DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
STUDENT HEARING OFFICE

STUDENT, **By and through PARENTS,**[1] ***Petitioner,*** **v.** **DISTRICT OF COLUMBIA PUBLIC SCHOOLS,** ***Respondent.***	)))))))))))	**Case No.** **Bruce Ryan, Hearing Officer** **Issued: June 30, 2011**

2011 JUN -1 AM 9:11
OSSE STUDENT HEARING OFFICE

HEARING OFFICER DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

This is a due process complaint proceeding pursuant to the Individuals with Disabilities Education Act ("IDEA"), as amended, 20 U.S.C. §§1400 *et seq.*, against Respondent District of Columbia Public Schools ("DCPS"). The Complaint was filed March 30, 2011, on behalf of a -year old student (the "Student") who has been determined to be eligible for special education and related services as a child with a disability under the IDEA.

Petitioners claim that DCPS has denied the Student a free appropriate public education ("FAPE") by: (a) failing to comply with the terms of a November 23, 2010 settlement agreement ("SA"), in that DCPS allegedly did not timely complete and review a psycho-educational evaluation or functional behavioral assessment ("FBA"); (b) failing to provide an individualized education program ("IEP") that is reasonably calculated to provide a FAPE; and (c) failing to provide an appropriate placement and/or location of services.

DCPS filed its Response on April 12, 2011, which asserts (*inter alia*) that DCPS has not violated the 11/23/2010 SA and that the IEP is appropriate to meet the Student's unique needs. DCPS also stated that "in order for the Student to obtain appropriate medical treatment, the

[1] Personally identifiable information is attached as an Appendix to this HOD and must be removed prior to public distribution.

student has applied to a psychiatric treatment facility through the District of Columbia Department of Mental Health" and "if the student were to obtain residency at this medical facility, DCPS would still provide her IEP services. *Response,* p. 2.

A resolution session was held on April 18, 2011, which did not resolve the Complaint, and the statutory 30-day resolution period ended as of April 29, 2011. The Hearing Officer then made repeated efforts to schedule a Prehearing Conference ("PHC") between May 4 and May 24, but could not arrive at a date and time that counsel for both parties were available.

The PHC was ultimately held in two sessions, on May 24 and June 1, 2011. At the May 24 PHC session, it was agreed that Petitioners would explore current residential treatment options through the D.C. Department of Mental Health ("DMH"), and the parties would then reconvene to complete the PHC on June 1. After discussing the issues and the time necessary to hear this matter, it was determined that approximately one full day of hearing time would be sufficient.[2]

The parties filed five-day disclosures as required on June 17, 2011; and the Due Process Hearing was held on June 24, 2011. Petitioners elected for the hearing to be closed.

At the Due Process Hearing, the following Documentary Exhibits were admitted into evidence without objection:

Petitioners' Exhibits: P-1 through P-57.

Respondent's Exhibits: R-1 through R-9.

In addition, the following Witnesses testified on behalf of each party:

Petitioners' Witnesses: (1) Mother; (2) Stepfather; and (3) the Student's Educational Advocate ("EA").

Respondent's Witnesses: (1) School Psychologist; (2) Compliance Case Manager ("CCM"); (3) Special Education Coordinator ("SEC"); and (4) DCPS Program Manager for Residential Placements.

Petitioner submitted a written closing argument following the hearing, and DCPS presented an oral closing statement at hearing.

---

[2] The Hearing Officer had originally scheduled the hearing for June 8, 2011, but the parties reported that they were not available on that date. The first date on which both parties were available for hearing was June 24, 2011. Accordingly, the parties agreed to schedule the DPH for that date and agreed to request a continuance of the 45-day timeline to July 1, 2011. A motion for continuance was filed June 2 and was granted by the Chief Hearing Officer on June 10, 2011.

II. JURISDICTION

The due process hearing was held pursuant to the IDEA, 20 U.S.C. §1415 (f); its implementing regulations, 34 C.F.R. §300.511; and the District of Columbia Code and Code of D.C. Municipal Regulations, *see* DCMR §§ 5-E3029, E3030. This decision constitutes the Hearing Officer's Determination ("HOD") pursuant to 20 U.S.C. §1415 (f), 34 C.F.R. §300.513, and Section 1003 of the *SOP*. The statutory HOD deadline is July 1, 2011.

III. ISSUES AND REQUESTED RELIEF

A discussion at the PHC of the issues and requested relief raised by Petitioners resulted in the following issues being presented for determination at hearing:

(1) **Failure to Implement 11/23/2010 SA.** — Did DCPS deny the Student a FAPE by failing to comply with the terms of a November 23, 2010 settlement agreement ("SA") by not timely completing and reviewing a psycho-educational evaluation and FBA?

(2) **Inappropriate IEP.** — Did DCPS deny the Student a FAPE by failing to provide an appropriate IEP (*i.e.*, one that is reasonably calculated to provide meaningful educational benefit) at February and/or March 2011 MDT meetings because DCPS allegedly refused to increase the IEP services from eight (8) hours of specialized instruction and 45 minutes per week of counseling services to a full-time IEP which would support her placement in a residential treatment facility?

(3) **Inappropriate Placement/Location.** — Did DCPS deny the Student a FAPE by failing to provide an appropriate educational placement in a small, residential treatment facility?

Petitioners request that the Hearing Officer: (a) find in their favor on the above issues; (b) order DCPS to convene an IEP team meeting to review the evaluation data and revise the IEP to provide no less than 27.5 hours of specialized instruction and related services in a residential treatment facility; (c) fund and place the Student in an appropriate residential treatment program; and (d) fund the parents' compensatory education program

IV. FINDINGS OF FACT

1. The Student is a ·year old student who has been determined to be eligible for special education and related services under the IDEA as a child with a disability. *See R-1.*
2. The Student moved with her mother to the District of Columbia in May 2009, and began attending DCPS schools. She enrolled at her neighborhood DCPS high school ("High School") at the beginning of the 2010-11 school year. *Mother Test.*
3. In late June, 2010, Petitioners requested that DCPS evaluate the Student due to academic and behavioral concerns. *P-24.* When DCPS did not act on this request, the mother filed a due process complaint against DCPS. *Mother Test.*
4. On or about October 2, 2010, the Student was admitted to the for the third time that year. *See P-11.* While the Student was at psychological and psychiatric evaluations were conducted. *P-10; P-11.* According to the evaluations conducted by the Student was diagnosed with Mood Disorder, NOS; Attention Deficit Hyperactivity Disorder ("ADHD"); and substance abuse disorder. *R-5; see P-10* Confidential Psychological Evaluation, dated 10/25/2010); *P-11* Psychiatric Report, dated 11/03/2010). The evaluators recommended that the Student be placed in a residential treatment center ("RTC") "due to her severe and persistent emotional symptoms." *P-11, p. 2.*
5. On or about November 23, 2010, the parties agreed to settle Petitioner's earlier complaint. A written settlement agreement ("SA") was entered into, by which "the parties agree[d] to the following:
    a. DCPS will complete a Psycho-educational Evaluation and a Functional Behavioral Assessment, and the accompanying reports.
    b. Upon completion of the final evaluation report, DCPS will convene an IEP meeting to review the Psycho-educational Evaluation and a Functional Behavioral Assessment; determine if the student is eligible for special education; develop an IEP, if necessary; discuss site location, if necessary; [and] discuss compensatory education, if warranted." *P-4, pp. 1-2.*
6. The next day, 11/24/2010, Petitioners through counsel reminded DCPS that the Student was currently hospitalized at PIW and that the testing could be conducted there. *P-6.*

7. On or about December 23, 2010, Petitioners through counsel inquired regarding the status of the Student's evaluations and notified DCPS that they believed it was not complying with the terms of the SA. *P-5; P-6.* DCPS responded that it expected the evaluations to be completed shortly after the Winter Break from school. *P-7.* At about this same time, Petitioners informed DCPS that the Student was again hospitalized at
8. On or about January 5, 2011, DCPS completed an educational evaluation, consisting of Woodcock-Johnson III Normative Update Tests of Achievement. The evaluation found that the Student's academic skills were mostly in the average range for her grade (*R-7)*, which was generally consistent with her cognitive ability measured in the average range of intellectual functioning. *P-10, pp. 2-3; R-1.2.* Mathematics and Written Expression were measured to be areas of relative weakness. *R-7.*
9. On or about January 6, 2011, DCPS completed an FBA for the Student. *R-8.* The behaviors of concern addressed by the FBA included "Off task, Talking out, Disorganization, Distracting others, [and] Seeks attention." *R-8, p. 3.*
10. Between January 13 and February 3, 2011, the DCPS School Psychologist conducted his psychological assessment. He reviewed the recent cognitive and academic achievement test results, and conducted interviews of the Student, mother, and teacher. *R-5; School Psych. Test.* He also reviewed the psychological and psychiatric evaluations that were performed independently by in late October 2010. *Id.* Copies of these evaluations were provided to him on or about 01/26/2011. *P-8.* The reviewer noted (*inter alia*) the Student's multiple psychiatric hospitalizations, and her "history of suicide attempts, traumatic sexual abuse with promiscuity, verbal and physical aggression toward her mother, and absconding from home with depressed affect." *R-5.*
11. In a report dated 02/03/2011, the DCPS School Psychologist concurred with the diagnoses of the evaluators and "agree[d] that [Student] demonstrate[s] significant mood disorder in the educational environment such that she will likely continue to exhibit difficulty accessing the regular educational curriculum without the implementation of specialized instruction and related services." *R-5.4.* He thus concluded that the Student "appears to present with the conditions to meet the eligibility criteria for special education services under the classification of Emotional Disturbance." *Id.*

12. On or about February 24, 2011, DCPS convened a meeting of the Student's MDT/IEP team to review her evaluations and determine her eligibility for special education services. *See R-1* (02/24/2011 meeting notes). At this meeting, DCPS found the Student to be eligible for special education services as a child with a disability, specifically Emotional Disturbance ("ED"). *R-1.3.* The MDT then developed an initial IEP that provides for eight (8) hours per week of specialized instruction in the General Education (inclusion) setting, along with 45 minutes per *month* of behavioral support services on a consultative basis. *R-2.4.* The meeting notes indicate that, after some discussion, Parent and advocate accepted the initial IEP and requested a 30-day review to be held before Spring Break. *See R-1.3.*
13. In discussing placement at the 02/24/2011 meeting, DCPS took the position that High School "can implement [Student's] IEP and is the appropriate location of services." *R-1.7.* The educational advocate then conferred with Petitioners, and they appeared to agree with the placement at least on an interim basis. According to the meeting notes, they came back to the meeting to "say that [Student] would be very defiant if she were sent to a full-time therapeutic placement right now, so they want to see how she does at [High School] and revisit her academic progress in 30 days." *Id. See also Mother Test.; EA Test.*
14. The 02/24/2011 team meeting also included a discussion of compensatory education services for the period of pre-eligibility delay (to account for DCPS' failure to determine the Student eligible for special education within 120 days of referral, *i.e.*, by approximately 10/30/2010). *See R-1; CCM Test.* DCPS offered 50 hours of one-to-one independent tutoring. *R-1.3, R-1.7.* Parents and advocate rejected that offer and indicated that they would submit an alternative proposal by March 2, 2011. *Id.* Their proposal was submitted on or about 03/04/2011 (*P-31*), but was not accepted. DCPS then issued an Authorization for Independent Tutoring and Counseling, dated 03/07/2011, which funded 50 hours of specialized instruction (to be completed by 02/29/2011) and also four hours of counseling (to be completed by 04/30/2011). *See R-3.*
15. At the end of February or beginning of March, 2011, the IEP services were scheduled to start, but the Student did not show up at school. As her mother later discovered, the Student had become sexually involved with an adult male that day. *See Mother Test.* Shortly thereafter, the Student was readmitted to after she barricaded herself in her

bedroom and started kicking and destroying items in the room. This extreme behavior occurred when her mother confronted her about messages on her iPod relating to the inappropriate relationship. *R-4.1; Mother Test.* The police had to be called, and the Student was taken to . *Id.*

16. On or about March 15, 2011, DCPS convened an "emergency meeting" of the Student's MDT/IEP team to discuss the Student's recent re-hospitalization at *R-4.* DCPS also received additional background information from Ms. Bass, the Director of DCPS' Non-public Unit, attended the meeting to explain the process within DCPS for moving a student to a more restrictive setting such as an RTF, which can take up to a couple of months to complete. *R-4.1; Bass Test.; Stepfather Test.* Dr. Ballard also explained the process at DMH. *R-4.2.* Dr. Ballard noted that the Student has Medicaid, which would pay for residential, but that it must go through (and be signed off on by) DMH. *Id.*
17. The 03/15/2011 IEP team advised the mother to pursue residential treatment for medical reasons through DMH, as the team did "not believe that [Student] needs a higher level of *educational* support." *R-4.3.* The team also did not think that the Student's IEP should be revised at this time. *Id.* The meeting concluded with the SEC agreeing to forward all relevant documents to both the LRE Review team within DCPS and to DMH. *Id.*
18. The Student has never returned to the High School. She remained at until June 10, 2011, about a week prior to the five-day disclosures in this case. At that time, she was admitted to a Residential Treatment Center ("RTC") in suburban Virginia, pursuant to DMH funding, and received a "bed to bed" transfer. While at the RTC, the Student has begun receiving special education services from DCPS pursuant to the 02/24/2011 IEP. *See Mother Test.; CCM Test.*

V. DISCUSSION AND CONCLUSIONS OF LAW

The burden of proof in a special education due process hearing is on the party seeking relief. *See Schaffer* v. *Weast,* 546 U.S. 49 (2005). Based solely upon the evidence presented at the due process hearing, an impartial hearing officer must determine whether the party seeking relief presented sufficient evidence to prevail. DCMR 5-E3030.3. Except for counseling services under the IEP, the Hearing Officer concludes that Petitioners have failed to meet their burden of proof in this case.

Issue 1 – Failure to Implement 11/23/2010 SA

"The IDEA does not specifically address enforcement by hearing officers of settlement agreements reached by the parties." *Letter to Shaw,* 50 IDELR 78 (OSEP 2007). However, it is generally recognized that a complaint alleging a failure to implement a settlement agreement is within the jurisdiction and authority of a hearing officer if it amounts to a dispute over the provision of FAPE. [3] In such action, District of Columbia law governs the interpretation and enforcement of the terms of the contract. *See Hester v. District of Columbia,* _ F.3d _ (D.C. Cir. 2007); *see also Howard Univ. v. Best,* 484 A.2d 958, 967 (D.C. 1984) ("the written language embodying the terms of an agreement will govern the rights and liabilities of the parties...").

In this case, the evidence shows that DCPS carried out the agreed terms of the 11/23/2010 SA. DCPS completed a psycho-educational evaluation and FBA in a reasonably timely manner under the circumstances. Upon completion of the evaluations, DCPS convened an IEP meeting to review the evaluations, and it determined the Student to be eligible for special education. The IEP team then developed an initial IEP for the Student, discussed placement/site location, and discussed compensatory education. These are all the steps that were required by the SA, and they were all completed within approximately 90 days, despite the Student's psychiatric hospitalizations during this period.

To the extent Petitioners complain about the ***results*** of DCPS' implementation of the agreement in the form of the IEP and placement, that complaint is considered under Issues 2 and 3 below.

Issues 2 and 3 – IEP and Placement/Location

The "primary vehicle" for implementing the goals of the IDEA is the IEP, which the statute "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)). To be sufficient to provide

---

[3] *See* 34 C.F.R. 300.507 (a); *Letter to Shaw, supra; Blackman-Jones* Consent Decree, Section II, A., pp. 10-11 (including within the "Jones class" any children who have been denied a FAPE because DCPS "failed to fully and timely implement agreements concerning a child's identification, evaluation, educational placement, or provisions of FAPE that DCPS has negotiated with child's parent or education advocate.").

FAPE under the IDEA, an "IEP must be 'reasonably calculated' to confer educational benefits on the child, but it need not 'maximize the potential of each handicapped child commensurate with the opportunity presented non-handicapped children." *Anderson* v. *District of Columbia,* 109 LRP 18615 (D.D.C. 2009), slip op. at 6, *quoting Board of Education* v. *Rowley,* 458 U.S. 176,200,207 (1982).[4] Judicial and hearing officer review of IEPs is "meant to be largely prospective and to focus on a child's needs looking forward ... at the time an IEP was created."[5] Moreover, the issue of whether an IEP is appropriate is a question of fact for hearing. *See, e.g., S.H.* v. *State-Operated School Dist. of Newark,* 336 F. 3d 260, 271 (3d Cir. 2003). "Ultimately, the question ...is whether or not [the] defects in the ...IEP are so significant that [DCPS] failed to offer [the Student] a FAPE." *N.S. v. District of Columbia,* 2010 WL 1767214, Civ. Action No. 09-621 (CKK) (D.D.C. May 4, 2010), p. 20).

Petitioners claim that the Student requires a "full-time" IEP that would support her placement in a residential treatment facility (RTF), rather than a program involving only 8 hours of specialized instruction in a general education setting. However, Petitioners have not shown by a preponderance of the evidence that the initial IEP developed for the Student should have included full-time (27.5 hours or more) of specialized instruction in the most restrictive setting possible, based on the information available to the IEP team in February and March, 2011.

In proposing a limited number of hours of specialized instruction, the IEP team recognized that the Student was testing on an average level in most academic areas. *See SEC Test.; R-1.6; R-7.* It was the consensus of the team that, at this time, the Student required academic support in the areas of math and English, in the amount of 4 hours per week in each subject. This translates into more than half of the total classroom time (approximately 7.5 hours per week) in these two subjects. *SEC Test.* (cross examination). Petitioners failed to prove that additional hours and/or areas of specialized instruction were needed to meet the Student's educational needs at that time.

---

[4] *See also Kerkam v. McKenzie,* 862 F. 2d 884 (D.C. Cir. 1988); *J G. v. Abington School,* 51 IDELR 129 (E.D. Pa. 2008), slip op. at 8 ("while the proposed IEP may not offer [the student] the best possible education, it is nevertheless adequate to advance him a meaningful educational benefit. ").

[5] *Schaffer* v. *Weast,* 554 F.3d 470,477 (4th Cir. 2009) (citing *Rowley,* 458 U.S. at 207); *see also Fuhrmann* v. *East Hanover Bd. of Educ.,* 993 F.2d 1031, 1040 (3d Cir. 1993) (whether an IEP is appropriate "can only be determined as of the time it is offered for the student, and not at some later date").

Nor have Petitioners demonstrated that residential placement was "necessary for educational purposes," as opposed to being "a response to medical, social or emotional problems that are segregable from the learning process," as of February and March 2011. *McKenzie v. Smith,* 771 F.2d 1527 (D.C. Cir. 1985), *quoting Kruelle v. New Castle Country School Dist.*, 642 F.2d 687, 693 (3d Cir. 1981). For the most part, the Student's psychiatric and behavioral problems were being demonstrated in the home and community, rather than in the school setting.[6] *See Mother Test.* (cross examination: Student was never suspended for bad behavior; and parent never received calls from High School regarding fights, outbursts, confrontations with teachers, or similar kinds of things); *School Psych. Test.* (psychological issues "were not manifested in the classroom"); *SEC Test.* (noting absence of behavioral outbursts in school threatening to harm the Student or others). No member of the team thought the Student needed to be placed at a full-time residential facility for academic or educational purposes. Moreover, at the time the IEP and placement were developed, Petitioners specifically agreed to try out the initial part-time special education program at High School to see if the Student could be successful in this less restrictive environment.

Regarding the related service of counseling, however, Petitioner has proved that the 02/24/2011 IEP was not "reasonably calculated" to confer educational benefit on the Student in this respect, considering all of the information available to the team when the IEP was created. The Hearing Officer concludes that DCPS could not reasonably find that a mere 45 minutes per ***month*** of ***consultative*** behavioral support services would be sufficient to address the social/emotional needs of an emotionally disturbed student who had attempted suicide and been psychiatrically hospitalized on multiple occasions. The IEP should have included a reasonable amount (*e.g.*, 45-60 minutes) of ***weekly***, ***direct*** counseling services to address the Student's severe social/emotional needs. DCPS witnesses offered no real explanation for providing such a scant level of service in this area.[7]

---

[6] *Cf. Ashland School Dist. v. Parents of Student R.J.*, 588 F.3d 1004 (9th Cir. 2009); *Linda E. v. Bristol Warren Regional School Dist.*, 55 IDELR 218 (D.R.I. 2010).

[7] Remarkably, the School Psychologist testified that despite the Student's exhibiting "very severe problems" and a "number of disturbing behaviors," he thought as little as 10 minutes per week would be sufficient to monitor and provide necessary feedback in school. *School Psych. Test.* The Hearing Officer also agrees with Petitioners that it is not appropriate for DCPS to rely on the views of an emotionally disturbed child – rather than parents, teachers, and other involved adults – in deciding on the level of counseling services required to address her needs. *R-1.6* (noting that Student did not want counseling services because she was "tired of talking").

Appropriate Equitable Relief

The IDEA authorizes the Hearing Officer to fashion "appropriate" relief, *e.g.,* 20 U.S.C. §1415(i)(2)(C)(iii), and such authority entails "broad discretion" and implicates "equitable considerations," *Florence County Sch. Dist. Four v. Carter,* 510 U.S. 7, 15-16 (1993); *Reid v. District of Columbia,* 401 F.3d 516, 521-24 (D.C. Cir. 2005). In this case, the Hearing Officer has ordered appropriate equitable relief for the above partial denial of FAPE, as set forth in the Order issued below. DCPS is ordered to convene an IEP team meeting within 30 calendar days to revise the Student's IEP, as appropriate, consistent with this HOD.

With respect to Petitioners' request for compensatory education relief, the Hearing Officer concludes that Petitioners have failed to prove educational harm to the Student from the inappropriate IEP (*i.e.*, an IEP without sufficient counseling services) between February 24, 2011 and the present. Before the 02/24/2011 IEP could even begin to be implemented at High School, Student was back in PIW for acute psychiatric care; and the Student continued to receive intense psychiatric treatment at such facility over the next three months.

Moreover, even assuming *arguendo* that residential placement should have been found necessary for educational purposes as of the February and/or March meetings, Petitioners have not shown that the Student suffered any harm. She was being treated psychiatrically at PIW until June 10 due to an emotional breakdown having no connection to school, and was also receiving some type of academic support while she was there (*see EA Test.*). Since that time, she has resided at a DMH-funded Residential Treatment Center, which Petitioners agree is meeting her current needs. *See, e.g., Mother Test.* (stating that Student is "doing great"). It is also undisputed that DCPS is now providing the Student with specialized instruction at her current location.

Finally, to the extent Petitioners seek to recover compensatory education services for any period ***prior*** to the 02/24/2011 determination of eligibility, the parties agreed in the SA that such services would be discussed and determined by the IEP team. The team has done so, and DCPS has already authorized the amount and type of services the team established. Petitioners do not get a second bite at that apple.[8]

---

[8] By entering into the 11/25/2010 SA, the Parent agreed to exchange the right to have her claim for pre-eligibility compensatory education litigated in a due process hearing for the right to have a discussion about it at a team meeting with no certain outcome. The SA expressly provides that it is "in full satisfaction and settlement of all claims contained in the pending Complaint, including those claims under IDEA and §504 the Parent now asserts or could have asserted within the statute of limitations as of the date of the signed Settlement Agreement." *P-4,* p. 2.

VI. ORDER

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

1. Within **30 calendar days** of this Order, DCPS shall convene a meeting of the Student's MDT/IEP Team to revise the 02/24/2011 IEP to include at least 45 minutes per week of direct behavioral support services (*i.e.*, counseling). The team should also review the IEP goals in the area of Emotional, Social, and Behavioral Development and revise them, as appropriate, to correspond to this greater level of services.

2. Any delay in meeting the above deadline caused by Petitioners or Petitioners' representatives (*e.g.,* absence or failure to attend a meeting, or failure to respond to scheduling requests) shall extend the deadline by the number of days attributable to such delay.

3. All other requests for relief in the Due Process Complaint filed March 30, 2011, are **DENIED.**

4. This case shall be, and hereby is, **CLOSED**.

IT IS SO ORDERED.

Dated: June 30, 2011

Impartial Hearing Officer

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by the findings and decision made herein has the right to bring a civil action in any District of Columbia 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 Decision of the Hearing Officer in accordance with 20 U.S.C. §1415 (i) (2).