

Before the
Administrative Hearing Commission
State of Missouri



and)
in the interest of)
)
Petitioners,)
)
vs.) No. 19-0750
)
KANSAS CITY 33 SCHOOL DISTRICT,)
)
Respondent.)

DECISION

On May 29, 2019, (Mother) filed a due process complaint against the Kansas City 33 School District (District), alleging that the District violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., when it found her son (Student) ineligible for special education services under the IDEA. The District did not violate the IDEA. Student will receive services under §504 of the Rehabilitation Act.¹

Procedure

On May 29, 2019, Mother filed a due process complaint against the District on behalf of her son. On June 17, 2019, the District filed a response to the complaint. On June 21, 2019, Mother and Father (together “Parents”) filed a motion to add Father as a petitioner. By order dated June 25, 2019, we granted the motion. By order dated June 28, 2019, we granted Petitioners’ motion for a continuance of the hearing. We reset and held the hearing on July 26,

¹ 87 Stat. 394, 29 U.S.C. § 794(a).

2019. Shana J. Long and Jeffrey Klusmeier represented the District. Parents appeared *pro se*. The matter became ready for our decision on August 9, 2019, the date the last written argument was filed.

Findings of Fact

1. Student is years old, resides within the boundaries of the District, and is expected to attend kindergarten in the 2019-2020 school year.
2. Student has a medical diagnosis of cerebral palsy diplegia. In January 2019, Student had hip surgery and a baclofen pump² surgically implanted. He cannot walk unassisted and requires the use of a wheelchair, and assistance navigating and using the restroom. His hands shake. He needs help in bathing, getting dressed, and putting on his shoes.
3. Student attended pre-kindergarten at the District for the past three school years. As a Young Child with a Developmental Delay (YCDD), Student was eligible for IDEA services and had an Individualized Education Program (IEP).
4. Student will turn years old next month and is entering kindergarten. He will no longer be eligible for services as a YCDD.
5. On May 20, 2019, an Eligibility Meeting was held for Student. The purpose of this meeting was to determine whether Student will be eligible for IDEA services. However IEP team members Rita Wilson (school psychologist) and Jennifer Cramer (District employee) had already determined, prior to commencement of the meeting, that Student should not qualify for IDEA services. Parents were notified of this decision as if the decision was made during or after the meeting.

² Baclofen is “an analogue of *v*-aminobutyric acid administered orally or intrathecally as a muscle relaxant and antispastic in the treatment of spasticity of spinal origin, including multiple sclerosis and spinal cord injury. It is also used intrathecally to treat spasticity of cerebral origin, including as trauma to the brain or cerebral palsy.” DORLAND’S ILLUSTRATED MEDICAL DICTIONARY 191 (30th ed. 2003).

District's Witnesses

6. Kimberly Colbert is a teacher for the early childhood learning department, and she has held that position for six years. She has a bachelor's degree and a master's degree and is working on her second master's degree.

7. Kendra Niner is the early childhood special education supervisor and has held that position for three years. She has a degree in early childhood and is certified in early childhood special education. She has a degree in both general education K-12 and special education. She has been a resource room teacher and a self-contained teacher. In her current position, she supervises teachers, psychologists, and social workers for the early childhood special education department.

8. Rita Wilson is a school psychologist with the District. She has a Ph.D. and has worked with regular education, special education, early childhood education, and the adult population. She evaluates and assesses the needs of students who are referred to her.

9. Karla Arnold is the director of special education and has held that position since 1996. She has a Ph.D. and was a former speech therapist.

Parents' Witnesses

10. Tammy Griddine is the outreach coordinator for the Missouri Parents Act (M-PACT). She has held this position since 2014. She has been trained to help make parents effective advocates for their children, and trained in the areas of special education law, disagreement resolution, and IEP and §504 cases.

11. Parents testified about Student's condition.

Student

12. Colbert was Student's teacher for three years. He was in her classroom with other students. He began as a part-day student and then became a full-day student. When Colbert met

Student, he was years old. He cried in the morning when he was dropped off, but was a “sweet little boy, wanted to learn, eager and happy.”³

13. Student participated in the regular preschool curriculum: arrival, sign-in by writing their names, breakfast, brushing teeth, large group work time, center time, gross motor work, lunch, nap time, snack time, recall of the day, depart.

14. Accommodations were made for Student in the classroom. He was in a stroller or wheelchair, and furniture was moved to allow him to maneuver and interact with other children. His one-on-one paraprofessional transported him to different places and helped him in and out of chairs and to the restroom.

15. Student required some accommodations to participate in the regular curriculum, such as the fact that he could not run with the other students, so he was provided other activities to allow interaction with them. Other accommodations were physical, such as ensuring that his wheelchair could fit so that he could work at a table, and making sure he could reach certain things. He had many friends and performed at the level of his peers.

16. The only academic accommodations Student had was hand-over hand drawing and cutting. He had special scissors that would help him with any fine motor problems.

17. Student was provided the related services of language services, occupational therapy (OT), and physical therapy (PT).

18. Student gets tired on days that he has PT. After his baclofen pump was surgically implanted, Student was unable to engage in “roughhousing” with other children, but still interacted with them.⁴

³ Tr. at 11-12

⁴ Tr. at 47.

19. Niner met Student in the fall of 2017. She observed the paraprofessional's interaction with Student. She oversees his case manager and ensures that the necessary accommodations are in place.

IEP Meeting – February 13, 2019

20. On February 13, 2019, Student's IEP team held a meeting. Mother, Niner, Parks, Colbert, and Tracy Johnson (Head Start Family Advocate) attended this IEP team meeting.

21. The IEP team proposed dismissal from language services based on Student meeting all language goals on the previous IEP. The report states:

[Student's] overall communication skills are considered a relative strength in comparison to developmental standards. He has demonstrated the ability to use spontaneous utterances that are typically developmental in length that contain nouns, adjectives, and verbs which help him effectively communicate his wants and needs in adult and preferred peer conversational tasks. While [Student] continues to appear that he enjoys his friends, his conversational skills are increased with adults as adults are his preferred communication partners. [Student] is able to produce 3-7+ word spontaneous sentences, using appropriate verb endings, greetings, and communicate his wants, needs, or to request/protest. [Student] is able to functionally communicate his feelings and ideas, as well as demonstrate the ability comment, request, protest, and clarify ideas and information.[⁵]

22. The IEP team determined that more information was needed and arranged for further evaluation. The IEP meeting minutes noted that the further testing/re-evaluation means he could meet eligibility criteria under a different identification category or could result in him not qualifying for special education services.

RED Meeting – March 26, 2019

23. On March 26, 2019, the team conducted a review of existing data (RED) meeting. Mother, Wilson, Colbert, Johnson, and Lauren Parks (special education teacher) attended the meeting.

⁵ Ex. 1 at 000012.

24. The RED meeting evaluated many different aspects of Student's condition and abilities. Some aspects were determined to be of no concern to any team member. Other aspects were of possible concern, but additional evaluation was not required because adequate data was available to the team. Two areas – Intellectual/Cognitive and Adaptive Behaviors – were identified by the team as areas where additional evaluation was needed.

25. Colbert provided information for the team. Colbert noted that Student understands sarcasm, which is important in understanding conversations. This is developmentally appropriate. She noted that he is friendly and gets along well with his peers. He could match words, knew upper and lower case letters, and was able to write his first name and was starting to write his last name. Student could count past 50, could retell a story, and was able to sequence (know the events of the day in their proper order). He knew his letters and shapes. All of these were determined to be developmentally appropriate and evidenced his readiness for kindergarten. Student was able to perform at an academic level above that of older children.

Evaluations

26. Mother signed a consent form for the additional evaluations.

27. The additional evaluations were conducted by, or under the supervision of, Wilson. Wilson oversaw and scored the administration of an Adaptive Behavior Assessment System – 3 (ABAS – 3), which was based on information from Colbert. Wilson also conducted a Wide Range Intelligence Test (WRIT) in April 2019.

28. The ABAS is an assessment of how Student is functioning in everyday life “in the areas of communication, his preacademic skills, school living, how he is getting around, his health and safety, his self-care, self-direction when a teacher is talking to him or another adult,

his socialization with others, and his motor area.”⁶ Colbert ranked Student in these areas, and Wilson scored the assessment.

29. Student’s General Adaptive Composite was 73, which was low, but this score was significantly affected by his gross motor abilities. This was expected since the scoring method compares all students of an age, not just physically impaired students. His preacademic skills were average, his communication was below average, his health and safety was average, and his leisure time was below average.

30. The WRIT assesses “intelligence or the cognitive area that we’re going to assess.”⁷ There is a verbal IQ score, a visual IQ score, and an overall IQ score.

31. Student’s overall IQ score was 89. He was within the average range in the visual area and verbal analogy area. He was within the low average range in vocabulary.

32. Wilson prepared an evaluation report.

Eligibility Meeting – May 20, 2019

33. On May 20, 2019, a team meeting was held to review the additional evaluation data and determine whether Student would continue to be eligible for IDEA services. Mother, Wilson, Colbert, District employee Jennifer Cramer, and Griddine attended the meeting.

34. All attendees were given the opportunity to share information and observations and voice any objections.

35. At the meeting, the attendees looked at a check-list to determine if Student might be eligible for IDEA services under the disability categories Orthopedic Impairment or Other Health Impaired. To find a student eligible under the first category requires documentation that “includes a description of **the adverse educational impact** of the physical impairment.”⁸ To

⁶ Tr. at 70.

⁷ *Id.* at 74.

⁸ Ex. 4 at 000048 (emphasis added).

find a student eligible under the second category requires a comprehensive educational evaluation that documents “all of the areas in which the child’s health impairment **adversely affects her/his educational performance.**”⁹

36. These eligibility categories and requirements were discussed at the meeting.

37. Mother was not given “the guideline book”¹⁰ or a document for Mother to sign authorizing Griddine to be at the meeting.

38. At the end of the meeting, Mother and Griddine were of the opinion that Student should be found eligible for IDEA services. All other attendees were of the opinion that Student did not meet the required criteria for any possible category of eligibility and therefore was not eligible for IDEA services. As noted above, these other attendees had come to this opinion prior to the meeting.

39. The District prepared and purportedly mailed to Mother a Notice of Action indicating that Student was not eligible for IDEA services. Mother did not receive this letter in the mail, and no District employee testified as to having mailed it. Furthermore, no notice of parents’ right to appeal was provided with this Notice of Action. Instead, on page 2, the form obscurely states, “Parents of a child with a disability have protection under the procedural safeguards of part B of the Individuals with Disabilities Education Act (IDEA). A copy of the Procedural Safeguards Statement for Parents and Children may be obtained from Dr. Karla Arnold[.]”¹¹ Nowhere does the notice indicate that the right to appeal is one of these procedural safeguards. This underhanded masking of the right to appeal by the District is concerning. In this case, Parents were informed of their rights by Griddine and were able to timely appeal.

⁹ *Id.* at 000049 (emphasis added). See 34 CFR § 300.8(c)(8) and (9).

¹⁰ Tr. at 122.

¹¹ Ex. 10.

Conclusions of Law

We have authority to hear this case.¹² The burden of proof is on the party seeking relief, in this case Parents.¹³ Parents must prove their case by a preponderance of the evidence.¹⁴

We must judge the credibility of witnesses, as well as the weight and value of the evidence.¹⁵ We have the discretion to believe all, part, or none of the testimony of any witness.¹⁶ When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.¹⁷

IDEA and §504

A main purpose of the IDEA is to ensure children with disabilities receive a free and appropriate education (FAPE) “that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living,” and “to ensure that the rights of such children and their parents are protected.”¹⁸ “Special education” is instruction specially designed to meet the unique needs of a child with a disability.¹⁹ Section 504 “prohibits discrimination against the disabled recipients of federal funding[.]”²⁰ Section 504 ensures that “[n]o other qualified individual with a disability ... shall, solely by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”²¹ We lack jurisdiction over §504 claims.

To be eligible for IDEA services, a student must be a “child with a disability,” a term defined as a child: (1) who has an impairment falling into one of several listed categories, and

¹² Section 162.961. Statutory references are to RSMo 2016, unless otherwise stated.

¹³ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

¹⁴ *Tate v. Dept. of Social Services*, 18 S.W.3d 3, 8 (Mo. App., E.D. 2000).

¹⁵ *Faenger v. Petty*, 441 S.W.3d 199, 204 (Mo. App., W.D., 2014).

¹⁶ *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001).

¹⁷ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

¹⁸ 20 U.S.C. § 1400(d)(1)(A) and (B).

¹⁹ 20 U.S.C. § 1401(29) and 34 C.F.R. § 300.39.

²⁰ *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

²¹ 29 U.S.C. § 794(a).

(2) who “by reason thereof, needs special education.”²² Only children with certain disabilities are eligible for the special education provisions under the IDEA.²³ The State Plan lists 13 educational disabilities and provides the qualifying criteria for each.²⁴ Thus, there are children who may benefit from certain improvements to a skill or attribute, but who do not fit into the specific categories dictated by the law, or who may qualify under YCDD but are no longer age eligible. Thus, when a child ages out of the YCDD category, there must be a determination of whether the child is eligible for services under the IDEA, §504, or both. The determination could also be, as noted above, that the child is not eligible for services under either.

The District argues that Student is eligible for services under §504, but not under the IDEA because Student does not fall into one of the listed categories. Student was evaluated to determine whether he fell into categories Orthopedic Impairment and Other Health Impairment, which are defined in 34 CFR §300.8(c):

(8) *Orthopedic impairment* means a severe orthopedic impairment **that adversely affects a child’s educational performance**. The term includes impairments caused by a congenital anomaly, impairments cause by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that –

(i) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sick cell anemia, and Tourette syndrome; and

(ii) **Adversely affects a child’s educational performance**.

²² 34 CFR § 308(a).

²³ 20 U.S.C. § 1401(3)(A).

²⁴ The 13 categories are autism, deaf/blindness, emotional disturbance, hearing impairment/deafness, intellectual disability, multiple disabilities, orthopedic impairment, OHI, SLD, speech/language impairment, visual impairment/blindness, and YCDD. State Plan, Regulation III at 23.

(Bold emphasis added.)²⁵ We agree that both categories require that the impairment must adversely affect Student’s educational performance.

Colbert testified about Student’s achievements and accommodations. Colbert noted that Student understands sarcasm, which is important in understanding conversations. This is developmentally appropriate. She noted that he is friendly and gets along well with his peers. He could match words, knew upper and lower case letters, and was able to write his first name and was starting to write his last name. Student could count past 50, could retell a story, and was able to sequence (know the events of the day in their proper order). He knew his letters and shapes. All of these were determined to be developmentally appropriate and evidenced his readiness for kindergarten. Student was able to perform at an academic level above that of older children.

The District agrees that Student will require related services such as the one-on-one paraprofessional, OT, and PT.²⁶ “Related services” are transportation and other developmental, corrective and supportive services that are required to assist the child in benefitting from special education.²⁷ If a child only requires related services, and does not otherwise qualify for special education, the child is not a child with a disability as defined by the IDEA.²⁸

The burden of proof is on Parents, and they did not prove that Student qualifies for IEP services. Parents argued that physical education class is an academic class and is required for graduation. But the District noted that there are no **academic** accommodations that would assist Student in a physical education class. His difficulties in a physical education class, as projected

²⁵ See also State Plan, Regulation III, page 27.

²⁶ Although the §504 plan has not been finalized, we note that several of the District’s witnesses stressed the necessity of the accommodations made for Student’s physical condition, including the one-on-one paraprofessional, and expressed doubt that Student would lose them under §504.

²⁷ 20 U.S.C. § 1401(26) and 34 C.F.R. § 300.34.

²⁸ 34 C.F.R. § 300.8(a)(2)(i).

at this time, will be his physical condition.²⁹ In its written argument, the District provided an example of its position about the differences between a student who is eligible for §504 services and one who is eligible for services under the IDEA.

If the Student is unable to, as a hypothetical, kick a soccer ball into a goal, there is no specially designed instruction that could address that. If it's a physical limitation and something he simply can't do, all the specialized instruction [footnote distinguishing specialized instruction and related services] in the world isn't going to change that. Specialized instruction in physical education may be appropriate for someone who, with ordinary instruction, can't understand *how* to kick a ball or *why* you try to kick it in the goal. There is no indication and no evidence that the Student would have any difficulty understanding or taking in the knowledge of how to kick a ball, but rather that he may physically not be able to accomplish that act himself. In other words, while the Student's physical performance (ability to kick the ball) may be adversely affected, his educational performance (understanding how a ball is kicked and a goal is scored) is unaffected. He may need other modifications or accommodations, but he does not need specially designed instruction in physical education.^[30]

Our review of case law supports this position.

Accommodations for physical education class can be made under §504, and failure to comply with a §504 Plan may give rise to a cause of action. In *Dorsey on behalf of J.D. v. Pueblo School District 60*,³¹ a parent challenged a §504 accommodation for her daughter's physical education class. The daughter suffered from progressive muscular/skeletal weakness and had undergone several orthopedic surgeries. The Court described her accommodations as follows:

As to Plaintiff's physical limitations, the 504 Plan and Health Care Plan recognized that Plaintiff "cannot participate in any high impact activities in P.E." and can "set her own pace in other activities" The Health Care Plan also reiterated that Plaintiff "should not participate in any high-impact activities such as running and jumping," and that "[s]trenuous activity should be avoided."^[32]

²⁹ A recent accommodation for Student that is similar to one that might be implemented for a physical education class is that Student cannot run with his peers, so other activities are planned so that he may interact with them.

³⁰ Resp. Brief at 11-12.

³¹ 215 F.Supp.3d 1082 (D. Colo. 2016).

³² *Id.* at 1085 (citations omitted).

The Court found that the mother and daughter had pled facts sufficient to support a §504 claim and denied the district's motion to dismiss.³³

Father testified, "I feel [Student] is being penalized because he's smart."³⁴ We understand Father's feelings and discuss the District's assurance that Student will receive services and accommodations below. However, he will receive these under a different law than the IDEA. Again, several of the District's witnesses stressed the necessity of the accommodations made for Student's physical condition, including the one-on-one paraprofessional, and expressed doubt that Student would lose them under §504.³⁵ In its response to the complaint, the District acknowledged the following with regard to services Student needs:

KCPS believes the Student qualifies for services under Section 504 of the Rehabilitation Act of 1973, as the Student's Cerebral Palsy Diplegia impacts/interferes with the Student's ability to learn in a general education classroom. The Student needs access to the building because of his wheelchair, and elevator access throughout the school where appropriate. The Student needs assistance with toileting. The Student needs a paraprofessional. The Student requires special transportation. The Student needs occupational and physical therapy.³⁶

Additionally, Arnold testified that Student would not lose any of his §504 services. While not relevant to determining whether Student is eligible for IDEA, Arnold's testimony indicates the District is assuring this Commission that Parents' concerns will be alleviated through continued §504 services despite not receiving IDEA services. We incorporate the District's assurance into this decision so Parents understand Student's needs will be met through §504. The District's inability to uphold its assurances should be taken into account when determining witness credibility in any future proceedings regarding this matter.

³³ *Id.* at 1090-91.

³⁴ Tr. at 130.

³⁵ Tr. at 35, 100-01.

³⁶ Response to Due Process Complaint at 2.

Mother testified that Student would need assistance with his pump, but, again, this is a physical disability that could be covered in a §504 Plan. Mother quotes language that the pump is not a related service, arguing that OT and PT are not related services. But our reading is that the baclofen pump is not considered a related service, in that the District is not required to provide or pay for it.

Parents also raise concerns about Student's future problems. Specifically, in addition to the issue of Student's performance in physical education class, Mother stated that Student's upper body spasms "in the long run is going to affect his educational performance."³⁷ Parents also raised concerns about Student's language skills in the future when he is in kindergarten. The Court in *Mowery v. Bd. of Education of the School Dist. of Springfield R-12*³⁸ described the eligibility standard under the IDEA:

The IDEA further requires that for eligibility the child must be found to have one of the enumerated disabilities that affects the child's educational performance and by reason thereof the child needs special education services. 34 C.F.R. § 300.8(c)(9)(ii). **"It is not whether something, when considered in the abstract, can adversely affect a student's educational performance, but whether in reality it does."** *Marshall Joint School District No. 2 v. C.D. ex rel. Brian D.*, 616 F.3d 632, 637 (7th Cir 2010), citing 34 C.F.R. § 300.8(c)(9)(ii).^[39]

In addition, this is a determination that can be revisited in the future. While we cannot speculate about Student's future needs, the determination that Student is not eligible for services under the IDEA can change.⁴⁰

We find Student is not a student with an educational disability that would qualify him for IDEA services. The District will create and implement a §504 Plan that will address his physical needs.

³⁷ Tr. at 139.

³⁸ 2011 WL 1044145 (W.D. Mo. 2011).

³⁹ *Id.* at *1 (emphasis added).

⁴⁰ See *Regional School Unit 51 v. Doe*, 920 F.Supp.2d 168 (D. Me. 2013).

Procedural Issues

Per the IDEA, the party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents.⁴¹ Griddine testified that Mother was not given “the guideline book”⁴² or a document for Mother to sign authorizing Griddine to be at the meeting. We believe their testimony, but we agree that Mother’s complaint does not address any procedural violations in the meetings. Parents also allege that Mother was not provided with these documents because of her race. This is also not in the complaint; therefore, we cannot consider it.

The complaint references Mother’s concern that the District had pre-judged the decision that Student was ineligible under the IDEA. Both Griddine and Mother testified that they felt that District staff had already decided that Student should receive services under §504 rather than under the IDEA, and thus failed to consider Mother’s input. Such a failure could be a procedural violation of the IDEA. The District was required to keep an open mind and consider parental input before reaching its final decision.⁴³

We believe Mother’s and Griddine’s testimony, but we find the District countered this. The District’s staff was allowed to have prepared reports and “pre-formed opinions as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.”⁴⁴ Mother and Griddine made suggestions and objections at the meeting. Griddine suggested two criteria under which Student might qualify for IDEA services, Orthopedic Impairment and Other Health Impairment. This was discussed, and other team members

⁴¹ 20 U.S.C. § 1415(f)(3)(B).

⁴² Tr. at 122.

⁴³ *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017); *R.L. v. Miami-Dade Co. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014) (“Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team”).

⁴⁴ *N.L. ex rel. Mrs. C. v. Knox County Schools*, 315 F.3d 688, 694 (6th Cir. 2003).

expressed the opinion that Student did not qualify under those criteria and the reasons why they had that opinion.

Summary

The District did not violate the IDEA when it found Student ineligible for special education and services under the IDEA. Student will receive services under §504 of the Rehabilitation Act.

SO ORDERED on August 15, 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 and time limit is addressed in 34 C.F.R. §300.516.