

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 pre-hearing procedural matters*

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discretion and authority

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

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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*



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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
 - provision of FAPE

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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*

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sufficiency challenges

- *Notice must be in writing and filed within 15 calendar days of receipt of the DPC*
- *No requirement that the non-complaining 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*

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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*

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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)

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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*

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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

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| <i>Use PHC to get specifics, and parties should be prepared to have meaningful discussions</i> | <i>Start at the end with pro se parents</i> |
| <i>Review IEP, even if line-by-line</i> | <i>Issue an order with specific questions that must be answered, when more time is needed to respond</i> |
| <i>Ask clarifying questions</i> | |

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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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the end

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