DECISION WRITING

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I. INTRODUCTION

A reasoned decision is a constitutional requirement for an administrative proceeding. Goldberg v. Kelly 397 U.S. 254, 271 (1970). The hearing officer's decision also fulfils the judicially mandated requirement that government provide reasons for its actions. Wichita R. & Light Co. v. Pub. Util. Comm. 260 U. S. 57-59 (1922). The requirement of a reasoned explanation in the form of a decision helps ensure a fair and careful consideration of the evidence and provides assistance to the reviewing courts. Citizens to Preserve Overton Park v. Volpe 401 U. S. 402 (1971).

The decision of the hearing officer is the only portion of our work that many people ever see. Our decisions should reflect well upon us; they are our **professional product**. It is extremely important, therefore, that our decisions be well reasoned and well written. Reviewing courts and officers receive no other communications from us. Our decisions represent us to the rest of the world. Our reputations as hearing officers depend upon **high quality** written decisions.

The decision is also the final administrative ruling for the parent/student and for the school district. It is imperative that they be able to understand the result of the hearing by reading the decision

Despite the critical importance of the hearing officer decision, there is very little guidance in the statute or regulations concerning the hearing officer's decision. The IDEA provides only that parties have the right to a written, or at the option on the parents an electronic, decision with findings of fact, and that the decision is final and subject to appeal. Sections 615(h) and 615(i)(1)(A). The IDEA'04 amendments add that the hearing officer must be able to write decisions in accordance with appropriate, standard legal practice; that a decision about FAPE must be made upon substantive grounds; and that a decision based upon a procedural violation denying FAPE must find that

the procedural inadequacy impeded FAPE or the parents' right to participate or caused a deprivation of educational benefits; and that despite the restriction on procedural rulings, a hearing officer may order a district to comply with IDEA requirements. Sections 615(f)(3)(A)(iv), and 615(f)(3)(E). The federal regulations paraphrase the statutory requirements. 34 C.F.R. Sections 300.512 (a)(5), 300.513, and 300.514(a). In addition, the federal regulations add the timelines for the hearing officer decision-requiring a decision within 45 days of the end of any resolution period, pending various potential adjustments. 34 C.F.R. Sections 300.515. In discussing the 2006 federal regulations, the U. S. Department of Education has clarified that a hearing officer still has the authority to issue a decision upon the issue of LRE despite the IDEA'04 amendments. The analysis of comments for the federal regulations states that although IDEA'04 and the corresponding regulations impose a new requirement that determinations as to whether a child has received FAPE must be on substantive grounds, "hearing officers continue to have the discretion to …make rulings on matters in addition to those concerning the provision of FAPE…" Federal Register, Vol. 71, No. 156 at p. 46706-7 (August 14, 2006).

A Q & A document from OSEP on Dispute Resolution Procedures under IDEA Part B. For decisions, see Q C-21 to C-23 and C-25 to C-27.

http://www.directionservice.org/cadre/pdf/OSEP_Q&A_memo7-23-13.pdf

Some states have regulations, policies, rules or manuals that provide further guidance on the matter of hearing officer decisions. Hearing officers should be aware of any such regulations or policies and apply them in their decisions.

II. Top Eight General Rules for Writing a Decision

Although the style of decision writing by hearing officers varies widely, there are some general rules that apply to good decisions. The following eight general rules have been derived from my experience as a hearing officer. These general rules provide some basic guidance on decision writing.

1. Be Fair
2. Appear to be Fair
3. Be Careful, Thorough and Thoughtful
4. Find Facts
5. Apply the Rule of Law: Make and Explain Conclusions
6. Resolve All Issues/ State Reasons
7. Make a Clear Order/ Award Relief
8. Be Clear and Concise

Rule Number One: Be Fair

The most important thing about being a hearing officer is to be fair. This is far and away the most crucial aspect of our work. Moreover, the policy underlying the due process clause is fairness. The reasoning of the Supreme Court in the seminal cases of Goldberg v. Kelly, supra, and Matthews v. Eldridge, 424 U.S. 319 (1976), focused upon the concept of fairness. Thus, fairness in our decisions is a constitutional mandate.

A fair and impartial decision-maker is at the core of procedural due process. Wong Yang Sun v. McGrath 339 U.S. 33, 45 (1950); Marshall v. Jerrico, Inc. 446 U.S. 238, 242 (1980). If we are to be fair and impartial, this must be reflected in our decisions.

Accordingly, fairness must be the guiding principle for decision writing. A fair decision is constitutionally required, and a fair decision is a good decision.

Rule Number Two: Appear to be Fair

Lawyers are required under their Cannons of Ethics to "avoid even the appearance of impropriety." See, Clinard v. Blackwood 46 S.W.3d 177 (Tenn. 2001). The philosophy underlying the rule prohibiting conduct which might have the appearance of impropriety is that public confidence in the system requires the belief that the system is fair. Respect for the rule of law cannot exist in the absence of such public confidence.

Under certain circumstances, the appearance of unfairness by the decision-maker may in itself violate procedural due process. See, Caperton et al v. Massey Coal Co, Inc, et al 556 U.S. 868, 129 S.Ct. 2252 (2009).

For those who write hearing decisions, giving the appearance of being fair is almost as critical as being fair. Receiving the fairest decision in the world means nothing to the party who believes that the decision was issued by a kangaroo court. By the time that parties get to a hearing, they are often angry. If the decision does not seem to be fair, these emotions will be inflamed.

In order to avoid even the appearance of unfairness, the hearing officer should take extraordinary steps to make it abundantly clear in her decision that she does not favor one party or attorney over the other. In this regard, the language of the decision should not be unduly harsh toward either party. There may well be occasions where it is appropriate to reprimand a party in the decision, but the tone should be restrained.

Similarly, the decision should avoid unnecessary criticism of the witnesses who testify on behalf of a party. It is preferable to say, for example, that "Witness X was not credible," rather than "Witness X lied."

The appearance of fairness is obviously not a shortcut to avoid the cardinal requirement that the decision be fair. The appearance of fairness is not meant to be a disguise for an unfair decision. Rather, the requirement of the appearance of fairness is an additional requirement. The decision must itself be fair, and the parties must have no reasonable basis to believe otherwise. The two rules work in tandem. By paying attention to both, the hearing officer's decision meets the mandate of the due process clause.

Rule Number Three: Be Careful, Thorough and Thoughtful

A number of courts have stated that they will accord more deference upon review to a hearing officer decision that is careful, thorough and thoughtful. See, County Sch. Bd. of Henrico County v. Z.P. by R.P. 42 IDELR 229 (4th Cir 2/11/05). Indeed, because hearing officers are professional writers and because the decision is our professional product, a good decision ought to be careful, thorough and thoughtful.

Being careful requires that you read any briefs and proposed findings of fact. It means that you have paid attention to witness testimony and that you have read the documentary evidence. The key arguments and evidence should be discussed in your decision. Failure to address important evidence or significant arguments is a certain way to get reversed. See, Scott ex rel CS v NY City Dept of Educ 63 IDELR 43 (SDNY 3/25/14).

Your reasoning should be clear to anyone reading your decision. If not, courts will not hesitate to remand. See, MO v Dist of Columbia 62 IDELR 6 (DDC 6/30/13); Suggs v. District of Columbia 679 F.Supp.2d 43, 53 IDELR 321 (D DC 1/19/10).

Being thorough includes giving the reasons why you decided the matter as you have. It also requires a discussion of why you discredited or discounted contrary evidence. A thorough decision demonstrates that the hearing officer understands and is familiar with the documentary evidence and the testimony of witnesses.

Being thoughtful includes choosing your audience. If you think an appeal is unlikely and you really want to get the attention of the parties (e.g. to cooperate in the future as to the education of the child), avoid legalese and school jargon. Use plain English to the extent possible. You must still cite the law to explain your conclusions of law, but try to use simple language if possible. If you suspect an appeal or if you are seeking to have the courts extend the law in a particular direction, a more legalistic tone may be appropriate. Inconsistent decisions are the opposite of

thoughtful decisions and are likely to be reversed. LO by DO & DO v East Allen County Sch Corp 64 IDELR 147 (ND Ind 9/30/14).

It is important that a reviewing court be able to tell from your decision that you have considered everything submitted and argued. It is advisable to affirmatively state that you have done so. Consider placing a boilerplate statement similar to the following near the beginning of your decision:

PRELIMINARY MATTERS

Subsequent to the hearing, each party submitted proposed findings of fact and a post-hearing brief. All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

Rule Number Four: Find Facts

Findings of fact are specifically required to be in our decisions by IDEA. §§615(h) and 615(i)(1)(A); and 34 CFR §§300.512(a)(5), 300.513.

Your findings of fact should be written as facts; they are not contentions, they are facts. You should include only facts of decisional significance. Despite our solid rulings on relevance during the hearing, every hearing includes testimony that we don't need for our decision. Findings of fact should be limited to

matters of decisional significance. (Although there are many good ways to write a decision, if you are having trouble determining which facts are decisionally significant, consider writing the findings of fact last.)

Findings should be carefully prepared. If a court disagrees with your legal conclusions or analysis, that is a part of the job. Where a court is critical of your findings, however, it is implicitly criticizing the hearing officer. Your findings must absolutely be based upon and consistent with evidence in the hearing record. South Kingston Sch Committee v Joanna S ex rel PJS 64 IDELR 191 (1st Cir 12/9/14); Pointe Educ Services v AT 63 IDELR 279 (D Ariz 8/14/14). The hearing officer should never mischaracterize the evidence. JG by Jimenez v. Baldwin Park Unified Sch Dist 65 IDELR 177 (CD Calif 3/20/15).

Findings of fact should not simply regurgitate testimony. That is the function of the transcript or hearing record. The danger in restating testimony contrary to your findings is that it could be mistaken for findings of fact. A court could also conclude that your conclusions are contrary to the evidence if regurgitated testimony is mistaken for findings of fact.

Because they are facts, findings should also not be inferences. You can explain your logic in the discussion section of your decision. Similarly, findings are no place for contentions of the parties. The contentions or issues should be in a separate section, preferably earlier in the decision. Findings should never be stated as hypotheticals. LaGue v Dist of Columbia 66 IDELR 101 (DDC 9/16/15).

Generally findings should be stated in the past tense. The facts being found almost always have happened prior to the hearing. Definite language is preferred over uncertain language. Findings should be stated as simple facts and not qualified unless necessary to reflect the record accurately. For example, findings should not include…"it appears that," "it seems that" or "tends to be."

There are two schools of thought concerning whether to provide citations to the record in your findings of fact. The benefit is that you show that your decision is thorough and that your findings are supported by the record evidence. The downside is that if your typist makes a mistake as to the page number, a reviewing court could conclude that your decision is not careful or that it is not supported by the evidence.

Consider requiring the attorneys to submit proposed findings of fact, anchored to specific record citations. Carefully check the citations to the record as lawyers can sometimes be creative with the meaning of exhibits or testimony. When utilizing proposed findings, impose your own judgment as to which proposed facts, if any, warrant inclusion in your decision. Even where proposed findings are correct, they may need to be restated to ensure accuracy and completeness. Never accept all of the findings from one party; a reviewing court could consider this to be evidence of bias or a lack of due care.

For example, in BH by JH & JH v Johnston County Bd of Educ 65 IDELR 66 (EDNC 3/19/15) the Court reversed HO and SRO decision where they failed to make findings of fact or corresponding conclusions of law on numerous issues raised by the parents' claim. The HO decision which was summarily adopted by the SRO is virtually a wholesale adoption of the SD's proposed final decision**.** A line by line comparison reveals that the **HO** adopted with no substantive modifications all 480 findings of fact and 79 conclusions of law proposed by the SD.

Rule Number Five: Apply the Rule of Law: Make and Explain Conclusions

The conclusions of law, and the discussion thereof, are the portion of the decision in which the hearing officer states the rule of law. Specific sections of IDEA and the federal regulations and any relevant state regulations should be cited. Every legal conclusion should include a citation of legal authority. Conclusions of law should be crisp and clear.

Remember that certain decisions are binding precedent. Other judicial or administrative special education decisions may be cited as helpful and relevant authority, but they are not binding, and they may be used as you so determine in the exercise of your discretion.

Prehearing legal research conducted by the hearing officer should be useful in the decisional phase of the proceeding. Additional research on specific legal questions should be conducted in preparing the decision. By providing caselaw, a hearing officer provides solid support for his legal conclusions.

Apply the legal standard with care. Explain how you have arrived at your conclusions given the legal standard, but be true to the legal standard. See, Marshall Joint Sch Dist No 2 v. CD by Brian & Traci D 616 F.3d 632, 54 IDELR 307 (7th Cir 8/2/10); Forest Grove Sch Dist v Student 63 IDELR 163 (D Ore 6/9/14). Be careful not to rely upon unpublished decisions. DF by AC v. Collingswood Borough Bd of Educ 694 F.3d 488, 59 IDELR 211 (3d Cir 12/12/12).

Where the losing party has cited legal authority that would appear to be controlling, state the reasons why you distinguish the facts of the case before you. If the losing party provides non-binding legal authority, explain why you found the cases to be unpersuasive. Such explanations should be in the decision, but they should not be included in the conclusions of law.

Rule Number Six: Resolve All Issues/ State Reasons

Before the discussion of the merits of the case, the decision should address any preliminary matters. Such matters might include any evidentiary issues, motions, deferred rulings, problems with non-record evidence attached to a brief, or other non-dispositive issues.

One of the functions of the decision is to notify the parties of the outcome of the case. Another is to permit meaningful review by courts and review officers. To accomplish these purposes, the decision must state why the decision turned out the way it did. The good work done by the hearing officer to narrow and simplify the issues during the prehearing phase of the proceeding should bear fruit in the decisional phase. The decision should decide and address each issue raised at the hearing. You should explain what evidence in the record lead you to conclude as you have. State the reasons why you ruled as you have ruled. Explain why you found certain evidence more persuasive than other evidence. If you permit posthearing briefs, discus all key arguments and why you accept or reject them.

All issues must be resolved. Failure to address issues is a basis for reversal. BH by JH & JH v Johnston County Bd of Educ 65 IDELR 66 (EDNC 3/19/15); WW ex rel MC v NY City Dept of Educ 63 IDELR 66 (SDNY 3/31/14).

Due process of law requires that the decision maker must provide an explanation for his determination, including the reasons for the decision and a statement of the evidence relied upon. Wichita R. & Light Co. v. Pub. Util. Comn. 260 U.S. 48, 57-59 (1922).

If the key theme underlying the hearing is the right to be heard, the theme underlying the decision is the right to know why. Both are critical components of due process. Explain your ruling in your decision.

Where credibility is in issue, and it often is in issue, explain why you believe one witness over another. Witness demeanor is one factor you can consider, but be aware that it is an inexact science. For example, the difference between a liar and a nervous witness is very difficult to ascertain. If you use demeanor, try to add at least one other factor such as inconsistencies, unfamiliarity with the child, changes in testimony, bad memory, leading questions by the attorney, inability to testify without documents… etc. Credibility is one area where courts are extremely reluctant to reverse the hearing officer who observed the testimony first hand. It is advisable to include a careful analysis of the credibility of witnesses in your decision.

It is very helpful during the decision phase if the hearing officer has taken good notes during the hearing itself. Notes should be taken as to all issues, including credibility, and each key piece of evidence relating to each issue. It helps to keep separate notes or else to use various different colored pens for these purposes.

The decision must be that of the hearing officer. This is one area in which we cannot solicit help from friends or colleagues. One question we cannot ask is "how should I decide?"

Rule Number Seven: Make a Clear Order/ Award Relief

Hearing officers have broad authority to grant appropriate relief when there has been a violation of IDEA. Forrest Grove Sch Dist v. TA 557 U.S. 230, 129 S.Ct. 2484, 52 IDELR 151 (U.S. 6/22/9). Compensatory education aims to place student in the position he would have occupied but for SD violation of IDEA, but it is not the only remedy. Rather a court or HO can order any equitable relief that is appropriate given the purpose of IDEA including tuition reimbursement, a prospective injunction and declaratory relief. Sch Dist of Philadelphia v Williams ex rel LH

66 IDELR 214 (ED Penna 11/20/15) The Order portion of your decision should award appropriate relief.

It is important that your Order be clear. If you rule in favor of the district and award no relief, say so. If any relief is awarded, clearly specify what you are requiring the school district to do. Timeframes should also be clearly specified. Note: if you are requiring evaluations, including an IEE, be aware that the evaluators may take time to complete their report, and they can be difficult for a district or a parent to control.

Even a carefully worded Order can sometimes result in additional litigation. For example, in Gumm by Gumm v. Nevada State Department of Education 113 P.3d 853, 43 IDELR 198 (Nev. S.Ct. 6/23/05), the parents of an autistic child prevailed at the due process hearing, and the hearing officer ordered the LEA to reimburse the parents for "all out of pocket expenses" related to the private placement, including "mileage for one round trip each day…" the student attended the program. The SRO affirmed. The LEA paid the parents more than $60,000. The parents then filed a state complaint seeking an additional $26,000 which constituted reimbursement for the mom's lost salary and benefits for the one year that she transported the student to and from the program. The state resolved the complaint in favor of the LEA, and the parents filed for mandamus. The Nevada Supreme Court upheld the state's determination and ruled that the mother was not entitled to reimbursement for her salary under the IDEA.

Before the order, explain in detail the relief being awarded and the reasons for the particular forms of relief. Where there has been a violation of the IDEA, the hearing officer has broad equitable powers to fashion the appropriate relief. See, Forrest Grove Sch Dist v. TA 557 U.S. 230, 129 S.Ct. 2484, 52 IDELR 151 (U.S. 2009); Burlington Sch Committee, et al v. Dept of Educ, et al 471 U.S. 359, 105 S.Ct. 1996, 2002, 556 IDELR 389 (1985). A hearing officer should be careful, however, not to order relief that is unavailable under the statute.

A rising **hot button trend** in special education law involves **restorative justice**. As applied to relief in hearing officer decisions, especially in cases involving student discipline and behavior issues, look for decisions that require restorative practices as relief. See, Larimer County Sch Dist, Poudre (CH) No. 2015:510 (SEA Colo 7/14/15) in which a state complaint investigator issued a decision requiring the school district, that had failed to comply with IDEA discipline requirements, to provide training to its staff - including **training on alternatives to traditional discipline-including restorative justice**.

Rule Number Eight: Be Clear and Concise

The decision should be long enough to do its job: set forth all decisionally significant findings of fact; state the rule of law; and discuss why the hearing officer made this decision. This may take a few pages. It is clear, however, that nobody wants to read a telephone book.

Be concise. Avoid excessive verbiage. Economy of words is appreciated by the parties as well as reviewing officers and courts. Say what must be said so that the parties understand the outcome, so that it is clear that record only evidence was considered, and so that a reviewing court may conduct a meaningful review, and then stop.

Be clear. Unless it is necessary for clarity, don't use charts, footnotes, or graphs. Try to make sure that your decision will be understood by its readers. Avoid Latin and other foreign language words or phrases. Simple and plain language is preferable. If the timelines permit, a good technique is to prepare a draft, sleep on it, redraft it, sleep on it again, and then finalize it. Courts do not tolerate unclear decisions by hearing officers. LJ by VJ & ZJ v. Audubon Bd of Educ 49 IDELR 6 (D.NJ 11/5/7); Gail A ex rel Zachary A v. Marinette Sch Dist 48 IDELR 73 (E.D. Wisc. 3/22/7).

Remember to date and sign the decision. In the prehearing phase, the hearing officer should have determined if the parent desired a written or electronic decision. Section 615(h)(4). In my experience, the written decision is nearly always preferred.

III. *Significant Caselaw: Hearing Officer Decision*

a. Varying levels of **deference** in reviewing HO decision: JP by Peterson v. County Sch Bd of Hanover County, VA 516 F.3d 254, 49 IDELR 150 (4th Cir 2/14/8). The Fourth Circuit noted that the HO could have offered a more thorough explanation as why he denied a request for tuition reimbursement, but the Court reversed the district court for according **no deference** to the HO decision or its findings of fact. The HO's findings of fact were regularly made and not the result of flipping a coin, throwing a dart, etc… Although the HO found all witnesses to be credible, the court held that he sufficiently identified his reasoning in reaching his decision. Contrast, KS by PS & MS v. Freemont Unified Sch Dist 545 F.Supp.2d 995, 49 IDELR 182 (N.D. Calif 2/22/8) the court found the HO decision to be thorough and careful and afforded it **considerable deference**. Nonetheless, the court rejected the HO's findings of fact because of faulty reasoning. HO's reasoning in bolstering credibility of district witnesses because of consistent district records and in reducing the parents' credibility because parent was advocating for the student were inconsistent with IDEA's philosophy; and Hansen ex rel JH v Republic R-III Sch Dist 632 F.3d 1024, 56 IDELR 2 (8th Cir. 1/21/11) After parent's case, school district elected not to put on any evidence and moved for a directed finding. HO panel granted the motion and issued a one paragraph decision in the school district's favor without any findings of fact. Eighth Circuit found that HO panel decision was entitled to **no deference** because no facts were found.

b. Perrin ex rel JP v Warrior Run Sch Dist (JG) 66 IDELR 225 (MD Penna 9/16/15) adopted by district court at 66 IDELR 254 (MD Penna 11/4/15) {affirming HO decisions at 113 LRP 39220 and 64 IDELR 260} Court found that HO **properly explained and justified** his credibility findings where he found testimony of mom **less credible and persuasive** than the testimony of SD witnesses where there were serious inconsistencies in mom's testimony, where she overstated student's injuries and where she contradicted the parties' stipulations; Stepp ex rel MS v Midd West Sch Dist (JG) 65

IDELR 46 (MD Penna 2/23/15) {affirming HO decisions @112 LRP 45128 and 113 LRP 16891} Court affirmed HO determination that the testimony of parent's expert school psychologist was entitled to **no weight** where his testimony was not credible or persuasive and contained contradictions; (JG) AM v Dist of Columbia 933 F.Supp.2d 193, 61 IDELR 21 (DDC 3/28/13) Court ruled that HO credibility findings were supported by the evidence in the record; ST ex rel SJPT and IT v Howard County Public Sch System 64 IDELR 268 (D Mich 1/5/15) aff'd by 4th Cir in UNPUBLISHED decision @ 66 IDELR 270 (Fourth Cir 1/5/16). HO **properly weighed** expert testimony and determined credibility of witnesses appropriately. HO did not automatically credit SD witnesses as parent alleged. HO properly weighed the credibility and persuasiveness of all witnesses- parents' witnesses had little first-hand knowledge of student's needs; Oakland Unified Sch Dist v NS by Genning & Sandahl 66 IDELR 221 (ND Calif 11/10/15) Court defers to HO credibility findings because HO is in a better position to assess; TO & KO ex rel JO v Summit City Bd of Educ 66 IDELR 16 (DNJ 7/27/15) Court rejected SD argument that HO decision should be reversed because **every time** she considered **contradictory evidence** about a preschooler's needs, she **sided with the parent**. Where there are two permissible views of evidence, HO's choice between them is not clearly erroneous and unless there is non-testimonial evidence that would render the credibility determination unreasonable, court will defer; DS & AS ex rel DS v. Bayonne Bd of Educ 54 IDELR 141 (3d Cir 4/22/10) The Third Circuit held that the District Court erred in overturning HO's **credibility** without showing a good reason for doing so; Marshall Joint Sch Dist No 2 v. CD by Brian & Traci D 616 F.3d 632, 54 IDELR 307 (7th Cir 8/2/10) Seventh Circuit rejected HO's credibility findings as not supported by the record; Sebastian M by Lisa M & Michael M v King Phillip Regional Sch Dist 685 F.3d 79, 59 IDELR 61 (1st Cir 7/16/12) First Circuit held that District Court properly deferred to HO's weighing of the testimony of expert witnesses and school personnel. HO **properly discounted** the testimony of experts who had not seen the child or conducted formal assessments of him. HO chose instead to

credit the testimony of educators who **worked with** the student and observed his daily progress.

c. Ridley Sch Dist v. MR & JR ex rel ER 680 F.3d 260, 58 IDELR 271 (3d Cir 5/17/12) Third Circuit refused to give deference to HO's **credibility findings** where there was strong non-testimonial evidence to contrary; KC v. Nazareth Area Sch Dist 57 IDELR 92 (ED Penna 8/26/11) Court accepted HO's credibility findings noting that HO credibility determinations will be overturned only when nontestimonial evidence in the record justifies a contrary finding. PC & MC ex rel KC v. Oceanside Union Free Sch Dist 56 IDELR 252 (EDNY 5/24/11) Court accepted HO's credibility determinations that were thoroughly discussed. Court rejected implication that SRO's credibility determinations were biased where the decision was a lucid and well reasoned opinion; Marcus C by Karen C v. Dept of Educ, State of Hawaii 56 IDELR 219 (D Haw 5/9/11) Court upheld HO credibility determinations upon conflicting evidence Bd of Educ of the Hicksville Union Free Sch Dist v. Schaefer 933 N.Y.S.2d 579, 84 A.D.3d 795, 56 IDELR 234 (NY Sup. Ct, App Div 5/3/11) Court held that SRO was not bound by HO credibility determinations when there was non-testimonial evidence to support a contrary conclusion; AC by CC v. Chicago Public Sch Dist # 299 57 IDELR 276 (ND Ill 11/18/11) Because courts give great deference to Ho's credibility determinations, Court deferred to HO decision to credit the testimony of district expert that the student would not benefit from assistive technology; Sundbury Public Schs v. Mass Dept of Elementary & Secondary Schs 55 IDELR 284 (D Mass 12/23/10) Court ruled that credibility determinations are the province of the HO; SA by LA v. Exeter Union Sch Dist 110 LRP 69145 (ED Calif 11/24/10) Court rejected arguments that HO improperly determined credibility and ignored certain evidence favorable to parents; CN by Newman v. Los Angeles Unified Sch Dist 51 IDELR 98 (C.D. Calif 10/9/8) Credibility determinations in a HO decision are given great deference and are generally accepted unless the non-testimonial evidence in the record would compel an opposite conclusion. MV ex rel AV v. Shenandoah Central Sch Dist 49 IDELR 98 (N.D. NY 1/2/8) SRO who did not observe witnesses testify, erred when he did not accept HO's credibility

determinations. Cincinnati Public Sch Dist 108 LRP 71134 (SEA OH 10/17/8) Because HO who had observed testimony was in a better position to evaluate the credibility of witnesses, SRO deferred to HO's credibility judgments. See also, Jaffess v. Council Rock Sch Dist 46 IDELR 246 (E.D.PA 10/26/6) Reviewing courts will give much deference to HO's findings of fact where the case turns on competing expert witnesses; Council Rock Sch. Dist. 106 LRP 20193 (SEA Pa. 3/27/6)(SRO panel will not overturn HO credibility determinations in the absence of evidence in the record compelling a contrary conclusion.); Ambridge Area Sch Dist 106 LRP 60446 (SEA PA 10/2/6) (SRO panel held that it would reverse HO findings and credibility determination and weighing of the evidence only where the whole record or non-testimonial extrinsic evidence compels a contrary conclusion.) KS by PS & MS v. Freemont Unified Sch Dist 545 F.Supp.2d 995, 49 IDELR 182 (N.D. Calif 2/22/8) Ho erred by crediting school district expert who had no contact with the student while discrediting parent expert because he had had no contact with the student; WH v Schuylkill Sch Dist 61 IDELR 133 (ED Penna 6/20/13) Court will accept HO **credibility** findings unless non-testimonial evidence justifies a contrary conclusion; Marcus I by Karen I v Dept of Educ, state of Hawaii 61 IDELR 98 (D Haw. 6/10/13) Court refused to disturb HO's credibility findings; TB & CB ex rel TB v Havershaw-Strong Point Central Sch Dist 933 F.Supp.2d 554, 60 IDELR 279 (SD NY 3/21/13) at n.11 Court agreed with SRO (& not HO) finding that witnesses testimony was credible. SRO decision satisfactorily explained an apparent discrepancy in her testimony in response to a question by HO; Presely ex rel KP v Friendship Charter Sch 60 IDELR 224 (DDC 2/7/13) Court gives particular deference to HO findings involving credibility; Endrew F By Joseph F & Jennifer F v Douglas County Sch Dist RE-1 64 IDELR 38 (D Colo 9/15/14) Court criticized HO decision that lacked references to the **record,** did not address **credibility** issues or **inconsistencies** in the evidence. Nonetheless the court gave deference because the HO explained his reasoning, {aff'd 798 F.3d 1329, 66 IDELR 31 (10th Cir 8/25/15)}; McAllister v Dist of Columbia 63 IDELR 130 (DDC 5/21/14) adopting Mgst @ 62 IDELR 294. Court upheld ho's adverse **credibility** assessment of

the testimony of parent's advocate. HO is not bound to accept testimony as true and correct merely because he admits it into evidence or because there was no contradictory evidence. HOs are required to weigh and interpret the evidence. Fact based or credibility HO findings are entitled to greater deference; MA v Jersey City Bd of Educ 63 IDELR 9 (DNJ 3/18/14)@ n.6 and 7 Court gives special weight to ho's credibility findings even if ho did not hear the testimony; TE v Cumberland Valley Sch Dist 62 IDELR 204 (MD Penna 1/7/14) It is within the discretion of the ho to **weigh testimony** and decide which evidence to credit or find credible; Contrast, Dept of Educ, State of Hawaii v Rita L by Rita L 64 IDELR 236 (D Haw 12/15/14) Court rejected ho's credibility findings where ho found two witnesses not credible in cursory fashion mentioning only that there testimony was riddled with inconsistencies without further elaboration.

d. P by Mr & Mrs P v. Newington Bd of Educ 546 F.3d 111, 51 IDELR 2 (2d Cir 10/9/8) IDEA allows HO and the reviewing courts wide latitude in fashioning an **appropriate remedy** where there has been a violation of IDEA. Here an award of compensatory education requiring the district to hire an inclusion expert and have him participate in an FBA for the student was appropriate; In Re: Student With a Disability 108 LRP 45824 (SEA WV 6/4/8) A special ed HO has **broad authority** to fashion an appropriate remedy where there has been a violation of IDEA. Here a combination of compensatory education and a thorough behavioral evaluation is the appropriate remedy; Sch Dist of Philadelphia v Williams ex rel LH 66 IDELR 214 (ED Penna 11/20/15) Compensatory education aims to place student in the position he would have occupied but for SD violation of IDEA, but comp ed is not the only remedy. Rather a court or HO **can order any equitable relief** that is appropriate given the purpose of IDEA **including tuition reimbursement, a prospective injunction and declaratory relief**. Here HO did **not exceed her authority** by ordering remedy longer than one year denial of FAPE especially given prior litigation; Oconee County Sch Dist v AB by LB 65 IDELR 297 (MD Ga 7/1/15) Court affd HO remedy, including **reduction** of reimbursement for transportation by **50%** where both parties derailed the **collaborative** process. @n.5:

Court encourages the parties to **work together** in the interest of the student; Larimer County Sch Dist, Poudre (CH) No. 2015:510 (SEA Colo 7/14/15) A state complaint investigator issued a decision requiring the school district, that had failed to comply with IDEA discipline requirements, to provide training to its staff - including **training on alternatives to traditional discipline-including restorative justice**. Contrast, ZH ex rel ZH v NYC Dept of Educ 65 IDELR 235 (SDNY 5/28/15) Court ruled that HO erred by **ordering as relief** that the SD to place a student in a **private school that had not been approved by the state**. Unlike a unilateral placement by a parent- which can be in an unapproved school, an SD may only place a student in a school that meets state standards; Sch Dist of Philadelphia v Kirsch & Misher ex rel NK 66 IDELR 247 (ED Penna 11/30/15) Court reversed HO who cut off reimbursement after December 2013 when she found that SD had offered FAPE. Instead court agreed with parents that stay put required reimbursement until litigation was finished; Bd of Educ of the Scarsdale Union Free Sch Dist 49 IDELR 85 (SEA NY 9/19/7). HO erred by granting relief in her decision that was not sought by the dp complaint; Morgan M by Barbara M & Arthur WM III v Penn Manor Sch Dist 64 IDELR 309 (ED Penna 1/14/15) Court **reversed** HO ruling in favor of parent. Court ruled that SD **failure to label** its services as "autistic services" as required by state law did not violate IDEA where the IEP provided a full range of services to address the student's identified needs.

e. DF by AC v. Collingswood Borough Bd of Educ 694 F.3d 488, 59 IDELR 211 (3d Cir 12/12/12) Court reversed HO and lower court criticizing their reliance on an **unpublished court decision**.

f. LO by DO & DO v East Allen County Sch Corp 64 IDELR 147 (ND Ind 9/30/14) Court reversed and vacated **inconsistent** HO decision. HO found that student was clearly not eligible in 09-10 school year and that SD had failed to implement 10-11 IEP and awarded compensatory education. After SD pointed to certain evidence, HO issued an amended decision ordering compensatory education for failing to find the student eligible in 09-10 school year. Court found that the change to the decision was contradicted

by the remainder of the decision. Also HO order requiring AT assessment was inconsistent w findings of fact re student did not need AT. HO order for SD to take reasonable steps to prevent bullying was not supported by the record evidence that showed that SD had taken reasonable corrective actions. **{surprise ending never good};** IS by Sepiol v Sch Town of Munster 64 IDELR 40 (ND Ind 9/10/14) Court criticized HO decision as **inconsistent** where SD would continue to use a methodology that wasn't working for a second school year after HO had found that it denied FAPE for the same thing in first school year.

g. JG by Jimenez v. Baldwin Park Unified Sch Dist 65 IDELR 177 (CD Calif 3/20/15) Court rejected HO's analysis where she **mischaracterized** the evidence, **ignored** mom's testimony, **failed to mention** the student's testimony, and where HO's analysis was not thorough and did not give a **fair representation** of the record; Scott ex rel CS v NY City Dept of Educ 63 IDELR 43 (SDNY 3/25/14) conclusions **not supported** by record; SRO failed to consider significant evidence; failed to **address** obvious weaknesses and gaps in evidence; **mischaracterized** evidence; and improperly substituted credibility determinations for those of ho who observed testimony; Howard G ex rel Joshua G v State of Hawaii, Dept of Educ 62 IDELR 292 (D Haw 2/24/14) HO decision not supported by the record; Cupertino Union Sch Dist v KA by SA & JS 64 IDELR 200 (ND Calif 12/2/14) Court remanded where HO award of compensatory education was not supported by the record; ho's award was hour-for-hour with no analysis of educational harm; Pointe Educ Services v AT 63 IDELR 279 (D Ariz 8/14/14) Court ruled that HO's findings were **not supported** by the evidence and disagreed with ho's credibility analysis. See, Forest Grove Sch Dist v Student 63 IDELR 163 (D Ore 6/9/14)(ignored contradictory evidence).

h. BH by JH & JH v Johnston County Bd of Educ 65 IDELR 66 (EDNC 3/19/15) Court reversed HO and SRO decision where they **failed** to make **findings** of fact or corresponding **conclusions** of law on **numerous issues** raised by the parents' claim. The HO decision which was summarily adopted by the SRO is **virtually a wholesale adoption of the SD's proposed final**

decision. A line by line comparison reveals that the **HO adopted with no substantive modifications** all 480 findings of fact and 79 conclusions of law proposed by the SD.

i. LaGue v Dist of Columbia 66 IDELR 101 (DDC 9/16/15) The need for remand was particularly obvious where some of HO's **findings are unexplained** and others are stated in **hypothetical form**; WW ex rel MC v NY City Dept of Educ 63 IDELR 66 (SDNY 3/31/14) SRO decision **failed to address** two issues (composition of IEPT & whether school too large) therefore court remanded; Rodriguez & Lopez ex rel CL v Independent Sch Dist of Boise City # 1 63 IDELR 36 (D Idaho 3/28/14) Court declined to defer to ho decision that was **sparse and conclusory** on one issue; MO v Dist of Columbia 62 IDELR 6(DDC 6/30/13) Court remanded case to HO where decision **failed to explain** his reasoning for concluding that LEA considered information provided by parents to IEPT. Conclusory statements were insufficient; EF v Newport Mesa Unified Sch Dist 65 IDELR 265 (CD Calif 6/22/15) HO gave due **credit** to parent's expert testimony re IEP goals and fba; Kelsey v Dist of Columbia 115 LRP 14802 (DDC 1/13/15) Court ruled that HO properly discounted the testimony of parent's expert where he used the wrong legal standard; ML by Leiman v Starr 66 IDELR 7 (D Md 8/3/15) Court rejected parent argument that HO failed to consider evidence where he **discussed** it but clearly did not credit it or give it weight.

j. Marshall Joint Sch Dist No 2 v. CD by Brian & Traci D 616 F.3d 632, 54 IDELR 307 (7th Cir 8/2/10) Seventh Circuit reversed HO who had applied the **wrong** legal **standard** for eligibility (HO determined that disability could affect ed performance not that it did affect performance); See, Forest Grove Sch Dist v Student 63 IDELR 163 (D Ore 6/9/14) Mgst gives little deference where ho findings were not careful (no **discussion** of witness testimony) and little deference to ho conclusions of law where ho failed to support them with **caselaw** and where ho ignored contradictory evidence and where ho imposed an arbitrarily high **legal standard** despite decades of court interpretations of IDEA; Contrast, DeKalb County Bd of Educ v Manifold ex rel AM 65 IDELR 268 (ND Ga 6/16/15) Court rejected

SD argument that HO improperly applied the ADA **legal standard** for effective communication to an IDEA claim where HO followed IDEA case law; Cobb County Sch Dist v DB by GSB & KB 66 IDELR 134 (ND Ga 9/28/15) HO affirmed where his judgment was sound, he applied correct legal standard, and his findings were supported by record evidence; JD ex rel AP v NYC Dept of Educ 66 IDELR 219 (SDNY 11/17/15) SRO given deference where his decision was well reasoned and he **explained why** he rejected contradictory evidence.

k. Rachel H v Dept of Educ, State of Hawaii 63 IDELR 155 (D Haw 6/18/14) Court gives more deference where ho's findings are thorough and careful; here substantial deference where ho gave **careful consideration** to post hearing briefs and ho participated in **questioning** witnesses and showed strong familiarity with the evidence.

l. SD ex rel HV v Portland Public Schs 64 IDELR 74 (D Maine 9/19/14) Court reversed HO's conclusion that the parent was to blame for IEP implementation failure because of her **demanding, blaming and insistent** attitude. Instead the court found that the **HO overstated** the parent's culpability and held that the denial of FAPE was the result of a badly drafted IEP with improper PLEPs.

m. Sch Union No. 37 v. Mrs C ex rel DB 518 F.3d 31, 49 IDELR 179 (1st Cir 2/26/8) First Circuit upheld the district court conclusion that HO decision lacked **persuasiveness** where it erroneously failed to find a six year delay in bringing a complaint to be unreasonable. Las Virgienes Unified Sch Dist v SK by JK & BK 54 IDELR 289 (CD Calif 6/14/10) HO decision was **not** entitled to deference because it was not careful and thorough. (no references to testimony or exhibits; serious errors re facts , eg time draft IEP was written); KE by KE & TE v. Independent Sch Dist # 15 54 IDELR 215 (D Minn 5/24/10) Court reversed HO where a number of the HO's findings were **not supported by evidence** in the record; Suggs v. District of Columbia 679 F.Supp.2d 43, 53 IDELR 321 (D DC 1/19/10) Court remanded case to HO where Ho did **not explain his reasoning**; HO cannot simply **disregard evidence**, HO must consider it, evaluate it and explain its impact upon his decision; Fort Osage R-1 Sch Dist v. Sims ex rel BS 55

IDELR 127 (WD Missouri 9/30/10) Court found that HO panel's findings of fact were not **supported by the evidence** and reversed the decision; Marc M ex rel Aidan M v. Dept of Educ, State of Hawaii 762 F.Supp.2d 1235, 56 IDELR 9 (D Haw 1/24/11) Court declined to give deference to HO decision where conclusions were **sparse and cursory** and **not linked to the facts developed at hearing**; SF & YD ex rel GFD v. New York City Dept of Educ 57 IDELR 287 (SDNY 11/9/11) Court found that HO analysis was not entitled to deference where he did **not carefully consider** the evidence (3/4 of a page double spaced in decision), but did give deference to SRO who carefully considered the evidence (nearly 3 single spaced pages); R-RK by CK v. Dept of Educ, State of Hawaii 57 IDELR 70 (D Haw 8/1/11) Court did not give deference to HO decision that was not carefully **reasoned**. SB by Dilip B & Anita B v. Ponoma Unified Sch Dist 50 IDELR 72 (C.D. Calif 4/15/8) HO decision was careful, impartial and sensitive to the complexities of the issues, but the court reversed where it disagreed as to the key conclusions of law. P by Peyman v. Santa-Monica Malibu Unified Sch Dist 50 IDELR 220 (C.D. Calif 7/6/8) Court reversed HO where the decision **ignored crucial** undisputed **testimony** by the parent's expert and where HO's reasons for discounting the expert were **not persuasive**. Cranston Sch Dist v. QD by Mr & Mrs D 51 IDELR 41 (D. RI 9/8/8) The court noted that the HO's decision was flawed by a number of **inconsistencies and mistakes,** most notably misattribution of the sources of evidence for the facts found. Hunter v. District of Columbia 51 IDELR 34 (D. DC 9/17/8) Court remanded a due process hearing to a HO where decision concluded no denial of FAPE without discussing parent's unrebutted testimony that the student regressed under his 2004 IEP, yet 2006 IEP was nearly identical. EM by EM & EM v. Pajaro Valley Unified Sch Dist 51 IDELR 105 (N.D. Calif 10/17/8) HO decisions should be supported by fairly detailed factual findings to permit judicial review. Here court **remanded** the matter back to the HO for further explanation of why he favored one intelligence test over another and **how he evaluated** all of the mixed test data in concluding that the student was not eligible for special education.

n. CL & GW ex rel CL v Scarsdale Union Free Sch Dist 744 F.3d 826, 63 IDELR 1 (2d Cir 3/11/14) Second Circuit does not give deference to SRO decision where not sufficiently reasoned or carefully considered; MW by SW & EW v NY City Dept of Educ 725 F.3d 131, 61 IDELR151 (2d Cir 7/29/13) Second Circuit stated that courts will defer to HO decision where it is **well reasoned**, the HO shows **familiarity** with the evidence, and where the HO has a good **command of the evidence**; Hardison ex rel ANH v Bd of Educ of the Oneota City Sch Dist 773 F.3d 372, 64 IDELR 161 (2d Cir 12/3/14) IDEA HOs have greater institutional **competence** in matters of **educational policy** and therefore federal courts must give due weight to the administrative proceedings because the judiciary lacks the specialized knowledge and experience. In deciding what weight is due, the analysis will hinge upon considerations that normally determine whether any particular judgment is persuasive such as the **quality and thoroughness of the reasoning**, the **type of** determination under review, and whether the decision is based upon **familiarity with the evidence and witnesses**. Here district court failed to give sufficient deference to SRO's conclusion that parents' private school was inappropriate where SRO decision was sufficiently reasoned and supported by the record; JF & LV ex rel NF v NYC Dept of Educ 65 IDELR 35 (SDNY 3/3/15) Courts defer to HOs because courts lack expertise in educational policy. Deference is particularly appropriate where as here decision is grounded in **logical reasoning**, is thorough and where decision demonstrates HO's **command** of the record and where conclusions are supported with solid analysis; AA ex rel JA v NYC Dept of Educ 66 IDELR 73 (SDNY 8/24/15) **Well reasoned** HO decision entitled to deference.

o. South Kingston Sch Committee v Joanna S ex rel PJS 64 IDELR 191 (1st Cir 12/9/14) First Circuit ruled that district courts must give due deference to the hos superior educational expertise. Level of review is "**involved oversight**" i.e., somewhere in between the highly deferential "clear error" standard and the non-deferential "de novo" standard. Here the court rejected four findings of fact as not **supported by the record**.

p. MW by SW & EW v NY City Dept of Educ 725 F.3d 131, 61 IDELR151 (2d Cir 7/29/13) Second Circuit stated that courts will defer to HO decision where it is well reasoned, the HO shows familiarity with the evidence, and where the HO has a good command of the evidence; RE ex rel JE v. New York City Dept of Educ 694 F.3d 167, 59 IDELR 241 (2d Cir 9/20/12) Deference to the HO decision depends upon the **quality and reasoning** of the decision tempered by the following principles: [D]eterminations regarding the **substantive** adequacy of an IEP should be afforded more weight than determinations concerning whether the IEP was developed according to the proper procedures. Decisions involving a dispute over an appropriate educational **methodology** should be afforded more deference than determinations concerning whether there have been objective indications of progress. Determinations grounded in **thorough and logical reasoning** should be provided more deference than decisions that are not. And the district court should afford more deference when its review is based entirely on the same evidence as that before the SRO than when the district court has before it additional evidence that was not considered by the state agency; MH & EK ex rel PH v. New York City Dept of Educ 685 F.3d 217, 59 IDELR 62 (2d Cir 6/29/12) (same re principles; more deference is due to decisions that are careful and thorough and well-reasoned and to findings that are supported by record evidence.

q. Hansen ex rel JH v Republic R-III Sch Dist 632 F.3d 1024, 56 IDELR 2 (8th Cir. 1/21/11) After parent's case, school district elected not to put on any evidence and moved for a directed finding. HO panel granted the motion and issued a one paragraph decision in the school district's favor without any findings of fact. Eighth Circuit found that HO panel decision was entitled to no deference because **no facts** were found.

r. Sumner County Sch Dist 17 v. Heffernan ex rel TH 672 F.3d 478, 56 IDELR 186 (4th Cir 4/27/11) Fourth Circuit gave deference to HO findings of fact that were regularly made but disagreed with his conclusions and reversed a decision for the school district; CC v Fairfax County Bd of Educ 59 IDELR 95 (ED VA 7/19/12) Court found HO decision to have been regularly made. Court endorsed HO's weighing of the evidence and expert

testimony and his conclusion that school personnel testimony was entitled to greater weight because they were more familiar with the student; SA v. Weast 59 IDELR 243 (D. MD 9/26/12) Although a more detailed analysis is always valuable – no particular **level of detail** is required for a HO decision in the 4th Circuit. An IDEA HO is not required to offer a detailed analysis of his credibility findings.

s. Helsling v. Avon Grove Sch Dist 47 IDELR 256 (E.D. PA 3/30/7) Court found that a due process HO has the authority to grant declaratory relief in his decision; Dist of Columbia Public Schs (JG) 111 LRP 76506 (SEA DC 9/23/11) HO has **broad equitable authority** to fashion an appropriate remedy for a violation of IDEA- here awarding comp ed plus a thorough behavioral **evaluation**;; In re Student with a Disability 111 LRP 40544 (SEA WV 5/31/11) (same re authority); Letter to Miller 110LRP 73646 (OSEP 5/10/10) (HOs have broad authority to determine reimbursement for a unilateral placement.) Troy Sch Dist v KM 65 IDELR 91 (ED Mich 3/31/15) Court rejected SD argument that HO decision violated the **spending clause** where compensatory services included a 1:1 psychologist for the student which it alleged was not required by IDEA. Court ruled that psychological services are among the related services available through IDEA and appropriate relief here. Also HO order that parent and SD work cooperatively was consistent with IDEA; CC by Cripps v Hurst-Euless-Bedford Independent Sch Dist 65 IDELR 195 (ND Tex 5/21/15) Court did **not address** arguments that HO **exceeded** his authority by determining that the student's actions constituted a felony because the finding was not relevant to the issues he was deciding in a discipline case; CC, Jr v Beaumont Independent Sch Dist 65 IDELR 109 (ED Tex 3/23/15) Court ruled that an IDEA HO has no obligation or **authority** to hear **motions to reconsider** after the final decision is issued;

t. Allen by Bailey v. Altheimer Unified Sch Dist 48 IDELR 95 (E.D. Ark. 7/6/7). The SEA is required to implement and **enforce** the school district's compliance with a HO decision; Bd of Educ of the County of Nicholas v HA by Monica A 56 IDELR 136 (SDWVa 3/9/11) Court rejected LEA argument that a letter from

SEA stating that school district was in compliance with HO decision based upon documents submitted negated later HO decision after taking evidence. Court held that LEA violated spirit and letter of IDEA when it refused to comply with HO decision requiring it to choose one of three evaluators selected by the parent (adopting Mgst recommendation at 56 IDELR 103).

u. Options Public Charter Sch v. Howe ex rel AH 48 IDELR 282 (D.DC 9/26/7) Court rejected HO decision as **inadequate** where it stated the issues ambiguously, relied upon speculation and contained no findings of fact or conclusions of law. Instead of finding facts, HO's language included "it is entirely conceivable that," and it is most probable that the provision of FAPE…might have required…; York County Sch Dist 49 IDELR 178 (SEA SC 1/24/8) SRO criticized HO decision that contained numerous errors, but upheld the decision where the ultimate finding (FAPE provided) was correct. Upper Perkiomen Sch. Dist. 106 LRP 20190 (SEA Pa. 3/13/6) Although merely **reciting** testimony instead of finding facts is clearly not the best practice, credibility determinations of the hearing officer should ordinarily receive deference. Dist of Columbia v. Nelson ex rel CP 57 IDELR 192 (DDC 9/21/11) Court reversed HO who exceeded her authority by taking actions in decision inconsistent with IDEA,: removing LEA from IEP process leaving it to parents and a private school; restricting ability of LEA to object to IEPs for the student; ordering LEA to ensure that student received a diploma by age 21- IDEA does not guarantee outcomes- and by ordering to keep the student in special education =inconsistent with LRE principles.

v. AB v Baltimore City Bod of Sch Commissioners 66 IDELR 40 (D Md 8/13/15) Court criticized HO stay put order as **unclear** where HO ordered the private school named in a mediation agreement as stay put placement for the school year. Court interpreted HO to mean =stay put until litigation finished. Stay put order was also **problematic** because HO incorrectly questioned his authority to make SD pay for stay put placement; LJ by VJ & ZJ v. Audubon Bd of Educ 49 IDELR 6 (D.NJ 11/5/7). Court criticized HO decision as **unclear**. Because the order did not specify the relief to be awarded, the court looked to the

reasoning of the HO and the findings to fashion an order granting relief;

w. NR by BR v San Ramon Valley United Sch Dist 107 LRP 7500 (N.D. Calif 1/25/7) Where HO decision omitted key findings of fact, and the HO ignored certain evidence and the HOs conclusions were **not based** upon record evidence, the court considered the evidence de novo; See also, Alfonso v. District of Columbia 45 IDELR 118 (D.DC 2/16/6) HO's decision reversed where he failed to consider undisputed evidence; Bd of Educ of the E. Islip Union Free Sch Dist 106 LRP 71800 (SEA NY 11/21/6) SRO reversed HO who had ruled IEP inappropriate without making any findings concerning the development of the IEP; Pittsburgh Sch Dist 46 IDELR 233 (SEA PA 10/27/6) SRO panel reversed HO who failed to make findings of fact and conclusions of law specific to FAPE; Lakeview Lochl Sch Dist 107 LRP 11268 (SEA Ohio 10/11/6) SRO reversed HO decision that was against the weight of the evidence and which **lacked adequate findings** of fact and **conclusions** of law. Gail A ex rel Zachary A v. Marinette Sch Dist 48 IDELR 73 (E.D. Wisc. 3/22/7). HO decision was so **unclear** regarding the arguments raised that the court remanded the case to the HO.

x. East Penn Sch Dist 106 LRP 53549 (SEA PA 8/30/6) SRO panel substituted its own legal conclusions where HO decision was long on facts but short on law, containing **no legal citations** other than to non-binding state guidelines; New York City Dept of Educ 46 IDELR 114 (SEA NY 8/4/6) SRO reversed HO decision placing an arbitrary $34,000 cap on reimbursement where the decision did not provide any rationale or other support for the cap. Pennsbury Sch Dist 107 LRP 63404 (SEA PA 9/25/7) SRO Panel criticized HO decision for relying upon SpEd literature concerning best practices and upon unpublished decisions from other jurisdictions rather than published opinions decisions setting forth the law. In re: Student with a Disability 108 LRP 40156 (SEA NY 6/4/8) SRO reversed HO who lacked authority to reopen a case and issue a decision with the opposite conclusion (no FAPE.)

y. BO & PS ex rel KO v. Cold Spring Harbor Central Sch Dist 57 IDELR 130 (EDNY 9/1/11) Court criticizes HO for stating

that he must **defer** to the judgment of **professional educators** as inconsistent with IDEA. This statement from Rowley applies only to court review of SEA proceedings. Court notes that HO has the authority to decide a case upon substantive grounds and render a decision using his own best judgment in light of the evidence. No harm found where odd statement did not affect outcome

z. Bd of Educ of Fayette County, KY v. LM ex rel TD 107 LRP 10801 (6th Cir. 3/2/7). The Sixth Circuit held that it is improper for a HO to remand a case to the IEP team for determination of compensatory education. The court reasoned that a hearing officer may not be employed by an LEA, and, therefore, IEP teams, which include LEA employees, cannot be **delegated** the duty of fashioning relief. HO must determine the remedy for an IDEA violation. Contrast, Bd of Educ of the South Huntington Union Free Sch Dist 47 IDELR 60 (SEA NY 12/7/6). SRO remanded the matter to the IEP team when HO improperly intervened in a question of methodology; and Bd of Educ of New York City 46 IDELR 299 (SEA NY 11/9/6) SRO remanded the issue of placement to the IEP team where HO had not developed a sufficient record. New York City Dept of Educ 106 LRP 65685 (SEA NY 10/30/6) SRO reversed HO who improperly found student eligible because eligibility committee lacked a regular ed teacher. Instead, the SRO remanded the matter back to the eligibility committee for a determination re eligibility; New York City Dept of Educ 48 IDELR 116 (SEA NY 5/30/7) (remand to IEPT); Fulton County Sch Dist 49 IDELR 30 (SEA Ga 7/11/7) (remand for a new manifestation determination); Hacienda La Puente Unified Sch Dist 48 IDELR 237 (SEA Calif 7/23/7); Fallbrook Union High Sch Dist 107 LRP 69374 (SEA Calif 11/20/7) (HO remanded matter to IEPT to determine correct placement).

aa. Friendship-Edison Public Charter Sch Collegiate Campus v. Nesbitt 534 F.Supp.2d 61, 49 IDELR 159 (D. DC 1/31/8) Court vacated HO decision where HO **failed to explain** a compensatory education calculation. Mary McLeod Bethune Academy Public Charter Sch v. Bland ex rel TB 534 F.Supp.2d 109, 49 IDELR 183 (D. DC 2/20/9) Court remanded case to HO

where the decision provided no explanation of the award of 37.5 hours of compensatory education or of the HO's reasoning in getting to that conclusion NOTE On remand, the court approved the HO's explanation of the calculation, 108 LRP 31400 (D.DC 5/27/8)..

bb. Leticia H ex rel RH v. Yselta Indep Sch Dist 47 IDELR 13 (W.D. Tex. 12/14/6) HO had found that FAPE had been provided, but issued order requiring district to correct **procedural** errors regarding IEP. The Court reversed holding that there can be no relief where there is no violation of IDEA (???); Kirby by Kirby v. Cabell County Bd of Educ 46 IDELR 156 (S.D. WV 9/19/6) Court held that HO decision's directive for implementation requiring better present levels was inconsistent with HO's conclusion that FAPE had been offered by the district.

cc. Scott v. District of Columbia 106 LRP 19073 (D.DC 3/31/6) HO's findings of fact were **not supported** by the record evidence; Bd of Educ of New York City 47 IDELR 30 (SEA NY 11/9/6) It is the responsibility of the HO to ensure that there is an adequate record to support her decision and to permit meaningful review of her decision; LS by Julia V Bd of Educ, Lansing Sch Dist 65 IDELR 225 (ND Ill 6/11/15) HO erred by considering in his decision an **affidavit** from the SD that contradicted witness who testified at dph without giving parent an opportunity to provide evidence rebutting the affidavit.

dd. SG v. District of Columbia 533 F.Supp.2d 105, 49 IDELR 284 (D.DC 2/5/8) Where HO incorporated a **settlement** agreement into his decision, parents were prevailing parties for purposes of attorneys fees. VM & KM ex rel DM v. Brookland Sch Dist 50 IDELR 100 (E.D. Ark. 5/6/8) (same) YN by Gillamadrid v Clark County Schs 63 IDELR 7 (D Nev 3/20/14) HO dismissal order noting that the student received compensatory education as a part of a settlement was not sufficient judicial imprimatur to confer **prevailing party status** on parents for attorney's fees purposes; RBIII by Batten v Orange East Supervisory Union 66 IDELR 277 (D Vt 12/30/15) Where HO dismissed dpc after settlement in mediation, and dismissal did not mention settlement or change parties' legal relationship, insufficient **imprimatur**.

ee. IEC by JC v Minneapolis Public Schs SSD #1 61 IDELR 288 (D Minn 8/26/13) Court rejected parent argument that SEA should have stopped HO from dismissing two dpcs. SEA has no such authority.

ff. FB & FB ex rel LB v NY City Dept of Educ 923 F.Supp.2d 570, 60 IDELR 189 (SD NY 2/14/13) Court remanded to SRO for ruling on issues raised by dpc but not addressed in first tier HO decision; . Lofisa S ex rel SS v State of Hawaii, Dept of Educ 60 IDELR 191 (D Haw 2/13/13) Court reversed HO who ruled on issues not raised by dpc; Dist of Columbia v. Pearson ex rel JP 60 IDELR 194 (DDC 2/8/13) Ct ruled that HO erred by raising the issue of student's truancy on her own volition where not in dpc or amendment thereto; AM by YN v NY City Dept of Educ 61 IDELR 214 (SD NY 8/9/13) Court refused to consider issue re ESY not stated in dpc; GI by GI & KI v Lewisville Independent Sch Dist 61 IDELR 298 (ED Tex 7/30/13) Parent was not allowed to raise an assistive technology argument on appeal where not in dpc and not mentioned at PHC where ho went over each issue.

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