

Scenario: Expert Witness

Issues:

The parent in his due process complaint, filed on behalf of his 5 year-old son, John, alleges that his son is on the autism spectrum and eligible for services under the IDEA. The school district in its response maintains that John is ineligible under the IDEA for various reasons. By way of relief, the parent, among other things, requests that his son be placed in the Doe School for Children with Autism, based on the recommendation of Dr. Jones.

At the prehearing conference (PHC):

The PHC is held over the phone. Counsel represents both parties.

At the PHC, the IHO establishes that the parent's diagnostic expert witness regarding John's eligibility is Dr. Mary Jones. The school district shares that it will rely on its own diagnostic expert witness, as well as other staff members who have evaluated and/or worked with John.

By the conclusion of the PHC, it is clear to the IHO that determining the eligibility issue will, in part, require credibility findings regarding the parties competing expert witnesses.

At the hearing!:

During the hearing, the parent's expert, Dr. Jones, is the first expert to testify. The parent's counsel introduces her vita, asks her a couple of questions about it, and then asks that she be qualified as an expert in the diagnosis of autism. The IHO does. The parent's counsel then asks Dr. Jones if she evaluated John (yes – with a brief review of her process), if she prepared a report (yes – a proposed exhibit), the results (John meets IDEA's/NY's eligibility requirements for autism), and why John should be determined eligible (discussing how John's characteristics/needs meet the criteria). Counsel for the school district then cross-examines Dr. Jones. But, his cross-examination does not provide any additional evidence possibly relevant to determining Dr. Jones credibility.

Q1: Are you comfortable that you have sufficient information in the hearing record to make a finding regarding Dr. Jones'

¹ The need to have a clear and complete record to make critical credibility findings applies equally to both party's expert witnesses. In this mock, we use the parent's expert witness. But, the same approaches to obtaining a clear and complete record, considering fairness and avoiding the appearance of partiality, would apply as well to the school district's expert witnesses. In fact, the best practice would be to ask the very same clarifying questions of both party's experts, to the extent appropriate and applicable.

credibility? If so, why? If not, what additional information do you think would be helpful/necessary to determine Dr. Jones' credibility?

Q2: If you believe the hearing record is inadequate in this regard, how would secure the necessary information?