

COMMONWEALTH OF KENTUCKY
KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF LEARNING SERVICES
AGENCY CASE NO. 1718-17

██████████

PETITIONER

v.

██████████

COUNTY SCHOOLS

RESPONDENT

**HEARING OFFICER'S
DECISION AND ORDER**

This Due Process Hearing was requested by a letter file stamped with the Kentucky Department of Education (KDE) by Counsel for the Petitioner on or about January 2, 2018 (with date of December 22, 2017) pursuant to the Individuals with Disabilities in Education Act (IDEA), (***20 U.S.C. § 1400, et. Seq.***)

Petitioner filed an Amended Due Process Request on February 23, 2018.

On March 22, 2018, the Parties held a Resolution Session, whereas it was agreed by the Parties to hold this matter in abeyance until the Student Petitioner was evaluated. The Respondent had agreed to provide an Independent Evaluation. (Joint Status Report, March 26, 2018)

A Second Joint Status Report (August 2, 2018) indicated the Parties had an ARC on June 15, 2018 to consider the Petitioner's eligibility for services. However, they were still waiting for the Independent Educational Evaluation (IEE). Once the IEE was received the plan was to convene an ARC to discuss its results.

On November 30, 2018, the Respondent School District filed a Motion for Partial Dismissal. This Hearing Officer's Order sustained Respondent's Motion to the extent that the only remaining issues were:

1. Whether the Petitioner was denied FAPE for any period between December 22, 2014 and the present day; and
2. The issue concerning the proper ARC membership and Petitioner's allegation that an "independent evaluator" was needed to explain the testing instruments used and to interpret the results for the ARC; and
3. Whether the proposed IEP presented to the Petitioner on 11/29/2018 was appropriate?

Respondent filed a Motion to Dismiss based upon **KRCP 12.03** on the basis that the Petitioner failed to state a claim for which relief may be granted on or about July 19, 2019. The motion was denied by an Order entered August 12, 2019.

This matter was heard over two days, namely August 20 and August 21, 2019.

ABBREVIATIONS

Attention Deficit Hyperactivity Disorder (ADHD); Admissions and Release Committee (ARC); Findings of Fact (FF); Free Appropriate Public Education (FAPE); Individualized Education Plan (IEP); Individuals with Disabilities Education Act (IDEA); Individuals with Disabilities Education Improvement Act (IDEIA); Independent Education Evaluation (IEE); Joint Exhibit (JE); Local Education Agency Kentucky Department of Education (KDE); (LEA); Respondent's Exhibit (R.E.); Trial Transcript (T.T.)

REFERENCES TO THE PARTIES

The Student will be referenced as Student Petitioner, Petitioner and [REDACTED]. The Respondent will be referenced as the District, Respondent School District, Respondent School District and the School.

BURDEN OF PROOF

The Petitioner as set forth in **KRS 13B.090(7)** has the burden of proof in respect to his claims. As this Due Process Hearing is an administrative proceeding in Kentucky, there are two guides for who has the burden of proof. As the party seeking relief, Student Petitioner bears the burden of proving his entitlement to relief by a preponderance of the evidence. **Schaffer v. Weast**, 546 U.S. 49, 62 (2005). The Supreme Court in **Schaffer** ruled that the party seeking relief has the burden of proof and thus the burden of persuasion as the party seeking relief. see also **City of Louisville, Div. of Fire v. Fire Serv. Managers Ass'n by & Through Kaelin**, 212 S.W.3d 89, 95 (Ky. 2006) Citing **KRS 13B.090(7)** " the party proposing the agency take action or grant a benefit has the burden to show the propriety of the agency action or entitlement to the benefit sought". See also- **McManus v. Ky. Ret. Sys.**, 124 S.W.3d 454, 458 (Ky. App. 2003) (citing **KRS 13B.090 (7)**). In this situation, the Student Petitioner is the party requesting action or seeking a benefit.

According to the Petitioner's February 2, 2018 "Response to Motion to Dismiss" on the third page of Student Petitioner's response, Student Petitioner sets forth 5 specific types of relief.

1. Determination that [REDACTED] is a student with a disability;
2. A determination that the Respondent violated provisions of **707 KAR Chapter 1 et. seq.**
3. An Order the Respondent to immediately comply with portions of **707 KAR Chapter 1** that it violated; and/or
4. Compensatory education for the time in which such substantive and/or procedural violations that amounted to the Student's right to FAPE; and
5. Reimbursement for any out of pocket and evaluation expenses.

These requests were reincorporated in Student Petitioner's "Amended Due Process Request" of February 23, 2018.

Per a "Joint Status Report" of March 26, 2018, the Parties agreed that the Respondent would provide an IEE for the Student.

According to this Hearing Officer's Order of January 17, 2019, the only remaining issues before the Due Process Hearing were:

1. Whether the Petitioner was denied FAPE for any period between December 22, 2014 and the present time?
2. The issue concerning the proper ARC membership and Petitioner's allegation that an "independent evaluator was needed to explain the testing instruments and to interpret the results for the ARC; and
3. Whether or not the proposed ARC presented to the Petitioner on 11/29/2018 is appropriate?

Start of the Hearing

1. The Parties waived opening statements. Respondent deferred its opening. (T.T. Vol. I, p. 4-5)
2. The Parties stipulated to Respondent's Exhibits 1-24 and Respondent's 30 and 31. (T.T. Vol. I, pp. 5-7)
3. Respondent's 32-36, 39 and 39, 40 and 41 were stipulated to and admitted. (T.T. Vol. I, p. 7)
4. Respondent's Exhibits 26, 27, 28 and 29 were admitted over the objection of Petitioner. (T.T. Vol. I pp. 149-152)
5. In respect to Petitioner's Exhibits, the Parties stipulated to everything except for Exhibits 3 and 6. (T.T. Vol. I, p. 7)

FINDINGS OF FACT

1. Student Petitioner is now a 9-year old with a birthdate of September 20, 2011. (P#1, p.8)
2. Student Petitioner was screened during preschool interventions during the spring of 2015. (P#1, p. 1-7)
3. In May 2015, the Student was evaluated for speech services and found eligible. The Student was provided speech services throughout pre-school and kindergarten. (R# 9, pp.33-38 & R#10, pp. 39-40 & R#11, pp. 41-47)
4. On or about 12-12-2016, the Student received a Referral for Special Education. (P#1, p. 11) In the accompanying page under Physical Functioning he failed his screening for speech but passed the screening for Vision and Hearing. It was noted that he had an IEP for speech. (P#1, p. 12)

5. Student Petitioner attended half-day kindergarten in Respondent School District during the 2016-2017 school year at [REDACTED] and [REDACTED] Elementary Schools. (T.T. Vol I, p. 42 & 47; R#1, R#4))
6. Due to his September birthday [REDACTED], the Student Petitioner was only 4 years old when he started kindergarten. (T.T. Vol. I, p. 95)
7. Petitioner's kindergarten teacher noted concerns about his readiness skills on his report card. (R# 36, pp. 196-197)
8. During the Petitioner's first semester of kindergarten, he missed 9 days and was tardy 5 times. (R #36, p.196)
9. The Student Petitioner's evaluation(s) during his kindergarten year were initially delayed due to absences and later due to recovery from surgery on [REDACTED]. (T.T. Vol. I, pp. 55-56; R#13 p. 58)
10. The Student Petitioner was evaluated using the Brigance Screen III Kindergarten Data Sheet while attending [REDACTED] Elementary. (P#2, pp. 16-18)
11. The Respondent School District produced an "Integrated Assessment Report" with a date of 03/28/17 for the Petitioner. The Petitioner was referred for the evaluation by his Parents due to academic concerns. Petitioner's ARC at [REDACTED] Elementary determined that an evaluation of the Student's communication, cognitive ability, academic readiness skills, and social-emotional functioning would be conducted to determine if he qualifies for special education services. (R#32, p. 153)
12. The "Integrated Assessment Report" consisted of seven (7) evaluation techniques. They were:

- i. Conners Early Childhood (Conners EC), Teacher Form
 - ii. Kaufman Assessment Battery for Children, Second Edition (KABC-III)
 - iii. Bracken School Readiness Assessment, Third Edition
 - iv. Communication Evaluation
 - v. Communication Observation
 - vi. Behavior Observation
 - vii. Record Review
13. Student Petitioner was placed in Response to Intervention (RTI) for his kindergarten year for reading and math. (T.T. Vol. I, p. 41; R# 40, pp.212-225)
14. Ms. [REDACTED], the Counselor at [REDACTED] Elementary testified regarding the ARC meeting held on 03/30/2017 about two weeks after he had transferred to [REDACTED]. (T.T. Vol. I pp. 101-116; R#16, p.75- 76) At that meeting it was determined that the Student Petitioner did not qualify for special education in any area. The decision according to Ms. [REDACTED] was based upon the results of his scores on the Goldman Fristoe were average; his KABC scores were in the average to high average range; his Bracken was in the average range and his scores on the Conners all areas were in the average range except for inattention and hyperactivity.
15. The ARC of 03/30/2017, considered by rejected eligibility for Developmental Delay despite checking “Student has not acquired skills or achieved commensurate with recognized performance expectations for his/her age in one or more developmental areas.” Checked are Cognition, Communication and Social-emotional development. (R#18, p. 88) Ms. [REDACTED] stated that he was

not eligible because; *“We don’t just use those scores. We also use observations in the classroom. So, if you look at the observation part where discussed, on R75, at the bottom, it says the observations were discussed. He was able to follow directions. He did wiggle on the carpet, but he was focused on instruction.”* (T.T. Vol. I p. 107) It should also be noted that there was no one from [REDACTED] Elementary was at the ARC meeting, even though it was less than a month since the Student left [REDACTED].

16. On or about August 16, 2017, the Parents of the Student Petitioner decided to homeschool the Student Petitioner and his siblings and removed them from the Respondent School District. (P#5, p.64)
17. The Student Petitioner’s ARC offered to provide targeted interventions with the Student Petitioner at his home. (T.T. Vol. I, p. 159; R#20, p101) The record was silent as to the follow-up.
18. An independent educational evaluation (IEE) was conducted on the Student Petitioner by Dr. Teresa Izquierdo on August 20, 2018. The results of this evaluation indicated that the Student has learning disorders in reading, written expression and math. He was also diagnosed with ADHD and adjustment disorder with Anxiety. (R# 35, pp. 182-193)
19. The Student’s ARC met to review the IEE on September 10, 2018. The ARC found the Petitioner eligible for special education and related services in any area Other Health Impairment. (OHI) No IEP was developed at that meeting. (R#21)

20. As of November 29, 2018, the Student Petitioner's Parents have refused to allow the Respondent to provide special education services to the Student Petitioner. (T.T. Vol II. pp. 286-287; RE#24, p. 135)
21. The IEP presented at the 11/29/2018 ARC meeting provided for Special Education Services. 30 minutes a day with Special Education Collaborative in the General Education Classroom. It also provided for 60 minutes a day in the Resource Room. (R#7, p. 21)
22. The IEP proposed on 11/29/2018 had four "Measurable Annual Goals and Bench Marks. They were:
- (1) "Given a large group instructional setting, (the Student) will demonstrate Active listening skills with 80% success for 4 consecutive observed occasions as measured weekly with a scoring checklist.
 - (2) "When presented with 5 randomized CVC words in isolation (the Student) will read the words with 60% accuracy for 4 consecutive trials as measure(sic) by CVC word list probe."
 - (3) "When verbally presented 5 CVC words, (the Student) will write The word with 80% accuracy (spelling and letter formation) For 4 consecutive trials as measured by weekly writing probe.
 - (4) "When presented with a 5 consecutive number sequence using Numbers from 1-100, (the Student) will be able to identify the Missing number to complete the sequence with 80% accuracy for 4 consecutive trials.) (R#7, pp.19-20)
23. Ms. Delana McGuire testified as an expert in Kentucky curriculum standards (T.T. Vol. II p.300)

24. Ms. McGuire testified that her review of the Student Petitioner's work samples and report cards from the 2017-2018 school year (when he was homeschooled) indicated the Student was not provided instruction with first-grade standards in reading and math and she found no indication of instruction in writing. (T.T. Vol. II, pp. 300-316, R#41, pp.200-204)
25. Ms. McGuire testified that she found no evidence of instruction on the 2nd grade level for the 2018-2019 school year. (T.T. Vol. II, pp. 300-316, R# 41, pp. 200-204)
26. Petitioner was referred to Dr. Teresa Izquierdo, Psy.D for an IEE. She produced an "Integrated Psychological Assessment Report" on or about 8/20/2018. (P#35, p. 182-193)
27. Dr. Izquierdo's testing resulted in the following DSM-V diagnoses:
- 315.00 Specific Learning Disorder with Impairment in Reading
Including Word Reading Accuracy, Reading Fluency, and Reading Comprehension
 - 315.2 Specific Learning Disorder with impairment in Written Expression
Including Spelling and Word Accuracy
 - 315. 1 Specific Learning Disorder with Impairment in Mathematics
Including accurate Math Calculation/Reasoning/and Memorization Of Math Facts
 - 314.01 ADHD, Combined Type
 - 309. Adjustment Disorder with Anxiety (R#35, p. 192)

28. The Summary Notes of 09/10/2018 indicate that the purpose of the meeting of the meeting was to discuss the results of an independent evaluation.

(R#21, p.112)

29. The review of the outside evaluation was made. The results were as follows:

-Communication assessment was not completed, though Oral expression was a strong area for him with a score of 102.

-Word reading he earned a standard score of 70.

-Overall basic reading skills was 72 which is below average.

-Alphabet writing fluency he scored 94 which is average.

-Spelling his score was 77.

-His math fluency score was 75 which is below average.

-Social skill area was 94.

-Practical skill area was 97.

-Overall adaptive score was 91 which is within the average range. (R#21, p. 112)

30. On the following page, it talked about the Conner's Early Childhood Behavior Rating Scale based on parent report. "Areas that were high were evidence of worry, academic difficulty, hyperactivity and separation fears. The rating scale indicated a significant elevation for all 3 types of ADHD. A generalized anxiety disorder was indicated. Bullying-victimization was also a factor on the Conner's Early Behavior Rating Scale. (R#21, p. 112-113)

31. The TOVA 8 was administered to look more at ADHD. The results indicated delays in processing speed and he was inconsistent in some of his responses. He did well with impulse control but struggled with inattention. His overall performance falls in line with ADHD. (R#21, p. 113)

32. He was given the WISC 5 for cognitive assessment. He scored in the average range for Verbal Comp; Visual Spatial and fluid reasoning. He scored in the lower range in working memory 74 below average and processing speed. All sub-tests combined gave him a Full-Scale IQ of 85. His previous IQ tests

- yielded a result of 102 in March 2017. His evaluation in the spring 2018 was a 98. The Global Ability Index was 95 which takes out the working memory and processing speed were his two areas of weakness, These will also play into his inattentiveness. (R#21, p. 113)
33. In using the DSM V as a guide, Specific Learning Disorder was in reading and math along with ADHD and adjustment disorders with anxiety were identified. (R#21, p. 113)
34. There was an ARC meeting on 11/29/2018. The purpose of the meeting was “To develop, review, and/or revise the student’s IEP and make placement decisions. (RE#23, p. 129)
35. According to the “Summary Notes” of the ARC meeting of 11/29/2018; The Parents through their attorney questioned how he could have academic goals in reading, math and writing when he has been given other health impairment designation (OHI). The Special Education teacher (Ms. █████) “discussed that his OHI is affecting his ability to gain his instruction and demonstrate knowledge in those academic areas. When an IEP is written the goals have to relate to the umbrella disability. His ADHD addresses the academic areas because of the impact. (R#23, p. 130)
36. The Student Petitioner’s Parents refused consent for the IEP of 11/29/2018 and made no counter suggestions for services. The Student’s Parents believed that the IEP was focused more on the ADHD than reading, math or writing. (Vol. II, p. 242-243; R#24, p. 135)
37. While the Student Petitioner’s Parents and legal guardians live in the Respondent School District, the Student Petitioner is currently attending

school in [REDACTED] while staying at an uncle's home in [REDACTED]. (T.T. Vol. II, pp. 273-275)

PETITIONER'S ARGUMENT

A review of Student Petitioner's Brief on its page 3, indicates that the Student Petitioner's issues concern allegations that a). he was not fully evaluated pursuant according to **707 KAR 1:310** while he was attending school in the Respondent School District (2014-2016 –preschool and 2016-2017-kindergarten) and b). his specific learning disabilities have not been addressed by the Respondent School District.

REMAINING ISSUES

Based upon the Order granting the Partial Dismissal of the Due Process Request issued in February 2019; the remaining issues are:

According to this Hearing Officer's Order of January 17, 2019, the only remaining issues before the Due Process Hearing were:

1. Whether the Petitioner was denied FAPE for any period between December 22, 2014 and the present time?
2. The issue concerning the proper ARC membership and Petitioner's allegation that an "independent evaluator was needed to explain the testing instruments and to interpret the results for the ARC; and
3. Was the proposed ARC presented to the Petitioner on 11/29/2018 is appropriate?

I.

COST OF AN INDEPENDENT EVALUATOR AT THE ARC MEETING?

A review of the transcripts and the Petitioner's pleadings indicates that this issue was not addressed. The Parents could have had the evaluator, Dr. Teresa Izquierdo present at the ARC meeting if they compensated her. However, the Respondent School District is under no obligation to compensate the evaluator for more than her time performing her examination. ***B.B. ex. Rel. Bruner v. Perry Tp. School, Corp. S.D. Indiana (2008) W.L. 2745094.***

Therefore, the request or compensation of the Independent Evaluator at an ARC meeting is denied.

II.

WAS THE STUDENT PETITIONER DENIED FAPE WHEN HE ATTENDED THE RESPONDENT SCHOOL DISTRICT?

Petitioner's Request for a Due Process Hearing was dated on December 22, 2017 and due to the Christmas and New Year's holidays, it was not stamped until January 2, 2018. Theoretically, Kentucky allows a Petitioner to go back three years from the date of filing. In this case, Petitioner could claim back to December 22, 2014. However, Plaintiff was enrolled in the Respondent School District beginning in August 2014, starting in pre-school. Pleadings are silent as to any possible allegations of violations during the Student's enrollment in two years of preschool during the 2014-2015 and 2015-2016 school year. This decision will focus on the Petitioner's 2016-2017 school year.

To determine whether the Student Petitioner was denied FAPE a review of his evaluations is needed.

III.

WAS STUDENT PETITIONER FULLY EVALUATED?

The first question is; was the Student Petitioner evaluated pursuant to 707 KAR 1:310 while he was attending school in the Respondent School District. Petitioner was a student in the Respondent's District from 2015-2017.

A review of the record indicates that the Student Petitioner was screened prior to pre-school during preschool interventions in the spring of 2015. (F.F. 2) The record indicates that while the Student Petitioner was in pre-school, he had an IEP for speech. (F.F. 3) He had one the following year for kindergarten. (FF 4)

While he was in kindergarten, the Petitioner was evaluated using the Brigance Screen III, Kindergarten Data Sheet. (FF 10) During his kindergarten year, the Student Petitioner was placed in RTI for math, reading and writing. By the end of his kindergarten year, the Student had not made much progress.

At the request of the Student Petitioner's Parents, the Respondent School District performed a battery of nine evaluations which were incorporated in the "Integrated Assessment Report of 03/28/17. (FF 11, 12) The results were discussed at the ARC meeting held on 03/30/2017. (FF 14) Despite having developmental issues in cognition, communication and social-emotional development, the Student Petitioner was not deemed eligible for special education under "Developmental Delay" because of observations made in the two or three weeks at [REDACTED] Elementary. (FF 16) The ARC of 03/30/2017, did not include anyone from the Student's previous school

██████████ Elementary where he attended for three quarters of the 2016-2017 school year.

The applicable section of **707 KAR 1:310** is—

2. The child does not achieve adequately for the child's age or grade level standards aligned with the Kentucky Program of Studies, as indicated on multiple data sources, as appropriate, in one or more of the following areas:

- a. Oral expression;
- b. Listening comprehension;
- c. Written expression;
- d. Basic reading skills;
- e. Reading fluency skills;
- f. Reading comprehension;
- g. Mathematics calculation; or
- h. Mathematics reasoning;

(b) The child fails to achieve a rate of learning to make sufficient progress to meet grade level standards aligned with the Kentucky Program of Studies, **704 KAR 3:303** in one or more of the areas identified in subparagraph (3)(a)2 of this section when assessed based on the child's response to scientific, research-based intervention; or

(c) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both relative to ability level or intellectual development, that is determined by the ARC to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with **707 KAR 1:300, Section 4.**

(4) The ARC shall not identify a child as having a specific learning disability if deficits in achievement are primarily the result of:

- (a) A visual, hearing, or motor impairment;
- (b) Mental disability as defined in **707 KAR 1:280(37)**;
- (c) Emotional-behavioral disability;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or.
- (f) Limited English proficiency.

A review of the record herein indicates that the Student Petitioner has had social emotional based behavioral issues (FF 11) The failure to find the Student Petitioner eligible for Developmental Disabilities explains the lack of progress and difficulties in the areas of math, reading and spelling during his kindergarten year. The Petitioner was

denied FAPE during his kindergarten year or for the period 2016-17 for failure to deem him eligible for special education services under the Developmental Delay. (FF 15) The Respondent should have found the Student eligible for services under Developmental Delay as required by **707 KAR 1:300, Section 4 (c)**.

IV.

WOULD THE IEP OF 11/29/2018 PROVIDED THE STUDENT FAPE?

The Student's Parents rejected the IEP offered on 11/29/2018. (FF3) The Student's Mother testified that the reason for the rejection of the IEP was due to the OHI designation which emphasized his issues with ADHD. The Student's mother believed there was not enough emphasis in the IEP in math, reading and writing. (FF 36)

A review of the IEP had four "Measurable Annual Goals and Bench Marks". Number 2 concerned reading; Number 3 concerned writing and Number 4 concerned mathematics. (FF 22)

There seems to a lack of understanding of how the designation of OHI and the offered IEP could work. Here a definition of OHI--

- A student could have a qualifying "other **health impairment**" under **34 CFR 300.8 (c)(9)** if the ADD or ADHD results in limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment.
- A student who is overly alert to his environment as a result of having ADD or ADHD may qualify as OHI if such distractibility adversely affects his educational performance. See **34 CFR 300.8 (c)(9)**.

While the designation of OHI for the IEP did not satisfy the Student's Parents, the elements of the goals covered the needs of the Student Petitioner were satisfied as set forth in the case of ***Board of Education of the Avon Lake City School District, Petitioner-Appellant v. Patrick M. by and through his parents, Lloyd and Faith M.***, 9 F. Supp. 2d 811 (1998) U.S. District Court, Northern District of Ohio; 1:97-CV-973; 29 IDELR 1 ; 29 LRP 5159. The court concluded it contained all of the required elements. The IEP included statements of the student's present level of educational performance, annual goals, short-term objectives, long-term goals, methods and criteria for evaluation and the specific educational services the student would receive. The court further determined the IEP addressed all of the student's individual educational needs, his behavior difficulties, and his social and emotional needs. As explained in the Summary Notes of the 11/29/2018 ARC, OHI designation enables an ARC to write an IEP to cover all the elements of the Student's disability or disabilities. (FF 35)

Therefore, the IEP offered the Student Petitioner on 11/29/2018 would have provided him FAPE had it been utilized.

DECISION

As set forth above, the IEP of 11/29/2018 would have provided the Student Petitioner FAPE. The Petitioner's request or relief on this issue is denied.

As set forth above, the issue concerning the ARC membership and compensation for Petitioner's expert is denied as set forth above is denied.

In respect to denial of FAPE for the Student Petitioner's kindergarten year, (2016-2017) is sustained for only the balance of that school year from March 31, 2017 to

the date of last day of the last day of student attendance during the 2016-2017 school year in the Respondent School District.

A remedy for any deficiencies or denial of FAPE (03/31/2017 to last day of 2016-17) would be difficult to Order by this Hearing due to the fact the Student Petitioner at the present time while a resident of the Respondent District is attending school in [REDACTED]. Moreover, the Petitioner did not identify the type of compensatory relief he wanted if he prevailed. There is a situation similar to *Morgan M. v. Barbara B.*, 64 IDELR 309 (E.D. Pa 2015) and *Jefferson County Bd. Of Educ.*, 119 LRP 13832 (AL SEA 12.10.18)

While the Student prevailed on one issue, there cannot be an award of compensatory education due to lack of proof as to type of compensatory education would be appropriate.

ATTORNEY FEES

Under *IDEA, 20 U.S.C. § 1415* the award of attorney fees is under the jurisdiction of the district courts of the United States. Specifically, *20 U.S.C. § (i) (3) (A)* and *(B)* is set forth is set forth below.

(3) Jurisdiction of district courts; attorneys' fees

(A) In general

The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees;

(i) In general, in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

(I) to a prevailing party who is the party of a child with a disability;

As this Hearing Officer is not with the district courts of the United States, he without the jurisdiction or the ability to award attorney fees to a prevailing party in a Due Process Hearing.

This Order and Decision is entered this 13th of day of January 2020.

/s/ Paul L. Whalen

PAUL L. WHALEN
Due Process Hearing Officer

CC:

Marianne S. Chevalier, Esq.; Claire Parsons, Esq.; and Olivia Amlung, Esq.
Counsel of Record Via email and U.S. Postage Pre-paid
KDE: Todd Allen, Esq. & Jennifer Payne

APPEAL RIGHTS

Pursuant to **707 KAR 1:340 Section 12**. Appeal of Decision. (1) A party to a due process hearing that is aggrieved by the hearing decision may appeal the decision to members of the Exceptional Children Appeals Board (ECAB) assigned by the Kentucky Department of Education. The appeal shall be perfected by sending it, by certified mail to the Kentucky Department of Education, a request for appeal, within thirty (30) calendar days of the date of the Hearing Officer's decision.

The address is Kentucky Department of Education
Office of Legal Services
300 Sower Blvd.; 5th Floor
Frankfort, Kentucky 40601

