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***648 EXPERT WITNESSES IN IMPARTIAL HEARINGS UNDER THE INDIVIDUALS WITH
DISABILITIES EDUCATION ACT [FN1]**

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The Individuals with Disabilities Education Act (IDEA) provides parents and local education agencies the right to an impartial hearing as the first adjudicative level of dispute resolution. [FN1] As these IDEA impartial hearings become more and more legalized, [FN2] the procedural, including evidentiary, rules become increasingly significant for not only the impartial hearing officers (IHOs) but also the immediate parties and the larger special education community. One of these potentially influential but previously ignored issues concerns the testimony of witnesses proffered as experts. Where the expert's testimony is deemed admissible and weighty, it may be outcome determinative in IDEA cases, starting at the IHO level. [FN3]

This article provides an annotated overview of a multi-step analysis for dealing with expert witness issue in IHO proceedings under the IDEA. Due to the statute's structure of "cooperative federalism," [FN4] which allows states to heighten and broaden—not subtract from—the IDEA floor, such analyses warrant consideration of not only the IDEA foundation but also the variable additions of state laws. [FN5] Using the state of Illinois, which is one of the most *649 active states for impartial hearings under the IDEA, [FN6] as an example, this analysis includes citations to its additional state authority in **bold font**. [FN7] The primary target readership consists of IHOs, although other interested individuals, such as parent and district representatives are welcome to benefit from this information.

Experts can have a weighty role because, unlike other witnesses, they may provide opinions based on specialized knowledge, not just facts or other opinions. [FN8] Given its potential significance in litigation, expert witness evidence has been a significant issue in the courts. The two competing approaches are (1) the traditional, relatively restrictive standard of *Frye v. United States*, [FN9] requiring general acceptance of reliability in the relevant scientific community, and (2) the modern, broader standard in *Federal Rules of Evidence* 702 that the Supreme Court upheld in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* [FN10] The focus here is the legal requirements and recommendations for expert evidence at the IHO level under the IDEA, including the extent of applicability of these judicial standards to this specialized administrative proceeding.

The *Daubert* approach applies in federal courts, but not necessarily in state courts or IDEA impartial hearings. [FN11] Indeed, Illinois state courts continue to follow the *Frye* standard. [FN12] Which of these approaches applies to IDEA impartial hearings appears to be an open question in Illinois. [FN13] Unless and until the courts clearly settle this matter, it seems that Illinois IHOs have *650 the discretion to use "the spirit of *Daubert*." [FN14] This latitude fits with the generally recognized wide discretion that IHOs have in conducting

IDEA hearings. [FN15] For example, in the commentary accompanying the IDEA regulations, OSEP's illustrations of IHO's broad procedural discretion expressly include determining appropriate expert witness testimony. [FN16]

Equally important, the *Daubert–Frye* question, being largely limited to admissibility, is only one aspect of expert testimony in IDEA hearings. This annotated outline, which is largely based on case law, [FN17] provides a flowchart–like framework of the three overlapping but sequentially separable categories for the IHO's application for carefully considering questions concerning expert witnesses. The final catchall category provides miscellaneous additional legal considerations related to this topic.

I. DOES THE WITNESS QUALIFY AS AN EXPERT?

- The answer, according to [Fed. R. Evid. 702](#) (by way of analogy), is based on “knowledge, skill, experience, training, or education” [FN18]

- overlapping with Step II, [FN19] courts apply [rule 702](#) via a two–part inquiry [FN20]: (1) whether the proffered expert has minimal qualifications in the specifically identified field, and (2) whether the particular expertise/opinion will be helpful (or, conversely, whether it would be superfluous and a waste of time) [FN21]

- with the burden on the proffering party by a preponderance of the evidence [FN22]

- Given the informal nature of IDEA impartial hearings, the IHO may not directly face the qualifying–expert issue at the hearing, but—as Step III *infra* shows [FN23]—it will recur in terms of explaining the weighting of the expert's *651 testimony and, if any, exhibits (i.e., reports). Thus, proactive attention is warranted.

- **ASP** provides that (1) the IHO “shall require the parties to provide curriculum vitae for each proposed expert witness in their five–day disclosures or ... [to stipulate] that the proposed expert's, including professional staff, credentials are accepted”; [FN24] and (2) upon qualifying a witness as an expert, the IHO “shall state on the record the area(s) of expertise in which the witness is being qualified.” [FN25]

- Beekman has observed, “if any objection is raised, it is within the discretion of the IHO to allow the [challenging] party to ‘voir dire’ the witness in this regard [and then] rule on whether the witness was ‘qualified’ as an appropriate expert [in one or more specific areas].” [FN26]

- As made more clear at the weighing stage of Step III, [FN27] the child's teachers—not just doctoral–level private practitioners and university professors—may meet the requisite two–part test.

- Indeed, given the alternative criteria for qualifying (e.g., experience), the IHO may accord, with due weight at Step III, expert status to the parent as to the individual strengths and needs of the child. [FN28]

II. IF THE WITNESS QUALIFIES AS AN EXPERT, IS HIS/HER TESTIMONY ADMISSIBLE?

- The basic criteria are reliability and relevance (i.e., fit). [FN29]

- More specifically, according to the [Fed. R. Evid. 702](#) (by way of analogy): if “(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and

methods to the facts of the case.” [FN30]

–*652 “ again with the burden on the proffering party [FN31]

– experts may testify within their specialized field, which typically excludes opinions or conclusions about law [FN32]

• in applying these criteria, be mindful of the need for efficiency in terms of the regulatory time line for issuance of your decision, which in turn is based on the interests of both the child and the district in terms of timely resource allocation; thus, given your own expertise and related discretion, [FN33] consider whether the expert's evidence is truly necessary.

III. IF THE WITNESS IS ALLOWED TO TESTIFY AS AN EXPERT, WHAT ARE THE CONSIDERATIONS FOR EXPLICITLY ASSESSING THE WEIGHT OF THIS TESTIMONY?

• Although this question overlaps with Step II, it is not identical; an expert's testimony may be admissible but may not be necessarily weighty. [FN34]

• The basic criteria are:

1. the relevant specialized expertise [FN35]

2. the relevant familiarity with the child [FN36]

• For a particularly pertinent and potent example, see the Seventh Circuit's finding an abuse of discretion in an IHO's discounting the opinion of the adaptive PE teacher and relying instead on the parents' medical expert *653 as to whether the child met the second prong essential for eligibility under the IDEA:

[In addition to her] cursory examination ... [the child's physician] is not a trained educational professional and had no knowledge of the subtle distinctions that affect classifications under the [IDEA] and warrant the designation of a child with a disability and special education.... Nor was [the physician] familiar with the curriculum and what [the child] needed to do in gym. In sum, her conclusory testimony and reports making an adamant demand for the “special education” classification are not substantial evidence and do not provide a reasoned basis for finding that [the child] needs special education. [FN37]

IV. MISCELLANEOUS OTHER ISSUES:

• The parties' procedure for eliciting expert opinions varies. [FN38]

• Sequestration, upon the request of the opposing party, is a matter of the IHO's discretion. [FN39]

• Prevailing parents are not entitled to district payment of expert witness fees. [FN40]

• An IHO has the discretion to appoint an expert *sua sponte* via the authority to order an independent educational evaluation, [FN41] but resorting to this option should be parsimonious based primarily on the time factor. [FN42]

• Upon judicial appeal, the parties have a limited right, within the court's discretion, to introduce additional evidence, including expert witnesses. [FN43]

• *654 Overall, IHOs should perform their “gatekeeping role” [FN44] for expert witnesses more strictly than courts due to their need for efficiency and the court's discretionary right to admit additional evidence.

- Courts accord qualified deference to IHO determinations regarding expert witnesses [FN45]; indeed, this deference is based in part on the presumed expertise of the IHO. [FN46]

- Beekman has offered the following additional, practical suggestions to IHOs with regard to taking the testimony of expert witnesses: [FN47]

- Look out for jargon problems where the witness comes from a clinical or non-education setting. Intercede gently, if necessary, to insure questions and responses ... [are] understandable and helpful to you in terms of the issues you must decide.

- If the expert has submitted an evaluation/report, do not allow the witness to rehash the entire report. Suggest that only matters of clarification or supplementation be addressed.

- Some experts have a tendency to be very expansive in their responses to question, even to the point of not being responsive! Gently try to *655 focus the witness's responses to the question asked, noting that if further explanation is needed, such will be requested by counsel or by you.

- In determining the expert's credibility you will need to cite to the record [in your written decision]. So, if questions [concerning the two key criteria arise], [FN48] consider doing so to establish the record you'll need to make the credibility findings later.

[FNa1] The views expressed are those of the authors and do not necessarily reflect the views of the publisher. Cite as 298 Ed.Law Rep. [648] (January 2, 2014).

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[FN1]. 20 U.S.C. § 1415(f) (2006). For the corresponding regulations, see 34 C.F.R. §§ 300.507–300.515 (2012) . For the various state structures for IDEA hearings, see, e.g., Perry A. Zirkel & Gina Scala, *Due Process Hearing Systems under the IDEA: A State-by-State Survey*, 21 J. SPECIAL EDUC. LEADERSHIP 3 (2010).

[FN2]. See, e.g., Perry A. Zirkel, Zorka Karanxtha, & Anastasia D'Angelo, *Creeping Judicialization In Special Education Hearings?: An Exploratory Stud*, 27 J. NAT'L ASS'N ADMIN. L. JUD. 27 (2007).

[FN3]. For a recent example, see *B.B. v. Catahoula Parish Sch. Dist.*, 62 IDELR ¶ ___, 113 LRP 40423 (W.D. La. 2013) (upholding IHO's ruling regarding least restrictive transportation based on testimony of special education professor who observed the child on the regular school bus); see also *M.H. v. New York City Dep't of Educ.*, 751 F.Supp.2d 552, 581–82 [265 Ed.Law Rep. [680]] (S.D.N.Y. 2010) (reversing review officer's decision that failed to properly consider expert evidence), *aff'd*, 486 Fed.Appx. 954 (2d Cir. 2012).

[FN4]. See, e.g., *Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 733–734 [220 Ed.Law Rep. [190]] (2d Cir. 2007).

[FN5]. For other examples of such differentiated, annotated analyses, see Perry A. Zirkel, “*Stay–Put” under the IDEA: An Annotated Overview*, 286 Ed. Law Rep 12 (2013); Perry A. Zirkel, *Tuition and Related Reimbursement under the IDEA: A Decisional Checklist*, 282 Ed. Law Rep. 785 (2012).

[FN6]. See, e.g., Perry A. Zirkel & Karen Gischlar, *Due Process Hearings under the IDEA: A Longitudinal Frequency Analysis*, 21 J. SPECIAL EDUC. LEADERSHIP 22 (2008) (finding that Illinois ranked 6th in total number of adjudicated IDEA hearings for the period 1991–2005).

[FN7]. This differentiation extends to IDEA decisions of the Seventh Circuit Court of Appeals due to their binding applicability to the impartial hearings in Illinois.

[FN8]. By way of analogy, the rules in federal courts and—for the various states that follow the federal model—in state courts is to allow restricted opinion evidence from lay, or non-expert, witnesses. The restrictions are for a basis that is not only rational and clarifying but also not “scientific, technical, or other specialized knowledge.” *Fed. R. Evid. 701*; **Ill. R. Evid. 701**.

[FN9]. 293 F. 1013 (D.C. Cir. 1923).

[FN10]. 509 U.S. 579 (1993). In a subsequent decision, the Court clarified that *Daubert's* interpretation of Rule 702 did not distinguish between “scientific” and “technical” or “other specialized knowledge, thus applying to expert witnesses in general.” *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999). For the relevant criteria in *Fed. R. Evid. 702*, see steps I and II *infra*.

[FN11]. *See, e.g., H.C. v. Katonah–Lewisboro Union Free Sch. Dist.*, 528 Fed.Appx. 64 [298 Ed.Law Rep. [129]] (2d Cir. 2013) (“Whether *Daubert* applies to IDEA hearings before state administrative agencies is highly questionable”).

[FN12]. *See, e.g., People v. Basler*, 710 N.E.2d 431 (Ill. Ct. App. 1999).

[FN13]. The Illinois Administrative Procedures Act (APA) generally, but not strictly, supports *Frye*. **5 ILL. COMP. STAT. 100/10–40 (2012)** (“The rules of evidence ... as applied in civil cases in the circuit courts of this State shall be followed. Evidence not admissible under those rules of evidence may be admitted, however, (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs”). The APA arguably applies to impartial hearings under the IDEA. *Id.* 100/1–5 and 100/1–20. However, this proposition is not clearly settled. Indeed, ISBE's APPROPRIATE STANDARD PRACTICES (ASP) (2013), at IX–C, provides: “Hearing Officers shall not apply the federal or state rules of evidence used by courts except by analogy and in the discretion of the [IHO].”

[FN14]. *Pasha v. Gonzales*, 433 F.3d 530, 535 (7th Cir. 2005) (“Although the *Daubert* filter against unreliable expert testimony is not strictly applicable to proceedings before administrative agencies, such as the Immigration Court, the ‘spirit of *Daubert*’ is applicable to them”). One reason is that on review, federal courts will use *Daubert* to review the admissibility of the expert. *See, e.g., Richland Sch. Dist. v. Thomas P.*, 32 IDELR ¶ 233 (W.D. Wis. 2000).

[FN15]. *See, e.g., Letter to Anonymous*, 23 IDELR 1073 (OSEP 1994).

[FN16]. 71 Fed. Reg. 46,691 (Aug. 14, 2006).

[FN17]. The author acknowledges, with appreciation, the additional contributions of Michigan attorney (and IHO trainer) Lyn Beekman for the suggestions for best practice and Illinois attorney Joe Selbka for the nuances of Illinois law.

[FN18]. Illinois courts follow the same approach. *See, e.g., Valiulis v. Scheffels*, 547 N.E.2d 1289, 1296 (Ill. Ct. App. 1989) (“In order to lay a proper foundation for expert testimony, a party must show that the expert has specialized knowledge or experience in the area about which the expert expresses his or her opinion [citation omitted]. The expert's knowledge may be based upon practical experience as well as scientific or academic

training [citation omitted]”).

[FN19]. See *infra* note 29 and accompanying text.

[FN20]. See, e.g., *Poust v. Huntleigh Healthcare, Inc.*, 998 F.Supp. 478, 491 (D.N.J. 1998) (citing Federal Judicial Center, Reference Manual on Scientific Evidence 55 (1994)).

[FN21]. Compare *D.L. v. Dist. of Columbia*, 55 IDELR ¶ 7 (D.D.C. 2010) (concluding that the expert did meet the second criterion), with *C.G. v. Commonwealth*, 57 IDELR ¶ 98 (M.D. Pa. 2011) (concluding that expert did not meet the second criterion).

[FN22]. See, e.g., *C.G. v. Commonwealth*, 57 IDELR ¶ 98 (M.D. Pa. 2011) (citing *Daubert*, 509 U.S. at 592–93 and Fed. R. Evid. 104(a)).

[FN23]. See *infra* note 34 and accompanying text.

[FN24]. ASP, *supra* note 13, at VII–B–5.

[FN25]. *Id.* at IX–B.

[FN26]. Lyn Beekman, Dealing with Expert Witnesses (undated outline—on file with author). His additional suggestions at this stage include:

- Require that vitas for experts be made an exhibit.
- [For voir dire,] if necessary, take over the questioning to avoid spending a great deal of time on a matter that is ultimately within your discretion.

[FN27]. See *infra* note 36 and accompanying text.

[FN28]. The due weight at the next step—as with other witnesses—includes the relevance in terms of context (e.g., home, community, or school) and reliability in terms of cogency (e.g., skew).

[FN29]. *Richland Sch. Dist. v. Thomas P.*, 32 IDELR ¶ 233 (W.D. Wis. 2000):

Courts in the Seventh Circuit employ a two-step inquiry for evaluating the admissibility of expert testimony under Fed. R. Evid. 702. See *Ancho v. Pentek*, 157 F.3d 512, 515 (7th Cir. 1998)... First, they examine the expert's testimony to determine whether it is scientifically reliable; if it is, they determine whether the testimony would assist the trier of fact (that is, whether the evidence is relevant).

[FN30]. Compare *D.L. v. Dist. of Columbia*, 55 IDELR ¶ 7 (D.D.C. 2010) (concluding that the plaintiff's statistical expert met these criteria); cf. *I.D. v. Cumberland Valley Sch. Dist.*, 2005 WL 6782653 (M.D. Pa. Oct. 5, 2005) (concluding that plaintiff's expert meet these criteria except for a legal conclusion), with *R.L. v. Miami Dade Cnty. Sch. Bd.*, 55 IDELR ¶ 259 (S.D. Fla. 2010) (concluding that the testimony of the parents' expert did not meet these criteria with regard to compensatory education); *Kropp v. Sch. Admin. Unit No. 44*, 471 F.Supp.2d 175 (D. Me. 2007) (concluding that the testimony of the parents' medical expert was too speculative to be reliable); cf. *Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 881 [266 Ed.Law Rep. [62]] (7th Cir. 2011) (“Dr. Russell is an expert, but fails to indicate, however sketchily, how he used his expertise to generate his conclusion”); *A.A. v. Raymond*, 61 IDELR ¶ 197 (E.D. Cal. 2013); *Miller v. Bd. of Educ. of Albuquerque Pub. Sch.*, 455 F.Supp.2d 1286 [214 Ed.Law Rep. [1046]] (D.N.M. 2006) (excluding part of

expert's testimony as not meeting the reliability criteria).

[FN31]. *See, e.g., C.G. v. Commonwealth*, 57 IDELR ¶ 98 (M.D. Pa. 2011) (citing *Daubert*, 509 U.S. at 592–93 and Fed. R. Evid. 104(a)). However, the burden for reliability is less than that for correctness. *See, e.g., Wiles v. Dep't of Educ., State of Hawaii*, 109 LRP 60390 (D. Hawaii 2008) (citing the Advisory Committee Notes to Rule 702).

[FN32]. *See, e.g., A.B. v. Seminole Cnty. Sch. Bd.*, 47 IDELR ¶ 7 (M.D. Fla. 2006) (allowing the parents' three autism experts to comment on mistreatment but not whether this mistreatment was a legal violation).

[FN33]. *See infra* notes 44–46 and accompanying text.

[FN34]. For a case showing the separability of the two steps, although the court ultimately deferred to the IHO's determination that the parents' expert testimony was not only admissible but also persuasive, see *Richland Sch. Dist. v. Thomas P.*, 32 IDELR ¶ 233 (W.D. Wis. 2000).

[FN35]. *See, e.g., Heather S. v. State of Wisconsin*, 125 F.3d 1045, 1058 [121 Ed.Law Rep. [493]] (7th Cir. 1997) (noting that “the deference [for the FAPE issue] is to trained educators, not necessarily psychologists”).

[FN36]. *See, e.g., Bd. of Educ. v. Michael R.*, 44 IDELR ¶ 36 (N.D. Ill. 2005) (upholding IHO's crediting of “witnesses who had specific experiences working with [the child]”), *aff'd sub nom Bd. of Educ. v. Ross*, 486 F.3d 267 [220 Ed.Law Rep. [482]] (7th Cir. 2007). The direct–experience factor often but far from always favors the testimony of the child's teachers and other district service personnel. *See, e.g., Sebastian M. v. King Phillip Reg'l Sch. Dist.*, 685 F.3d 79 [282 Ed.Law Rep. [28]] (1st Cir. 2012) (upholding IHO's crediting of educators who worked directly with the child rather than the private experts, who did not observe the child in the classroom or consult with the child's teachers); *cf. Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 46 IDELR ¶ 102 (C.D. Ill. 2006) (deferring to district when battle of experts was relatively equal). *But cf. K.S. v. Fremont Unified Sch. Dist.*, 545 F.Supp.2d 995 [232 Ed.Law Rep. [738]] (N.D. Cal. 2008) (rejecting IHO's one–sided reliance on district's expert over parents' experts).

[FN37]. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 616 F.3d 632, 641 [260 Ed.Law Rep. [46]] (7th Cir. 2010); *cf. F.O v. New York City Dep't of Educ.*, 2013 WL 5495493 (S.D.N.Y. 2013) (requiring special weighting for “non–hired,” i.e., internal, experts); *Jefferson Cnty. Bd. of Educ. v. Lolita S.*, 62 IDELR ¶ 2 (N.D. Ala. 2013).

[FN38]. Beekman, *supra* note 26:

There are basically three ways: a hypothetical question, question–by–question, or narrative. If the hypothetical approach is used and the facts included in it are not yet in evidence, the opinion can be given subject to such evidence being put in the record later. If the evidence is not thereafter provided, the hypothetical question would fall.

[FN39]. *Id.*:

Whether the presence of the witness is required for the preparation of the parties' case, would expedite the hearing, or [would] taint the witness's objectivity are all factors that [the IHO] might consider.

[FN40]. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 126 S.Ct. 2455, 165 L.Ed.2d 526 (2006); *cf. Bd. of Educ. of City of Chicago v. Illinois State Bd. of Educ.*, 62 IDELR ¶ ___, 113 LRP 39970 (N.D.

Ill. 2013) (related services do not include expert witness testimony at IDEA impartial hearings). However, as the Court subsequently recognized, parents have the qualified right to an IEE at public expense as an IDEA avenue to a district–paid expert witness. *Schaffer v. Weast*, 546 U.S. 49, 60–61 [203 Ed.Law Rep. [29]] (2005); cf. *M.M. v. Lafayette Sch. Dist.*, 58 IDELR ¶ 132 (N.D. Cal. 2012) (right to IEE at public expense extends to evaluator's attendance at IEP meeting).

[FN41]. 34 C.F.R. § 300.502(d) (2012); see also 105 ILL. COMP. STAT. 5/14–8.02a (g)(55) (2012) (IHO authority for additional information before completion of hearing).

[FN42]. Another significant consideration is whether the IHO should be an activist in the adjudicatory process.

[FN43]. See, e.g., *Monticello Sch. Dist. No. 25 v. George L.*, 102 F.3d 895 [114 Ed.Law Rep. [1042]] (7th Cir. 1996); *Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751, 760 [105 Ed.Law Rep. [23]] (3d Cir. 1995); *Ojai United Sch. Dist. v. Jackson*, 4 F.3d 1467, 1472–73 [85 Ed.Law Rep. [724]] (9th Cir. 1993); *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 790–91 [18 Ed.Law Rep. [278]] (1st Cir. 1984). One of the reasons for limiting this opportunity is that it undermines the expertise of the IHO. See, e.g., *B.H. v. Joliet Sch. Dist.*, 52 IDELR ¶ 193 (N.D. Ill. 2009).

[FN44]. See, e.g., *Kumho Tire Co., Ltd. v. Carmichael*, 536 U.S. at 141.

[FN45]. See, e.g., *Sebastian M. v. King Phillip Reg'l Sch. Dist.*, 685 F.3d 79 [282 Ed.Law Rep. [28]] (1st Cir. 2012); *A.E. v. Westport Bd. of Educ.*, 251 Fed.Appx. 685 [229 Ed.Law Rep. [106]] (2d Cir 2007); *Bd. of Educ. of Montgomery Cnty. v. S.G.*, 230 Fed.Appx. 330 [222 Ed.Law Rep. [119]] (4th Cir. 2007); *Richland Sch. Dist. v. Thomas P.*, 32 IDELR ¶ 233 (W.D. Wis. 2000). However, this deference is not at all absolute. See, e.g., *W. Windsor–Plainsboro Reg'l Sch. Dist. Bd. of Educ.*, 44 IDELR ¶ 159 (D.N.J. 2005) (ruling that exclusive reliance on parents' experts as “utterly persuasive” was unsupported in the record and, thus, not entitled to any deference); *Arlington Cnty. Sch. Bd. v. Smith*, 230 F.Supp.2d 704, 730 [172 Ed.Law Rep. [162]] (E.D. Va. 2002) (overruling the IHO because his “findings lack support in the record, and he failed to defer to the considered judgment of the educational experts, who uniformly and consistently testified that [the child] would receive educational benefit from [the district's proposed] placement”).

[FN46]. See, e.g., *Bd. of Educ. of Murphysboro Cmty. Unit Sch. Dist. No. 186 v. Illinois State Bd. of Educ.*, 41 F.3d 1162, 1167 [96 Ed.Law Rep. [90]] (7th Cir. 1994) (recognizing IHO's “special expertise in special education law”); see also *T.G. v. Midland Sch. Dist.*, 848 F.Supp.2d 902 [282 Ed.Law Rep. [425]] (C.D. Ill. 2012); *James D. v. Bd. of Educ.*, 642 F. Supp. 2d 804 [250 Ed.Law Rep. [194]] (N.D. Ill. 2009). The other primary underpinning, at least for credibility determinations, is the IHO's direct observation of the witness. See, e.g., *A.L. v. Chicago Pub. Sch. Dist. No. 299*, 57 IDELR ¶ 276 (N.D. Ill. 2011) (deferring to IHO's credibility determination between competing experts). For the combination along with the thorough–writing criterion, see, e.g., *Richland Sch. Dist. v. Thomas P.*, 32 IDELR ¶ 233 (W.D. Wis. 2000):

The [IHO], who has more experience in these matters than this court and who had the opportunity to observe the witnesses, wrote a thoughtful, well–reasoned opinion in which he explained his reasons for rejecting the district's challenges to Dr. Eisemann's testimony. Notwithstanding the unique standard of review called for by the IDEA, it would violate judicial economy and common sense to overturn such a credibility determination without a compelling reason.

[FN47]. Beekman, *supra* note 26.

[FN48]. See *supra* text accompanying notes 35–36.
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