

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Office of Dispute Resolution
810 First Street, NE, 2nd Floor
Washington, DC 20002

OSSE
Office of Dispute Resolution
October 1, 2014

PETITIONER,
on behalf of STUDENT,¹

Date Issued: September 30, 2014

Petitioner,

Hearing Officer: Peter B. Vaden

v.

DISTRICT OF COLUMBIA
PUBLIC SCHOOLS,

Office of Dispute Resolution,
Washington, D.C.

Respondent.

HEARING OFFICER DETERMINATION

INTRODUCTION AND PROCEDURAL HISTORY

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner (the Petitioner or MOTHER), 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 (DCMR). In her Due Process Complaint, Petitioner alleges that Student has been denied a free appropriate public education (FAPE) by the failure of Respondent District of Columbia Public Schools (DCPS) to conduct “child-find” and to identify Student as a child with a disability.

¹ Personal identification information is provided in Appendix A.

Student, an AGE child, is a resident of the District of Columbia. Petitioner's Due Process Complaint, filed on August 29, 2014, named DCPS as respondent. The undersigned Hearing Officer was appointed on September 2, 2014. In her complaint, the Petitioner requested an expedited hearing based upon safety concerns for Student and other children. On September 3, 2014, DCPS filed a response opposing the expedited hearing request. By an order entered September 4, 2014, I granted the request for an expedited hearing. The parties met for a resolution session on September 12, 2014 and did not resolve the due process complaint. On September 8, 2014, I convened a prehearing telephone conference with counsel to discuss the hearing date, issues to be determined and other matters.

On September 12, 2014, DCPS filed a motion to dismiss Petitioner's child-find claims as moot because at a Resolution Session Meeting earlier that day, DCPS agreed to find that Student was eligible for special education services. The Petitioner opposed the motion. After receiving oral argument at the beginning of the due process hearing on September 17, 2014, I denied DCPS' motion on the record.

The expedited due process hearing was held before the undersigned Impartial Hearing Officer on September 17, 2014 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on a digital audio recording device. The Petitioner appeared in person and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by SPECIAL EDUCATION TEACHER and by DCPS' COUNSEL.

Petitioner testified and called as witnesses MENTOR, CLINICAL PSYCHOLOGIST, NONPUBLIC SCHOOL DIRECTOR, and EDUCATIONAL ADVOCATE. DCPS called as witnesses SCHOOL PSYCHOLOGIST, PRINCIPAL,

Special Education Teacher, and ASSISTANT PRINCIPAL. Petitioner's Exhibits P-1 through P-12 and Respondent's Exhibits R-1 through R-12 were admitted into evidence without objection. Counsel for the respective parties made opening and closing statements. Neither party requested leave to file post-hearing written argument.

JURISDICTION

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

ISSUES AND RELIEF SOUGHT

The following issues to be resolved, and relief requested, were certified in the September 8, 2014 Prehearing Order:

- Whether DCPS denied Student a FAPE by failing to evaluate him, including to conduct psychiatric and occupational therapy (OT) assessments and a functional behavioral assessment (FBA), following Mother's several requests during the 2013-2014 school year;
- Whether DCPS failed to comply with the IDEA's Child Find regulations by not evaluating Student for eligibility;
- Whether DCPS denied Student a FAPE by failing to timely review an independent comprehensive psychological evaluation provided to DCPS on June 4, 2014;
- Whether DCPS denied Student a FAPE by failing to develop an Individualized Education Program (IEP) and provide an appropriate special education placement for school year 2013-2014; and
- Whether DCPS denied Student a FAPE by failing to develop an IEP and provide an appropriate special education placement for school year 2014-2015.

For relief, Petitioner requests that the Hearing Officer determine that Student is a Multiply Disabled child based upon Emotional Disturbance and Other Health Impairment disabilities, and that he requires a full-time therapeutic special education

placement; that DCPS be ordered to immediately convene an Multidisciplinary Team (MDT) meeting to develop an IEP for Student, which will include the goals developed by the parent's experts; that DCPS be ordered to fund the student's private placement at Nonpublic School, and that, if needed in the interim, that DCPS be ordered to provide Student a trained 1:1 male aide in and out of the classroom; that DCPS be ordered to fund an independent occupational therapy (OT) assessment and a functional behavioral assessment (FBA) of Student and to convene a meeting to review the assessment reports within ten business days of their receipt; and that DCPS be ordered convene a 30-day review after Student is appropriately placed. Petitioner also reserved the right to seek compensatory education until such time as Student has been in an appropriate placement for at least 30 days.

DCPS STIPULATIONS OF FACT

At the beginning of the due process hearing on September 17, 2014, DCPS, by counsel, stipulated, on the record, as follows:

- A. Student is a child with a disability as defined by the IDEA, 20 U.S.C. § 1401(3);
- B. Student's primary disability is Other Health Impairment, based upon Attention Deficit-Hyperactivity Disorder (OHI-ADHD); and
- C. DCPS is willing to conduct FBA and OT assessments of Student, as was recommended in the May 30, 2014 independent Comprehensive Psychological Evaluation.

FINDINGS OF FACT

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

- 1. Student is an AGE resident of the District of Columbia, where he resides with Mother. Testimony of Mother.

2. Student is eligible for special education and related services as a child with a disability. Stipulation of DCPS.

3. For the 2014-2015 school year, Student is enrolled in the GRADE at CITY ELEMENTARY SCHOOL, a DCPS public school. He also attended City Elementary School for the 2012-2013 and 2013-2014 school years. Testimony of Special Education Teacher.

4. During the 2012-2013 school year, Special Education Teacher was regularly in Student's classroom providing services to other children. Student never "came up on her radar" as a child with special education issues. Testimony of Special Education Teacher.

5. From the first day of the 2013-2014 school year, Mother received calls from CLASSROOM TEACHER about Student's disruptive and disrespectful behaviors. Testimony of Mother. On September 8, 2013, Classroom Teacher made a Student Support Team (SST) referral for Student. She described Student's learning and behavior concerns as Academic - Math & Literacy and Defiant Behavior/Impulsive/Aggressive Tendencies. In her comments, Classroom Teacher wrote as follows:

Academically:

[Student] is academically my second lowest student in both literacy and math. He was tested for "Reading Partners" and was so low, that he did not make it in. They are planning to re-test him at an "early emergent-reader." In math, he exhibits "basic skill" deficits. (He does not know his numbers, nor can he compare which is larger/smaller and thus has difficulty completing any work.) I think working with him one on one has been the most successful. He does not work well in small groups.

Behaviorally:

[Student's] defiant behavior occurs on a daily basis during any time of the day. I have noticed though, that it seems to get worse when he is academically frustrated. For example [Student] will become hostile if praise is not given to his

work, and becomes angry (throwing books and pencils) if he is reprimanded for simple things (such as sitting criss-cross on the carpet.)

He is also physically threatening towards other students. He often times makes fists (as if he's going to punch someone) or tells them that he will beat them up.

Exhibit P-3 [sic].

6. In October or November 2014, City Elementary School convened an SST meeting for Student. The team discussed Student's academic concerns and what Classroom Teacher observed in the classroom. The team was going to attempt academic interventions. A second SST meeting was convened around six weeks later. The focus of the second meeting was on Student's behaviors. At that meeting the school counselor was brought into the loop. Testimony of Assistant Principal and School Psychologist.

7. Mother testified that she continuously asked for Student to be evaluated at City Elementary School. However, at times in her testimony Mother's memory of events in the 2013-2014 school year was inconsistent. I find that the first corroborated request by the parent for a special education evaluation was made at a March 28, 2014 meeting at the school. At that meeting, Mother requested a special education assessment and her request was received positively by FORMER PRINCIPAL. Testimony of Tutor. Mother was not interested in having DCPS or City Elementary School conduct the assessment because she did not trust the Local Education Agency (LEA) or the school. Testimony of Assistant Principal.

8. Mother referred Student to Clinical Psychologist for an independent Comprehensive Psychological Evaluation. PSYCHOLOGY RESIDENT conducted observations and assessments in May 2015, including cognitive testing, achievement testing, behavioral assessments, and classroom observations. Clinical Psychologist's report was issued on May 30, 2014. On cognitive testing, Student scored Low Average.

On the Woodcock Johnson III Tests of Achievement, Student's scores were Very Low for Broad Reading and Broad Written Language and Low Average for Broad Math. Exhibit P-6.

9. On the Behavior Assessment System for Children, Second Edition (BASC-2) and the Attention Deficit-Hyperactivity Disorder Test rating scales, Clinically Significant and At Risk areas at school included Externalizing Problems, Hyperactivity, Aggression, Conduct Problems, Internalizing Problems, Depression, School Problems, Attention Problems, Learning Problems, Atypicality, Withdrawal, Adaptability, Social Skills, Leadership and Study Skills. Clinical Psychologist diagnosed Student with ADHD-Combined Type and Oppositional Defiant Disorder. Exhibit P-6.

10. Clinical Psychologist also recommended in the report that Student should be further evaluated by an Occupational Therapist and that Student's teachers should be trained in working through his behavioral issues so he can be available to learning. Exhibit P-6.

11. School Psychologist made a written review of Clinical Psychologist's Comprehensive Psychological Report on June 6 and June 18, 2014. School Psychologist reported that the independent psychological evaluation supported the conclusion that Student meets Special Education criteria for OHI-ADHD but did not meet criteria for ED. School Psychologist explained in her reports that Student's behavioral issues were likely a reflection of his ADHD and stem from factors in his environment. Exhibits R-1, R-2; Testimony of School Psychologist.

12. On July 24, 2014, Petitioner's Counsel contacted Principal by email to request a meeting to review the May 30, 2014 independent Comprehensive Psychological Evaluation Report. Exhibit P-9. The meeting was scheduled for August 26, 2014. A

meeting was not scheduled earlier because of staff absences during summer vacation.

Testimony of Special Education Teacher. At the August 26, 2014 meeting, there was agreement that Student was eligible for special education services. The school

representatives agreed that Student's disability classification should be OHI-ADHD.

Mother agreed to return the next day to sign a consent form. Testimony of Special Education Teacher. When Special Education Teacher contacted Mother the next day, Mother instructed her to get in touch with her attorney. Testimony of Mother.

13. At the August 26, 2014 meeting, the school representatives proposed to conduct an FBA and OT assessment of Student. Testimony of Principal. Following the August 26, 2014 meeting, school staff, Mother and Petitioner's attorney had written and oral communications regarding the next steps in Student's evaluation, eligibility and IEP development process. The parent believed that Student should found eligible under both OHI-ADHD and ED criteria. Mother initially withheld her consent for additional assessments. Testimony of Mother, Testimony of Principal, Testimony of Special Education Teacher. On September 9, 2014, Mother went to the school to sign the evaluation consents. However, she arrived at the school without an appointment and Special Education Teacher was occupied with other parents. Special Education Teacher asked Mother to return later. Mother did not return. Testimony of Special Education Teacher.

CONCLUSIONS OF LAW

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

Burden of Proof

The burden of proof in a due process hearing is normally the responsibility of the party seeking relief – the Petitioner in this case. *See* DCMR 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).

Analysis

A.

- Did DCPS deny Student a FAPE by failing to evaluate Student, including to conduct psychiatric, OT and Functional Behavioral Assessments, following the parent's several requests during the 2013-2014 school year?
- Did DCPS fail to comply with the IDEA's Child Find regulations, by not evaluating Student for eligibility?
- Did DCPS deny Student a FAPE by failing to timely review an independent comprehensive psychological evaluation provided to DCPS on June 4, 2014?

The first three issues asserted by Petitioner concern DCPS' alleged failure to evaluate Student for special education eligibility during the 2013-2014 school year and DCPS' alleged failure to timely review Clinical Psychologist's May 30, 2014 Comprehensive Psychological Evaluation report. The parent contends that DCPS violated the IDEA both by not complying with the Act's "child-find" requirement and by not complying with her own requests for evaluations. DCPS responds that at first, it proactively addressed Student's academic and behavior problems through the Student Support Team (SST) process, but that it agreed to conduct a special education assessment when requested by Mother in March 2014.

Under the IDEA, states, as well as the District of Columbia, that receive federal educational assistance must establish policies and procedures to ensure that a FAPE is

made available to disabled children. *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C.Cir.2005). The District must “ensure that ‘[a]ll children with disabilities residing in the [District] . . . who are in need of special education and related services are identified, located, and evaluated.’ ” *Scott v. District of Columbia*, 2006 WL 1102839, at 8 (D.D.C. Mar. 31, 2006) (citing *id.*); 20 U.S.C. § 1412(a)(3). Under the IDEA, “[s]chool districts may not ignore disabled students’ needs, nor may they await parental demands before providing special instruction.” *Reid*, 401 F.3d at 518. Instead, the IDEA imposes an affirmative obligation on school systems to “ensure that all children with disabilities residing in the State . . . regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated.” *Id.* at 519 (internal quotations omitted); § 1412(a)(3)(A). . . . The duties to identify, evaluate, and determine eligibility for disabled children are collectively known as the “Child Find” obligation. *DL v. District of Columbia*, 2013 WL 6913117, 1 (D.D.C.Nov. 8, 2013). Child-find includes children who are suspected of being a child with a disability and in need of special education, even though they may be advancing from grade to grade. 34 CFR § 300.111(c). As soon as a child is identified as a potential candidate for services, DCPS has the duty to locate that child and complete the evaluation process. *G.G. ex rel. Gersten v. District of Columbia*, 924 F.Supp.2d 273, 279 (D.D.C.2013) (Citations and internal quotations omitted.).

The evidence in this case leaves no doubt that, at least by the beginning of the 2013-2014 school year, DCPS had cause to suspect that Student was a child with a disability. At the beginning of the school year, Special Education Teacher alerted school officials in an SST Referral of Student’s academic deficits and, especially his behavior issues. Specifically, Special Education teacher wrote that “Student’s defiant behavior

occurs on a daily basis during any time of the day” and that he was also “physically threatening toward other students.” The IDEA requires the IEP team, in the case of a student whose behavior impedes the student’s learning or that of others, to consider the use of positive behavioral supports, and other strategies to address that behavior. *See* 34 CFR § 300.321(a)(2)(i). City Elementary School did initiate and implement SST interventions to assist Student. However the SST process cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability. *See* Letter to State Directors of Special Education (OSEP Jan. 21, 2011). I conclude that DCPS was on notice that Student was suspected of being a child with a disability in the fall of 2013 and that DCPS violated the IDEA’s child-find requirement by not identifying, locating and evaluating Student at that time.

DCPS’ failure to ensure that Student was timely evaluated for eligibility for special education services was a procedural violation of the IDEA. *See, e.g., Kruvant v. District of Columbia*, 99 Fed. Appx. 232, 233, 44 IDELR 127 (D.C.Cir. 2004) (Failure to timely conduct initial eligibility evaluation). Procedural violations of the IDEA which result in loss of educational opportunity to the Student are actionable. *See, e.g., Lesesne ex rel. B.F. v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006). DCPS now concedes that Student is a child with a disability, OHI-ADHD, and there was no proffer at the due process hearing that Student did not have the same impairment when Classroom Teacher made the September 8, 2013 SST referral. It is evident from Classroom Teacher’s reports, the May 30, 2014 Comprehensive Psychological Evaluation report and School Psychologist’s June 18, 2014 evaluation review, that as a result of his disability Student has needed, and continues to need special education and related services. I find that DCPS’ failure to ensure that Student was timely evaluated and provided IEP services

during the 2013-2014 school year resulted in a loss of educational opportunity and a denial of FAPE.

The evidence also established that at a March 28, 2014 meeting at City Elementary School, Former Principal agreed to Parent's request to have Student evaluated. (Mother elected to obtain, independently, a comprehensive psychological evaluation rather than have DCPS evaluate Student.²) I conclude that the denial of FAPE in this case lasted from September 8, 2013, when Classroom Teacher made the SST referral, to March 28, 2014, when Former Principal agreed to have Student assessed, a period of over six months.

B.

- Did DCPS deny Student a FAPE by failing to develop an IEP and provide an appropriate special education placement for him in school year 2013-2014?
- Did DCPS deny Student a FAPE by failing to develop an IEP and provide an appropriate special education placement for him in school year 2014-2015?

In the proceeding section, I concluded that DCPS denied Student a FAPE by not conducting an initial eligibility evaluation in the fall of 2013. It follows that DCPS was also required to ensure that an IEP was developed for the child. Under District law, following a referral for special education evaluation, DCPS must complete the evaluation within 120 days. See D.C.Code § 38–2561.02(a) (“DCPS shall assess or evaluate a

² Mother's claim that DCPS did not timely review Clinical Psychologist's May 30, 2014 report is not supported by the evidence. School Psychologist reviewed the report on June 6, 2014. The Multidisciplinary Team (MDT) at City Elementary School reviewed Clinical Psychologist's report at the August 26, 2014 team meeting at which time the team members agreed that Student was eligible for special education services based upon his OHI-ADHD disability. Neither has Mother established that DCPS refused to conduct psychiatric, OT or FBA assessments, which were recommended in Clinical Psychologist's May 30, 2014 psychological evaluation report.

student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.” *Id.*) The child’s first IEP must be developed within 30 days of the eligibility determination. *See* 34 CFR § 300.323 (Meeting to develop an IEP must be conducted within 30 days of a determination that the child needs special education and related services.) Therefore, under the IDEA and District law, Student’s initial IEP had to be developed, at latest, within 150 days of Classroom Teacher’s September 8, 2013 SST referral – by February 5, 2014. I conclude that Student was denied a FAPE, from DCPS’ failure to ensure that Student has had an appropriate initial IEP and placement, from early February 2014 forward.

At a meeting at City Elementary School on August 26, 2014, DCPS agreed that Student was eligible for special education services and sought to complete the eligibility and IEP process. However, at that point there was a breakdown in communications between the parent and the school. Parent would not provide her consent for further OT and FBA assessments and further processing was not completed. The due process complaint in this case was filed on August 29, 2014. I find that DCPS is not responsible for the delay in finalizing Student’s eligibility determination after the August 26, 2014 meeting.

Remedy

In this case, I have found that DCPS denied Student a FAPE by not evaluating him and determining him eligible for special education services by February 2014. The IDEA gives hearing officers “broad discretion” to award compensatory education as an “equitable remedy” for students who have been denied a FAPE. *See Reid v. District of Columbia*, 401 F.3d 516, 522-23 (D.C.Cir. 2005). A compensatory education award is

intended to “provide the educational benefits that likely would have accrued from special education services” that the school district “should have supplied in the first place.” *Id.* However, Petitioner elected in this case to defer any request for compensatory education until such time as Student will have been in an appropriate placement for at least 30 days. The relief which Petitioner seeks now is a determination that Student should be classified as Multiply Disabled – Emotional Disturbance (ED) and Other Health Impaired – and an order for DCPS to fund Student’s full-time therapeutic special education placement at Nonpublic School.

Primary Disability Classification

With regard to Student’s disability classification, DCPS has stipulated that Student is a child with a disability and that his primary disability classification is OHI-ADHD. Parent contends that Student should also be classified as ED, based upon the May 30, 2014 comprehensive psychological report. DCPS counters that Student does not meet criteria for ED because the behaviors which have impeded him from progressing in the classroom result from his ADHD symptomatology or stem from environmental factors. Each party offered expert testimony in support of their positions and I found both experts to be credible. However, I found School Psychologist more persuasive because she has worked as a school psychologist since 2008 and she is likely more familiar with the criteria for IDEA disabilities than Clinical Psychologist, who presumably, uses the *Diagnostic and Statistical Manual* (DSM) to classify a given mental disorder. Also, School Psychologist is personally more familiar with Student, from having known him since the 2012-2013 school year and from working on his behavior plans beginning in the 2013-2014 school year.

Moreover, under 20 U.S.C. § 1412(a)(3)(B), LEAs are not required to classify

IDEA-qualifying students into a specific category; rather the focus of the mandate is on adequacy of services:

Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter.

Id. The IDEA “charges a school with the responsibility of developing an appropriate education, not with coming up with a proper label.” *Heather S. v. Wisconsin*, 125 F.3d 1045, 1055 (7th Cir.1997). Therefore, I deny Petitioner’s request that I determine Student’s primary disability classification to be MD, rather than OHI-ADHD as stipulated by DCPS.

Private School Placement

Petitioner also seeks an order for DCPS to fund Student’s private placement at Nonpublic School. This request is premature pending development of an IEP for Student. *See, e.g., Eley v. District of Columbia*, 2012 WL 3656471, 11 (D.D.C.Aug. 24, 2012) (“The issue of prospective placement generally arises, however, only after the IEP has been properly completed and the parent wishes to remove the student from the IEP’s recommended location.” *Id.*) DCPS agreed on August 26, 2014 that Student is eligible for special education and was prepared to move forward with the IEP process. However, apparently because of the disagreement over Student’s disability classification and because Parent was suspicious of DCPS’ proposal to conduct an OT assessment and an FBA of Student, there was a breakdown in the parties’ collaborative effort to develop an initial IEP for Student.

If DCPS had been unwilling or unable to develop an IEP to meet Student’s needs, then private placement might be an appropriate remedy. *See, e.g. Florence Cty. Sch.*

Dist. Four v. Carter, 510 U.S. 7, 114 S.Ct. 361, 126 L.Ed.2d 284 (1993). But here, Mother has not argued, let alone demonstrated, that when DCPS agreed that Student is eligible for special education, it was unwilling to develop an IEP or that City Elementary School or another D.C. public school will be unable to implement an appropriate IEP when it is developed. “[I]f there is an appropriate public school program available . . . the District need not consider private placement, even though a private school might be more appropriate or better able to serve the child.” *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C.Cir.1991) (citations and quotations omitted).

I will order DCPS to ensure that Student’s eligibility team determines he is eligible for special education and related services as a result of a qualifying IDEA disability and that an IEP is developed for Student in accordance with 34 CFR §§ 300.320 through 300.324. Pending completion of the IEP development and placement process, it is not appropriate to order DCPS to fund Student’s placement at a nonpublic school.

ORDER

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

- i. DCPS is ordered to ensure (i) that within 10 school days of entry of this order, an eligibility team, including the parent, is convened pursuant, to 34 CFR § 300.306(a), to confirm Student’s eligibility for special education and related services as a “child with a disability” as defined by the IDEA, and (ii) that an appropriate IEP is promptly developed for Student in accordance with 34 CFR §§ 300.320 through 300.324;
- ii. Petitioner’s request for an order that DCPS fund Student’s tuition at Nonpublic School is denied without prejudice;
- iii. The Hearing Officer makes no finding on Student’s entitlement to compensatory education;

- iv. DCPS' motion to dismiss Petitioner's child-find claims as moot is denied;
and
- v. All other relief requested by the Petitioner herein is denied.

Date: September 30, 2014

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).