

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
810 First Street, NE, 2nd Floor  
Washington, DC 20002

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PETITIONERS,  
on behalf of STUDENT,<sup>1</sup>

Date Issued: November 3, 2017

Petitioners,

Hearing Officer: Peter B. Vaden

v.

Case No: 2017-0229

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Hearing Date: October 25-26, 2017

Respondent.

Office of Dispute Resolution, Room 2006  
Washington, D.C.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by the Petitioners, under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). In their due process complaint, the parents allege that Respondent District of Columbia Public Schools (DCPS) denied Student a free appropriate public education (FAPE) by determining in May 2017 that Student was no longer eligible for special education and related services.

Student, an AGE youth, is a resident of the District of Columbia. Petitioners’ Due Process Complaint, filed on August 22, 2017, named DCPS as respondent. The

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<sup>1</sup> Personal identification information is provided in Appendix A.

undersigned hearing officer was appointed on August 23, 2017. The parties met for a resolution session on September 7, 2017 and were unable to reach an agreement. My final decision in this case is due by November 5, 2017. On September 11, 2017, I convened a telephone prehearing conference with counsel to discuss the hearing date, issues to be determined and other matters.

The due process hearing was held before the undersigned impartial hearing officer on October 25 and 26, 2017 at the Office of Dispute Resolution in Washington, D.C. The hearing, which was closed to the public, was recorded on an electronic audio recording device. The Petitioners appeared in person and were represented by PETITIONERS' COUNSEL and PETITIONERS' CO-COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL.

The Petitioners called as witnesses IEP COORDINATOR, HEAD OF SCHOOL, CLINICAL PSYCHOLOGIST and NONPUBLIC SPEECH LANGUAGE PATHOLOGIST. FATHER also testified as a rebuttal witness. DCPS called as witnesses 504 SPECIALIST, DCPS SPEECH LANGUAGE PATHOLOGIST, SCHOOL PSYCHOLOGIST and LEA Representative. Upon motion of Petitioners' Counsel, I excluded the testimony of 504 Specialist as irrelevant in this matter. Petitioners' Exhibits P-1 through P-17 were admitted into evidence without objection. DCPS' Exhibits R-1 through R-55 were admitted into evidence without objection, except for Exhibit R-40 to which Petitioners' objection was sustained. Counsel for the respective parties made opening statements and closing arguments. Neither party requested leave to file a post-hearing brief.

## **JURISDICTION**

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

## **ISSUES AND RELIEF SOUGHT**

The following issues for determination were certified in the September 11, 2017

Prehearing Order:

- 1) Whether in May 2017, DCPS erroneously determined that Student was no longer eligible for special education and related services as a student with a disability;
- 2) Whether DCPS has failed to offer Student a free appropriate public education (FAPE) for the 2017-2018 school year and
- 3) Whether DCPS violated the IDEA's procedural requirements by unilaterally determining that Student was no longer eligible for special education and related services.

For relief, the parents request that the hearing officer overturn the May 2017 determination that Student was no longer eligible for special education and related services, order DCPS to implement Student's April 6, 2017 Individualized Education Program (IEP) and order DCPS to fund Student's nonpublic placement at NONPUBLIC SCHOOL until such time as DCPS offers Student an appropriate educational placement.

## **FINDINGS OF FACT**

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

1. Student, an AGE youth, resides in the District of Columbia. Testimony of Father.
2. Student was initially determined eligible for special education and related services by DCPS in the 2010-2011 school year. Exhibit P-8. On May 18, 2017, a DCPS-

controlled eligibility team determined that Student was no longer eligible for special education. Exhibit P-14. The parents and Nonpublic School eligibility team members dissented from this decision. Testimony of IEP Coordinator. Prior to that date, Student's special education eligibility had been most recently confirmed on May 30, 2014, under the IDEA disability classification Specific Learning Disability (SLD).

Exhibit P-6.

3. Since the 2014-2015 school year, Student has attended Nonpublic School. Student was initially unilaterally enrolled there by the parents. In a prior due process proceeding in the fall of 2014 (Case No. 2014-0457), the parents sought reimbursement from DCPS for their private school expenses for Student. Following a two-day hearing in December 2014, Hearing Officer Keith Seat determined that DCPS had failed to offer Student an appropriate IEP for the 2014-2015 school year and that Nonpublic School was a proper and appropriate placement for Student. Hearing Officer Seat ordered DCPS to reimburse the parents for their expenses for Student's enrollment at Nonpublic School and to continue to fund Student's placement at Nonpublic School until DCPS made another appropriate placement available for Student. Exhibit P-2.

4. At an IEP meeting on April 6, 2017, Student's IEP team at Nonpublic School met for the annual review of Student's IEP. LEA Representative and DCPS School Psychologist attended the meeting. Mathematics, Reading, Written Expression, Communication/Speech and Language and Motor Skills/Physical Development were identified as IEP areas of concern. Student's weaknesses cited in the IEP included,

Presents with language needs for auditory processing, phonological awareness, semantics, word retrieval, and organization of oral and written language; Math weaknesses of fluency with whole number multiplication and division, fraction additions and subtraction, decimal calculation, percent calculation, finding area

and perimeter of basic geometric shapes; Student participates in class discussions, but usually piggybacks on another student's response. Student needs extra time to process, recall, organize and express ideas. Student struggles to identify supporting facts in responding to open-ended questions. Student tends to be literal, but benefits from teacher support to explore more abstract ideas. Student is inconsistent in completing homework assignments, especially after an absence. Student does not self-advocate when uncertain about a task or concept. Student struggles to follow instructions and benefits from repetition, paraphrasing and restating. Student is easily distracted in peer interaction, but is easily redirected; Written language weaknesses with grammar, sentence structure, mechanics, essay development and sequencing; Difficulty following classroom instructions and directions due to auditory processing difficulties and weaknesses in linguistic aspects of executive function, difficulty independently completing grade-level reading and writing assignments and language-laden academic course work, difficulty answering questions and participating in class discussions due to weaknesses in word retrieval and oral expressive language organization, difficulty taking notes due to weaknesses in auditory processing, spelling, written language, and in linguistic executive functioning; Below average typing skills, deficits with organization, time management and sequencing of unfamiliar multi-step tasks. Exhibit P-6.

5. The April 6, 2017 IEP team decided that Student needed full-time (27.5 hours per week) Specialized Instruction outside general education, 180 minutes per month of Occupational Therapy (OT) and 360 minutes per month of Speech-Language Pathology. Exhibit P-6.

6. Also on April 6, 2017, DCPS convened an Analyze Existing Data (AED) meeting at Nonpublic School in anticipation of completing Student's triennial eligibility reevaluation. DCPS School Psychologist stated that he did not have enough information for an eligibility determination. The parents informed DCPS School Psychologist that a psychological reevaluation of Student by Clinical Psychologist was in process. The team agreed to wait for Clinical Psychologist's report before proceeding with the triennial eligibility determination. Testimony of DCPS School Psychologist.

7. Student's special education eligibility review meeting was eventually scheduled for May 18, 2017. Before the meeting, Nonpublic School provided DCPS a

copy of Clinical Psychologist's Comprehensive Psychoeducational Evaluation of Student.  
Exhibit P-9, Testimony of DCPS School Psychologist.

8. Clinical Psychologist is an independent contractor who works out of space at Nonpublic School. Testimony of Clinical Psychologist.

9. Clinical Psychologist administered a battery of cognitive and educational tests to Student and obtained responses from Student, MOTHER and Nonpublic School Teachers on behavior rating scales. Clinical Psychologist reported that Student's attention and concentration were largely appropriate during two highly structured one-on-one testing sessions, with frequent changes in testing pace and tasks. Student largely demonstrated adequate focus and sustained attention throughout the sessions. Of note, Student took much more time and exhibited restlessness and fidgety behavior during tasks requiring reading comprehension. Student also required frequent repetition of orally presented instructions. Student was taking Concerta medication on the days of testing. Exhibit P-9.

10. Student's general cognitive functioning was assessed using the Wechsler Intelligence Scale for Children - Fifth Edition (WISC-V). Student earned a FSIQ of 110, which ranks overall ability as falling in the High Average range (75th percentile). The test results revealed that Student possesses a number of cognitive strengths, as well as some areas of weakness. Student demonstrated strong skill in the areas of verbal reasoning, receptive language, working memory, associative memory, auditory processing, and visual perceptual skill. Age-appropriate skills were found in the areas of verbal comprehension, expressive language, processing speed, short-term memory, fluid reasoning, and rapid digit naming. Areas of weakness included rapid letter naming,

visual-motor integration, and fine motor coordination. Student's performance on tests evaluating working memory were significantly improved from the last evaluation in 2013. Exhibit P-9.

11. On educational testing, with regard to reading, Student was reported to exhibit deficits in sight word reading. Student's decoding was solid but lacked fluency. Student's rapid letter naming was an area of weakness that impacts the ability to quickly and accurately identify words and text. Student's reading fluency was age-appropriate on longer passages, as well as for short structured sentences, and Student's reading comprehension was solid. Student's spelling performance was weak and phonologically-mediated spelling was also poor. Student's writing work illustrated significant trouble with spelling, punctuation, sentence structure, and writing organization. Writing fluency was age-appropriate on structured writing measures. With regard to mathematics, Student's basic math skills were below average. Student demonstrated variable conceptual math knowledge and applied problem-solving skill. Student's numerical operations revealed a poor understanding of math facts and operations. Student's math fluency was also quite slow. Overall, Student's weaknesses in the domains of writing and math were significant enough to warrant *The Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) diagnosis of a Specific Learning Disorder with Impairments in Written Expression and Mathematics. Exhibit P-9.

12. With medication for ADHD symptoms, Student's ability to stay focused and to attend appeared appropriate. Student had a proclivity to become socially distracted and impulsive in certain settings as Student is sensitive to the environment and to those around. Clinical Psychologist found that Student continued to meet criteria

for ADHD-Combined type, though Student's symptoms were well-managed. Exhibit P-9.

13. With regard to executive functioning, Clinical Psychologist reported that Student has traditionally responded very well to structure, consistency, and clearly laid out instructions. Student's self-advocacy skills are limited, Student does not routinely seek out support, and has trouble keeping up with missed assignments. In addition, Student struggles with independent initiation and following instructions unless the task is clearly laid out. Student relies on cuing, repetition, and additional time to help initiate, process, and organize the work. Exhibit P-9.

14. With regard to emotional and behavioral functioning, Clinical Psychologist reported that while Student denied the presence of symptoms of depression, Student acknowledged the experience of anxiety and sometimes feeling overwhelmed by academic obligations and time constraints. Student was reported to be self-conscious and nervous about how Student is perceived and regarded by others. In addition, Student has a history of anxiety symptoms and fatigue around academics and has a longstanding history of feeling self-conscious and nervous around homework completion, time restrictions, and laborious academic tasks. Clinical Psychologist reported that taken together, Student's anxiety symptoms have existed for a prolonged period of time and serve as a chronic stressor. Student's anxiety and worry are associated with fatigue, limited recall of learned information, low self-confidence, and self-consciousness. Clinical Psychologist concluded that the DSM-5 diagnosis of Adjustment Disorder with Anxiety was warranted. Exhibit P-9.

15. In her psychological evaluation report, Clinical Psychologist recommended

that Student met criteria for Specific Learning Disorders with Impairment in Writing and Mathematics, for ADHD and for Adjustment Disorder with Anxiety. She recommended also that Student was eligible for special education under the IDEA and that Student warranted special education to meet educational needs. Exhibit P-9.

16. DCPS School Psychologist reviewed Clinical Psychologist's psychological evaluation of Student on May 17, 2017. In addition, Clinical Psychologist interviewed Student and Student's science teacher and conducted a classroom observation at Nonpublic School. From his review of Clinical Psychologist's testing and his observation and interview of Student at Nonpublic School in May 2017, DCPS School Psychologist concluded that Student did not meet eligibility criteria for special education services as a student with a Specific Learning Disability. DCPS School Psychologist recommended that Student should be able to access the general education curriculum with accommodations provided in a Section 504 plan (Section 504 of the Rehabilitation Act of 1973). Exhibit P-10.

17. An eligibility meeting for Student was convened on May 18, 2017 at Nonpublic School. The parents, Petitioners' Attorney, Nonpublic School staff, DCPS School Psychologist and LEA Representative attended. School Psychologist presented his review of Clinical Psychologist's psychological reevaluation of Student and his recommendation that Student was no longer eligible for special education as a student with a SLD disability. Over the opposition of the parents and the Nonpublic School team members, the two DCPS representatives determined that Student did not meet District of Columbia criteria for the SLD disability and that Student was no longer eligible for special education and related services. Exhibit R-3, Testimony of LEA

Representative.

18. On June 6, 2017, DCPS issued a Prior Written Notice to the parents giving notice that the IEP team had determined that Student was no longer eligible for special education services and that after the 2016-2017 school year, the IEP team proposed that Student would enroll in Student's neighborhood DCPS public school. Exhibit R-5. On August 22, 2017, the parents filed their due process complaint in this matter and required that during the pendency of these administrative proceedings, DCPS continue to provide funding for Student to remain at Nonpublic School pursuant to the IDEA's stay-put provision. See 34 CFR § 300.518(d). As of the due process hearing date, Student continued to be a publicly funded Student at Nonpublic School under the stay-put provision. Testimony of IEP Coordinator.

**CONCLUSIONS OF LAW**

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

**Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioners in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by DCPS, the District shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case

before the burden of persuasion falls on the District. *See* D.C. Code § 38-2571.03(6). In this case, there is no dispute about the appropriateness of Student's existing or proposed program of placement. Therefore, the Petitioners must bear the burden of persuasion. The burden of persuasion shall be met by a preponderance of the evidence.

#### Analysis

- Did DCPS erroneously determine in May 2017 that Student was no longer eligible for special education and related services as a student with a disability?
- Did DCPS fail to offer Student a free appropriate public education (FAPE) for the 2017-2018 school year?
- Did DCPS violate the IDEA's procedural requirements by unilaterally determining in May 2017 that Student was no longer eligible for special education and related services?

This case arises from the decision of Student's May 18, 2017 eligibility team to exit Student from special education services. The decision was driven by the DCPS representatives on the team. The remaining team members – the parents and Nonpublic School staff – all disagreed that Student no longer required special education and related services. The parents contend that the eligibility determination was erroneous resulting in denial of FAPE to Student.

In Student's triennial eligibility reevaluation on May 30, 2014, Student was determined to have a Specific Learning Disability and by reason thereof, in need of special education and related services. *See* 34 CFR § 300.8. At an April 6, 2017 IEP annual review meeting, the Nonpublic School IEP team affirmed Student's need for full-time specialized instruction as a student with a Specific Learning Disability. Subsequent to the April 6, 2017 meeting, Nonpublic School provided to DCPS Clinical Psychologist's 2017 comprehensive psychological reevaluation of Student. Clinical Psychologist

recommended that Student met DSM-5 criteria for Specific Learning Disorders with Impairment in Writing and Mathematics, for ADHD and for Adjustment Disorder with Anxiety and that Student was eligible for special education under the IDEA.

DCPS School Psychologist received Clinical Psychologist's psychological reevaluation of Student about a week before a May 18, 2017 meeting to review Student's special education eligibility. From his review of Clinical Psychologist's report and his own observation of Student in the Nonpublic School classroom, DCPS School Psychologist concluded that Student did not meet eligibility criteria as a student having a Specific Learning Disability and that Student should be able to access the general education curriculum with only Section 504 plan accommodations. The parents contend that Clinical Psychologist's determination was erroneous and that in "unilaterally" finding Student no longer eligible for special education, DCPS did not comply with the IDEA's procedural requirements.

In the IDEA regulations, Specific Learning Disability means "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia." 34 CFR § 300.8(c)(10); *see also* 20 U.S.C. § 1401. IDEA regulations further provide that an MDT Team "may determine" that a child has a SLD as defined in 34 CFR § 300.8(c)(10) if three requirements are met. First, the child "does not achieve adequately for the child's age or to meet State-approved grade-level standards" in one or more basic academic skill areas (e.g. written expression, reading

comprehension or mathematics calculation). 34 CFR § 300.309(a)(1). Second, the child “does not make sufficient progress to meet age or State-approved” standards “when using a process based in 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 relevant areas. 34 CFR § 300.309(a)(2). Third, the MDT Team determines its findings are not the result of factors such as a visual or hearing disability, cultural or environmental factors. 34 CFR § 300.309(c)(3).

Each State must adopt criteria, consistent with 34 CFR § 300.309, for determining whether a child has a SLD as defined in § 300.8(c)(10). Local educational agencies (LEAs) must use the State criteria in determining whether a child has a SLD. *See* 34 CFR § 300.307. The criteria adopted by the State must not require the use of a severe discrepancy between intellectual ability and achievement; must permit the use of a process based on the child’s response to scientific, research-based intervention; and may permit the use of other alternative research based procedures for determining if a child has a SLD. *See* 34 CFR § 300.307(a).

Pursuant to 34 CFR § 300.8(c)(10), the District of Columbia Office of the State Superintendent of Education (OSSE) has adopted criteria for SLD which are promulgated in 5E DCMR § 3006. These regulations provide, *inter alia*, that the “IEP team *shall* determine that a child has a SLD if: a disorder is manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to learn, think, speak, read, write, or do mathematical calculations.” 5E DCMR § 3006.4(a) (emphasis supplied). The OSSE regulations also provide that LEAs “may use a process

that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedure.” 5E DCMR § 3006.4(d). In addition, as the result of any evaluation or reevaluation, where a child is suspected of having a SLD, LEAs must prepare a written evaluation report that includes the basis for making the determination regarding SLD, including the following:<sup>2</sup>

- (a) information provided by the parent(s);
- (b) results of assessment procedures considered and used as a basis for making an eligibility determination;
- (c) a statement whether the assessment procedures were valid for the purposes intended and valid for the child;
- (d) whether the child is a child with a disability;
- (e) whether the child needs special education and related services; and
- (f) the signatures of team members participating in the determinations.
- (g) if the child was suspected of having SLD, in addition to (a)-(f):
  - (1) a statement of whether the child has SLD;
  - (2) the basis for making the determination;
  - (3) the relevant behaviors noted during the observation of the child;
  - (4) the relationship of the behaviors to the child’s educational performance;
  - (5) educationally relevant medical findings, if any;
  - (6) a statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
  - (7) the determination of the IEP team concerning the effects of environmental, economic, or cultural disadvantage; and

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<sup>2</sup> There is no evidence in the hearing record that DCPS prepared a written report that met the requirement of 5E DCMR § 3006.5(d).

- (8) the written certification of each IEP team member as to whether the written report reflects the member's conclusions. If the written report does not reflect a member's conclusion, the team member shall submit a separate statement presenting the team member's conclusion. This separate statement will be included as part of the evaluation report.

5E DCMR § 3006.5(d).

In her testimony at the due process hearing, Clinical Psychologist stated that Student had long standing learning disabilities, deficits in executive functioning and well-documented ADHD. In her 2017 Comprehensive Psychological Evaluation report, Clinical Psychologist concluded that Student had a Specific Learning Disorder, as defined in DSM-5, with impairments in Written Expression and Mathematics. For the Written Expression impairment, Clinical Psychologist reported that Student's spelling performance was weak and Student's phonologically-mediated spelling was poor. She reported that Student's writing work illustrated significant trouble with spelling, punctuation, sentence structure and writing organization. In her testimony, Clinical Psychologist added that Student's writing deficits are so significant that Student struggles with getting words on the page. For Mathematics, Clinical Psychologist wrote that her testing revealed that Student's basic math skills were below average, that Student demonstrated variable conceptual math knowledge and applied problem-solving skills, that Student's numerical operations revealed a poor understanding of math facts and operations and that Student's math fluency was also quite slow. Clinical Psychologist opined that Student requires a full-time special education educational setting.

In reaching his contrary determination that Student does not have a Specific Learning Disability, DCPS School Psychologist reported that Student's scores on the

WJ-IV Ach were in the average range for Reading Rate Clusters (101) and Academic Knowledge Clusters (91). With regard to Student's progress to meet age or state-approved grade-level standards, DCPS School Psychologist reported that Student was currently passing all academic subjects. Addressing Student's achievement with regard to intellectual development, DCPS School Psychologist reported that Student's overall academic achievement composite scores were commensurate with Student's academic ability.

With regard to Student's special education eligibility under the SLD classification, I found Clinical Psychologist to be the more credible witness. First, neither DCPS School Psychologist nor anyone else for DCPS conducted an IDEA reevaluation of Student. Moreover, in his review of Clinical Psychologist's comprehensive psychological evaluation report, DCPS School Psychologist did not dispute Clinical Psychologist's test results or her findings that Student had significant weaknesses in the domains of writing and mathematics. (DCPS School Psychologist reported that although Student presented with challenges in writing, Student's overall general knowledge base and ability were in the average to above average range.) With regard to whether Student's overall academic achievement composite scores were commensurate with Student's academic ability, DCPS School Psychologist acknowledged in his testimony that Student's composite score, 19<sup>th</sup> percentile, on the Mathematics subtest of the WIAT-III was not commensurate with Student's High Average full scale IQ. Nor was Student's Written Language composite score, 6<sup>th</sup> percentile, commensurate with Student's FSIQ score. DCPS School Psychologist's reliance on the fact that Student was passing all academic subjects was not justified,

considering that since the 2014-2015 school year, Student has been receiving full-time specialized instruction in a very small classroom setting taught by special education teachers. With perhaps some overstatement, DCPS School Psychologist asserted in his testimony that any child is going to excel in a classroom of only six students.

I find that the parents have met their burden of persuasion that it is more probable than not that Student has a Specific Learning Disability, manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder manifests itself in the imperfect ability to learn, write or do mathematical calculations. *See* 5E DCMR § 3006.4(a).

In order to be eligible for special education, a student must not only have an IDEA disability, such as SLD, he or she must also, “by reason [of the disability], need special education and related services.” *See* 34 CFR § 300.8(a). Special education is “‘specially designed instruction’ to meet the unique needs of a child with a disability,” as opposed to general education which is what is provided to non-disabled children in the regular classroom setting. *See L.J. v. Pittsburg Unified Sch. Dist.*, 835 F.3d 1168, 1176 (9th Cir. 2016), *opinion amended and superseded on denial of reh’g sub nom. L.J. by & through Hudson v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996 (9th Cir. 2017) (citing 34 § CFR 30039(a)).

Petitioners’ experts testified that Student does need specialized instruction. Head of School testified that Student struggles to follow instructions and needs supports across the curriculum. Nonpublic Speech Language Pathologist testified that Student struggles with written language and requires speech and language services. She added that Student needs a lot of “check-ins” with the teacher and opined that Student requires

a highly structured program. Moreover, DCPS School Psychologist agreed in his testimony that Student may need co-taught or pull-out classes, though he opined that Student was ready to transfer to a less restrictive environment than Nonpublic School.<sup>3</sup> I find that Petitioners have established that by reason of Student's Specific Learning Disability, Student needs special education and related services.

In sum, I conclude that Petitioners have met their burden of persuasion that Student remains eligible for special education and related services as a student with a Specific Learning Disability. The determination by the May 18, 2017 MDT team, directed by DCPS, that Student was no longer eligible for special education and related services was erroneous. DCPS' failure to offer Student an IEP for the 2017-2018 school year was a denial of FAPE.

Petitioners also allege that DCPS violated the IDEA's procedural requirements by unilaterally determining on May 18, 2017 that Student was no longer eligible for special education and related services. This was not a unilateral DCPS decision. Rather it was a decision of Student's IEP team with which the parents disagreed. The IDEA requires that parents have the right to participate in the decision making process. However, it is well established that there is no provision in the IDEA for "majority rule" at eligibility meetings or for the parents to veto the decision of the LEA. *See, e.g., Doe by Gonzales v. Maher*, 793 F.2d 1470, 1489 (9th Cir. 1986), *aff'd as modified sub nom. Honig v. Doe*, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988); *Hawkins v. District of Columbia*,

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<sup>3</sup> The only substantive issue in this case is whether DCPS denied Student a FAPE by determining in May 2017 that Student was no longer eligible for special education and related services as a student with a disability. In this decision, I do not reach whether Student's April 6, 2017 IEP is appropriate or whether Student's educational placement at Nonpublic School is the least restrictive environment.

692 F.Supp.2d 81, 84 (D.D.C.2010). I find that the Petitioners did not establish that DCPS violated IDEA procedures by making a unilateral eligibility determination.

**ORDER**

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

ORDERED:

1. Within fifteen days of the date of this order, DCPS shall ensure that Student's eligibility for special education and related services as a student with a disability is reinstated *nunc pro tunc* to May 18, 2017. DCPS shall continue to fund Student's tuition and other covered expenses at Nonpublic School through the end of the private school's 2017-2018 school year. This is without prejudice to the right of DCPS to conduct a comprehensive reevaluation of Student, if DCPS determines that Student's educational or related services needs, including improved academic achievement and functional performance, warrant a reevaluation. Nor shall DCPS be precluded from convening Student's IEP team to determine whether a change of educational placement to a less restrictive setting is appropriate for Student for the 2018-2019 school year and
2. All other relief requested by the Petitioners herein is denied.

Date: November 3, 2017

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. § 1415(i).

cc: Counsel of Record  
Office of Dispute Resolution  
OSSE Division of Specialized Education  
DCPS Resolution Team