FOR N.Y.  
IMPARTIAL HEARING  
OFFICERS (IHOS)**

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**Overview**

- purposes of the accompanying document
  - concepts/trends for applicability
  - reference for citations
- scope and organization
  - published decisions, 1995–2014
  - your jurisdiction only

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**Identification Case Trends**

- e.g., child find v. eligibility
- e.g., two prongs – classification (esp. ED) and need for special education
- e.g. bridge – adverse effect and educational performance – narrow
- yet to come – RTI cases for SLD

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### FAPE Case Trends

- e.g., overlap with tuition reimbursement category
- e.g., predominance of autism cases, often including methodology
- e.g., snapshot approach and modified four-corners approach

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### FAPE Case Trends (cont.)

- e.g., *Rowley* two-pronged test:
  - procedural side**
    - e.g., footnoted codification of procedural prong
    - e.g., parental participation, esp. pre-determination
    - e.g., issues of FBAs/BIPs and parent counseling under state law

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### FAPE Case Trends (cont.)

- e.g., *Rowley* two-pronged test (cont.):
  - substantive standard**
    - e.g., deference doctrine – especially for methodology (but also for IHOs)
    - e.g., emerging issue of bullying

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### Major FAPE Decisions

*A.C. v. Bd. of Educ.* (2d Cir. 2009)

- Procedural: violation of state regulation requiring an FBA was not a denial of FAPE where the IEP adequately addressed the child's behavior
- Substantive: based on specialized expertise and sufficient cited evidence, the SRO's conclusion that the IEP adequately addressed the child's need for independence was entitled to deference

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### Major FAPE Decisions (cont.)

*T.Y. v New York City Dep't. of Educ.* (2d Cir. 2009)

- Procedural: an IEP's failure to identify a specific school location is not a per se violation
  - context of providing opportunity for meaningful parental participation
- Substantive: not all deficiencies, at least where IHO corrected them, "render the IEP as a whole substantively deficient"
  - deference where thorough and well reasoned

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### Major FAPE Decisions (cont.)

*R.E. v. New York City Dep't of Educ.* (2d Cir. 2012)

- "retrospective testimony" (i.e., re post IEP period): modified four-corners rule + snapshot approach
- conflicting IHO and RO decisions: repeats *M.H.*
- violations of state regs: differentiation in relation to likely direct substantive effect
- school selection: district choice

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### Major FAPE Decisions (cont.)

*T.M. v. Cornwall Cent. Sch. Dist.* (2d Cir. 2014)

- LRE applies to ESY; “a school district must consider an appropriate continuum of alternative placements, and ... offer the student the least restrictive placement from that continuum that is appropriate for the student's disabilities”
- Stay-put only entitles the child to the same general program; the district may, in good faith, change the specific service providers—doing so after an initial refusal does not amount to bad faith

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### LRE Case Trends

- e.g., “it depends” within broad continuum
- e.g., *Oberti* two-step, multi-factored test

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### Major LRE Decision

*P. v. Newington Bd. of Educ.* (2d Cir. 2008)

- adopted *Oberti* two-pronged test for LRE
  - Prong 1: nonexhaustive factors including 1) reasonable efforts, 2) comparative benefits, and 3) possible disruption
  - Prong 2: maximum extent appropriate – individual needs > statistical generalization
- upheld the IHO's compensatory education remedy of inclusion consultant for one year

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**Related Services Case Trends**

- e.g., bright-line test for medical services exemption
- e.g., state law complexities

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**Discipline Case Trends**

- e.g., special rules for disciplinary changes in placement
- e.g., not juvenile justice, including PINS proceedings

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**Attorneys' Fees Case Trends**

- e.g., effect of *Buckhannon* on settlements
- e.g., not expert fees

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### Remedies Case Trends

- e.g., tuition reimbursement > compensatory education (maybe) > money damages (no)
- e.g., tuition reimbursement: sequential steps, including private-placement's appropriateness and equities

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### Tuition Reimbursement Case Trends

- e.g., *Gagliardo* substantive test for appropriateness of the private placement
- e.g., extensive and relatively relaxed consideration of the equities
- e.g., extension to direct payment

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### Major Tuition Reimbursement Cases

*Gagliardo v. Arlington Cent. Sch. Dist.* (2d Cir. 2007)

- focus on the tuition reimbursement step for appropriateness of the unilateral placement:
  - burden of persuasion on the parent
  - test of whether it provides instruction specifically designed to address the unique needs of the student
  - deference to IHO's ruling where reasoned and supported

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### Major Tuition Reimbursement Cases

*C.L. v. Scarsdale Union Free Sch. Dist.* (2d Cir. 2014)

- focus on the tuition reimbursement step for appropriateness of the unilateral placement:
  - LRE is a factor but not a dispositive one (and not in relation to district's placement)
  - deference to IHO > SRO where more reasoned and carefully considered ruling
- equities step: focus on parental cooperation rather than parental intent

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### Compensatory Ed. Case Trends

- e.g., unsettled trigger – gross FAPE denial?
- e.g., unsettled approach – quantitative, qualitative, or relaxed hybrid?
- e.g., extension of equities step?

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### Other, IDEA-Related Issues

- e.g., IHO timeliness and thoroughness
- e.g., noncustodial parents
- e.g., home-schooled students

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