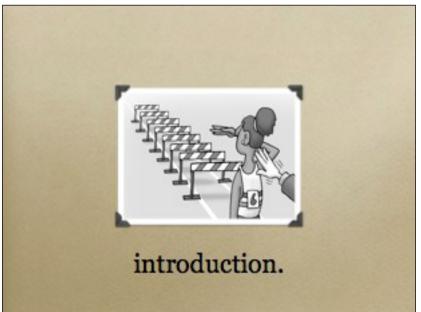
Pre-Hearing Techniques Deusdedi Merced Lyn Beekman



introduction.

interruptions are welcomed* *provided the point you wish to make is in agreement with what we have said

discretion and authority

- Each party must have a meaningful opportunity to exercise hearing rights set forth in the IDEA
- DPH must serve as an effective mechanism for resolving disputes

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discretion and authority

- Decisions regarding the conduct of IDEA DPHs are left to discretion of the hearing officer, subject to appellate review
 - Said discretion extends to prehearing procedural matters

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discretion and authority

- States have considerable latitude in in determining appropriate procedural rules
- State must ensure that hearing officers have the authority to grant appropriate relief

discretion and authority

- NYS explicitly provides the hearing officer with discretionary authority to conduct PHCs
 - 8 NYCRR § 200.5(j)(3)(xi)

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holding PHC is good practice

- Although federal or state law does not mandate the PHC, a PHC should be held in each case
 - Even in a case where it initially appears that it will ultimately settle

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structure and tone

- Take control of the hearing process by managing the timeline soon after appointment
- Set expectations for the participants



structure and tone

- Conveys importance of 45-day timeline to the parties
- Sets expectation for the completion of the hearing, and issuance of decision, within the 45-day timeline
- Allows hearing officer to schedule PHC early on in the 45-day period
- Sets stage and tone for the PHC and hearing process

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structure and tone

- Confirm the start of the 45-day timeline, and decision due date
- Provide written notice of DPH
- Provide written notice of PHC
 - Include topics for discussion

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content of dpc

- A parent or the LEA may file a DPC on any of the matters relating to the
 - · identification;
 - evaluation;
 - · educational placement; or
 - o provision of FAPE

content of dpc

- IDEA is quite specific on what is required in the DPC
- · Content must include -
 - the name of the child;
 - the address of the residence of the child

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content of dpc

- the child's school of attendance;
- a description of the nature of the problem, including facts relating to the problem
- a proposed solution, to the extent known and available

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sufficiency challenges

- IDEA requires the complaining party to provide sufficient notice to the other side
- DPC is deemed sufficient unless the non-complaining party files a notice challenging the sufficiency of the DPC

sufficiency challenges

- Notice must be in writing and filed within 15 calendar days of receipt of the DPC
- No requirement that the noncomplaining party state in writing why the DPC is insufficient

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sufficiency challenges

- HO must issue written decision within 5 calendar days
 - HO must decide on the face of the DPC
 - HO must identify how the DPC is insufficient

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8 NYCRR § 200.5(j)(3)(xi)

- simplifying or clarifying the issues;
- establishing date(s) for the completion of the hearing;
- identifying evidence to be entered into the record;
- identifying witnesses expected to provide testimony; and/or
- addressing other administrative matters as the impartial hearing officer deems necessary

other topics for the phc

- Objections to appointed hearing officer;
- Evidentiary issues, including disclosures, format of exhibits, burden of proof;
- · Access to records;

- Compelling attendance;
- Motion practice;
- Prior decisions and SA
- Special accommodations

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scheduling considerations

- Schedule PHC early on in the 45-day time period
- Be mindful of what is said during the PHC, especially if it precedes the resolution meeting
- Consider whether to record the PHC

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unavailability of party

- A party should not be allowed to delay the PHC without good cause
- Reasonable attempts should be made to hold the PHC
- Said attempts should be documented and made part of the record

unavailability of party

- Parties should confirm availability
- Adjourn PHC to another day or to non-business hours or days
- Consider progressive discipline



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pre-hearing order

- A written summary should follow the PHC
- The written summary should be in the form of an order
- Provide the PHO to parties within reasonable time after PHC
- Hold the parties to matters in the PHO

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requiring precision

- Managing the issues presented helps with the management of the hearing process
- Hearing officers have authority to require specification of the issue(s)
- Use PHC to obtain needed clarification of the issue(s)

requiring precision

- · Precise, clear issues -
 - allow hearing officer to determine jurisdiction up front
 - permit non-complaining party to adequately prepare
 - encourages focused evidence

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requiring precision

- · Precise, clear issues -
 - affords parties an additional opportunity to resolve the DPC
 - lead to a sharper decision

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preparation is key

- Set expectations for the PHC
- Notify parties to be ready to discuss the issues in a meaningful way

Expect resistance, but charge ahead.

Hearing officers, too, should prepare for the PHC in order to engage the parties in a meaningful discussion.



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managing the issues

- Consider discussing a Notice of Insufficiency with the parties prior to ruling
- Issue written decision and, if DPC insufficient, explain how
- Provide an opportunity to amend, but consider dismissal if party refuses to amend

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managing the issues

- Use PHC to get specifics, and parties should be prepared to have meaningful discussions
- Review IEP, even if line-by-line
- Ask clarifying questions

- Start at the end with pro se parents
- Issue an order with specific questions that must be answered, when more time is needed to respond

other considerations

- Allow new issues to be added, provided it can be done fairly and without undue delay
- Document issues and facts not in dispute
- · Eliminate non-hearable issues

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