

The Different Standards of Appellate Review in IDEA Cases

By Jennifer Donaldson

In Pennsylvania, there are two levels of appellate review available to an aggrieved party seeking reversal of an adverse decision in an IDEA case. Initially, if a party is aggrieved by a decision of a hearing officer, review is available by a Special Education Appeals Panel, commonly referred to as an Appeals Panel, which consists of three administrative officers. Thereafter, if a party is aggrieved by a decision of an Appeals Panel, review is available by a judge in either state or federal court. At both levels of appellate review, the reviewing body provides a check on the preceding decision. However, the precise standard of review to be employed in the appellate review depends upon the reviewing body involved.

In reviewing a decision of a hearing officer, an Appeals Panel is required to defer to the factual findings of the Hearing Officer on matters of credibility unless non-testimonial extrinsic evidence in the record would justify a contrary conclusion or unless the record read in its entirety would compel a contrary conclusion. The rationale for giving deference to a hearing officer concerning credibility determinations and the factual findings that occur as a result thereof is based on the fact that the hearing officer is the only one to hear and observe first-hand the testimony of the witnesses. The observation of live testimony provides the opportunity to judge the demeanor and tone of the witnesses, which cannot be reproduced in the transcripts of the testimony, and, thus, puts the hearing officer in the best position to analyze the witnesses' credibility. However, beyond credibility determinations, the Appeals Panel is to employ a *de novo* standard of review, meaning that the Appeals Panel is to look at the questions of law as though they had not been heard before and make its own conclusions. Thus, the Appeals Panel is free to make its own decisions concerning educational policy.

Thereafter, if a party is aggrieved by the decision of the Appeals Panel, review is available by a judge in either federal or state court and involves an examination of the record, and additional evidence if necessary, in order to determine if a preponderance of the evidence supports the prior rulings. In court, just as with an Appeals Panel, a judge is to give deference to the credibility determinations of the hearing officer for the same reasons as discussed above. The difference in the standard of review employed by a judge, in comparison to that employed by an Appeals Panel, is that a judge is to give due deference and due weight to the factual findings and conclusions of the administrative officers who have ruled upon the matter, unless the judge can point to contrary non-testimonial extrinsic evidence on the record to justify a contrary conclusion. This standard is commonly referred to as a "modified *de novo*" standard of review, meaning that, while the judge is to review the results of the administrative proceedings, the judge must consider the factual findings from the administrative proceedings as *prima facie* correct. Therefore, while the judge is to conduct an independent review of the case and base his/her decision upon the preponderance of evidence, the judge is not to substitute his/her own notions of sound educational policy for those of the administrative officers whose decision is under review. The rationale for imposing this modified *de novo* review upon judges in evaluating IDEA claims is that administrative officers possess a professional background and expertise in the field of education, whereas judges do not necessarily possess such a background or expertise.

In Pennsylvania, the modified *de novo* review requires further explanation due to the unique two-tiered nature of Pennsylvania's special education due process hearing system, which requires both a local-level administrative review by a hearing officer and a state-level administrative review by an Appeals Panel before entering the court system. In reviewing IDEA cases under the modified *de novo* standard, judges owe deference to the findings and conclusion of the Appeals Panel, even when the results of Appeals Panel contradicted those of the hearing officer. However, a judge would owe less deference to an Appeals Panel decision when the Appeals Panel improperly ignored credibility-based findings of fact made by the hearing officer.

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