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STANDARD OF REVIEW IN IDEA APPEALS

The standard of review that must be employed by a judge in reviewing an IDEA case is slightly different than the standard of review that was required of the appeals panels under the prior system of appellate review of hearing officers' decisions. Thus, in deciding whether to appeal a hearing officer's decision, it is important to understand the standard of review that will be employed by a judge.

In reviewing a decision of a hearing officer, a judge must review the administrative record and base his or her decision on the preponderance of evidence. Also, a judge may, at the request of a party and at the judge's discretion, permit additional evidence to be presented.

In conducting the review, a judge is required to defer to the hearing officer's determinations of the credibility of the witnesses, 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 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 examine 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.

In addition to deferring to the hearing officer's credibility determinations, a judge is to give due deference and due weight to the hearing officer's factual findings, unless the judge can point to contrary non-testimonial extrinsic evidence on the record to justify a contrary conclusion.

This standard of review is commonly referred to as a "modified *de novo*" review, meaning that, when the judge is reviewing the hearing officer's decision, the judge must consider the hearing officer's factual findings as *prima facie* correct. Therefore, while the judge is to conduct an independent review of the case and base his or her decision upon the preponderance of evidence, the judge is not to substitute his or her own notions of sound educational policy for those of the hearing officer. The rationale for imposing this modified *de novo* standard of review upon judges in evaluating IDEA claims is that the hearing officers were selected by the state because they possess a professional background and expertise in the field of education, whereas judges do not necessarily possess such a background or expertise. Still, a judge may reverse a decision of a hearing officer, but is obliged to explain why.

Thus, when deciding whether or not to try to appeal an unfavorable decision by a hearing officer, a school district should consider whether or not it will be able to prove that a preponderance of the evidence supports overruling the presumption that the hearing officer was correct or that a pure legal error has occurred.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.