

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

Office of Dispute Resolution  
1050 First Street, N.E., Third Floor  
Washington, D.C. 20002

OSSE  
Office of Dispute Resolution  
November 16, 2020

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<i>Student</i> , <sup>1</sup>	)	Case No.: 2020-0163
through <i>Parent</i> ,	)	
<i>Petitioner</i> ,	)	Date Issued: 11/16/20
	)	
v.	)	Hearing Officer: Keith L. Seat, Esq.
	)	
District of Columbia Public Schools	)	Hearing Date: 11/9/20
("DCPS"),	)	Video Platform: Microsoft Teams
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner pursued a due process complaint alleging that Student had been denied a free appropriate public education ("FAPE") in violation of the Individuals with Disabilities Education Improvement Act ("IDEA") by DCPS failing to meet its Child Find obligations and timely evaluate Student for special education and related services. DCPS responded that it did not receive a request for evaluation and there was no reason to suspect Student needed an evaluation.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, 20 U.S.C. § 1400, *et seq.*; the implementing regulations for IDEA, 34 C.F.R. Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations ("D.C.M.R.").

**Procedural History**

Following the filing of the due process complaint on 9/11/20, the case was assigned to the undersigned on 9/14/20. Respondent filed a response on 9/22/20, and did not challenge jurisdiction. A resolution meeting occurred on 10/5/20, but the parties did not resolve the case or shorten the 30-day resolution period which ended on 10/11/20. A final

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<sup>1</sup> Personally identifiable information is provided in Appendix A, including terms initially set forth in italics.

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decision in this matter must be reached no later than 45 days following the end of the resolution period, which requires a Hearing Officer Determination (“HOD”) by 11/25/20.

Aa prehearing conference was held on 10/22/20 and a Prehearing Order was issued on 10/27/20 and amended at the request of *Respondent’s counsel* on 10/30/20, which addressed the use of a videoconference platform to conduct the due process hearing. The due process hearing took place on 11/9/20 and was closed to the public. Petitioner was represented by *Petitioner’s counsel*. DCPS was represented by Respondent’s counsel. Petitioner participated in the hearing by telephone.

Petitioner’s Disclosures, submitted on 11/4/20, contained documents P1 and P2, which were admitted into evidence without objection. Respondent’s Disclosures, submitted on 11/4/20, contained documents R1 through R6, which were admitted into evidence without objection.<sup>2</sup>

Petitioner’s counsel presented Parent as the sole witness in Petitioner’s case-in-chief (*see Appendix A*).

Respondent’s counsel presented 3 witnesses in Respondent’s case (*see Appendix A*):

1. *Principal at Public School*
2. *Teacher at Public School*
3. *Dean of Students at Public School*

Petitioner’s counsel presented Parent as the sole rebuttal witnesses.

The issue to be determined in this Hearing Officer Determination is:

**Issue:** Whether DCPS denied Student a FAPE by failing to timely evaluate for special education and related services based on (a) Parent’s written request in 2018/19,<sup>3</sup> and (b) the school’s Child Find obligations pursuant to 34 C.F.R. § 300.111, based on Student’s extreme academic delays and severe behavior problems. (*Petitioner has the burden of persuasion on this issue.*)

The relief requested by Petitioner is:

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<sup>2</sup> References herein to Petitioner’s documents are indicated by a “P” followed by the exhibit number, a hyphen, and the exhibit page (or pages separated by commas). By contrast, Respondent’s documents are consecutively Bates numbered throughout, so are referenced by an “R” followed by the exhibit number, followed immediately by a “p” (for page) and the Bates number without leading zeros.

<sup>3</sup> All dates in the format “2018/19” refer to school years. Petitioner’s counsel clarified at the beginning of the due process hearing that Parent was asserting a written request only in 2018/19 and not in 2019/20; Respondent’s counsel had no objection to clarifying the issue.

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- 1) A finding that Student was denied a FAPE.
- 2) DCPS shall, at Parent's option, conduct or fund (a) evaluations in all areas of suspected disability, and (b) all evaluations recommended by the comprehensive psychological evaluation, all of which shall be completed within 30 days after the HOD is issued.
- 3) DCPS shall convene a Multi-disciplinary Team ("MDT") meeting to review the evaluations in the previous paragraph and develop an Individualized Education Program ("IEP") if Student is found eligible, including all recommendations necessary for Student to fully participate in the distance learning process.
- 4) DCPS shall complete the IEP/placement process within 45 days after the HOD is issued.<sup>4</sup>
- 5) Compensatory education for any denial of FAPE is reserved, as it depends on the future outcome of the evaluations above.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of counsel, the Findings of Fact<sup>5</sup> are as follows:

1. Student is a resident of the District of Columbia; Petitioner is Student's Parent.<sup>6</sup> Student is *Age*, *Gender* and in *Grade* at Public School.<sup>7</sup>

2. In 2016/17 Student repeated the grade from the prior year.<sup>8</sup> In 2017/18 Student was performing poorly in math and struggling in English Language Arts ("ELA"), but the school said Student was no worse than other students.<sup>9</sup> Based on an earlier school recommendation, in 2017/18 Parent hired and paid a tutor for 2 hours/week for Student, but after 6 weeks the tutor concluded it was a waste of time as Student would not pay attention

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<sup>4</sup> Petitioner's counsel clarified at the beginning of the due process hearing that Parent was no longer seeking as relief for DCPS to "fund Parent's advocate at all eligibility/IEP meetings."

<sup>5</sup> Footnotes in these Findings of Fact refer to the sworn testimony of the witness indicated or to an exhibit admitted into evidence. To the extent that the Hearing Officer has declined to base a finding of fact on a witness's testimony that goes to the heart of the issue(s) under consideration, or has chosen to base a finding of fact on the testimony of one witness when another witness gave contradictory testimony on the same issue, the Hearing Officer has taken such action based on the Hearing Officer's determinations of the credibility and/or lack of credibility of the witness(es) involved.

<sup>6</sup> Parent.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

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and didn't learn anything.<sup>10</sup> Parent diligently tried to get help for Student and frequently talked with Student's teachers and observed classes.<sup>11</sup>

3. Letter Requesting Evaluation. In Student's first year at Public School in 2018/19 the provider that diagnosed Student with Attention Deficit Hyperactivity Disorder ("ADHD") recommended that Parent write a letter seeking evaluation and give it to Public School.<sup>12</sup> Parent hand-delivered a formal letter dated 4/2/2019 addressed to Principal at Public School which sought an evaluation of Student; Parent talked with staff in the Public School office about giving the letter to Principal as soon as she was out of a meeting.<sup>13</sup> The 1-page, typewritten letter expressed Parent's concerns about Student based on failing classes, being easily distracted, and being unable to complete homework.<sup>14</sup> The letter stated that Student had been diagnosed with ADHD, so Parent was seeking a "complete evaluation" to determine what services may be needed.<sup>15</sup> Parent received no response from Public School and Student was not evaluated.<sup>16</sup>

4. Principal testified that she did not receive Parent's 4/2/19 letter, but acknowledged that she would not have seen it as the letter would have gone directly to *LEA Representative*, who was the assistant principal in charge of special education.<sup>17</sup> LEA Representative was present throughout the hearing but did not testify and did not assert that Public School had not received Parent's letter.<sup>18</sup> Principal explained that if an evaluation had been requested, Public School would have taken action to gather information and set up a meeting; since no action was taken there must have been no letter.<sup>19</sup> Parent often orally requested help for Student from teachers Parent named in her testimony; Parent did not know Student needed an evaluation or IEP, so she did not specifically ask for them apart from her 4/2/19 letter.<sup>20</sup>

5. Reading. Parent observed Student reading at home 3-4 times a week and was very concerned about Student reading only 1 word at a time and skipping unknown words; Parent has older children so knows Student is not performing adequately for Student's grade.<sup>21</sup> Parent observed Student at school and thinks Student is embarrassed due to poor academic

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Parent; P1-1.

<sup>14</sup> P1-1.

<sup>15</sup> *Id.*

<sup>16</sup> Parent.

<sup>17</sup> Principal.

<sup>18</sup> Administrative Notice.

<sup>19</sup> Principal.

<sup>20</sup> Parent.

<sup>21</sup> *Id.*

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abilities.<sup>22</sup> Student does not participate during distance learning, despite logging in each day.<sup>23</sup>

6. Student's chart of SRI lexile scores begins in 2018 with relatively high scores of 870 and 877, which were less than a year below Student's grade and at the 60<sup>th</sup> percentile compared to peers.<sup>24</sup> Student steadily declined over the next 2 years until Student was 3 years below grade, and at the 20<sup>th</sup> percentile rank.<sup>25</sup> The steady decline in SRI scores appeared to Principal to be lack of effort.<sup>26</sup>

7. On 9/22/20 Student's SRI score was 897, close to the mean of Student's class of 906; Student was at the 33<sup>rd</sup> percentile rank, but remained 3 years below grade.<sup>27</sup> Principal considered this score to be "real"; it was after a long stretch with little schooling due to summer break and the pandemic.<sup>28</sup>

8. In 2019/20, Student was taught ELA by Teacher in a class of 24-28 children.<sup>29</sup> Based on lexile scores, Student was placed in the next to highest of 4 reading groups, for students who were 1-3 years below grade in reading; the highest group was for those at or above grade level, which was the smallest of the 4 groups.<sup>30</sup> Teacher suggested tutoring, which Student did not do.<sup>31</sup>

9. Math. In 2018/19, Student's iReady math scores were about 1 year below grade in the Middle of Year ("MOY") assessment, but 2 or 3 years below grade in the Beginning of Year ("BOY") and the End of Year ("EOY") assessments.<sup>32</sup> In 2019/20, Student's iReady math scores were worse, with BOY more than 5 years below grade and MOY 3 years below grade.<sup>33</sup> Principal testified that Student's math teacher listed Student as 1 of 10 students not performing to their potential in math, so Principal met 1:1 with each student and encouraged Student to do and turn in homework, and go to tutoring with math teacher (which Student did not do).<sup>34</sup>

10. Grades. Principal did not view Student's grades as those of a failing student as they were not much worse than other students; Student's test scores were mostly on level.<sup>35</sup> In

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> R3p11-12.

<sup>25</sup> R3p11-12; R1p5 (Student 2 years below grade at the end of 2018/19).

<sup>26</sup> Principal.

<sup>27</sup> R4p13-14.

<sup>28</sup> Principal.

<sup>29</sup> Teacher.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> R5p15.

<sup>33</sup> R6p17.

<sup>34</sup> Principal.

<sup>35</sup> *Id.*

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2018/19, Student's final grades ranged from "As" to "D+s"; in total Student received final grades of: A, A, B, B-, C+, C-, C-, D+, D+; Student received 8 term grades of "A" or "A-" and 3 term grades of "F" out of 36 term grades.<sup>36</sup> In 2019/20, Student had only 3 final letter grades due to the pandemic, which were: A, A, B-.<sup>37</sup> On the 2019/20 Mid Exam, Student received 4 "Fs" out of 9 courses; Student received 8 term grades of "A" and 3 term grades of "F" out of 34 term grades in 2019/20.<sup>38</sup>

11. Behavior. Student did not have a behavior problem and was easily redirected when off task.<sup>39</sup> No teacher at Public School was concerned about Student's behavior.<sup>40</sup> Dean of Students explained that Student had been involved in a couple of behavioral incidents over 3 school years; Parent thought there were at least 3 suspensions.<sup>41</sup> Student's incidents involved cutting class, being in the hallway after the bell, and taking too long in the bathroom.<sup>42</sup>

12. Overall. Standardized test cores showed Student was behind; when Student made an effort, Student did better.<sup>43</sup> Student was average in work quality when work was turned in.<sup>44</sup> Teacher did not believe Student needed to be evaluated for special education.<sup>45</sup> Principal once observed Student engaged and working in ELA class and paying attention and taking notes in math class.<sup>46</sup> Principal did not consider evaluating Student as there was nothing requiring consideration.<sup>47</sup>

### Conclusions of Law

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

The overall purpose of the IDEA is to ensure that "all children with disabilities have available to them a free appropriate public education 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). *See Boose v. Dist. of Columbia*, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (the IDEA "aims to ensure that every child has a meaningful opportunity to benefit from public education").

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<sup>36</sup> R1p1-3.

<sup>37</sup> R2p7-9.

<sup>38</sup> *Id.*

<sup>39</sup> Teacher; Dean of Students (Student "doesn't usually get in trouble").

<sup>40</sup> Dean of Students.

<sup>41</sup> Dean of Students; Parent.

<sup>42</sup> *Id.*

<sup>43</sup> Teacher.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Principal.

<sup>47</sup> *Id.*

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“The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Endrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994, 197 L. Ed. 2d 335 (2017), *quoting Honig v. Doe*, 484 U.S. 305, 311, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 137 S. Ct. at 994, *quoting Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).

Once a child who may need special education services is identified and found eligible, Respondent must devise an IEP, mapping out specific educational goals and requirements in light of the child’s disabilities and matching the child with a school capable of fulfilling those needs. *See* 20 U.S.C. §§ 1412(a)(4), 1414(d), 1401(a)(14); *Endrew F.*, 137 S. Ct. at 994; *Sch. Comm. of Town of Burlington, Mass. v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369, 105 S. Ct. 1996, 2002, 85 L. Ed. 2d 385 (1985); *Jenkins v. Squillacote*, 935 F.2d 303, 304 (D.C. Cir. 1991); *Dist. of Columbia v. Doe*, 611 F.3d 888, 892 n.5 (D.C. Cir. 2010).

A Hearing Officer’s determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a). In other words, an IDEA claim is viable only if those procedural violations affected the child’s *substantive* rights. *Brown v. Dist. of Columbia*, 179 F. Supp. 3d 15, 25-26 (D.D.C. 2016), *quoting N.S. ex rel. Stein v. Dist. of Columbia*, 709 F. Supp. 2d 57, 67 (D.D.C. 2010).

Petitioner carries the burden of production and persuasion, except on issues of the appropriateness of an IEP or placement on which Respondent has the burden of persuasion, if Petitioner establishes a *prima facie* case. D.C. Code Ann. § 38-2571.03(6); *Z.B. v. Dist. of Columbia*, 888 F.3d 515, 523 (D.C. Cir. 2018) (party seeking relief bears the burden of proof); *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S. Ct. 528, 537, 163 L. Ed. 2d 387 (2005). “Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether . . . sufficient evidence [was presented] to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE.” 5-E D.C.M.R. § 3030.3.

**Issue:** *Whether DCPS denied Student a FAPE by failing to timely evaluate for special education and related services based on (a) Parent’s written request in 2018/19, and (b) the school’s Child Find obligations pursuant to 34 C.F.R. § 300.111, based on Student’s extreme academic delays and severe behavior problems. (Petitioner has the burden of persuasion on this issue.)*

Petitioner met her burden of persuasion on the sole issue in this case, based on her letter to Principal seeking an evaluation, but not based on Student’s circumstances. The U.S. Court of Appeals for the District of Columbia emphasized in *DL v. Dist. of Columbia*, 860 F.3d 713, 717 (D.C. Cir. 2017), that Child Find is among the most important IDEA

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requirements, in order to identify, locate and evaluate every child in need of special education. *See* 34 C.F.R. § 300.111.

The Child Find obligations of a Local Education Agency (“LEA”) are triggered either by awareness of the child’s circumstances or by parental request. *See Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 57 (D.D.C. 2011). Here, Petitioner asserted both that she submitted a formal letter to Public School seeking an evaluation of Student and that DCPS should have been aware of the need for a special education evaluation through Student’s circumstances.

Parent’s Request. Parent explained that she often was at Public School talking to Student’s teachers in an effort to obtain help, as Student was not making sufficient academic progress. The undersigned found Parent credible in her testimony that she hand-delivered to Public School a letter dated 4/2/19 addressed to Principal, but did not receive a response. Principal asserted that she did not receive the letter, but explained that it would have gone directly to LEA Representative, who was the assistant principal in charge of special education at Public School. LEA Representative did not testify – despite being present throughout the hearing – so did not deny that Public School had received the letter.

Public School’s defense was simply that if it had received a request for an evaluation it would have taken action, as that was what was supposed to happen. And since Public School didn’t take action it must not have received the 4/2/19 letter from Parent. While one hopes that the system always works as intended, the undersigned does not view this as outweighing Parent’s definitive testimony of taking the letter to the Public School office and her specific conversation with Public School staff. This Hearing Officer holds that Parent did request an evaluation that should have been carried out promptly by Public School as discussed in the remedy section below.

Student’s Circumstances. Parent also sought to establish Public School’s Child Find responsibility based on Student’s extreme academic delays and severe behavior problems, which could have extended the period for which compensatory education was due back as far as September 2018. But Parent failed to meet her burden of persuasion here.

Parent had legitimate concerns about Student’s academics, including reading difficulties, based on her own work with Student, her observations and other information. This led to Parent’s 4/2/19 letter which triggered Child Find, as discussed above. But the educators at Public School did not have Parent’s insights about Student and viewed Student as average overall, and not in need of a special education evaluation. In ELA, Teacher placed Student in the next to highest of 4 reading groups. Student’s math teacher thought Student was not performing to potential in math, so included Student as 1 of 10 students who Principal met with 1:1 to encourage Student to do and turn in homework and to go to tutoring.

Student’s SRI and iReady scores showed Student was behind, but Teacher explained that when Student made an effort Student did better. In reading, Student had a steady decline in SRI scores from 2018 to 2020 that appeared to Principal to simply be a lack of effort, as Student improved significantly in September 2020 to nearly reach the class



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average. In math, Student's iReady scores were sometimes 1 year below grade and other times 5 years below, which bounced back within months to 3 years below, suggesting the assessments were not solid fixes on Student's ability.

Against that background, Student's grades did not suggest a failing student in need of evaluation. Student's grades were not much worse than other students, and Student received no final grade of "F." Instead, Student's final grades in 2018/19 were: A, A, B, B-, C+, C-, C-, D+, D+. In 2019/20, Student had only 3 final letter grades due to the pandemic, which were: A, A, B-. Principal observed Student engaged and working in ELA class and paying attention and taking notes in math class. Teacher and Principal did not believe Student needed to be evaluated for special education.

Finally, turning to Student's behavior, Student was involved in a few behavioral incidents over the 3 school years, which involved cutting class, being in the hallway after the bell, and taking too long in the bathroom. While Parent asserted that there were at least 3 suspensions, the undersigned concludes that Student did not have a behavior problem and that teachers were not concerned about Student's behavior.

In the view of this Hearing Officer, neither Student's academic challenges nor the minor disciplinary issues are sufficient to find DCPS at fault for not carrying out a Child Find evaluation based on Student's circumstances. *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3<sup>rd</sup> Cir. 2012) ("Child Find does not demand that schools conduct a formal evaluation of every struggling student. . ."); *G.G. ex rel. Gersten v. Dist. of Columbia*, 924 F. Supp. 2d 273, 275 (D.D.C. 2013).

### Remedy

Based on Parent's formal request for evaluation of Student and understandable concerns, DCPS is ordered below to conduct or fund (at Parent's option) an evaluation of Student in all areas of suspected disability. 34 C.F.R. § 300.304(c)(4). Thereafter, DCPS shall convene an MDT meeting to review the evaluation reports, determine eligibility for special education and related services, and develop an appropriate IEP if eligible. Given current circumstances and Parent's request, any such IEP for Student is to include the recommendations necessary for Student to fully participate in distance learning.

Compensatory education is not yet due for the delay in acting on the 4/2/19 request, because it is not yet clear whether Student is eligible for special education such that the delay had an impact on Student's education. Thus, as sought by Parent, compensatory education is reserved until the evaluations are conducted and it can be determined whether receiving special education and related services was in fact delayed.

### ORDER

Petitioner has prevailed in this case, as set forth above. Accordingly, **it is hereby ordered that:**

- 1) DCPS shall conduct or fund, at Petitioner's option, evaluations of Student in all areas of suspected disability, convene an MDT meeting to review the evaluation

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reports and determine eligibility for special education and related services, and develop an appropriate IEP if eligible, including all recommendations necessary for Student to fully participate in the distance learning process, all of which is to be completed within 60 days, with day-for-day extensions for any delay attributable to Petitioner.

- 2) Compensatory education for any denial of FAPE is reserved, as it depends on the future outcome of the evaluations required in the prior paragraph.

Any and all other claims and requests for relief are **dismissed with prejudice**.

**IT IS SO ORDERED.**

Dated in Caption

/s/ *Keith Seat*

Keith L. Seat, Esq.  
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).

Copies to:

Counsel of Record (Appendix A, by email)

OSSE-SPED (due.process@dc.gov)

ODR (hearing.office@dc.gov)

██████████@k12.dc.gov

██████████@k12.dc.gov