

Scenario: Compensatory Education Witness

Issues:

The parents in their due process complaint allege FAPE was denied to their child for various reasons. They seek compensatory educational services to remedy each of the several denials.

At the prehearing conference (PHC):

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

The PHC proceeds to addressing the compensatory education relief the parents seek. The parents' attorney initially informs the IHO that the parents would be comfortable with whatever form of compensatory education the IHO awards if she is to find in the parents' favor.

Q1: As the IHO handling the PHC at this point, are you comfortable with the approach the parents' attorney is proposing. If so, why? If not, how would you address it?

The IHO seeks additional clarification and the parents' attorney provides the IHO with a list of specific services that the parents would like the IHO to consider. However, the parents' attorney does not go beyond simply listing the specific services (i.e., the parents' attorney simply says that the parents would like additional speech and reading services).

Q2: Would you require greater specification from the parents' attorney? If so, how much and on what?

Q3: What if the parents' attorney provides greater specification but the school district's attorney is aghast at the number of hours the parents' attorney is proposing? Do you pursue the school district's attorney's concerns with the attorney (school district)? What if the school district's attorney says, "Even if you were to find a denial of FAPE, in our opinion the student would require significantly less hours than what the parents are seeking?" Do you take this opportunity to discuss with the school district's attorney whether the school district would be prepared to introduce evidence of what it believes would be appropriate compensatory education should you find any FAPE denials?

At the hearing:

Several days of hearing have taken place and the parents are concluding their case; there is one day left for the parents to finish presenting their case. Thus far, you have not been provided with any evidence regarding the compensatory education remedy and, as far as you are aware, only the parents' testimony remains.

Q4: As the IHO, what do you do at this point, if anything?

Q5: Assume that the IHO decided not to pursue the lack of evidence pertaining to compensatory education, how would you address this in the final decision? Do you have an obligation to craft an award of compensatory education even when it is not specifically requested?