



NAHO NEWS

*...benefitting hearing officials
and the individuals they serve...*

NATIONAL ASSOCIATION OF HEARING OFFICIALS

MAY 2017



CONVENE WITH YOUR COLLEAGUES AT THE CAPITAL:

NAHO 2017 Annual Professional Development Conference

Toni Boone (OR)

Do you ever daydream about visiting the capitals of the world, such as London, Paris, Rome, Madrid or Athens? Did you know that people from other countries daydream about visiting Washington DC? It's true! Washington DC welcomes two million foreign visitors each year—and with good reason. There are very few, if any, cities in the U.S. that can claim as many spectacular attractions as Washington DC, which is one of the many reasons that 'the District' was selected as the site for NAHO's 2017 Professional Development Conference.

The venue for NAHO's 2017 conference is the Embassy Suites-DC Convention Center, which is centrally located in the trendy Penn Quarter area right in the heart of the District. Within easy walking distance of the hotel are Ford's Theater, the National Archives, the National Portrait Gallery and

the International Spy Museum. Just a few steps beyond, and still within walking distance, is the National Mall, that great swath of green in the middle of the capital city that stretches from the foot of the United States Capitol to the Potomac River. The National Mall, which is actually a national park, is home to the Washington Monument, the Lincoln Memorial, the Jefferson Memorial, the Martin Luther King Jr. Memorial, the Franklin Delano Roosevelt Memorial and the memorials to the veterans of World War I, World War II, the Korean War and the Vietnam War.

The area surrounding the National Mall is home to eleven Smithsonian museums and galleries including the American History Museum, the Natural History Museum, the National Gallery of Art, the National Air and Space Museum, the American Indian Museum, and the recently-opened Museum of African



Toni Boone (OR)

American History and Culture. Admission to many of the Smithsonian Museums is free.

Our host hotel is only three blocks from the Metro Center Station. From there you can travel on the District's subway system to explore other destinations such as Arlington National Cemetery, Mount Vernon (George Washington's home), the Supreme Court, the Library of Congress and the National Zoo.

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THE PRESIDENT'S POST

Springtime for All!

Janice Deshais (CT)

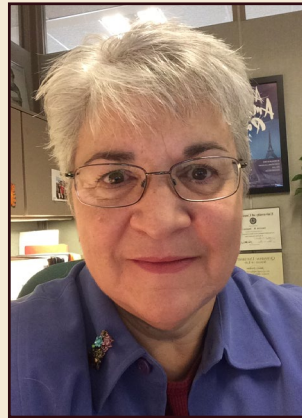
As I write this, I can feel the fresh air coming in my open window on this warm May day. Spring at last. The long, dark, cold, stuffy, snowy winter is over. I know some of you enjoy warm temperatures and sun all winter, while some of you have much tougher winters than I do in Connecticut. Regardless, I think we all feel the effects of a version of spring this time of year.

For NAHO, spring is the time of year when the pace of activities and plans start to speed up as our (somewhat) slower winter ways melt away. Preparations for the annual Conference in Washington, DC are accelerating. Our conference planner extraordinaire, Vice President Toni Boone (OR), has been working all winter to develop a wonderful curriculum and has gathered an excellent faculty for this annual event, which will take place September 10 to 13 -- save the dates! The Conference brochure, which will outline the outstanding training program and provide registration and other important information, will be released soon. NAHO members, start watching for the brochure in your email. Prospective members, check NAHO's website at www.naho.org for Conference news coming soon!

The Board held its mid-year meeting on April 1st in Washington, DC at the Embassy Suites - Convention Center, site of the 2017 Conference. Board members participated by teleconference, and Toni and I were joined by other NAHO officers Linda Snow (TX) and Jo Murphy (TN) to not only be a part of the meeting, but to also tour

the hotel's conference facilities and start to finalize planning and logistics. The hotel will be an excellent venue. All of the rooms are suites and are roomy and comfortable. All Conference attendees will enjoy a free full breakfast every day and every night there is a manager's reception in the lobby for treats and adult beverages. The hotel is a fairly short taxi or Uber ride from Reagan National, which is the airport you should use. The hotel has no shuttle, but there are independent shuttle services from the airport and the inexpensive Metro is easy to catch; the hotel is only six stops from the airport.

In addition to conducting the "business" of NAHO, the topics discussed at the mid-year meeting included the actions the Board is taking to realize its continuing goal to improve the services NAHO provides for its members. As you will hear more about soon, the requirements of NAHO's certification program are being enhanced to increase the value of that credential for all who achieve and maintain status as a CHO or CALJ. NAHO continues to expand its website for access to all things NAHO and is updating its library "video" service, which will allow for a better and easier training experience for NAHO members. NAHO is also gaining more of a presence on social media - follow us on Facebook and Twitter too! Plans are also underway for the all-important elections this summer for the 2018-2019 terms for Board officers and regional representatives. (Look in this newsletter for details of the election and the voting process - please consider running and please vote for those who do!)



Janice Deshais (CT)

I hope you are looking forward to the annual Conference in September. I know I am. DC is not only a great city with lots to see and do, but it is an area of the country where NAHO has not had a conference in some time. I hope those of you who have not been able to travel to past conferences will be able to come and bring friends and associates. The more the merrier!

NAHO works hard to make sure the Conference provides a great training opportunity for its members and others who are involved in the important business of providing administrative "due process" to a wide range of citizens. The Conference is also the time when I get to meet or reacquaint myself with so many of you and have a little fun too - my favorite part of a Conference.

Wait - what was that noise? A bird? Or, was it my phone chirping with a tweet from NAHO? Either is a welcome sign that spring is here with all the new activity it brings to me and you -- and NAHO. Happy Days! 🐦

CONVENE WITH YOUR COLLEAGUES AT THE CAPITAL

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But let's not forget that your trip to the 2017 Professional Development Conference is a 'working vacation.' NAHO has created a curriculum for the conference that has something for everyone employed in the realm of administrative adjudication. In addition to some interesting and informative presentations on ethics, due process, evidence, decision writing, and hearing and pre-hearing conduct and control, there are many classes that are specific to one type of hearing. There will be classes exclusively for administrative adjudicators conducting school hearings, workers' compensation hearings, driver's license hearings, and Medicaid hearings. In addition, NAHO will be offering two management/leadership presentations designed for the chief judge or administrator and one session for agency representatives who prepare reports and/or testify in administrative hearings.

September is an ideal time to visit Washington DC. The average daily temperature during September is 78 degrees and the average overnight low is 59 degrees. Each room at the Embassy Suites-DC Convention Center is a suite with a living room, which includes a sofa bed, and a separate bedroom. The hotel offers a complimentary cooked-to-order breakfast each morning and a complimentary Evening Reception which includes a variety of beverages and snacks. You can keep in shape while you're away from home at the hotel's complimentary 24-hour fitness center or the indoor pool.

Mark your calendars now for NAHO's 2017 Professional Development Conference in Washington DC, September 10 through 13. It is sure to be a beneficial and worthwhile conference in the most memorable city in the U.S. 🐦

NOMINATIONS OPEN FOR ELECTION TO THE NAHO BOARD OF DIRECTORS

Bonny Fetch, ND

It is time to elect a new Board of Directors to serve a two-year term from January 1, 2018, through December 31, 2019. There are ten elected positions, President, Vice-President, Secretary, Treasurer, and six Regional Representatives. The Board also includes two non-elected positions, Immediate Past-President, and an at-large member appointed by the President and approved by the Board.

The Board meets by teleconference every four to six weeks. The Board also holds a mid-year meeting which may be held in-person or by teleconference. In addition, the Board holds an in-person annual meeting at the Conference. The Board formulates policies, plans the annual Conference, and sets the general direction for NAHO. Board members, along with non-board members, staff the various committees that make up the structure of NAHO. The duties of each position are described in the By-Laws which are posted on the website at www.naho.org.

Board members serve as volunteers. Board members may recoup certain out-of-pocket expenses or partial expenses, depending upon NAHO's fiscal circumstances, but there is no remuneration for a Board member's time. NAHO has traditionally reimbursed Board members for 50% of travel and lodging expenses to attend in-person mid-year and annual meetings and waives the Conference registration fee for Board members. The Board retains discretion to change this policy depending upon fiscal or other circumstances which may affect its interests. Board members are obliged to first apply for reimbursement from their employers regarding the Conference registration fee as well as travel and lodging expenses.

NAHO members nominated for an elected office must be members in good standing. Associate members are not eligible to vote or serve on the Board. A member may not serve more than two consecutive terms in any office.

If you are interested in nominating someone or running for the Board, please note:

1. The time frame for submitting nominations is **June 1, 2017, through June 30, 2017.**



2. A member may nominate another member or submit their own name. If a member nominates someone else, the Nominations Committee will contact that person to ascertain their interest in running for the position. Anyone not willing to run will not be placed on the ballot.
3. Candidates for President, Vice-President, Secretary, and Treasurer may be from any geographical region. Candidates for Regional Representatives must be from the regions they represent. The six regions are:

Northwest Region: Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Puerto Rico, and the Virgin Islands.

Southwest Region: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Western Region: Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, and American Samoa.

Central Region: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Mountain Region: Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

Southwest Region: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Western Region: Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, and American Samoa.

4. Nominations must include the nominee's **name** and a **brief biographical sketch** and be submitted to **NAHO, P.O. Box 330865, Ft. Worth, Texas, 76163**, or by email to gregory.ozment@naho.org.
5. Nominations must be **received by NAHO no later than 5:00 p.m. ET on June 30, 2017.** If you mail the nomination, be sure to mail it so that it will be received by the deadline date.

Ballots will be sent electronically to NAHO members on or about **July 14, 2017.** You may request a paper ballot if you prefer. Ballots must be returned no later than **August 15, 2017.** Ballots received after that date will not be counted. The Nominations Committee meets and prepares an official result of the balloting and certifies the results to the President. The newly elected Board members will be installed at this year's conference in Washington, DC, in September.

The Nominations Committee invites you to consider serving on the Board. NAHO is a nationally recognized organization that trains and certifies Hearing Officers and Administrative Law Judges. Membership on the Board brings distinction and prestige to agencies that encourage their hearing officials to serve on the Board.

For more information or if you have questions about NAHO election 2017, please contact one of the members of the Nominations Committee:

Gregory Ozment
gregory.ozment@naho.org

Peter Halbach
peter.halbach@naho.org

Norman Patenaude
normpaten@comcast.net 

FROM THE EDITOR

CHANGE... CHALLENGE... COPE

Bonny Fetch, ND

I wrote this article several years ago and upon re-reading it I find it is still very relevant to the present. In fact, it may be even more relevant now as agency budgets continue to be extremely tight, resulting in constant change and challenges for agencies and employees. I have revised it somewhat, and I hope you find it inspiring and helpful.

Remember that famous 1960's tune, The Times They Are a-Changin'? It is one of Bob Dylan's most famous songs, and according to Wikipedia, "many felt that it captured the spirit of social and political upheaval that characterized the 1960s." It applies to the times today as well. These are definitely changing, challenging times. Almost every direction one turns, there is anxiety, unrest, and fear of the bottom dropping out. State budgets are tight or broke and there have been drastic cutbacks of employees, which have affected many of our colleagues. In some states, hearing functions have been restructured so that whole divisions are eliminated, in others, cutbacks have left fewer hearing officers having to handle more cases. In still others, employees are forced to take furloughs because the legislature has failed to enact a budget or there is a budget shortfall. We have seen this on the national scene as well. Some states have cut pay or not provided pay raises in an effort to stretch the budget. And yet, the work must get done and employees strain ever harder to keep up because unemployment is not an option. Sobering thoughts, if not downright depressing.

I'm going to take a little segue at this point and talk about another challenge. In 2011, the Missouri River flooded. The great river flows through several states, and the flood was of historic proportions. I live in Bismarck, the capital city of North Dakota, which is on the banks of the Missouri. The flood took many homes, businesses, trees and land underwater and kept it

there the whole summer. Hard to comprehend. After the initial shock and disbelief, Bismarck set to work to meet the challenge to minimize the damage. The community pitched in and volunteers picked up gloves and shovels and headed to several sites and made hundreds of thousands of sandbags (no easy task). Those whose homes were in harm's way worked feverishly with the assistance of friends, family, and non-relative volunteers to clear out furniture and belongings, sometimes to the bare walls and floors, and built ring dikes of sandbags, bales, or dirt and plastic surrounding their homes. Many, like me, took frequent drives along the river and to favorite vantage points overlooking the river, to see first-hand how fast the water was rising. In the meantime, I went and made sandbags as often as I could until they said, finally, there were enough and the sites closed. The frantic pace everyone had been working at suddenly slowed down, and an eerie sort of feeling settled in, best described as an underlay of anxiety, waiting for what was to come, with an overlay of hopefulness that the preparations would be successful in protecting as much as possible. When the flood came, some lost their homes, but all the hard work paid off for the city and for a great many who came through with minimal or no damage.

That flood experience got me to thinking about how Bismarck dealt with that overwhelming challenge and whether there are certain stages which might correlate to dealing with other challenges. I identified five stages which I think apply to successfully dealing with any change or challenges, no matter how big or small they might be. To illustrate, these stages apply whether the challenge might be an impending flood or cutbacks in funding and possible loss of a job.

PREPARE – This is critical, it involves gathering the best information available about the situation, determining options, and taking action to avert or minimize damage and optimize results. It also involves mental preparation and placing yourself in the best possible position to deal with change or meet the challenge.

ENDURE – Having prepared to the best of your ability, this in-



Bonny Fetch (ND)

volves letting nature take its course, so to speak. This does not mean you do nothing, it means you gauge the situation as it unfolds, take corrective action when necessary, and bear up if the worst happens.

REFLECT – This is a period of analysis, figuring out what went well, what did not go well, and what to do differently or better if the same situation were to occur again.

RECOVER – This is a stage of acceptance, forgiveness, and healing. It is a time of purging, accepting what happened, ridding yourself of guilt or doubts that you may not have done the right thing or may not have done all you could, forgiving others for what they may have done to cause the situation, letting go of the anger or shame or any other unhelpful or destructive feelings, and finally, taking positive steps to feel better and move forward.

REBUILD – Having come through the first four stages, you are at a point where you no longer dwell on what was. You decide your future and you rebuild accordingly.

I hope you can come to the Conference in September. The various sessions will help you PREPARE (the critical first stage) to meet the challenges of your profession and cope with the stresses of constantly changing priorities, increasing expectations, and decreasing resources. Depending on your particular circumstances, you may find information, tools, and support to help you deal with other stages you may be experiencing. Now, more than ever, it is important to take care of ourselves. And what better place than in the company of your colleagues. 🏠

MEMBERSHIP FEE CHANGES



Kayla Adams (TX)

Effective March 1, 2017, NAHO membership dues changed as follows:

New Membership

- One year - \$60.00
- Three years - \$135.00
- Five or more new members applying from the same agency (one year membership only) - \$50.00 each

Membership Renewal

- One year - \$50.00
- Three years - \$115.00
- Five or more renewing members from the same agency (one year renewal only) - \$40.00 each

NAHO no longer offers a discount for 25 or more membership renewals from the same agency.

To renew or update your membership information, log into your profile at www.naho.org/Sys/Profile using your email and password. In most cases, your NAHO membership number could be your password. If you are a member and do not know your password, or if you are a new member and need to set a password, you can do so at www.naho.org/Sys/ResetPasswordRequest.

NAHO no longer issues membership cards to new members or renewing members. Actual membership cards are not necessary, as we can now confirm membership in our membership data base.

If you have questions regarding your membership, contact me at kayla.adams@nah.org or contact your Regional Representative. 🏠

MEMBER SPOTLIGHTS

This issue we asked featured members several questions. Here are the questions and their responses. *What agency do you work for? What is your job title? Describe what type of hearings you do or how your job is related to hearings. What difficulties are associated with your job? How long have you been a NAHO member? Have you attended NAHO conferences? Has NAHO helped you with the difficulties you indicated in your job? Is there anything you would like to see NAHO do which would be of more help to you as a member?*



Bipasha Barua, ND

My name is Bipasha Barua and I am one of the seven hearing officers for the North Dakota Department of Transportation. We are involved whenever a person requests a hearing as the Department of Transportation has taken or is going to take action that impacts their North Dakota driving privileges. All the hearings involve the personal and/

or commercial driving or operating privileges of a driver/petitioner. As hearing officers we also schedule and provide the forum for any hearing. One of the biggest challenges is scheduling timely hearings with petitioners, attorneys, and witnesses, especially given the vastness of the state of North Dakota. In all our hearings we also make findings of fact based upon the evidence and the relevant conclusions of law as a result of the facts.

The bulk of our cases are the result of individuals being investigated and arrested for driving under the influence, and the resultant proposed suspension or revocation of driving privileges. These hearings, which take place pursuant to North Dakota's implied consent laws, focus on reasonable grounds for the arrest, fair administration of testing (when testing has taken place) and the appropriate length of suspension.

In my experience, the North Dakota implied consent laws have been an area of dynamic change. In the four years that I have served

as a hearing officer there have been two revisions of the state implied consent laws from the North Dakota Legislature. One of the major changes has been making refusal of testing for blood alcohol concentration a crime. Additionally, North Dakota implied consent cases have risen to the level of the United States Supreme Court. The decision from the Supreme Court in *Birchfield v. State of North Dakota* impacted how law enforcement obtains a test for blood alcohol concentration in cases of driving under the influence. Before moving to North Dakota, I worked in another jurisdiction as both a prosecutor and a law clerk, it wasn't until working as hearing officer that I felt the very immediate impact of a Supreme Court decision on my job.

The remainder of our cases involve other traffic violations and the subsequent penalties such as points on the petitioners license which impact driving privileges. Some of these cases involve researching traffic regulations and laws in other states in order to understand the

appropriate impact on a North Dakota license holder. Often the petitioners are not represented and part of my role is also to assist them in understanding the system.

In all hearings, my goal has been to ensure a petitioner's due process rights in a fair hearing. I have often found that an administrative hearing is often the first experience a petitioner has with a legal system. My role has been to educate petitioners and facilitate the process such that a petitioner has the opportunity to be heard, even if the outcome is not what they would want. As a result, I have found that one of the most challenging and rewarding aspects of being a hearing officer is that is the learning never stops! Now, as a recent member of NAHO, I look forward to the many opportunities offered by the organization to better educate myself in my responsibilities as a hearing officer. I look forward to attending future NAHO conferences. 🐾



Jeff J. Minckler, WA

About 40 years ago I was hired out of college to represent an AFL-CIO local, followed by a few years as a labor relations specialist and then Bureau Chief for the Montana Labor Relations Bureau which deals with over 70 state bargaining units. Following that was a move back to labor as a regional manager for the Montana Public Employees Association, and then back to management once again as the Director of Labor Relations for the Montana School Boards Association which deals with most of the state's 150+ school district bargaining units. All that flip-flopping paid off when I opened a private practice and for 25 years was able to attract both

labor and management clients.

After all those years representing alternately labor and management, my much anticipated retirement is now being limited by a new career as an arbitrator and factfinder, which was supposed to be just a way to keep my hand in the game.

I learned of NAHO only last year - in my 5th year as a labor arbitrator - when I Googled "organizations for hearings officials", because a hearing official I am, and up popped NAHO. A bit of research lead to my application for membership and days later notice about NAHO's annual convention in Portland, Oregon, the next month. The three-hour drive from my home in Seattle down to

Portland is always nice, so off this brand new member went without knowing much of what I was headed for.

What I found was a large group of professionals eager to share their experiences and perspectives, and a number of impressive speakers on a wide range of critical topics. Updated information on witness veracity, handling objections, and much more made me understand just how valuable my membership was going to be. I look forward to each NAHO newsletter and meeting.

You can read more about Jeff Minckler at www.minckler.net 🐾

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MEMBER SPOTLIGHTS, *continued from page 5*

Adaora Chukudebelu, LA

I work for the Louisiana Division of Administrative Law (DAL), which is the state's centralized administrative hearings panel. It is a tribunal staffed

with independent, impartial, and professional Administrative Law Judges (ALJs). The DAL conducts hearings for a variety of state agencies, including the Department of Health, the Department of Children and Family Services, the **Department of Public Safety**, the Department of Education, the **Department of Insurance**, and the **Board of Ethics**.

My job title is Deputy General Counsel. I manage the section that handles all fair hearings for the Louisiana Department of Health. The section is made up of 12 ALJs, one attorney, 5 support staff, and one deputy clerk of court.

In addition to being a Deputy General Counsel, I am also an ALJ and conduct hearings on a variety of cases. In the last three years I served on the Ethics Adjudicatory Board,

a three-judge panel that hears appeals concerning governmental ethics for public employees. I currently hear cases dealing with Medicaid and the Individuals with Disability and Education Act (IDEA). The Medicaid and Medicaid-related cases involve health providers, Medicaid applicants, and Medicaid recipients. The IDEA cases involve due process complaints filed by parents, students, and school boards.

The role of our agency is to provide fair, prompt, and orderly adjudications. To further this role, I have to juggle my responsibilities as a manager of my section, and also meet the agency's high expectations as an ALJ. Time management is crucial to successfully managing my duties. Keeping abreast of new issues in the healthcare arena and having the right temperament to deal with different personalities is also

very important.

I've been a NAHO member since approximately 2004.

I've attended two NAHO conferences. My first was in Dallas, TX, after I received a NAHO scholarship. The second was in Charleston, S.C.

NAHO has helped in many ways. First, it has provided me with the basic skills to conduct smooth and efficient hearings. I have used those skills in training new and old ALJs. Second, NAHO has provided me with practical managerial skills, particularly in time and stress management. Third, NAHO has afforded me the opportunity to meet other ALJs and hearing officers and learn from them. I have picked the brains of many members, before, during and after conferences. 🙌

INTRODUCING NAHO'S NEW BOARD MEMBER Karen Gorman, Western Region Representative

Janice Deshais (CT)

Last December, NAHO lost a great friend and supporter with the untimely death of Eric Moody (ID), Western Regional Representative. Eric's passing also left the NAHO Board without a representative from that region. Pursuant to my authority, I have appointed a new Western Regional Representative, Karen Gorman of California, to serve out the rest of Eric's term.

I thank Karen for agreeing to add this position to all her professional responsibilities. Karen serves as the Chief Hearing Officer and ALJ for the Los Angeles County Metropolitan Transportation Authority and is also the Chief Ethics Officer and Inspector General for that agency. Karen oversees the Authority's Transit Court hearing unit and manages the Ethics Department, advising the agency's Board of Directors on conflicts of interest. As the Inspector General, Karen oversees audits and inspections concerning fraud by contractors or waste of resources by employees.

Before joining the Authority, Karen was

a Deputy Trial Counsel with the State Bar of California, where she directed investigations and prosecuted attorneys charged with violations of the law and rules on professional conduct. Before her work for the public sector, Karen was in-house counsel for several large corporations, where she handled transactional legal matters and drafted and negotiated large scale contracts.

Karen is not only admitted to practice before the California courts and the Northern Federal District Court, but she is admitted to appear before the US Supreme Court. She holds teaching credentials and is a member of numerous professional organizations, including NAHO.

The Board is thrilled to have someone with Karen's experience on the Board. We are happy to welcome her aboard and hope she continues to serve after she has completed her work for Eric.

I am sure Eric would be pleased to welcome Karen too.



Karen Gorman

REVISED REQUIREMENTS GREATLY ENHANCE THE VALUE OF CERTIFICATION

Toni Boone, OR

Since 1995, NAHO has maintained the only national certification program for administrative adjudicators. While some states have implemented salary incentives based on NAHO certification, other states and agency administrators have insisted that NAHO certification is devoid of value. They asserted that NAHO certification is inconsequential because there is no method by which NAHO evaluates those who receive certification to assure that certified individuals have a sound background in both administrative law and hearing procedures.

NAHO's Board holds its members in high esteem. We know how hard each NAHO member works day-to-day in the field of administrative adjudication. We also know that those who have achieved certification have put a great deal of effort into reaching that goal. We don't want those efforts to go unrecognized or unrewarded. Consequently, in 2016, the Board began the task of revising certification requirements so that NAHO's certification symbolizes a more significant achievement—an achievement that will be widely accepted as substantial and meaningful in the realm of administrative law.

The new certification requirements are scheduled to go into effect on January 1, 2018. The number of course credit hours required for initial certification has increased from 44 to 60 hours. The number of classroom hours required for recertification has also increased from 12 to 20 for those members who have not

attended a NAHO conference in the last three years. Courses offered at NAHO's Professional Development Conferences, the National Judicial College, NAALJ, state bar-approved CLE classes, many administrative agency training programs, and through NAHO's video library will continue to satisfy core certification requirements.

The most significant difference in the new certification requirements is the implementation of testing. Both initial certification and recertification will require those seeking certification to take and pass an on-line test. The test will be multiple-choice and will consist of 45 questions—five questions from each of these nine subject matter areas: Conducting an Administrative Hearing, Credibility Assessment, Decision Writing, Due Process, Equity and Inclusion, Ethics, Evidence, Hearing Management and Control and the History and Development of Administrative Law. Applicants must answer at least 30 of the 45 questions correctly in order to pass the test. The test will have no 'trick questions' and is not intended to make certification problematic. Any experienced adjudicator with a solid background in administrative law and hearing procedures should be able to pass the test without difficulty.

Once all course requirements for certification are completed and the fee for testing and certification is paid, the applicant for certification will have 30 days to take and complete the online test. The test is 'open book,' meaning that you can consult whatever resources are available to

you during the test. The applicant may take the test up to 3 times during the 30-day period, but the second and third tests will not have the same questions as the first test. If the applicant does not pass the test within 30 days, the Certification Committee will deny certification. The applicant may reapply for certification at some future date, but will have to file a new application for certification and pay an additional fee for testing and certification.

Applicants already certified at the time the new certification procedures go into effect will have to take the above 45-question test upon recertification. Second and subsequent recertifications will require passage of a 20-question test with a score of at least 70%.

The Board, and in particular Board member Joseph Rubenstein, have put long hours of effort into revising certification in a way that would be both fair to the applicant and meaningful to employers in the realm of administrative law. No member of NAHO who seeks certification or recertification is exempted from testing. The Board has unanimously supported certification testing and does not believe that the testing process will be onerous for any NAHO member seeking certification.

If you have questions or comments regarding the revision of the certification process, please feel free to contact any member of the NAHO Board. ↘

STRESS MANAGEMENT COPING SKILLS

Tom Olson, EAP Counselor

Tom Olson is a counselor at CHI St. Alexius Health Employee Assistance Program in Bismarck, ND, where he specializes in individual, couple and family therapy. This article printed with permission of the author.

More people are feeling stress in the world we live and work in. It is a fast-paced place, and we fall into the trap of believing we have to be going as fast as everyone else. We need to slow down and learn to relax and reduce stress in our lives.

Eustress is a positive stress resulting from an exhilarating experience, such as winning a lottery

or getting a promotion, which can be good and motivate us. Distress is stress from losing, failing or overworking and not coping well.

Stress can be external, such as the death of a loved one, divorce, financial problems, lack of sleep or even a simple argument. Stress also can be internal, including values, beliefs, faith, self-esteem or expectations of self and others. Some common symptoms can be physical, emotional, behavioral, cognitive, spiritual or relational. How do we learn about coping with stress? Do we need to learn better coping skills?

Learning something new can be exciting, but it can also feel odd or weird. We may even think learning visualizations or

deep-breathing techniques are only for those who have significant problems. Millions of people use relaxation techniques around the world and have for centuries.

Common stress management coping skills are deep breathing, exercising, guided imagery or visualization, yoga, being organized, good nutrition, having fun and using humor, journaling, progressive muscle relaxation, meditation, Tai Chi Chi, listening to music, prayer or massage. I suggest trying different techniques and pick one or two that work best, then practice it. I have been meditating for more than 35 years and have found it helpful and enlightening.

Helpful hints to help de-

crease stress include knowing your limits, being realistic and setting boundaries. Change your attitude by learning to see stressful situations as a challenge or opportunity. Learn to say "no." You can alter, avoid or simply accept stressful situations.

Here is a simple breathing technique to practice. Inhale through the nose and count to four. Hold and count to seven. Exhale through the mouth and count to eight. Do that four or more times. When using deep-breathing techniques, it releases serotonin, a stress-fighting hormone, which flows into the bloodstream and to the brain. Using any of these techniques can be of benefit. ↘

ASK THE BOARD

Each issue we print responses from the Board to questions from members. Here are five questions posed by members and the Board's responses.

Could we have a podcast training program?

If the question is are we going to train people to produce a podcast, the answer is no.

If the question is are we going to produce podcasts to train hearing officers, the answer is maybe. From what I can gather, it would take a significant amount of time, technical knowledge, a capital investment in a microphone and other equipment (or renting a studio), and an editing software program to record a podcast. I haven't determined if that's feasible for NAHO.

Clayton Mansfield, NE Region Representative

Could we have a NAHO conference in Texas?

We love Texas! NAHO had a conference along the beautiful Riverwalk in San Antonio in 2012, and the Board would be happy to return to the Lone Star State. NAHO is booked for the 2017 (DC) and 2018 (San Diego) conferences, but we will put Texas on our list to consider for 2019!

Jan Deshais, President

My agency does not pay for travel to NAHO conferences. Are there any scholarships available to pay for hotel, meals, travel, to NAHO conferences?

NAHO offers a limited number of scholarships to NAHO members to attend the annual conference. These scholarships cover the total registration fee and all group meals that are part of the conference, but, unfortunately, do not cover travel expenses, lodging expenses or meals that are not provided as part of the conference. Be on the lookout for information about how to apply for a scholarship when the conference is publicized!

Jan Deshais, President

What type of jobs are available for persons certified as a Certified Hearing Officer with NAHO?

Of course, the easiest answer includes serving as an administrative law judge or a hearing official. But, since I have not held either of this type of positions for about five years now, I can say just about any position uses the skills you obtain while becoming a Certified Hearing Official.

When I left the hearings division, I moved into management for the eligibility determination area of the agency. The skills I learned as a Certified Hearing Official immediately assisted me in all aspects of my new position. Because of my training to become a Certified Hearing Official, I easily ascertained the facts in personnel disputes and client complaints. In each personnel and client interaction my skills regarding credibility, ethics, due process, plus hearing conduct and control all came in handy.

In addition, I used mediation skills from a NAHO class I attended to minimize disruption between staff with personality conflicts. In instances where it became necessary to write-up performance management information for review by HR, my evidentiary knowledge, fact-finding skills, and decision-writing skills were indispensable. Since I learned to work my docket (and not let it work me) while conducting hearings, my skills as a Certified Hearing Official help me maintain a schedule for completing my current job duties.

I continue to attend NAHO conferences and maintain my standing as a Certified Hearing Official because each new course I attend allows me an opportunity to walk away with more knowledge. Every newly learned skill betters my ability to do my job,

whatever that job may be.

So, I guess the best answer for your question is ... any job you want and have the ability to perform is available to a person with the skills of a Certified Hearing Official. Go dust off your resume, get a book on interviewing, and put yourself out there! You never know what will happen, but your Certified Hearing Official skills can only help you obtain the new job you want.

Linda Snow, Treasurer

What are the benefits getting certified if my agency does not increase my pay if I am certified?

While it is certainly a nice benefit when an agency compensates its hearing officers for achieving certification, there are other good reasons to obtain and maintain certification. In addition to your personal achievement, the requirements for certification help you develop, expand and sustain your abilities as a hearing officer and benefits those who appear before you. Having the initials CHO or CALJ after your name is also evidence of your enhanced qualifications and commitment to NAHO's goal of the development of uniform standards of excellence and professionalism for hearing officials throughout the country.

Jan Deshais, President 🐦

NAHO IS TRENDING

Bobbie Marshall, TX



That's right! NAHO is trending and we want you to be a part of it. If you are not following us on Twitter or Facebook, you may be suffering from FOMO... that's right, Fear of Missing Out. It is a real condition that impacts millions of people! Okay, maybe not, but you really are missing out on networking, educational topics, and of course funny cartoons. So, take a break and enjoy a moment with us, find old friends from past conferences, or find out information about our 2017 Washington D.C. NAHO Annual Professional Development Conference. We want this to be a place for you. As always, if you have any questions or content ideas, please contact Sarah Huber at sarah.huber@naho.org or Bobbie Marshall at bobbie.marshall@naho.org. We are eager to hear from you!

@NAHOTweets

Facebook: National Association of Hearing Officials

or www.facebook.com/NAHOorg/. 🐦

DECISION WRITING

Jim Gerl

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 fulfills 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 parties. 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. For example, IDEA the federal special education law 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). A hearing officer must be able to write decisions in accordance with appropriate, standard legal practice; and that a decision about FAPE must be made upon substantive grounds. Sections 615(f)(3)(A)(iv), and 615(f)(3)(E).

Some states and agencies 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.

This article provides some thoughts on how to write decisions after administrative hearings given the lack of guidance.

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.

- Be Fair
- Appear to be Fair
- Be Careful, Thorough and Thoughtful
- Find Facts
- Apply the Rule of Law: Make and Explain Conclusions
- Resolve All Issues/ State Reasons
- Make a Clear Order/ Award Relief
- Be Clear and Concise

1 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.

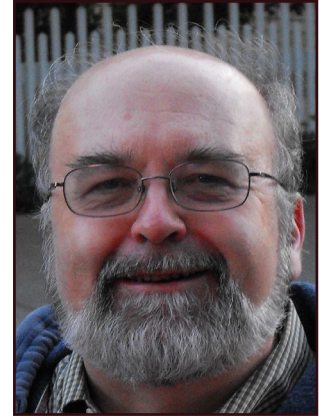
2 Appear to be Fair

Lawyers are required under their Canons 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.



Jim Gerl

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.

3 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.

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DECISION WRITING

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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.

4 Find Facts

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 a hearing officer who failed to make findings of fact or corresponding conclusions of law on numerous issues raised by the parents' claim. The decision was virtually a wholesale adoption of the school district's proposed final decision. A line by line comparison reveals that the hearing officer adopted with no substantive modifications all 480 findings of fact and 79 conclusions of law proposed by the SD.

5 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 any relevant statutes and 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*

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DECISION WRITING

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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.

6 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. 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 led 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, discuss 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. Comm. 260 U.S. 48, 57-59 (1922).

If the key constitutional 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?"

7 Make a Clear Order/ Award Relief

Hearing officers have broad authority to grant appropriate relief when there has been a violation of the law. Forrest Grove Sch Dist v. TA 557 U.S. 230, 129 S.Ct. 2484, 52 IDELR 151 (U.S. 6/22/9). 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 any relief is awarded, clearly specify what you are requiring the party to do. Timeframes should also be clearly specified.

Even a carefully worded Order can sometimes result in additional litigation. For example, see Gumm by Gumm v. Nevada State Department of Education 113 P.3d 853, 43 IDELR 198 (Nev. S.Ct. 6/23/05).

Before the order, explain in detail the relief being awarded and the reasons for the particular forms of relief. A hearing officer should be careful, however, not to order relief that is unavailable under your statute.

8 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. Wis. 3/22/7).

Remember to date and sign the decision. ↩

