Tackling the Issues: Why Do It and How?



Introduction

- Broad authority to do all things that are reasonably necessary for the proper administration of the DPH
- Authority extends to requiring specification of the issues
- OSEP suggests HOs have a role to play in managing the issues

Why do it?

- Everyone involved knows the precise questions the HO is being asked to answer
- May prompt settlement
- The responding party is able to prepare for the hearing

Why do it?

- The hearing is focused
- The HO is able to determine whether he has jurisdiction over the specific issues
- Helps with writing a good decision

PHC

- It is at the PHC that the HO begins to work on writing a good decision
- Set expectations for the PHC

Review

- DPC
 - Subject matter
 - Content
 - Four corners
- Response
- Amendments

Effective Practices

- Prepare for the PHC
 - Identify questions intended to help clarify the issue(s) and / or the relief sought
 - Draft a rough outline of the issue(s)
 - Outline the standard for each issue

Effective Practices

- At the PHC
 - Ask clarifying questions
 - Get specifics by reviewing the IEP (line-by-line, if necessary)
 - Start from the end

Effective Practices

- Simplify and organize the issue(s)
 - Eliminate duplicity
 - Subdivide single issues that should be addressed separately
 - Restate issue(s) in question format
 - Present multiple issues in logical sequence

Effective Practices

- Allow the parties to get back to you with answers to specific questions when more time is needed
- Document issues not in dispute
- Eliminate non-hearable issues
- Be flexible

First Exercise

DPC

Whether Respondent [LEA] denied the Student a FAPE by failing to conduct the comprehensive psychological reevaluation requested by the parent.

PHO

Whether Respondent denied the Student a free, appropriate, public education ("FAPE") by failing to conduct a comprehensive psychological assessment in response to Petitioner's [Parent] written request on October 4, 2011, and oral reiteration of that request on October 17, 2011.

DPC

Whether Respondent [LEA] denied the Student a FAPE by failing to develop an appropriate Individualized Education Program ("IEP") on or about October 17, 2011.

PHO

Whether Respondent [LEA] denied the Student a FAPE on October 17, 2011, by developing an IEP that does not include any goals in mathematics, sufficient reading and writing goals, or any behavioral goals or a behavior implementation plan, and fails to provide testing accommodations and assistive technology that would enable the Student to communicate effectively.

DPC

LEA denied the Student a FAPE by failing to provide the Student with an appropriate school placement for the entirety of the 2011-2012 school year. Specifically –

LEA failed to provide an appropriate placement to the Student by placing him at Public School 1 to begin the 2011-2012 school year.

LEA failed to provide an appropriate placement to the Student by failing to provide him with any placement from January through March of 2012.

LEA failed to provide an appropriate placement to the Student by placing him at Public School 2 beginning in March 2012.

PHO

Whether Respondent [LEA] denied the Student a free, appropriate, public education ("FAPE") from August 2011 through March 2012 by failing to provide the Student an appropriate placement because the school he was attending during that time, Public School 2, could not implement his individualized educational program ("IEP") or provide the therapeutic environment he required to access the curriculum.

Whether Respondent [LEA] denied the Student a FAPE from April 2012 through the present by failing to provide the Student an appropriate placement/location of services because the school he currently attends, Public School 3, cannot implement his IEP or provide the therapeutic environment he requires to access the curriculum.

DPC

LEA denied the Student a free appropriate public education by failing to provide the Student with an appropriate placement/location of services.

LEA denied the student a free appropriate public education by failing to follow proper procedure in determining the Student's educational placement/ location of services.

LEA denied the Student a free appropriate public education by reducing the amount of specialized instruction the Student receives on a weekly basis.

PHO

Whether LEA failed to provide the Student a free appropriate public education ("FAPE") by:

Failing to provide the Student an appropriate placement or location of services. The Student requires a placement/location of services that will provide him vocational training in auto mechanics, the occupation the Student would like to pursue. The placement at Non-Public School proposed by LEA following the February 17, 2012 meeting is not appropriate because it does not offer such training.

Failing to follow proper procedures in determining the Student's placement/location of services in that the Student (who is an adult) was denied his right to participate in the decision; and

Unilaterally reducing the number of hours of specialized instruction on Student's IEP from 29 hours to 25.5 hours at the February 17, 2012 IEP meeting.

Second Exercise