

Before the
Administrative Hearing Commission
State of Missouri



, in the interest of)	
,)	
)	
Petitioner,)	
)	
vs.)	No. 19-0279
)	
UNIVERSITY ACADEMY CHARTER)	
SCHOOL,)	
)	
Respondent.)	

DECISION

(Mother) filed a due process complaint against University Academy Charter School (University Academy) alleging that University Academy failed to provide special education services to her child, (Student), pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. We find that Mother has not met her burden to demonstrate a violation of 34 C.F.R. §§ 300.301(c) and 300.111(c)(1).

Procedure

On March 12, 2019, Mother filed a due process complaint in the interest of Student against University Academy. On May 13, 2019 and June 7, 2019, we held a hearing. Mother appeared *pro se*. Attorney Shellie L. Guin represented University Academy. This case became ready for decision on June 28, 2019, when the last written argument was due. On July 2, 2019,

University Academy filed a motion to strike portions of Mother's brief. We grant the motion as elaborated below.

Findings of Fact

1. At the time of the hearing, Student was years old. She has no medical or educational diagnoses.

2. Student lives with her Mother and Father (Parents) in Kansas City, Missouri. Mother is , and Father suffers from and .

3. Father has a and a . He has training or certificates in education. Mother has a in with a concentration in . At the time of the hearing, Mother was studying to receive a in . Mother holds a certificate to , but does not have any other .

4. Student attended University Academy from August 2018 to March 2019. University Academy is a public charter school in Kansas City, Missouri. As a public charter school, University Academy operates as its own local education agency (LEA).

5. Student was born healthy and met developmental milestones within appropriate time intervals. Student displays good general health.

Preschool and Kindergarten

6. For the 2009-2010 and 2010-2011 school years, Student attended preschool and kindergarten at Satchel Paige Elementary School.

7. From Fall 2011 to Spring 2015, Student attended Dobbs Elementary in the Hickman Mills School District (Hickman Mills). Student remained at Dobbs Elementary through at least April of fourth grade.¹

¹ The record is not clear as to whether Student completed 4th grade at Dobbs Elementary.

First Grade through Fourth Grade

8. After leaving Dobbs Elementary, Student received a education until she enrolled in University Academy in Fall 2018. These years corresponded with the end of fourth grade through seventh grade.

9. On June 1, 2012, Student underwent a comprehensive speech and language evaluation at Children's Mercy Hospital. At the time of the evaluation, Student was years and months old.

10. Children's Mercy administered several tests for Student. These tests included:

- Clinical Evaluation of Language Fundamentals – 4 (CELF 4)
- Comprehensive Test of Phonological Processing (CTOPP)
- Dynamic Indicators of Basic Early Literacy Skills test (DIBELS)
- Phonological Awareness Test – 2 (PAT 2)

11. On the CELF 4, Student scored within normal range for five and six year olds. If applied to standards for seven year olds, Student's CELF 4 performance would place her "below average."

12. On the CTOPP, Student scored within normal range for phonological awareness and rapid naming. She scored below average in phonological memory. If applied to standards for seven year olds, Student's CTOPP performance would place her "below average."

13. On the DIBELS, Student correctly identified ten words per minute indicating a deficit in reading skill. An average child would be expected to identify 23 words per minute midway through first grade and 47 words per minute by the end of first grade. Based on this performance, Children's Mercy recommended explicit instruction of foundational reading skills.

14. On the PAT 2, Student scored within the average range for six year and ten month old children.

15. Parent reported to Children's Mercy that Student displayed difficulties with focus and attention.

16. Children's Mercy found that Student presented no deficiencies in hearing and mild delay in language skills.

17. Children's Mercy compared the findings of its evaluation of Student to the medical standards of dyslexia for seven year olds. Children's Mercy found that some characteristics of dyslexia were present, but did not diagnose Student with dyslexia. Children's Mercy recommended that Student receive a re-evaluation in one year to more accurately evaluate Student. Parents did follow up with Children's Mercy to reevaluate Student in the following year.

18. In December 2012, Hickman Mills performed an initial evaluation of Student at Parents' request. As part of its evaluation, Hickman Mills administered several tests for Student, including:

- Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV)
- Test of Auditory Comprehension of Language – Third Edition (TACL-3)
- Wechsler Individual Achievement Test-Third Edition (WIAT-III)

19. On the WISC-IV, Student scored in the average range in each subcategory composite and in her overall composite score for children her age. The WISC-IV measures a student's cognitive capabilities.

20. On the TACL-3, Student scored in the average range in the areas of grammatical morphemes and elaborated phrases and sentences. She scored below average in vocabulary. Student's overall TACL-3 score fell in the average range.

21. On the WIAT-III, Student scored in the average range for Basic Reading, Written Expression, Mathematics, and Math Fluency. Student scored below average in Total Reading and Reading Comprehension and Fluency.

22. In addition to these tests, Hickman Mills considered Children's Mercy's findings and input from Parents and school staff. Based on this information, Hickman Mills determined that Student did not meet the eligibility criteria for special education.

Homeschool

23. Parents homeschooled Student from 2014 until she was enrolled in University Academy in Fall 2018. These years corresponded with the end of fourth grade through seventh grade.

24. As part of Student's homeschool education, Parents implemented an "IXL program" – standardized software used for homeschool work that aligns with Missouri's and other states' learning standards. IXL is a supplemental practice program for skills needed at each grade level. IXL contains lessons and reviews of certain concepts in which a student would be expected to receive instruction at school.

25. A printout from the IXL program dated August 21, 2018, shows that Student had completed 37 hours and 31 minutes of seventh grade math training and 1 hour and 11 minutes of eighth grade math training. Student completed 55 hours and 11 minutes of seventh grade language arts training and 2 hours and 53 minutes of eighth grade language arts training.

26. In addition to IXL, Parents implemented other education methods as part of Student's homeschool curriculum, but could not provide University Academy with specifics of those methods because they were displaced when the family moved.

University Academy and Requests for Evaluation

27. In August 2018, Student enrolled at University Academy. On a disclosure form completed prior to enrollment, Parents indicated that Student had never received special education services or a 504 plan. Parents provided University Academy with an IXL report indicating the hours of training Student had received in seventh and eighth grade math and English language arts. Parents presented no other information regarding the specifics of Student's homeschool curriculum.

28. On October 23, 2018, Parents submitted a request for an initial special education evaluation to University Academy.

29. On November 19, 2018, University Academy issued a notice of action denying Parents' request for an evaluation of Student. University Academy denied the request because it had not observed Student in a regular educational setting and wanted to see how Student responded to regular education interventions. In making its determination, University Academy considered parent input, homeschool information, and Hickman Mills' records (Review of Existing Data, attendance, grades, and staff input). University Academy had not received a copy of Student's Children's Mercy records.

30. On January 16, 2019, Parents submitted a second request for an initial special education evaluation. In correspondence with University Academy staff, Parents discussed Student's evaluation at Children's Mercy. After Parents signed authorization forms, University Academy received a copy of Children's Mercy's report from June 2012.

31. On February 12, 2019, University Academy issued a notice of action denying Parents' request for an evaluation of Student. University Academy denied the request because Student was "making gains with a good rate of progress. She was homeschooled for years before attending University Academy. There is not enough evidence for the team to suspect a

disability under IDEA.”² In making its determination, University Academy considered its own records, parent input, homeschool information, Hickman Mills’ records (Review of Existing Data, attendance, grades, and staff input), the Children’s Mercy report, Study Island benchmark progress, and staff input.

32. Concurrent with the notice of action, University Academy’s special education coordinator, Amy Bellman, e-mailed Parents to further detail University Academy’s refusal to evaluate Student. Bellman explained that University Academy did not suspect Student had a disability, citing improvements Student had made in Math and Reading with certain accommodations and Student’s poor attendance.

Student’s Academic Achievement and
Attendance at University Academy

33. University Academy uses a testing program called Study Island to measure its students’ learning achievement and progress. Each year, students take four “benchmark” tests through Study Island: one in each quarter of the academic year. In addition to these benchmark tests, University Academy students use Study Island as a supplement to their regular curriculum.

34. Student took three benchmark tests in math, English language arts, social studies, physical science, and life science: on August 20, 2018, December 12, 2018, and March 7, 2019.

35. In the area of math, Student scored “Below Basic” for each benchmark test. However, Student’s benchmark scores improved significantly from August 20 to December 12. Student’s progress slowed from December 12 to March 7.

36. Student received an initial math benchmark of 10.5%. At the same time, her peers would have scored 22% on average. Student received a second benchmark score of 23.6%; her peers scored an average 35%. Student received a third benchmark score of 18.4%; her peers scored an average 48%.

² Resp. Ex. M.

37. In the area of English language arts, Student scored “Below Basic” for each benchmark test. However, Student’s benchmark scores improved significantly from August 20 to December 12. Student’s progress continued from December 12 to March 7.

38. Student received an initial English language arts benchmark of 7.6%. At the same time, her peers would have scored 48% on average. Student received a second benchmark score of 28.2%; her peers scored an average 53%. Student received a third benchmark score of 35.8%; her peers scored an average 59%.

39. In the area of social studies, Student’s benchmark scores improved drastically from August 20 to December 12. Student’s progress continued from December 12 to March 7.

40. Student received an initial social studies benchmark of 17.1%. At the same time, her peers would have scored 36% on average. Student received a second benchmark score of 60.0%; her peers scored an average 61%. Student received a third benchmark score of 62.8%; her peers scored an average 65%.

41. In the area of physical science, Student’s benchmark scores improved from August 20 to December 12. At the time of the hearing, Student had not taken a third benchmark test.

42. Student received an initial physical science benchmark of 20.9%. At the same time, her peers would have scored 35% on average. Student received a second benchmark score of 37.2%; her peers scored an average 51%.

43. In the area of life science, Student’s benchmark scores improved from August 20 to December 12. At the time of the hearing, Student had not taken a third benchmark test.

44. Student received an initial physical science benchmark of 31.4%. At the same time, her peers would have scored 48% on average. Student received a second benchmark score of 46.3%; her peers scored an average 59%.

45. Student received low or failing grades in most classes she took at University Academy.
46. Student received failing grades in Math for the first and second quarter, but progressed to a low passing grade in the third quarter.
47. Student failed first quarter speech, but passed in the second and third quarters.
48. Student received low passing grades in communications arts in the first, second, and third quarters.
49. Student failed first quarter science, but passed in the second and third quarters.
50. Student received low passing grades in American history in the first, second, and third quarters.
51. On January 11, 2019, University Academy notified Parents that it was considering retaining Student to repeat eighth grade.
52. University Academy provided Student with accommodations to improve her performance, including: sitting close to the board/teacher, one-on-one instruction, extra time for assignments and tests, assistance in core classes, audio versions of books, opportunity for after-school tutoring, and unlimited time for Study Island.
53. University Academy records student attendance as a percentage of school days attended. As of February 12, 2019, Student's attendance for the first semester was 83.82%. As of February 12, 2019, her second semester attendance percentage was 89%. At the time of Parents' complaint, Student had missed 22 days of school in the 2018-2019 school year.
54. Student's attendance issues were exacerbated by Student's bus route. Parents notified University Academy of these issues, but University Academy failed to ameliorate them.

55. On March 25, 2019, Parents withdrew Student from enrollment at University Academy due to dissatisfaction with the way University Academy handled Parents' requests for evaluation and its education of Student generally.

Conclusions of Law

This Commission has jurisdiction over due process complaints with respect to any matter relating to the identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) for a child in this state.³ Mother must prove her case by a preponderance of the evidence.⁴ A preponderance of the evidence is "evidence which as a whole shows the fact to be proved [is] more probable than not."⁵ We must judge the credibility of witnesses, as well as the weight and value of the evidence.⁶ We have the discretion to believe all, part, or none of the testimony of any witness.⁷

Evidentiary Issues

At the hearing, we took University Academy's objections to Mother's Exhibits B, C, D, and E with the case. University Academy objects on the grounds that these exhibits were not disclosed five business days prior to the hearing. Mother disclosed these exhibits on Monday, May 6, 2019. The hearing began on Monday, May 13, 2019. A "business day" means any day, Monday through Friday, except federal and state holidays.⁸ By virtue of a Truman Day falling on Wednesday, May 8, 2019, five business days before the hearing was Friday, May 3, 2019. As the hearing officer, this Commission "may" bar any evidence for failure to comport with the IDEA's five-day disclosure rule.⁹ The term "may" means discretion, not a mandate.¹⁰ Truman

³ Section 162.961.1, RSMo 2016.

⁴ *Tate v. Dep't of Social Services*, 18 S.W.3d 3, 8 (Mo. App. E.D. 2000).

⁵ *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000).

⁶ *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App. W.D. 2014).

⁷ *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D. 2001).

⁸ 34 C.F.R. § 300.11(b).

⁹ 34 C.F.R. § 300.512(b)(2).

¹⁰ *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App. K.C.D. 1974).

Day represents a relatively obscure, Missouri-exclusive state holiday. We find the occurrence of this holiday unlikely to have prejudiced University Academy or its counsel in any way.

Therefore, we overrule University Academy's objection.

Additionally, University Academy moved to strike portions of Mother's closing statement and portions of Mother's proposed findings of fact, conclusions of law, and decision. It is true that Mother raised factual allegations not presented at the hearing. We grant University Academy's motion to strike. We base our decision on the evidence in the record.¹¹

Issues of the Case

Mother alleges University Academy has failed to provide FAPE as required by the IDEA. Specifically, Mother alleges that Student was denied FAPE because University Academy failed to identify Student as eligible for special education services. Specifically, Mother alleges that University Academy failed to properly consider medical documentation indicating that Student should receive a re-evaluation for a medical diagnosis of dyslexia.

The IDEA requires each state's department of education to actively identify, locate, and evaluate children with disabilities.¹² This "child find" requirement extends to students who are suspected of having a disability, despite progressing from grade to grade.¹³ The IDEA requires University Academy to conduct an initial evaluation in which it assesses "all areas of suspected disability."¹⁴ This assessment must consider available diagnoses, health history, and specific health needs necessary to assist a child in school.¹⁵ A failure to diagnose a disability does not constitute a FAPE violation per se – especially in the case of ailments that are difficult to

¹¹ *Hartley v. Spring River Christian Village*, 941 S.W.2d 4, 7 (Mo. App. S.D. 1997).

¹² 20 U.S.C. § 1412(a)(3)(A); *Bd. of Educ. of Wappingers Cent. Sch. Dist. v. M.N. on Behalf of J.N.*, No. 16-CV-09448(TPG), 2017 WL 4641219, at *6 (S.D.N.Y. Oct. 13, 2017).

¹³ 34 C.F.R. § 300.111(c)(1).

¹⁴ 21 U.S.C. §§ 1414(a)(1)(A), (b)(3)(B).

¹⁵ *See L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1008 (9th Cir. 2017).

diagnose.¹⁶ However, there is an inferred requirement that schools identify disabled children within a reasonable time after notice of behavior that likely indicates a disability.¹⁷ There is no specific time at which a school's failure to identify a disability becomes unreasonable, but if it fails to do so, it necessarily denies FAPE.¹⁸

Initial Evaluations

Before a student may receive special education and related services, the public agency must conduct an initial evaluation.¹⁹ A parent may request an initial evaluation for special education services.²⁰ If the public agency does not suspect the student has a disability, it may refuse the parent's evaluation request with written notice to parents.²¹ The content of this notice must state the reasons for the refusal and the factors considered in making that determination.²²

This case involves two separate requests and refusals for an initial evaluation: one in October 2018 and a second in January 2019. For both requests, University Academy complied with the IDEA's procedural requirements for refusal. Therefore, we examine the substantive basis for University Academy's refusal to evaluate student. Furthermore, "child find" represents an ongoing obligation with which University Academy must comply in the absence of a parental request.²³ As such, we also consider University Academy's ongoing failure to evaluate throughout Student's attendance at University Academy.

These considerations share a common set of legal principles related to the diagnosis of students under the IDEA. Mother seeks special education services on the basis of Student's prior

¹⁶ *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3rd Cir. 2012).

¹⁷ *Todd by Todd v. Elkins Sch. Dist. No. 10*, 105 F.3d 663 (8th Cir. 1997), citing *W.B. v. Matula*, 67 F.3d 484, 501 (3d Cir. 1995).

¹⁸ *Bd. of Educ. of Wappingers Cent. Sch. Dist.* at *7.

¹⁹ 34 C.F.R. § 300.301(a).

²⁰ 34 C.F.R. § 300.301(b).

²¹ 34 C.F.R. § 300.503(a)(2).

²² 34 C.F.R. § 300.503(b).

²³ *Indep. Sch. Dist. No. 413, Marshall v. H.M.J. ex rel. A.J., M.N.*, 123 F. Supp. 3d 1100, 1108 (D. Minn. 2015).

medical evaluation that considered a diagnosis of dyslexia in conjunction with Student' poor academic performance. Although not explicitly articulated in Mother's filings, the record indicates Parents share a primary concern that Student suffers from dyslexia. A student with dyslexia may qualify for special education services under the educational diagnosis of Specific Learning Disability (SLD). SLD means:

a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or, limited English proficiency.

A child has a specific learning disability when:

(1) **The child does not achieve adequately for the child's age or to meet State approved grade level standards** in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State approved grade-level standards:

- a. Oral Expression
- b. Listening Comprehension
- c. Written Expression
- d. Basic Reading Skill
- e. Reading Fluency Skills
- f. Reading Comprehension
- g. Mathematics Calculation; and,
- h. Mathematics Problem Solving

(2) **The child does not make sufficient progress** to meet age or State approved grade-level standards in one or more of the areas identified in A above **when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with 34 CFR**

300.307-300.311. A pattern of strengths and weaknesses is defined as a severe discrepancy between achievement and intellectual ability of at least 1.5 standard deviations; and,

(3) The group determines that its findings under A and B of this section are not primarily the result of:

- a. A visual, hearing, or motor disability;
- b. Intellectual disability;**
- c. Emotional disturbance;
- d. Cultural factors;
- e. Environmental or economic disadvantage;
- f. Limited English Proficiency;
- g. Lack of appropriate instruction in reading, including the essential components of comprehensive literacy instruction (as defined in section 2221(b)(1) of the ESEA);**
- h. Lack of appropriate instruction in math; and,**

(4) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:

a. Data that demonstrate that prior to or as part of the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and

b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.^[24]

Prior to enrolling at University Academy, Student received a homeschool education for three full school years. Student showed progress at University Academy as measured by her grades and benchmark tests. However, University Academy considered retaining Student to repeat eighth grade. This retention did not come to fruition because Parents withdrew Student from classes before the end of the school year. Therefore, we find that Student did not achieve adequately for her age or make sufficient progress. She therefore meets the criteria outlined in

²⁴ State Plan, Title III, § B page 27-29. Emphasis added.

subsections (1) and (2) for SLD. Therefore, we evaluate University Academy's failure to evaluate under the criteria of subsections (3) and (4).²⁵

November Notice of Action

On November 19, 2018, University Academy issued a notice of action denying Parents' request for an evaluation of Student. University Academy denied the request because it had not observed Student in a regular educational setting and wanted to see how Student responded to regular education interventions.

Regulation 34 C.F.R. § 300.309(b) provides:

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§300.304 through 300.306—

- (1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
- (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

University Academy “must” consider these data points and documentation in conducting an evaluation for special education. Consequently, we cannot find a violation of FAPE if that data did not exist, Parents did not make said data available, or the data available reflects a deficiency of appropriate instruction. The IXL documentation Parents provided reflected fewer than 40 hours of training in math and 60 hours in English language arts. Parents did not provide any other specific description of Student's curriculum to University Academy, nor did it explicate that instruction at the hearing.

²⁵ See also 34 C.F.R. § 300.309(b)(1) and (2).

Aside from IXL training completed over an unspecified date range, Parents did not present any evidence to suggest Student received regular assessments of achievement at reasonable intervals. Given the lack of data and documentation available to University Academy, we find that University Academy did not deny Student FAPE by refusing to evaluate her in November 2018.

January Notice of Action and Second Semester

On February 12, 2019, University Academy issued a notice of action denying Parents' request for an evaluation of Student. University Academy denied the request because Student was "making gains with a good rate of progress. She was homeschooled for years before attending University Academy. There is not enough evidence for the team to suspect a disability under IDEA."²⁶

Approximately six months and one full semester had passed since Student enrolled at University Academy. At that point, Student's benchmark scores indicated significant progress across all subject areas. This progress continued, albeit inconsistently, when Student underwent her third set of benchmark assessments. Also, Student's grades in speech and science improved from failing to passing during the first semester. Student's grades in math improved from failing to passing in the third quarter. Although Student received accommodations, the record does not reflect these accommodations were specifically designed to compensate for dyslexia or another intellectual disability under the State Plan, Title III, § B(3)b.

At the hearing, University Academy presented testimony that attendance factors disproportionately affected Student's math instruction. We may find absences pertinent to determining whether Student's underachievement stems from a lack of instruction.²⁷ Student

²⁶ Resp. Ex. M.

²⁷ See *Antioch Unified School District*, Case No. 2018050541 119 LRP 324 (December 28, 2018).

missed 22 full days of school before withdrawing from University Academy in March 2019. Despite these absences, Student still demonstrated progress that we cannot determine she made in homeschool. Parents attribute these absences to problems with Student's bus route, and we acknowledge University Academy failed to accommodate Student to Parents' satisfaction. Although we understand Parents' frustration and find University Academy's failure in this matter concerning, we find the fact that Student made progress in spite of these absences compelling evidence that she could succeed in a regular education environment.

Parents' strongest evidence in support of their argument that University Academy should have suspected a disability rests in Children's Mercy's finding that Student presents signs of dyslexia, but needed further evaluation to properly diagnosis Student. However, at the time University Academy received this information, more than six years had passed since this evaluation. Hickman Mills evaluated Student shortly thereafter and found Student did not meet the eligibility criteria for SLD. Although the Hickman Mills evaluation reflected average or below average academic achievement, Parent failed to present any evidence that indicated a lack of progress in the more than two complete school years in regular education that followed those tests.

Given these circumstances, we find that University Academy did not have cause to suspect Student might have a disability under the IDEA. Therefore, we do not find University Academy violated its duties under 34 C.F.R. §§ 300.301(c) and 300.111(c)(1).

Summary

We find that University Academy did not violate its duties under 34 C.F.R. §§ 300.301(c) and 300.111(c)(1).

SO ORDERED on July 8, 2019.

SREENIVASA RAO DANDAMUDI
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

- (1) The court shall hear the case without a jury and shall:
 - (a) Receive the records of the administrative proceedings;
 - (b) Hear additional evidence at the request of a party; and
 - (c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;
- (2) Appeals may be taken from the judgment of the court as in other civil cases;
- (3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;
- (4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;
- (5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. § 300.516.