

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

**Perry A. Zirkel**  
**Lehigh University**

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**Organizing Framework**

- definition of compensatory education
- whether the child is entitled to compensatory education (i.e., trigger)
- if so, how much compensatory education (i.e., calculation)
- other issues – e.g., form of compensatory education

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**Definition**

Equitable remedy that provides in-kind special education and other related services for denials of a free and appropriate public education (FAPE)

- procedural, substantive, combination, or implementation denial
- FAPE denial could be via other issues, such as child find, eligibility, or LRE
- incomplete analogy to tuition reimbursement

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### Trigger

- Elsewhere – denial of FAPE beyond de minimis
- New York – two competing interpretations:
  1. only for a gross violation – see, e.g., *V.M.* (S.D.N.Y. 2013); *J.A.* (S.D.N.Y. 2009)  
- OR -
  2. the gross violation standard only applies to students over the age of 21 – *P. v. Newington Bd. of Educ.* (D. Conn. 2007), *aff'd*, (2d Cir. 2008); SRO decisions w. N.Y.S. court affirmation

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### Calculation

- Elsewhere - three competing approaches:
  1. quantitative (e.g., *Third Circuit*)
  2. qualitative (e.g., D.C. and Sixth Circuits)
  3. relaxed (e.g., Ninth Circuit)
- New York – not settled at the court level but SRO has opted for combination of approaches 2 & 3, including balancing equities of parties' conduct.

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### Calculation (cont.)

1. Quantitative approach:
  - duration: the period of denial of FAPE
  - alternatives of service-unit or total-package approach
  - deduction at the start for period estimated for reasonable rectification
  - reduction for net inequities in terms of unreasonable parental conduct

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### Calculation (cont.)

#### 2. Qualitative approach:

- individualized fact-specific determination of amount “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place”

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### Calculation (cont.)

#### 2. Qualitative approach (cont.):

- What are the child’s “specific educational deficits”?
- Which and how much of these specific deficits resulted from the child’s “loss of FAPE”?
- What are “the specific compensatory measures needed to best correct [the] deficits [in the second item]”?
- Will there be a deduction for reasonable rectification or unreasonable parental conduct? If so, calculate and explain.

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### Calculation (cont.)

#### 3. Relaxed approach

- citing equitable flexibility
- providing facially fitting amount, form, and explanation – keyed to child’s specific needs and the scope of the FAPE denial

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### Other Issues

- procedural issues for qualitative approach
  - e.g., prehearing instructions – yes
  - bifurcated hearing – ??
- statute of limitations
- mootness
- possible problem of remand to CSE
  - reduction/termination → calculation?

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### Other Issues (cont.)

- forms:
  - e.g., consultant or training
  - postsecondary education – ??
  - prospective placement
  - escrow account
- default for tuition reimbursement??
- reversible insufficiency

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