DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002

PETITIONER, on behalf of
[STUDENT],[1]

Petitioner,

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Respondent.

Date Issued: November 4, 2011

Hearing Officer: Peter B. Vaden

OSSE
STUDENT HEARING OFFICE
2011 NOV 14 AM 10: 47

HEARING OFFICER DETERMINATION
(Corrected for Typographical Error on November 11, 2011)

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by MOTHER (the "Petitioner"), under the Individuals with Disabilities Education Act, as amended (the "IDEA"), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations ("D.C. Regs."). In her Due Process Complaint, the Petitioner alleges that Student's placement at CITY HIGH SCHOOL ("CHS") is inappropriate because the school is unable to implement Student's IEP. In addition Petitioner alleges that DCPS has

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[1] Personal identification information is provided in Appendix A.

denied Student a free appropriate public education ("FAPE") by failing to review Student's March 9, 2010 IEP and by failing to consider Student's 2011 vocational assessment and 2010 Vineland adaptive scales.

Student, an AGE young man, is a resident of the District of Columbia. The Petitioner's Due Process Complaint, filed on September 12, 2011, named DCPS as respondent. The undersigned Hearing Officer was appointed on September 14, 2011. Both parties waived the resolution session, effective September 21, 2011. The 45-day time line for issuance of this HOD began on September 22, 2011. On October 4, 2011, a prehearing telephone conference was held with the Hearing Officer and counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned Impartial Hearing Officer on November 1, 2011, at the Student Hearing Office in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by DCPS COUNSEL.

The Petitioner testified and called as witnesses, CHS SPED COORDINATOR, PRIVATE SCHOOL ADMISSIONS DIRECTOR, and Student. DCPS called as witness DCPS CONTRACTOR. Petitioner's Exhibits P-1 through P-18, P-20, and P-22 through P-24, were admitted into evidence without objection, with the exception of Exhibits P–7, P-8, P-11, P-12 and P-19. Exhibits P-8, P-11, and P-12 were admitted over DCPS' objections. Exhibits P-7, P-19, P-25 and P-26 were withdrawn. DCPS Exhibits R-1 and R-2 were admitted into evidence over Petitioner's objection. DCPS withdrew Exhibit R-3. The Hearing Officer sustained DCPS' objection to Petitioner's offering Exhibit R-3 as a Petitioner's exhibit.

JURISDICTION

The Hearing Officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

ISSUE AND RELIEF SOUGHT

– WHETHER DCPS HAS DENIED STUDENT A FAPE BY FAILING TO MATCH HIM WITH A SCHOOL CAPABLE OF FULFILLING HIS IEP NEEDS;

– WHETHER DCPS HAS DENIED STUDENT A FAPE BY FAILING TO TIMELY UPDATE AND REVISE STUDENT'S MARCH 9, 2010 IEP; and

– WHETHER DCPS DENIED STUDENT A FAPE BY NOT CONVENING AN MDT TEAM TO CONSIDER STUDENT'S VOCATIONAL ASSESSMENT REPORT AND ADAPTIVE VINELAND BEHAVIOR SCALES.

Petitioner requests that the Hearing Officer order DCPS to fund Student's private placement at Private School and furnish school transportation. In addition, Petitioner requests that DCPS be ordered to convene Student's IEP team to revise and update his IEP after considering his vocational assessment and adaptive behavior assessment.

FINDINGS OF FACT

After considering all of the evidence, as well as the arguments of counsel, this Hearing Officer's Findings of Fact are as follows:

1. Student is an AGE young man. Student resides with Mother in the District of Columbia. Testimony of Mother.

2. Student is a "child with a disability" as defined by the IDEA. In an August 2, 2011 IEP, Student's Primary Disability is reported as Multiple Disabilities. Exhibit R-1.

3. For the 2011-2012 school year, Student is enrolled in GRADE at CHS. Testimony of Mother.

4. In June 2009, Student scored in the impaired or mentally retarded range (Full Scale IQ of 61) on the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV). He was diagnosed by PSYCHOLOGIST with Attention Deficit Hyperactivity Disorder ("ADHD"), predominantly inattentive type and Oppositional Defiant Disorder ("ODD"). Exhibit P-11. Student has also been diagnosed with Asperger's under the Autism Spectrum. Exhibit P-14.

5. Student attended CLOSED PRIVATE SCHOOL ("CPS") beginning in STARTING GRADE for approximately six years until the school was closed in the summer of 2011. Testimony of Mother, Exhibit P-11.

6. Student's April 20, 2010 IEP at CPS provided that he would receive 27.5 hours per week of Specialized Instruction, 1 hour per week of Clinical Counseling, and .75 hours per week of Occupational Therapy ("OT"), 100 percent outside of the general education setting. Exhibit P-13.

7. Following an adaptive behavior assessment conducted in October 2010, Psychologist reported that Student's adaptive behavior functioning is in the impaired or mentally retarded range well below age expectation in the areas of communication and functional academics. Psychologist reported that Student would benefit from continued placement in an educational setting that can provide effective instruction at the level appropriate for individuals with mild mental retardation. Exhibit P-10. In her pleadings, Petitioner refers erroneously to the assessment as an "adaptive vineland." The instrument used by Psychologist was the Adaptive Behavior Assessment System - Second Edition (ABAS-II). *Id.*

8. On March 28, 2011, Newview, LLC conducted a level two vocational assessment of Student to establish Student's vocational interests and preferences. Petitioner's counsel provided the vocational assessment report to COMPLIANCE CASE MANAGER at DCPS on

April 8, 2011. Exhibit P-9.

9. Around April 24, 2011, Student's IEP team at CPS convened to update Student's IEP. Petitioner attended by telephone. The IEP team decided that Student would continue to attend CPS. Testimony of Contractor. Student's April 2011 IEP was not offered into evidence.

10. At the end of the spring in 2011, the D.C. Office of the State Superintendent of Education ("OSSE") issued a directive to convene Least Restrictive Environment ("LRE") meetings for all students placed at CPS. Testimony of Contractor.

11. Contractor sent notices to Petitioner on July 7, 2011 to schedule a LRE meeting for Student. Contractor sent the notices to Petitioner by regular mail and certified mail and attempted, unsuccessfully, to reach Petitioner by telephone. When no response was received from Petitioner, a meeting of Student's MDT team was set for August 2, 2011 at CPS. Notice of the meeting was sent by email to Petitioner's counsel on July 19, 2011. Testimony of Contractor, Exhibit P-24.

12. Student's MDT team convened on August 2, 2011 at CPS. Neither Petitioner nor Petitioner's counsel attended. CPS representatives did not wish to hold the meeting without the Petitioner. However, DCPS decided to proceed with the meeting. At the meeting, CHS SPED Coordinator informed the team that CHS could implement Student's IEP. The MDT team changed Student's placement/location from CPS to CHS. Testimony of Contractor.

13. On or about August 2, 2011, DCPS sent Prior Written Notice to Petitioner that Student's location of services was proposed to change from CPS to CHS, effective June 22, 2011. Exhibit R-2.

14. At the August 2, 2011 meeting, the MDT team developed a revised IEP for Student. Although the IEP form states that Student and Petitioner attended the August 2, 2011

meeting, neither was present. Testimony of Contractor.

15. On the August 2, 2011 IEP, Student's primary disability if identified as Multiple Disabilities ("MD"). The IEP states that, for the Reading Area of Concern, in small groups, with a consistent group of supportive peers, Student is focused and enthusiastic; that for the Emotional, Social and Behavioral Development Area of Concern, Student's disability limits his ability to have appropriate interactions with peers, and that Student's difficulty conversing and interacting with peers in socially appropriate ways will prevent him from functioning in a less restrictive environment; that for the Motor Skills/Physical Development Areas of Concern, Student's ability to self-regulate across environments has regressed, that Student demonstrates difficulties in visual perception, inability to self regulate, and visual motor integration impacts his participation in functional school and community activities; and, as regards Least Restrictive Environment, that the nature and severity of Student's disability is such that Student can only make progress on IEP goals and objectives by being removed from the general education classroom to receive Specialized Instruction Services, Behavioral Support Services and OT. Exhibit R-1.

16. The August 2, 2011 MDT team discussed whether Student can access the curriculum in a combination setting with a combination of in-class supports, pull out or related services and be with non-disabled peers. The team explored if Student can access the curriculum in a self-contained setting with all disabled peers and serviced in a separate location. The team concluded that a self-contained setting is most appropriate for Student at this time. Exhibit R-1.

17. Student is on a high school diploma track. Exhibit R-1.

18. The August 2, 2011 IEP team did not consider the ABAS-II assessment of

Student conducted in October 2010 or the March 2011 level two vocational assessment to determine Student's IEP needs. Exhibit R-1. Testimony of Contractor.

19. CPS closed permanently on August 8, 2011. Testimony of Contractor.

20. After learning that Student would be placed at CHS, Petitioner and Student went to CHS to meet with SPED Coordinator. SPED Coordinator did not know anything about Student and did not have his IEP or other documentation. Petitioner had her attorney forward the IEP to SPED Coordinator. Testimony of Petitioner.

21. CHS has an enrollment of approximately 1,600 students, of whom 161 students are served under IEPs. CHS is able to offer self-contained classes for English, mathematics, history, science, reading and learning lab, except for 12th grade science. CHS does not offer self-contained classes for electives, foreign languages, music, art, computer or health/physical education. Testimony of SPED Coordinator.

22. To receive a DCPS high school diploma, Student must take electives and foreign languages. Testimony of SPED Coordinator.

23. Under Student's 2011-2012 class schedule at CHS, he is enrolled for first semester in Spanish II, Physical Education, English IV, Probability and Statistics, D.C. History and Government, Environmental Science, and World History and Geography. For the second semester, Student will be enrolled in Spanish II, Art and Design Foundations, English IV, Probability and Statistics, Principals of U.S. Government, Environmental Science, and World History and Geography. Exhibit P-17. Of these classes, CHS offers Spanish II, Physical Education, and Art and Design Foundations only in the general education setting. Testimony of SPED Coordinator.

24. Student is failing his classes at CHS. Testimony of Mother, Exhibit P-18.

25. Student has been accepted for admission at Private School. Private School has an enrollment of 73 students, all from the District of Columbia, some of whom have been placed at Private School by DCPS. Private School has received a certificate of approval issued by OSSE. The tuition cost at Private School is approximately for the 10 month program. Private School offers small class size with a maximum of 8-10 students, with a teacher and teacher's assistant in each class. All teachers are special education and content certified. Private School follows the DCPS curriculum and offers a DCPS diploma to students who complete graduation requirements. All students at Private School are on IEPs. Most students at Private School have emotional disabilities. Some students are also intellectually disabled ("ID"). Teachers at Private School work with ID Students on developmental and life skills, help them find jobs and prepare for transition to post-school activities. Testimony of Admission Director.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and, the argument of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

DISCUSSION

Burden of Proof

The burden of proof in a due process hearing is the responsibility of the party seeking relief – the Petitioner in this case. *See* D.C. Regs. tit. 5-E, § 3030.3. *See, also, Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 536, 163 L.Ed.2d 387 (2005); *Hester v. District of Columbia*, 433 F.Supp.2d 71, 76 (D.D.C. 2006).

1. HAS DCPS HAS DENIED STUDENT A FAPE BY FAILING TO MATCH HIM WITH A SCHOOL CAPABLE OF FULFILLING HIS IEP NEEDS?

The Petitioner contends that DCPS is denying Student a FAPE because the school at which Student is placed for the 2011-2012 school year, CHS, is unable to implement Student's August 2, 2011 IEP. After CPS closed, DCPS transferred Student to CHS. At CHS, two of Student's classes, Spanish II and Physical Education, are only offered in the general education setting. For the second semester, Student is placed in an art class, which is also only taught in the general education setting. Student requires these classes to earn a DCPS high school diploma.

To determine whether the CHS placement is appropriate for Student, one must refer to his IEPs. *See Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 44 (D.D.C. 2006). "Designing an appropriate IEP is necessary but not sufficient. DCPS must also implement the IEP, which includes offering placement in a school that can fulfill the requirements set forth in the IEP. 20 U.S.C. § 1401(9)." *O.O. ex rel. Pabo v. District of Columbia*, 573 F.Supp.2d 41, 53 (D.D.C. 2008). Student's IEPs at CPS provided that Student would receive 25.75 hours per week of Specialized Instruction and additional related services, 100 percent outside of the general education setting. Student's current IEP, developed on August 2, 2011, likewise provides that he will receive 25.75 hours per week of Specialized Instruction outside general education. Addressing the least restrictive environment for Student, the August 2, 2011 IEP team discussed whether Student could access the curriculum in a setting with non-disabled peers or needed to be in a self-contained setting with all disabled peers. The IEP team agreed that a self-contained setting was most appropriate.

CHS cannot offer Student a self-contained setting for all of the classes he needs to graduate. This semester, CHS had to place Student in general education classes for Spanish II

and physical education. Next semester Student will also be placed in a general education art class. DCPS argues that it has substantially complied with the IEP and CHS's failure to provide Spanish II, physical education and art to Student in self-contained classes does not constitute a failure to implement Student's IEP.

It is correct that a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of the IEP. "While the question of what standard to apply to failure-to-implement claims under the IDEIA has not been addressed by the D.C. Circuit, 'the consensus approach to this question among federal courts that have addressed it has been to adopt a standard articulated by the Fifth Circuit' in *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir.2000). *Catalan ex rel. E.C. v. District of Columbia*, 478 F.Supp.2d 73, 75 (D.D.C. 2007), aff'd sub nom. *E.C. v. District of Columbia*, No. 07-7070, 2007 U.S.App. LEXIS 21928 (D.C.Cir. Sept. 11, 2007). In *Bobby R.*, the court held:

> [T]o prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failures and for providing the disabled child a meaningful educational benefit.

200 F.3d at 349; *see also Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir.2007) ('[A] material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and [those] required by the child's IEP.')." *S.S. ex rel. Shank v. Howard Road Academy*, 585 F.Supp.2d 56, 67-68 (D.D.C. 2008) Thus, the Hearing Officer must determine whether DCPS' failure to provide all of Student's instruction in a self-contained setting is "material." *See id.*

In the present case, I find that CHS' placement of Student in general education settings for some courses is more than a minor discrepancy between the requirements of the August 2,

2011 IEP and the services available at CHS. At the August 2, 2011 IEP meeting, Student's IEP team reported that Student's disability limits his ability to have appropriate interactions with peers and that his difficulty conversing and interacting with peers in socially appropriate ways will prevent him from functioning in a less restrictive than self-contained environment. Therefore, Student's placement with nondisabled peers in general education classrooms for several courses at CHS, especially for a substantive course like Spanish II, must be deemed a material failure to implement Student's IEP. Petitioner prevails on this issue.

2. DID DCPS DENY STUDENT A FAPE BY FAILING TO TIMELY UPDATE AND REVISE HIS MARCH 9, 2010 IEP?

Petitioner contends that DCPS failed to timely review and update Student's March 9, 2010 IEP. The IDEA requires that the IEP team review a child's IEP periodically, but not less than annually, and revise the IEP as appropriate. *See* 34 C.F.R. § 300.324(b). In this case, the evidence establishes that Student's IEP team met at CPS on or about April 24, 2011 and reviewed his IEP. Petitioner participated by telephone. The IEP team decided that Student would remain at CPS. Unfortunately, with the closing of CPS in August 2011, Student's April 2011 IEP cannot now be located. (DCPS developed an updated IEP on August 2, 2011 when it changed Student's placement location to CHS.) I find that Petitioner has not established that DCPS failed to timely review and revise Student's March 9, 2010 IEP. DCPS prevails on this issue.

3. DID DCPS DENY STUDENT A FAPE BY NOT CONVENING AN MDT TEAM TO CONSIDER STUDENT'S VOCATIONAL ASSESSMENT REPORT AND ADAPTIVE BEHAVIOR ASSESSMENT?

Psychologist conducted an adaptive behavior assessment of Student in October 2010. Newview, LLC conducted a level two vocational assessment of Student on March 28, 2011. At the August 2, 2011 IEP meeting, Student's IEP team did not utilize either assessment to

determine Student's IEP needs. Under the IDEA, when the IEP team reviews a child's IEP, the IEP team must consider, *inter alia*, the results of any reevaluation conducted at the request of the parent. *See* 34 C.F.R. under §§ 300.324, 300.303. The IEP team's failure to consider the adaptive behavior assessment and vocational assessment was therefore a procedural violation of the IDEA. "A procedural violation of the IDEA 'can itself constitute the denial of a free appropriate education.' *Blackman v. Dist. of Columbia*, 277 F.Supp.2d 71, 79 (D.D.C.2003). But it is important to note that, in [the D.C. Circuit], a procedural violation does not, standing alone, establish a failure to provide a FAPE. *See Lesesne v. Dist. of Columbia*, 447 F.3d 828, 834 (D.C.Cir. 2006). 'An IDEA claim is only viable if those procedural violations affected the student's substantive rights.' *Id.*" *O.O. ex rel.Pabo v. District of Columbia*, 573 F.Supp.2d 41, 47 (D.D.C. 2008) (emphasis omitted). In the absence of a showing that the child's education was substantively affected, no relief may be awarded. *Id.* Petitioner offered no evidence at the hearing that the IEP team's failure to consider Student's adaptive behavior assessment or level two vocation assessment had diminished the appropriateness of Student's IEPs or otherwise affected Student's education. Under *Lesesne*, no relief may be awarded. DCPS prevails on this issue.

REMEDY

Private School Placement

In this determination, I have found that this school year, DCPS has denied Student a FAPE by not matching him with a school capable of implementing his IEP requirement that services be provided in a setting outside of general education. For relief, Petitioner seeks an order that DCPS fund Student's placement at Private School. "[W]here a public school system has defaulted on its obligations under the IDEA, a private school placement is 'proper under the [IDEA]' if the education provided by said school is 'reasonably calculated to enable the child to

receive educational benefits.'" *Wirta v. District of Columbia*, 859 F.Supp. 1 (D.D.C. 1994) citing *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Before ordering Student's placement at Private School, additional considerations must be resolved. Under District of Columbia law, special education placements shall be made in the following order or priority:

> (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
>
> (2) Private or residential District of Columbia facilities; and
>
> (3) Facilities outside of the District of Columbia.

D.C. Code Ann. § 38-2561.02(c). In this case, DCPS has not identified any DCPS school or public charter school that could meet Student's IEP needs. Private School is in the next level of priority as a District of Columbia facility where DCPS has placed other children with disabilities.

Courts have identified a set of further considerations "relevant" to determining whether a particular placement is appropriate for a particular student, including the nature and severity of the student's disability, the student's specialized educational needs, the link between those needs and the services offered by the private school, the placement's cost, and the extent to which the placement represents the least restrictive educational environment. *Branham v. Government of the Dist. of Columbia*, 427 F.3d 7, 11-12 (D.C. Cir. 2005). Pursuant to the *Branham* guidance, I will address each of these considerations in turn.

a. Nature and Severity of Student's Disability:

The evidence in this case establishes that Student has OHI-ADHD and ODD disabilities. His adaptive behavior functioning is in the impaired or mentally retarded range. Student's IEP team determined that Student's disability limits his ability to have appropriate interactions with

peers and that Student has difficulty conversing and interacting with peers in socially appropriate ways. Since being placed at CHS, Student is failing several classes.

b. Student's Specialized Educational Needs:

Student was placed by DCPS at CPS for some six years. Psychologist reported in his October 7, 2010 adaptive behavior assessment that Student would benefit from placement in an educational setting that can provide effective instruction at the level appropriate for individuals with mild mental retardation. Student's IEP team determined that the nature and severity of Student's disability is such that Student can only make progress on IEP goals and objectives by being removed from the general education classroom and that his disability prevents him from functioning in a less restrictive environment.

c. Link between Student's Needs and the Services Offered by Private School:

Private School serves students with emotional disabilities, some of whom may have Intellectual Disabilities. Private School offers small class size and a low student-to-teacher ratio. All instruction at Private School is provided outside of general education. Private School follows the DCPS curriculum and Student could earn a DCPS high school diploma. Teachers at Private School work with ID students on developmental and life skills, help them find jobs and prepare for transition to post-school activities.

d. Cost of Placement at Private School:

The tuition cost at Private School is about $39,000 per year. DCPS offered no evidence that the cost of placement at Private School is higher than costs at other private District of Columbia schools serving children with disabilities.

e. Least Restrictive Environment:

The IDEA requires school districts to place disabled children in the least restrictive

environment possible. *Roark ex rel. Roark v. District of Columbia*, 460 F.Supp.2d 32, 43 (D.D.C. 2006) (citing 20 U.S.C. § 1412(a)(5); 34 C.F.R. 300.550; D.C. Mun. Regs. tit. 5, § 3011 (2006)). "In determining the least restrictive environment, consideration is given to the types of services that the child requires." *Id.* (citing 34 C.F.R. § 300.552(d)). As a full time special education school, Private School is a very restrictive environment. However, Student's IEP team determined that a self-contained setting is most appropriate for Student at this time and the IEP team rejected less restrictive alternatives, such as an inclusion setting with non-disabled peers or a combination of in-class supports with pull-out services. Considering all of the above factors, as well as the failure of DCPS to offer a less restrictive placement for Student, where he could still receive all of his instruction outside of the general education setting, I conclude that Private School is an appropriate placement for Student.

SUMMARY

In summary, I have found that DCPS has denied Student a FAPE for the 2011-2012 school year by placing him at CHS, which is unable to implement fully the August 2, 2011 IEP. Private School is an appropriate placement for student under the *Branham* criteria. Petitioner has not established that DCPS' failed to timely review and revise Student's April 2010 IEP or that Student's education was substantively affected by his IEP team's failure to consider his October 2010 adaptive behavior assessment and March 2011 level two vocation assessment.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ORDERED:

1. DCPS shall fund Student's private placement at Private School for the remainder of the 2011-2012 school year and shall provide school transportation pursuant to OSSE special education transportation guidelines.

2. Within 10 days of this order, DCPS shall convene Student's MDT/IEP team to effect his change of placement/location to Private School pursuant to the requirements of 34 C.F.R. § 300.325. A representative from Private School must attend the IEP meeting; and

3. All other relief requested by Petitioner herein is denied.

Date: November 4, 2011

s/ Peter B. Vaden
Peter B. Vaden, Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(I).