Dealing With Pro Se Litigants in Administrative Hearings

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I. Hearing Officer Duty to Make a Complete Record

Particularly where a party is not represented by counsel (such parties are sometimes referred to as "pro se" parties), an administrative hearing officer has a duty to develop a complete record fully and fairly. Thompson v. Schweiker 665 F.2d 936 (9th Cir 1982); Baker v Employment Appeal Board 551 N.W.2d 646 (Iowa Ct App 1996). See, Board of Education of the Victor Central School District 27 IDELR 1159 (SEA NY 1998); Salisbury Township School District 26 IDELR 919 (SEA PA 1997); LBDE Public Schs v Massachusetts Bureau of Special Education Appeals 59 IDELR 284 (D Mass 9/27/12) (HO develops the administrative record which a court needs to review an appealed decision.); FL by AL & RL v NY City Bd of Educ 938 F.Supp.2d 417, 61 IDELR 45 (ED NY 4/12/13) Court remanded to HO because the administrative record was unacceptably sparse, Student's disability was severe and court needed more information regarding the physical environment in the school.

Related to this is the duty of the hearing officer to ensure that each party has the opportunity to present its case at the hearing. Bd. Of Educ. Of the City School District of the City of New York 28 IDELR 263 (SEA NY 1998); Wimbler Area Sch. Dist. 36 IDELR 53 (SEA PA 2001); Cantwell v. City of Boise 2008-ID-R0718.001 (Id. S.Ct. 6/17/8) (Due process requires that the parties be permitted to give their side of the story.); *Walker v Dept of Housing* 29 A.3d 293 (Ct App Md 2011) Hearing officer must develop a record; Butler v Astrue 926 F.Supp.2d 466 (ND NY 2013) (hearing officer has an affirmative duty to develop the record); District of Columbia Public Schs (JS) 112 LRP 47415 (SEA DC 6/28/12) HO ruled that in IDEA cases, HO has the power to **develop** the administrative record, including the ability to depart from the adversary process so long as the HO remains impartial; Hiawatha Sch Dist # 426 (JS) 58 IDELR 269 (SEA Ill 2/27/12) HO has a duty to make a complete record (including the power to ask questions of Ws) and to ensure a fair process. But see, Wafford v. Industrial Claim Appeals Office 907 P.2d 741 (Colo.Ct.App. 10/26/95) (HO only required to conduct hearing so that either party has an opportunity to develop fully and fairly his or her own record.)

The duty to make a complete record is rooted in the principle of fairness; each party should have an opportunity to present its evidence. See section 615 (h) of the IDEA, and Schaffer v. Weast 546 U.S. 49, 126 S.Ct. 528, 44 IDELR 150 (11/14/5). It is critical in making a complete record, however, that the hearing officer remain impartial. Making a complete record does **not** mean that the hearing officer becomes an advocate for a party. Walking the fence between compiling a complete record and advocacy on behalf of a party is a difficult, but very necessary, task.

When a pro se party is presenting his case, the hearing officer should ask enough questions to ensure that the party has testified to all relevant areas that he wants to provide testimony on. The less sophisticated and educated the pro se party, the more questions that the hearing officer may need to ask. It is a good idea to begin any such line of questions with a statement like "you understand Ms. X that I am neutral and cannot act as your lawyer in this case…" It is generally advisable to permit a pro se party to begin testifying in narrative form, rather than the traditional question and answer method, prior to cross-examination and the hearing officer's questions. If the testimony of a pro se party bogs down, the hearing officer should intervene and ask a few (or more) questions designed to elicit relevant information. Many courts have expressly approved of the hearing officer's right to ask questions of witnesses. Discipline of Haskell 962 P.2d 813, 136 Wash.2d 300 (Wash. 9/10/98) (also approves HO ordering W to retrieve document and making it an exhibit.); Comito v. Police Bd of the City of Chicago 317 Ill.App.3d 677, 739 N.E.2d 942 (Ill.Ct.App. 11/1/00); SA by CA v. Exeter Unified Sch Dist 110 LRP 69145 (ED Calif 11/24/10) (HO may ask questions), See also, Doggett v Wyoming Unemployment Insurance Comm 2014 WY 119 (Wy S.Ct. 9/20/2014); (JG) AM v Dist of Columbia 933 F.Supp.2d 193, 61 IDELR 21 (DDC 3/28/13) (Court ruled that it was appropriate for HO to control the hearing process by interrupting witness who was testifying to issues that were not identified in prehearing memo or prehearing conference.) But see, Dept of Highway safety & Motor Vehicles v. Pitts 815 So.2d 738 (Fla.Ct.App. 5/2/02)(HO may ask questions to clarify the record evidence but may not abandon the position of neutrality and elicit new evidence which the parties themselves failed to submit.) But note that **even pro se litigants** are required to inform themselves of procedural

rules and comply with them RB ex rel AB Dept of Educ City of NY 59 IDELR 139 (SDNY 7/18/12); WV by NV v Encinitas Union Sch Dist 59 IDELR 289 (SD Calif 9/25/12).

The Hearing Officer should be careful not to step over the line and become an advocate for a party in the process of establishing a complete record Shaw v. Marques, et al RI Super. 2011 (R.I. Superior Court April 4, 2011).

Another technique for developing a complete record is asking the parties before you adjourn the hearing whether they have any more evidence and whether they have anything else to say. This technique is particularly effective for pro se parties who may be unsure as to when they were supposed to say or do something during the course of a hearing.

To a lesser extent, the duty to ensure a complete record also applies to a situation where a party has a lawyer who is not conversant with the area of law involved in the case. Many hearing officers believe, however, that when a party is represented by a lawyer, no matter how bad, the hearing officer's duty to ensure a complete record is inapplicable. In these situations, I believe that the duty does apply, although it is greatly reduced by the presence of counsel. The hearing officer should take minimal steps to ensure a complete record in these cases, such as requests to the lawyer as to whether certain topics will be covered. The hearing officer should again remember that the duty does not make the hearing officer an advocate for the party with a bad lawyer.

A corollary to the duty to make a complete record is the requirement that parties be permitted to fairly present their evidence. It was a flagrant disregard of a party's due process rights for a hearing officer to prevent any evidence or argument on an issue properly presented. Eastwood Nursing and Rehabilitation Center v. Department of Public Welfare 910 A.2d 134 (PA Commonwealth Ct. 11/3/06).

See, Model Rules of Judicial Conduct, Rule 2.2:

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment on Rule 2.2:

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] ***It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.***

(Emphasis added).

II. Dealing With Difficult Pro Se Parties

This outline discusses unacceptable disruptions by problem pro se parties that sometimes arise in the process of conducting a hearing. Please note that you should always first consult any applicable administrative procedure act, statute, regulations, or any applicable hearing officer manual or similar document before relying upon any suggestions contained in this outline.

Most of us have experienced nightmares after having problems with out of control pro se parties (i.e., parties who are not represented by legal counsel). Unrepresented parties are often carried away by their emotions. Sometimes the

conduct can be so far out of bounds that it jeopardizes the record. Certain behaviors are unacceptable if we are to properly perform our duty to conduct a fair and reasonable hearing.

This outline will include a discussion of techniques and suggestions for dealing with the problem during the hearing. The techniques and suggestions presented herein are the result of my experience in conducting hearings. In addition, I have also included a sampling of caselaw that demonstrates how some other hearing officers have dealt with similar problems in hearings. It should be noted, however, that there is little caselaw concerning how to conduct a hearing. I suspect that the reason for the relative scarcity of caselaw is that the hearing officer has wide discretion for determining the procedures to be applied in a hearing, and that absent an abuse of that discretion, these issues rarely end up in court.

Although I have included my interpretation of the cases cited in this outline, it is important for you to read the cases for yourself. You may then interpret the cases and decide whether you might want to try the techniques used by the hearing officer in the case cited. As always, this outline and presentation are submitted for educational purposes only, and nothing stated herein should be construed as legal advice, and nothing stated in the course of this presentation should be construed as having applicability to any pending case or set of facts.

1. Techniques

Unlike our judicial counterparts, an administrative hearing officer or ALJ generally does not have the power to find a party in contempt of court. In my opinion, however, we can effectively deal with contumacious conduct even without contempt powers.

Before considering techniques it is important to distinguish between minor infractions and major infractions by lawyers. Minor infractions are actions that you wish to cease but which can be tolerated. Minor infractions include muttering or talking during testimony; inappropriate gestures, posturing or pouting. For minor infractions, the hearing officer might ignore the first occurrence or use humor to make a point.

The most effective technique for dealing with minor infractions, however, is what I call the **raised eyebrow sanction.** A hearing officer employs the raised eyebrow sanction when she clearly expresses her displeasure with the conduct of the party. Invoking the raised eyebrow sanction almost always stops minor infractions.

Another technique to correct party misbehavior is to take one or multiple recesses or to continue the hearing until the next day. In these situations the misbehaving party should be given a **"time out" instruction**, that is, tell them to think about what they have done.

Major infractions are actions that simply cannot be tolerated. Major infractions include lawyers refusing to comply with hearing officer rulings, aggressive disruption of the hearing or intimidation of witnesses. When major infractions occur, the hearing officer should go off the record the first time that it happens and ask to talk to both parties or the pro se party and the lawyer. While off the record, the hearing officer should issue a warning that the conduct will not be tolerated. For a second offense, the hearing officer should stay on the record and issue a firm warning. The hearing officer should state that "I know that your conduct cannot be inadvertent because I have previously warned you in an off the record conversation." The hearing officer should then make it clear that if the misconduct is repeated, the party will be ordered to leave the hearing room. If a major infraction is repeated a third time, the hearing officer should

order the party out of the hearing room and take appropriate steps to determine whether the party represented by the offending counsel needs a continuance to find new legal counsel (as always bearing in mind any deadlines). Depending upon the severity, or lack of severity, of the conduct, the hearing officer might have to either skip one or more steps, or else, repeat one or more steps. NOTE: proceed with caution when removing a party from the hearing. I have not yet found it necessary to have a party removed. The misconduct has always been cured before that sanction became necessary. Only in the rarest of extreme cases, however, should a party be ordered out of the hearing. If a party has a right to a hearing, it would be a rare case indeed where it would be appropriate or permissible to kick the party out of the hearing room. Proceed with caution and exhaust every other possibility before imposing such an extreme sanction.

If you believe that a party is trying to abuse you or trick you, be very careful not to have conversations off the record. The party may purposefully misrepresent what you said while off the record when you return. It is also imperative to let the parties know that you, and only you, control when you go off the record.

Bear in mind that the pro se parties to an administrative hearing are often quite **upset**. This is particularly true in special education and certain other types of disputes where the parties are often angry and exasperated by the time that they end up in a hearing. Although it is critical that the hearing officer maintain reasonable order in the hearing room and that the hearing officer ensure that a fair hearing is provided, it is advisable to issue plenty of warnings before taking any serious actions against an emotional party.

Many parties have **never been involved** in any type of legal proceeding before. Particularly where a party

appears pro se, it is very important for the hearing officer to **explain** why certain behaviors cannot be tolerated during the hearing.

2. Caselaw

A California Court has upheld the right of a hearing officer to terminate a hearing because of extremely disruptive behavior by a party who **repeatedly refused** to abide by the **rulings** of the hearing officer and who repeatedly **yelled** at witnesses and **abused** the opposing party and the hearing officer. In Gil N. Mileikowsky v. Tenet Healthsystem, et al 128 Cal.App.4th 531, 27 Cal.Rptr.3d 171 (Second Div. April 18, 2005), the Court held that the hearing officer's decision to terminate the hearing was supported by the statutes and regulations governing the proceeding. Moreover, the Court held that even if the power to control the proceedings was not specifically enunciated by the statutes and other law, hearing officers have wide latitude as to all phases of the conduct of the hearing. The court stated further that just as judges have the ***inherent authority*** to control litigation before them, so too administrative hearing officers "… must have the power to control the parties and prevent deliberately disruptive and delaying tactics."

JD by Davis v. Kanawha County Bd of Educ 53 IDELR 225 (SD WVa 11/4/09), aff'd on other grounds, JD by Davis v. Kanawha County Bd of Educ 54 IDELR 184 (4th Cir. 4/27/10) NB: **UNPUBLISHED,** Pro se parent requested indefinite continuance and HO requested more information. Parent refused to provide more information as to parent's medical conditions on privacy grounds. HO granted a short continuance but denied request for an indefinite continuance as not permitted under IDEA. Parent did not appear at hearing. HO denied motion to dismiss, but imposed the **sanction** of proceeding to hearing without the parent being present. Ct affirmed HO rulings no abuse of discretion as

hearing procedures are within the discretion of the HO; Student v Hartford Bd of Educ No. 15-0384 (JJ) (SEA CT 9/15/16). Where a pro se parent refused to provide witness and exhibit information after numerous instructions from the hearing officer, failed to request an extension, and otherwise failed to comply with HO orders, HO dismissed parent dpc with prejudice for failure to prosecute. The decision is available here.

An opinion by the Third Circuit demonstrates just how inappropriate and disruptive a party can behave in an administrative hearing. In a hearing before the stewards of the New York State Racing and Wagering Board, a pro se party became upset and began **yelling** loudly, pounding on the desk, shouting **vulgarities** and even threatening to **strangle** the opposing party. The hearing officer (steward) tried to have the offending party leave the hearing room in order to settle down, but he refused to leave and continued his tirade and cursing. The hearing officer cautioned the party to watch his language, and the party responded by calling the calling the hearing officer a "c---s---er" The hearing officer fined him $500, and the party **taunted** the hearing officer to "make it a thousand." This situation continued to escalate until the hearing officer had imposed the maximum $5,000 fine prescribed by the Racing Board regulations. The Racing Board upheld the sanction, but reduced the fine to $3,000. The Third Circuit rejected a free speech challenge and upheld the fine. Perez v, Hoblock 368 F.3d 166 (Third Cir. May 18, 2004).

Card ex rel JD v Citrus County Sch Bd 65 IDELR 3 (MD Fla 2/12/15) Although **pro se parties** are held to less stringent standards and their pleadings must be liberally construed, they must still comply with the rules. Here failure to specify facts and failure to include or describe administrative record caused court to dismiss, with leave to amend; Aaron v Gwinnett County Sch Dist 64 IDELR 16

(ND GA 8/19/14) Court noted that although pleadings by **pro se parties** are entitled to **liberal** construction, such generosity does **not excuse** them from complying with the court's **procedural rules**; informed the court that it had put money aside for this purpose; Horen v Bd of Educ of the City of Toledo Public Schs 63 IDELR 290 (ND OH 8/1/14) Court imposed Rule 11 sanctions vs **pro se** parent for > $32K in attorney fees. Parent had filed three previous complaints which the court had dismissed, warning on two occasions of future sanctions. Court concluded that **sanction** is only way to **deter** this **misbehavior.** (@n.3: Parent response to SD motion to dismiss was **5,500 pages** long.); Aaron v Gwinnett County Sch Dist 64 IDELR 16 (ND GA 8/19/14) Court noted that although pleadings by **pro se parties** are entitled to **liberal** construction, such generosity does **not excuse** them from complying with the court's **procedural rules;** Finley v Shelby County Schs 114 LRP 3705(WD Tenn 1/22/14) adopts Mgst @ 114 LRP 3712. Court dismissed complaint of pro se parents where they failed to amend complaint within time allowed; Hinton ex rel MWH v Lenoire County Public Sch Bd 66 IDELR 76 (EDNC 8/6/15) adopted in part @66 IDELR 109. Mgst recommended dismissal of **pro se** parents complaint where parent had disregarded court order requiring her to state how she had exhausted administrative remedies; Schroeder v Seminole County Public Sch System 112 LRP 43425 (MD Fla 8/8/12) Mgst gave parent one more chance to fix pleadings before dismissal- the sanction of **last resort**. Adopted by District Court at 112 LRP43423; Nickerson-Reti v Lexington Public Schs 59 IDELR 282 (D Mass 9/27/12) Court reversed HO dismissal for failure to prosecute where the parent was sick on the date of dph but able to proceed three days later; court noted that the **most drastic** sanction of dismissal was too severe and remanded; TW v Hanover County Public Schs 112 LRP 48269 (ED VA 9/28/12) Court noted that dismissal is appropriate only where there is a clean record of delay or willful contempt and a finding that a lesser sanction would be ineffective; here court dismissed IDEA/504 claim where parent repeatedly

refused to submit facts and to properly organize her complaints; Hunt v Lincoln Unified Sch Dist 112 LRP 58076 (ED Calif 12/3/12) Mgst recommended dismissal, even though a harsh remedy, where pro se party failed to prosecute an IDEA appeal. **Pro se litigants** are bound by the rules of procedure; RB ex rel AB Dept of Educ City of NY 59 IDELR 139 (SDNY 7/18/12) Court ruled that **even pro se litigants** are required to inform themselves of procedural rules and comply with them; WV by NV v Encinitas Union Sch Dist 59 IDELR 289 (SD Calif 9/25/12) Court held that even pro se litigants are subject to Rule 11 sanctions where they act with an improper purpose. Here court fined pro se parent $2,500 where she settled IDEA claim and then sued using the lawsuit as a bargaining chip to try to obtain additional concessions; Hinton ex rel MWH v Lenoire County Public Sch Bd 66 IDELR 76 (EDNC 8/6/15) adopted in part @66 IDELR 109. Mgst recommended dismissal of **pro se** parent's complaint where parent had disregarded court order requiring her to state how she had exhausted administrative remedies.

Utah Schs for the Deaf & Blind (JG) 111 LRP 29590 (SEA UT 4/8/11) Ho has wide discretion to regulate hearing procedures for a dph –including the power to require compliance with HO's reasonable directives. Where parent **failed to comply** with HO's directives by failing to cease giving details of settlement negotiations and failing to provide dates for PHC, HO dismissed dpc.

Dist of Columbia Public Schs (JG) 111 LRP 77405 (SEA DC 7/20/11) Where the attorneys **failed to notify** the HO of the resolution meeting agreement not to agree for weeks after it happened, HO imposed sanction on both attorneys limiting their presentations at dph to 4 hours each plus a reasonable time for closing argument. Appropriate sanctions may be imposed where counsel fail to follow the reasonable directives of the HO.

Shikellamy Sch Dist 112 LRP 9604 (JG) (SEA Penna 1/28/12) HO ruled that the student's mother was not a "parent" for purposes of IDEA where a state court had terminated her educational decision-making authority. The issue was not custody but rather educational decision-making authority. HO rejected mom's argument that the fact that she had such authority at the time of filing the dpc was controlling; noting that the mom had no authority to pursue the dph or obtain relief under IDEA.

Silva v Dist of Columbia 63 IDELR 217 (DDC 7/21/14) An IDEA HO has the authority to dismiss dpcs with and without prejudice. Although with prejudice is a **harsh sanction**, no abuse of discretion where parent failed to comply with HO's directive; Schroeder v Seminole County Public Sch System 112 LRP 43425 (MD Fla 8/8/12) Mgst gave parent one more chance to fix pleadings before dismissal- the sanction of **last resort**. Adopted by District Court at 112 LRP43423; Nickerson-Reti v Lexington Public Schs 59 IDELR 282 (D Mass 9/27/12) Court reversed HO dismissal for failure to prosecute where the parent was sick on the date of dph but able to proceed three days later; court noted that the **most drastic** sanction of dismissal was too severe and remanded; Contrast Brown v Industrial Commission 741 P.2d 1230, 154 **Ariz** 252 (**Ariz** Ct App 1987) HO abused his discretion by dismissing claim where ultimate sanction of dismissal was not warranted because a lesser sanction would have been sufficient; See also Austin v City of Scottsdale 684 P.2d 151, 140 **Ariz** 579 (**Ariz** S.Ct. 1984).

Bd of Educ of the County of Boone WVa v KM 65 IDELR 138 (SD WV 3/31/15) Court denied SD motion to stay enforcement of HO decision pending appeal. HO ordered SD to pay for private ABA services and when HO ordered that relief it became stay put. The fact that **SD failed to pay** does not justify stay; Doe v Boston Public Schs 64 IDELR 296 (D Mass 1/23/15) Because of foot-dragging by SD causing

parent attorney to focus on services for the child rather than attorney's fees petition, court changed its previous ruling and allowed 3 years to file fee petition.

Horen v Bd of Educ of the City of Toledo Public Schs 63 IDELR 290 (ND OH 8/1/14) Court imposed Rule 11 sanctions vs **pro se** parent for > $32K in attorney fees. Parent had filed three previous complaints which the court had dismissed, warning on two occasions of future sanctions. Court concluded that **sanction** is only way to **deter** this **misbehavior.** (@n.3: Parent response to SD motion to dismiss was **5,500 pages** long.); King v Industrial Commission 160 Ariz 161, 771 P.2d 81 (**Ariz** Ct App 1989) Courts will generally not overturn an administrative hearing officers order imposing sanctions absent an abuse of discretion; Aaron v Gwinnett County Sch Dist 64 IDELR 16 (ND GA 8/19/14) Court noted that although pleadings by **pro se parties** are entitled to **liberal** construction, such generosity does **not excuse** them from complying with the court's **procedural rules** Finley v Shelby County Schs 114 LRP 3705(WD Tenn 1/22/14) adopts Mgst @ 114 LRP 3712. Court dismissed complaint of pro se parents where they failed to amend complaint within time allowed. Old Pueblo Plastic Surgery, PC v. Fields 146 Ariz 178, 704 P.2d 819 (**Ariz** Ct App 1958) Despite latitude, pro se parties are held to the same standards as an attorney. NB the Arizona courts have developed a "Guide for Self-Represented Litigants." http://www.appeals2.az.gov/PROSEGuides.cfm

Luo v Baldwin Union Free Sch Dist 60 IDELR 281 (ED NY 3/21/13) Parents appeal complaint used foul language (including referring to the dph as an **"asshole parade"** frequently using "bullshit," etc.). Court threatened sanctions if parent continued to disrespect the proceedings; Luo v Baldwin Union Free Sch Dist 62 IDELR 260 (ED NY 2/12/14) Court dismissed counterclaim by hearing officer for abuse of process against parent who had sued him after a

dph because in 2d Cir, abuse of process requires more than filing a lawsuit (which was promptly dismissed). Parent's motion for sanctions against ho was dismissed because the counterclaim was not frivolous. @n2, court reprimanded parent for continuing to use improper language in court filings, including calling ho an **"asshole kisser."**

An ALJ for the National Labor Relations Board had her hands full with a very difficult pro se party. In the case of *In Re: Uzi Einy* 332 NLRB 134 (8/31/8), the self-represented party who also represented others before the Board, filed unsupported pleadings and disrupted the hearing process. Among the unacceptable behaviors were the following: **interrupting** the ALJ, opposing counsel or the witness on 19 occasions; being **noisy** or talkative during testimony 7 times; **arguing** with the ALJ or **disobeying** her requests/orders 5 different times; arriving late for a hearing session; permitting his **cellphone** to ring and continue ringing during the hearing and giving **hand signals** to the person questioning him. As a result of the misconduct by the party, the Board suspended his ability to practice before the Board in the future.

Another example of an abusive party is Somerson v. Mail Contractors of America 2002-STA-18 and 19 (U.S. Dept. of Labor ALJ February 20, 2002). Prior to the hearing, the party submitted faxes that **called** the ALJ foolish and referred to the appeals board members as "jarheads" and "gangsters." During the hearing, the party frequently interrupted and objected in a **loud and angry** tone of voice. The party also berated the court reporter and witnesses. The ALJ tried to calm the angry party by telling him that while he may have a valid complaint, his conduct was preventing the hearing from being conducted. The party responded by telling the ALJ that "I'm a mirror image of you, sir." Eventually, the ALJ terminated the hearing and made substantive inferences on the merits against the party because of the offensive conduct.

An Iowa unemployment ALJ was faced with a situation in which the party's misconduct was brief but highly inappropriate. A telephone hearing was noticed for 9:00 am. The claimant was not home when the ALJ initiated the hearing. He called back eight minutes later. The ALJ mentioned that she had called him at 9:00 am, and when the employer was on the line, the claimant said to somebody in the background that "she gave me a f---ing attitude that I'm ten minutes late." The claimant was warned that any further **profanity** would cause him to be disconnected. He responded, "I'll just disconnect myself then," and he hung up. The ALJ issued a decision rejecting his claim based upon his failure to proceed. Ryan Hoyt v. Concept Builders, Ltd. Appeal No. 04A-UI-00684-ET (Iowa Workforce Development 04-27-03).

In the special education case, JD by Davis v. Kanawha County Bd of Educ 48 IDELR 159 (SD WVa 8/3/07), where parents had derailed the IEP process after five IEP Team meetings for the same IEP, the court affirmed the hearing officer decision that the parents could not claim that they were prevented from meaningfully participating in the process; Lessard v. Wilton-Lyndeborough Coop Sch Dist 518 F.3d 18, 49 IDELR 180 (1st Cir. 2/25/8) Court refused to find violation where parents' non-cooperation caused 4 month delay; to reward intransigent parents would be "…at odds with the collaborative relationship fostered by the IDEA framework."; Systema by Systema v. Academy Sch Dist No. 20 538 F.3d 1306, 50 IDELR 213 (10th Cir. 8/26/8) Tenth Circuit held that parent failure to participate in the IEPT process renders any procedural violation harmless.

JW by JEW & JAW v. Fresno Unified Sch Dist 52 IDELR 5 (E.D. Calif 2/18/9) Court granted motion to strike parents **141 page** statement of facts to support their motion, aff'd 55 IDELR 153; Reyes v. Valley Stream Sch Dist 52 IDELR 105 (E.D. NY 3/26/9) Despite 15 requests for an

emergency conference by parent, court dismissed case where parent failed to first appeal to SRO; Clairborne County Sch System 109 LRP 23840 (SEA TN 3/23/9) HO allowed school dist to present its evidence after parent failed to appear at the dp hearing; In re Student with a Disability 109 LRP 56222 (SEA NY 8/14/9) SRO affirmed dismissal of dp complaint where parent failed to comply with the reasonable directives of the ho: LF by Ruffin v. Houston Independent Sch Dist 53 IDELR 116 (S.D. Tex 9/21/9) As a sanction for baseless allegations, court admonished the parent; In re Student with a Disability 55 IDELR 89 (SEA Va 6/3/10) HO dismissed dp complaint where parent failed to comply with HO order to provide documents. (State regs gave HO power to bring case to a conclusion if bad faith by either party.); French by French v. New York State Dept of Educ 55 IDELR 128 (N.D. NY 9/30/10) Court ruled that the child's failure to receive FAPE was caused directly by the father's dilatory tactics and failure to compromise and his holding the student out of school; JG by Stella G v. Baldwin Park Unified Sch Dist 55 IDELR 2 (CD Calif 8/11/10) Where the parent filed multiple dpcs alleging the same issues or multiple complaints where the parent could have raised other issues in a previous complaint, Court affirmed the HO's dismissal of the later complaints under res judicata and collateral estoppel; Bethlehem Area Sch Dist v. Zhou 54 IDELR 311 (ED Penna 7/23/10) Court allowed sch dist to proceed with attorney's fees claim vs parent who had filed 14 dpcs in 8 years, requested interpreters/translators although she speaks English and told a mediator (???) she was just trying to increase sch dist expenses.

In Re RW & Orange county Social services Agency v. AW 109 LRP 17060 (Calif App Ct 3/26/9) State appellate court affirmed juvenile court decision to limit parent's educational **decision-making rights** and to order consent to a residential placement over parent's objections; CB v. Sonora Sch Dist 54 IDELR 293 (ED Calif 3/8/10) Court denied immunity and allowed suit against personnel to

continue where staff ignored the bip of an 11 year old with a mood disorder that caused him to freeze in place, cross arms and keep his head down, instead calling the police and having him handcuffed and put in the back of a squad car. Contrast, Minnesota Special Sch Dist # 001 110 LRP 44951 (SEA Minn 5/17/10) State complaint investigator found no violation where principal required parent to comply with visitor policy requiring that she sign in after parent threatened the student's teacher.

DA & AA ex rel RA v. Haworth Bd of Educ D. NJ 9/25/9) Court ruled that HO erred by failing to impose a **lesser sanction first** where HO dismissed dp complaint where parent **attorney** failed to file sworn response to Mo/ summary judgment; Nicholas W by Melanie W v. Northwest Indep Sch Dist 53 IDELR 43 (E.D. Tex 8/25/9) Court dismissed FAPE action where parent's attorney refused to obey orders of the court; court rejected argument that neglect was excusable because of the exceptionally **pressing workload** of all lawyers practicing school law; Nicholas W by Melanie W v. Northwest Indep Sch Dist 51 IDELR 238 (E.D. Tex 1/16/9) Where parent attorneys failed to amend complaint within timeframe ordered by court, court dismissed complaint finding neglect not excusable; EK by Mr & Mrs K v. Stamford Bd of Educ 52 IDELR 133 (D. Conn 3/31/9) where attorney continued to litigate after it became frivolous and unreasonable, court awarded attorney fees vs parent attorney; District of Columbia v. Ijeabunonwu 631 F.Supp.2d 101, 52 IDELR 289 (D.DC 7/8/9) (same); Bridges Public Charter Sch v Barrie 709 F.Supp.2d 94, 54 IDELR 186 (D DC 5/6/10) Where attorney for parent continued to litigate claim after it was obviously baseless, Court found sch dist stated a claim for attorney fees vs parent lawyer; CO by Oman v. Portland Public Schs 54 IDELR 162 (D OR 3/31/10) Court found that both the LEA and its attorney retaliated against a parent for filing a dpc by issuing a blanket refusal to provide discovery and by ordering parent not to talk to sch personnel.

Osetgo Public Schs 107 LRP 22229 (SEA Mich 3/22/7) Where the parents attorney **refused to comply** with a HO order requiring more details concerning the relief sought, HO dismissed the complaint.

LJ by VI & ZJ v. Audubon Bd of Educ 49 IDELR 184 (D. NJ 2/19/8) Court ordered **fine** of $ 250 per day against a school district that failed to comply with prior court order requiring it to provide ABA services to a student; Poway Unified District v. Lindsey Stewart 107 LRP 31437 (Calif App. Ct. 6/6/7) A state appeals court affirmed a trial court order requiring a parent to pay more than $3,000 in sanctions under state law for failing to provide timely notice that he would not be attending a scheduled hearing.

In McAllister Towing & Transportation Co., Inc. and Local 33, Longshoremen's Association (Cases 2-CA- 30974, 31457, New York, NY) 341 NLRB 48 (NLRB March 5, 2004), the Board upheld the sanction of permitting the opposing party to prove by secondary evidence the issue for which a subpoena was not obeyed and of prohibiting the offending employer from rebutting such evidence.

A state review officer held that it was within the authority of a special education hearing officer to dismiss the due process hearing request of parents who refused to comply with the hearing officer's reasonable directive that the parents identify the issues presented in Bd. of Educ. of the Wappingers Cent. Sch. Dist.42 IDELR 195 (SEA NY 2005). Similarly in Epsom Sch. Dist. 31 IDELR 120 (SEA NH 1999) the hearing officer dismissed a request for due process hearing when the parents failed to comply with a discovery order. See also, Stancourt v. Worthington City Sch. Dist. Bd. of Educ. 44 IDELR 166 (Ohio App. Ct. 10/27/05), in which the appellate court ruled that the trial court erred in holding that a hearing officer lacked the authority to dismiss a hearing request because the parents

failed to comply with an order to produce documents. Although the hearing officer has such authority, it should be used only with great circumspection.

Where a special education hearing officer continued on with a hearing after the parents walked out of the hearing, he was upheld by the court in Sabur by Sabur v. Brosnan 36 IDELR 264 (E. D. NY 2002).

Petersen v. California Hearing Office 50 IDELR 250 (N.D. Calif 8/1/8) Court refused to declare the pro se parents **vexatious** litigants where they had filed four federal lawsuits against the district all of which were dismissed. The parents are divorced and this was only the second lawsuit by dad.

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; WS v Wilmington Area Sch Dist 66 IDELR 249 (WD Penna 11/30/15) Court found non-custodial mom's inconsistent pleading statement to have been made in **bad faith;** GK & CB ex rel TK v Montgomery County Intermediate Unit 66 IDELR 288 (ED Penna 7/17/15) Court upheld HO finding that **obstructive** conduct by the parent interfered with the implementation of the student's IEP.

An example of a hearing officer who went too far by losing his cool in reacting to the misbehavior of a parent is presented by Northwest Local Sch. Dist. 42 IDELR 104 (SEA Ohio 2004). The hearing officer found the parent in "contempt" and dismissed the due process hearing because of the parent's "ranting" during a prehearing conference. The state review officer reversed and ruled that a new hearing officer be assigned. The parent failed to appear for the

subsequent hearing and the school district prevailed. Another good example of a hearing officer losing his cool is the case of Knight ex rel JKN v. Washington Sch Dist 51 IDELR 209 (E.D. Mo. 12/22/8) The HO panel chair dismissed 4 of 5 issues, and was then asked by parent attorney to recuse himself. The chair then had a heated exchange with the attorney on the record and dismissed the fifth issue in retaliation for the motion to recuse. The court reversed noting that especially dismissal of the fifth claim was improper because it denied parents an opportunity to present evidence, as well as a fair hearing on the issue.

Similarly, an ALJ deprived a social security claimant of his right to a full and fair hearing by aggressively asking coercive and intimidating questions in the absence of misconduct by the claimant. Ventura v. Shalala 8 A.L.3d (Pike & Fischer) 1476 (Third Cir. 1995).

It was not reversible error, however, for an ALJ to comment that he found it difficult to believe that a party who had been in the United States for over thirty years did not speak more than a little English. Verduzio v. Apfel 14 A.L.3d (Pike & Fischer) 1051 (9th Cir. 1999).

The court in Christopher M. Johnson, et al v. District of Columbia 190 F.Supp.2d 34, 36 IDELR 181 (D.D.C. 2002) took into account that the school district had listed three famous dead individuals and the parents' attorney as witnesses on the school district's witness list as a factor in assessing an award of attorney's fees to the parents' attorney.

A hearing officer dismissed a special education hearing because of the disruptive behavior of the parent, including an assault on the attorney for the school district by throwing

a pitcher of water at him in Hazleton Area Sch. Dist. 102 LRP 11440 (SEA PA 2000). The parent was permitted to participate in a subsequent due process hearing involving the student, however.

The parents' zealous advocacy and refusal to cooperate with the school, however, were found by a state appeals court to be insufficient grounds to justify the appointment of a limited guardianship to handle the educational affairs of a 16-year old disabled student. E.N. by Nesbitt v. Rising Sun Ohio County Community Sch. Corp. 720 N.E.2d 447, 31 IDELR 136 (Indiana Ct. App. 1999).