

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E.
Washington, D.C. 20002**

Parents, on behalf of, Student¹,

Petitioner,

Hearing Officer: James McKeever

v.

Hearing Date: 12/21/11

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS

Respondent.

HEARING OFFICER DETERMINATION

I. JURISDICTION

This proceeding was brought in accordance with the rights established under the Individuals with Disabilities Education Act 2004 ("IDEA"), and its implementing regulations codified at 20 U.S.C. Section 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

II. INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner is the parent of the Student, a year-old boy who is classified as a student with a disability and who currently attends a general education program at a Non-Public School in the District of Columbia. The Student was placed at the Non-Public School pursuant to a scholarship awarded by a scholarship fund. On October 18, 2011, Petitioner filed a Due Process Complaint ("DPC") against DCPS alleging violations of the Individuals with Disabilities Education Act ("IDEA").

Subsequent to Petitioner's filing of the DPC, Petitioner requested prospective funding for the Student to attend a full-time, special education program at a different Non-Public School than the one he is currently

¹ Case information listed at Appendix "A."

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STUDENT HEARING OFFICE

attending (herein referred to as the "Private School") for the remainder of the 2011-2012 school year. DCPS counsel had no objection.

Respondent has not challenged the sufficiency of the DPC. DCPS filed its response to the DPC on October 31, 2011.

On November 15, 2011, the parties participated in a resolution meeting, but were unable to resolve the issues raised in the DPC. Nevertheless, the parties agreed to continue the resolution period, which expired on November 17, 2011. The forty-five day due process hearing timeline began on November 18, 2011. The PHC was held on November 21, 2011. Counsel for Petitioner and counsel for DCPS participated in the prehearing conference.

The due process hearing was held on December 21, 2011.

Petitioner's Exhibit's 1-16 and Respondent's Exhibits 1-11 were admitted into evidence². The following witnesses testified on behalf of the Petitioner: Parent; Advocate, Caseworker, Administrator, Teacher, and Director of proposed Private School. No witnesses appeared on behalf of the Respondent.

III. ISSUES PRESENTED

The following issues were certified for adjudication at the due process hearing:

a. Whether DCPS denied the Student a free and appropriate public education by failing to develop an appropriate IEP on January 11, 2011, when the Student's hours of specialized instruction were reduced from 10 hours per week outside the general education setting and 5 hours per week within the general education setting to only 5 hours per week within the general education setting, in light of the student's recent psychological evaluation and the Student's failing grades;

b. Whether DCPS denied the Student a free and appropriate public education by failing to develop an appropriate IEP on June 24, 2011, for the same reasons set forth in paragraph (a);

c. Whether DCPS denied the Student a free and appropriate public education by failing to develop a behavior intervention plan (BIP) after receiving the Student's independent Functional Behavioral Assessment (FBA);

² A list of all Exhibits entered into evidence is annexed hereto at Appendix "B."

d. Whether DCPS denied the Student a free and appropriate public education by changing the Student's mode of transportation from a school bus to public transportation via the metro in light of the Student's deficits;

e. Whether DCPS denied the Student a free and appropriate public education by failing to offer the Student Extended School Year service (ESY) during the summer of 2011.

Petitioner requests that DCPS be directed to fund the Student's placement at the Private School for the remainder of 2011-2012 school year and to fund an independent FBA. Petitioner also requests that DCPS be directed to develop an IEP with a small student to teacher ratio, increase special education instruction hours outside the general education setting and provide bus transportation as well as a BIP and counseling services. Lastly, Petitioner request compensatory educational services for the denial of FAPE.

DCPS asserts that the Student attended a summer program in 2011 and that an Independent Educational Evaluation (IEE) was issued for the FBA. DCPS also asserts that the Student's special education hours of instruction were reduced at the request of the parent and that DCPS can place the Student in a full-time special education program at a DCPS Middle School.

IV. FINDINGS OF FACT

The Student is a year-old boy who currently attends the grade at a Non-Public school in the District of Columbia pursuant to a scholarship, which the parent obtained from a scholarship fund (Petitioner's testimony). The Student is classified as "other health impaired" and has been diagnosed with multiple disabilities including a Learning Disability, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder and mixed Adjustment, Anxiety and Depressive Disorder (Exhibit R-7 and P-14).

The Student's cognitive ability is in the High Average range and the Student has the ability to perform well academically. However, the Student's emotional and behavioral issues significantly impact his academic functioning (Exhibit P-11). The Student's "emotional issues cause him to inaccurately view social situations," which cause him respond in a manner that is "ineffective and inappropriate and makes him behave impulsively" (Exhibit P-14-Clinical Evaluation).

A clinical evaluation conducted on March 31, 2010, recommended that the Student be taught in "a small therapeutic setting with a teacher to student ratio of 1:3" and that an FBA be developed for the student to address

his emotional issues and his absences from school (Exhibit P-14-Clinical Evaluation). No evidence was presented to rebut this recommendation, as such, I find that the Student requires a small therapeutic setting with a small teacher to student ratio for instruction.

An FBA was developed for the Student on October 4, 2010 and several recommendations were made including the development of a BIP to address the Student's absences from school and a reward system to reinforce positive behaviors at school (Exhibit P-13, page 5). As of the date of the impartial hearing, I find that DCPS failed to develop a BIP for the Student (Exhibits P-6, P-7, and Petitioner's testimony).

During the 2009-2010 school year, the Student attended a Public Charter school where he received 3 hours per day of specialized instruction in English, math and written expression in the general education setting (Exhibit P-14, paged 14), but due to his poor behavior and failing grades, the Student was moved to a neighborhood school that could meet his special education needs (Petitioner's testimony).

On August 3, 2010, the Public Charter School developed an IEP for the Student which recommended 5 hours per week of specialized instruction within the general education setting and 10 hours per week of specialized instruction outside of the general education setting. The Student also received 45 minutes per week of behavioral supports (Exhibit R-7, IEP pages 5 and 7, and Petitioner's testimony) and bus transportation because it was noted that the Student becomes "paranoid" and "wanders" when walking to school, which sometimes results in the Student not making it to school (Exhibit R-5, page 5 "Meeting Notes" dated 8/3/10 and Petitioner's testimony).

During the fall semester of 2010, the Student attended a DCPS middle school. The Student was unhappy at this school because he was placed in a self-contained class with Students who were diagnosed with Down Syndrome (Petitioner's testimony).

In December 2010, Petitioner moved from her residence and the Student was transferred to different DCPS middle school (Petitioner's testimony).

On January 11, 2011, DCPS reduced the Student's hours of specialized instruction from 5 hours per week within the general education setting and 10 hours per week outside of the general education setting (Exhibit R- IEP dated 8/20/10) to only 5 hours per week within the general education setting. DCPS contends that the reduction in the Student hours specialized

instruction was at Petitioner's request (DCPS Response). Petitioner testified that she did not agree with the reduction in services for the Student (Exhibit P-6, IEP dated 1/11/11, page 11 and Petitioner's testimony) and as there was no evidence to rebut Petitioner's testimony on this issue, I find that the DCPS reduced the Student's hours of specialized instruction without Petitioner's consent.

I note that with the exception of the reduction of the Student's hours of specialized instruction, the DCPS IEP developed on January 11, 2011 is identical to the IEP developed by the Public Charter School on August 3, 2010 (See Exhibit R-7 and Exhibit P-6).

At the end of the 2010-2011 school year, the Student failed most of his classes and was "retained" pending his successful completion of summer school (Exhibit P-9, Progress Report dated June 20, 2011).

The Student's Caseworker from a community provider testified that she has worked with the Student for the last year. The Caseworker testified that she meets with the Student once a week to help him develop "coping skills" to enable him to function at school and in the home. The Caseworker also testified that the Student's behaviors escalated during the 2010-2011 school year and that she believed that the Student needs a "smaller, more therapeutic academic setting" (Testimony of Caseworker).

On June 24, 2011, DCPS reconvened an IEP meeting and continued to provide the Student with only 5 hours per week of specialized instruction, but changed the Student's mode of transportation from a school bus to the public metro (Exhibit P-7 page 7). During this IEP meeting, DCPS also denied Petitioner's request for ESY services during the summer of 2011 (Exhibit P-7, page 8, Petitioner's testimony).

Again, I note that the IEP dated June 24, 2011 is identical to the IEP dated January 11, 2011, which is identical to the IEP dated August 3, 2011, that was developed by the Public Charter School, with the exception of the reduction of the Student's hours of special education instruction and the change in the Student's mode of transportation from a bus to the metro (See, Exhibit R-7, Exhibit P-6 and Exhibit P-7). Although the DCPS IEP meeting was held on June 24, 2011, the "anticipated date of achievement" for every annual goal on this IEP is June 6, 2011, which is 3 weeks before the annual goals were developed and the same date for the achievement of the annual goals listed on the Public Charter School IEP that was developed on August 3, 2010 (Exhibits P-7 and R-7). As such, I find that the annual goals on the June 23, 2011 IEP are inappropriate for the Student.

During the summer of 2011, Petitioner enrolled the Student at a Public Charter school. I find that the Student successfully completed his summer school program at the Charter School and that he was promoted to the 9th grade (Exhibit R-9).

In September 2011, Petitioner enrolled the Student at the Non-Public school because the Student was awarded a scholarship by a scholarship fund (Petitioner's testimony). From September 2010 to December 2010, the Student was enrolled in a general education class with 5-7 students in each class. During the first quarter, the Student received failing grades in all of his classes (Exhibit P-5). The Administrator from the Non-Public school testified that although the Non-Public School offers special education services, the Student's scholarship was limited to the general education setting (Administrator testimony). I find that the Non-Public school cannot meet the Student's special education needs (Administrator testimony).

The Student's Teacher at the Non-Public testified that the Student enters her class and puts his head down on his desk and does not perform class work. The Teacher also testified that the Student often walks out of class and leaves the school building without permission.

On October 12, 2011, Petitioner, through counsel, provided DCPS with notice of the Student's unilateral placement at the Non-Public school (Exhibit P-1) and requested that DCPS conduct a comprehensive psychological evaluation and an FBA (Exhibit P-2).

On or about December 9, 2011, counsel for Petitioner advised the HO and DCPS' counsel that the relief was requesting was changed from funding at the Non-Public school that the Student is currently attending to funding at the proposed Private School.

The Student's Advocate, who is a former special education teacher, testified that the Student requires 40 hours of independent counseling as a form of compensatory education services based on DCPS failure to conduct a BIP to address the Student's behaviors during the 2010-2011 school year. The Advocate also testified that the Student requires 1 year of independent tutoring services, at 4 hours per week, to make up for the reduction of the Student's specialized instruction during the 2010-2011 school year and because DCPS failed to provide the Student with ESY services during the summer of 2011 (Exhibit P-16 and Testimony of Advocate).

The Student was accepted to the proposed Private School placement, which is a full-time special education program (Exhibit P-15) that offers a therapeutic milieu with small class sizes and a small student to teacher ratio

(Testimony of Director). There are 10 students and two teachers in each class and all the instructors are licensed and/or certified in their content areas. The school also employs a clinical psychologist and there are two counseling centers on the premises (Testimony of Director).

The Student was accepted to the Private School on December 7, 2011, (Exhibit 15).

V. STATUTORY AND LEGAL FRAMEWORK

The IDEA was enacted "to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). It requires all states and the District of Columbia to provide resident children with disabilities a FAPE designed to meet their unique needs. *Id.* § 1412(a)(1).

The IDEA aims to guarantee children with disabilities a FAPE by requiring states and the District of Columbia to institute a variety of detailed procedures. "[T]he primary vehicle for implementing" the goals of the statute "is the [IEP], which the [IDEA] mandates for each child." Harris v. District of Columbia, 561 F. Supp 2d 63, 65 (D.D.C. 2008) *citing* Honig v. Doe, 484 U.S. 305, 311-12 (1988)). An IEP is a written statement that includes, among other things: (i) a statement of the child's present levels of academic achievement and functional performance; (ii) a statement of measurable annual goals, including academic and functional goals; (iii) a description of the child's progress in meeting those goals; (iv) a statement of the special education and related services and supplementary aids and services to be provided to the child; and (v) an explanation of the extent, if any, to which the child will not participate with nondisabled children in any regular classes. *Id.* § 1414(d)(1)(A)(i). An "IEP Team" -- which consists of the parents of the child with disability, not less than one regular education teacher of the child (if applicable), not less than one special education teacher or provider of the child, and a representative of the local education agency -- is charged with developing, reviewing, and revising a child's IEP. See *id.* § 1414(d)(1)(B) (defining an IEP Team). Because the IEP must be "tailored to the unique needs" of each child, *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982), it must be regularly revised in response to new information regarding the child's performance, behavior, and disabilities, and must be amended if its objectives are not met. See, 20 U.S.C. §§ 1414(b)-(d). In order to be sufficient to confer a FAPE upon a given child, an IEP must be "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 207. Each local educational agency is required to have an IEP in effect for each child

with a disability in the agency's jurisdiction at the beginning of each school year, 20 U.S.C. § 1414(d)(2)(A).

The IDEA requires that children with disabilities be placed in the "least restrictive environment" so that they can be educated in an integrated setting with children who are not disabled to the maximum extent appropriate. See § 1412(a)(5)(A). The IDEA also guarantees parents of disabled children the opportunity to participate in the evaluation and placement process. See §§ 1414(f), 1415(b)(1).

VI. BURDEN OF PROOF

Pursuant to 5 D.C.M.R. § 3030.3, the burden of proof shall be born by the party seeking relief. In this case, the burden of proof rests with the parent.³

VII. ANALYSIS AND CONCLUSIONS OF LAW

IEP dated January 11, 2011:

Pursuant to 34 C.F.R. Section 300.324(a)(1), in the development of the IEP, the IEP team must consider: (i) the strengths of the child; (ii) the concerns of the parent for enhancing the education of their child; (iii) the results of the initial or most recent evaluation of the child; and (iv) the academic, developmental and functional needs of the child. *Id* at 300.324(a)(1).

I find that Petitioner has met her burden of demonstrating that DCPS denied the Student a FAPE by failing to develop an appropriate IEP on January 11, 2011.

The evidence shows that when the IEP team eliminated the Students' 10 hours per week of specialized instruction outside of the general education setting on January 11, 2011, their decision was not based on the Student's current clinical evaluation which recommended that the Student be taught in "a small therapeutic setting with a teacher to student ratio of 1:3" (Exhibit P-14, report date March 31, 2010), a fact which does not support a reduction in the Student's special education services. Additionally, although it is undisputed that the Student has a High Average cognitive ability, the evidence shows that the Student has significant behavioral issues, which affect his ability to access his education (Exhibits P-13, P-14, and Petitioner's testimony), yet DCPS failed to develop a BIP for the Student as recommended in the Student's FBA, dated October 4, 2010 (Exhibit P-13).

³ See, *Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).

Accordingly, I find that the IEP dated January 11, 2011 failed to offer the Student a FAPE for the 2010-2011 school year because the IEP was not "tailored to the unique needs" of the Student, and because it was not reasonably calculated to enable the Student to receive educational benefits, *Rowley*, at 181.

IEP dated June 24, 2011:

Here, the evidence shows that the June 24, 2011 IEP is identical to the January 11, 2011, with the exception of the change in the Student's mode of transportation. As indicated above, I determined that the IEP dated January 11, 2011, denied the Student a FAPE because it failed to include a BIP as recommended by the FBA dated October 3, 2010, and because the reduction in the Student's hours of specialized instruction was inconsistent with the recommendations made in the Student's most recent clinical evaluation, to wit, that the Student should be taught in "a small therapeutic setting" (Exhibit P-14). Accordingly, because the June 24, 2011 IEP is identical to the January 11, 2011 IEP, I find that the June 24, 2011 also denied the Student FAPE based on the same reasoning. Additionally, the evidence shows that at the time the June 24, 2011 IEP was developed, the Student's academic progress report dated June 20, 2011 (just 4 days before the IEP meeting), showed that the Student was failing most of this academic courses (Exhibit P-9). As such, DCPS knew that their program recommendation was not appropriate for the Student and should have known that modifications to the Student's IEP should have been considered. Moreover, the evidence shows that goals and objectives on June 24, 2011 IEP were copied-verbatim from the January 11, 2011 IEP, which copied, again verbatim, the goals and objectives listed on the Public Charter School IEP developed on August 3, 2010. These facts confirm that DCPS failed to conduct a meaningful review of the Student's IEP, and constitute a complete abdication of DCPS' responsibility to address the Students' educational needs. Accordingly, I find that the IEP dated June 24, 2011, denied the Student a FAPE because it was not tailored to the Student's individual needs and because it was not reasonably calculated to confer an educational benefit to the Student *Rowley*, at 181.

Finally, I conclude that DCPS' decision to change the Student's mode of transportation from a bus to public transportation via the metro, also denied the Student a FAPE because the evidence shows that the Student becomes "paranoid" on his way to school, which makes it difficult for him to navigate public transportation independently and get to school in order to access his education (Petitioner's testimony-Exhibit R-5) 34 C.F.R. Section 300.34(a).

FBA and BIP:

Petitioner contends that DCPS denied the Student a FAPE by failing to develop a BIP after receiving the Student's independent FBA.

As indicated above, I determined that the IEPs dated January 11, 2011 and June 24, 2011 denied the Student a FAPE, in part, because DCPS failed to develop a BIP for the Student as recommended in the FBA dated October 4, 2010.

Transportation:

Petitioner contends that DCPS denied the Student a free and appropriate public education by changing the Student's mode of transportation from a school bus to public transportation via the metro in light of the Student's deficits. As indicated above, I determined that that IEP dated June 24, 2011, denied the Student a FAPE because the DCPS changed the Student's mode of transportation from a bus to the metro.

ESY:

Petitioner contends that DCPS denied the Student FAPE by failing to offer the Student ESY services during the summer of 2011

34 C.F.R. Section 300.106 indicates:

"(1) Each public agency must ensure that extended school year services are available as necessary to provide. FAPE consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child."

ESY services are considered to be necessary when there is evidence of regression without such services, and that the student lacks the ability for recoupment in a reasonable period of time. See, Independent School District No. 709, Duluth v. Bonney, 44 IDELR 191 (Minn. Ct. App. 2005).

The evidence demonstrated that, although the Student's cognitive ability is in the High Average range and that the Student has the ability to perform well academically, the IEP team should have recommended ESY services during the summer of 2011. First, because Student did not make progress towards his IEP goals during the 2010-2011 school year as evidenced by his failing grades and because he "retained" pending his successful completion of summer school (Exhibit P-9, Progress Report dated

June 20, 2011). Second, the nature and severity of the Student's disability, including his "ADHD, Oppositional Defiant Disorder and mixed Adjustment, Anxiety and Depressive Disorder (Exhibit R-7 and P-14), warranted a recommendation for ESY services during the summer of 2011. As such, I find that the IEP team on June 24, 2011 should have offered the Student ESY services during the summer of 2011 and that its failure to do so denied the Student FAPE.

Private School Placement:

The Student has the intellectual ability to perform well academically. However, due to his emotional and behavioral issues (and the inappropriate program recommendation by DCPS), the Student has failed to make progress and/or derive a meaningful educational benefit from instruction (Exhibit P-11). The evidence is also unequivocal that the Student should not be placed in the general education setting, but in a small therapeutic milieu, with a small student to teacher ratio (Exhibit P-14).

The proposed Private School offers specialized educational services to learning disabled students and offers small class sizes with a small student to teacher ratio. There are 10 students and two teachers in each class and all the instructors are licensed and/or certified in their content areas (Director's testimony). The school also employs a clinical psychologist and there are two counseling centers on the premises. Based on these facts, I find that the program and services offered at the Private School are appropriately suited to the Student's needs. Additionally, there was no showing that the Student's needs could be met at a DCPS school. As such, Petitioner's request for prospective funding for the Student's placement at the Private School is granted Branham v. District of Columbia, 427 F.3d 7, 12 (D.C. Cir. 2005).

I also find that the Private School is the Student's least restrictive environment (LRE), as the evidence shows that the Student should not be placed in the general education setting, but in a small class with a small student to teacher ratio (Exhibit 14). As such, I find the Private School is presently the Student's LRE.

Equities:

It is undisputed that that the Petitioner cooperated with the IEP process, and there was no evidence presented to warrant a denial of prospective funding for the Private School. As such, I find that the equities support an award of prospective funding for placement at the Private School for the remainder of the 2011-2012 school year.

Compensatory Education:

Petitioner requests an order directing DCPS to fund 40 hours of independent counseling services and 1 year of independent tutoring services at 4 hours per week.

Where a school system fails to provide special education or related services to a disabled student, the student is entitled to compensatory education, which is the replacement of educational services that the child should have received in the first place. Reid v. District of Columbia, 401 F.3d. 516 (D.C. Cir. 2005). Because compensatory education is a remedy for past deficiencies in student's educational program, a finding as to whether a student was denied a FAPE in the relevant time period is a "necessary prerequisite to a compensatory education award," Peak v. District of Columbia, 526 F. Supp. 2d 32, 36 (D.D.C. 2007).

As indicated above, Petitioner has proven that the Student was denied a FAPE for the 2010-2011 school year based on the flawed IEPs developed on January 11, 2011 and June 24, 2011. As such, the Student is entitled to compensatory education. (See, The Mary McLeod Bethune Day Acad. Pub. Charter Sch. v. Bland, 534 F. Supp. 2d 109, 115 (D.D.C. 2008).

In support of her request for independent counseling services and independent tutoring services, Petitioner submitted a compensatory education plan developed by the Student's Advocate, who is a licensed special education teacher (Advocate's testimony, Exhibit P-16).

I conclude that an award of compensatory services in the form of 40 hours of independent counseling services and 1 year of independent tutoring services at 4 hours per week is an appropriate compensatory education plan because these services can place the student in the position he should have been in had DCPS provided the student with the appropriate amount of specialized instruction from January 2011 through the summer of 2011. As such, Petitioner's request for 40 hours independent counseling services and 1 year hours of independent tutoring services at 4 hours per week, is granted.

As Petitioner failed to present any evidence as to the hourly rate for the independent counseling and tutoring services, DCPS shall fund the counseling and tutoring services at a rate not to exceed the average rate DCPS pays for these services in the District of Columbia.

IEE:

Petitioner requests funding for an independent FBA. However, the evidence shows that an FBA was developed for the Student on October 4,

2010 and nothing was presented to demonstrate that this FBA was inappropriate. As such, Petitioner's request for an independent FBA is denied.

IEP development:

The evidence shows that the Student has significant social/emotional and special education needs. Thus far, DCPS has failed to develop an appropriate IEP for the Student. Accordingly, DCPS is directed to develop an IEP with a small student to teacher ratio with increased special education instruction hours outside the general education setting, and to provide door to door bus transportation as well as a BIP and counseling services.

ORDER

Based upon the Findings of Fact and Conclusions of Law herein, on this 1st day of January 1, 2012, it is hereby

ORDERED that, on or before January 31, 2012, the DCPS shall fund the Students' placement at the Private School for the remainder of the 2011-2012 school year and arrange for the Student's transportation by bus to and from the Private school; and it is further

ORDERED that, on or before February 15, 2012, DCPS shall reconvene an IEP meeting and develop an IEP for the Student with a small student to teacher ratio and with increased special education instruction hours outside the general education setting, as well as provide bus transportation, a BIP and counseling services; and it is further

ORDERED that, Petitioner's request for an independent FBA is denied; and it is further

ORDERED that, DCPS shall fund 40 hours independent counseling services and 1 year of independent tutoring services at 4 hours per week at a rate not to exceed the average rate DCPS pays for these services in the District of Columbia.

Dated January 1, 2012

By: /s/ James McKeever
Hearing Officer

NOTICE OF APPEAL RIGHTS

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer's Determination shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. Section 1415(i)(2).