



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

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Overview

- purposes of the accompanying document
 - reference
 - concepts/trends
- scope and organization
 - published decisions, 2011-2012
 - national scope



Identification Case Trends

- e.g., child find v. eligibility
- e.g., prong 1 – ED and SLD
- e.g., prong 2 – adverse effect and educational performance
- yet to come – RTI cases for SLD



FAPE Case Trends

- e.g., overlap with tuition reimbursement category
- e.g., predominance of autism cases, often including methodology and sometimes IDEA's peer-reviewed research (PRR) provision

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 transition services

FAPE Case Trends (Cont.)

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

Major FAPE Decisions

M.H. v. New York City Dep't of Educ. (2d Cir. 2012)

- deference to administrative decisions:
 - not a bright-line, three-category approach
 - methodology –district discretion w. limits
 - RO > IHO unless “thorough and careful” standard dictates opposite weighting
- second appropriateness step for tuition reimbursement – illustrative application
- “opening the door” for new issues

Major FAPE Decisions

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

- “retrospective testimony” (i.e., re post IEP period): no - 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



LRE Case Trends

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



Discipline and Attorneys' Fees Case Trends

- e.g., manifestation determinations
- e.g., effect of *Buckhannon* (IHO or court imprimatur)
- e.g., possible dampers on flagrant conduct



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

Remedies Case Trends (Cont.)

- e.g., compensatory education-trigger: unsettled in the Second Circuit—must FAPE denial be gross when student has not graduated or is not more than 21 years old?
- e.g., compensatory education-calculation: movement toward equitably flexible, qualitative-like approach (except Third Circuit)



Remedies Case Trends (Cont.)

- e.g., no IHO (or court) money damages
- e.g., multi-step test for IEE reimbursement
- e.g., broad, creative equitable authority unless abridging IEP team authority or not sufficiently connected to violation(s)



Other, IDEA-Related Issues and Section 504

- e.g., other IDEA-related issues:
child find and aversives
- e.g., Section 504: lack of jurisdiction
for IDEA IHOs in N.Y.