

**District of Columbia  
Office of the State Superintendent of Education**

Office of Dispute Resolution  
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OSSE  
Office of Dispute Resolution  
April 21, 2023

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<b>Parent, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioner,</b>	)	
	)	<b>Hearing Date: 4/11/23</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2022-0218</b>
<b>District of Columbia Public Schools,</b>	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving an X-year-old student (the “Student”) who is currently eligible for services as a student with Multiple Disabilities (Emotional Disturbance, Other Health Impairment). A due process complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on December 16, 2022. The Complaint was filed by the Student’s parent (“Petitioner”). On December 23, 2022, Respondent filed a response. A resolution meeting was held on January 9, 2023, without an agreement being reached. The resolution period expired on January 15, 2023.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the IDEA, 20 U.S.C. 1400 et seq., its implementing regulations, 34 C.F.R.

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<sup>1</sup> Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations (“DCMR”), Title 5-A, Chapter 30.

### **III. Procedural History**

On February 6, 2023, a prehearing conference was held. Attorney A, Esq., counsel for Petitioner, appeared. Attorney B, Esq., counsel for Respondent, appeared. On February 9, 2023, a prehearing conference order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case. On February 27, 2023, Petitioner moved for a continuance and to extend the timelines for the Hearing Officer Determination (“HOD”). On February 28, 2023, the motion was granted by a written order, and the timelines for the HOD were extended to April 21, 2023, without objection.

The matter proceeded to trial on April 11, 2023. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-22. Objections were filed with respect to exhibits P-19, P-20, and P-22. These objections were overruled. Exhibits P-1 through P-22 were admitted. Respondent moved into evidence exhibits R-13 through R-18, R-31, R-36, R-49, and R-50. Objections were filed with respect to exhibits R-13 through R-18, and R-31. These objections were overruled. Exhibits R-13 through R-18, R-31, R-36, R-49, and R-50 were admitted. Petitioner presented as witnesses, in the following order: Witness A, a special education consultant (expert in special education and Individualized Education Program (“IEP”) programming); and herself. Respondent presented as a witness: Witness B, a DCPS resolution specialist (expert in expert special education programming and placement). After testimony and evidence concluded on April 11, 2023, the parties presented oral closing statements.

#### IV. Issues

As identified in the prehearing conference order and in the Complaint, the issue to be determined in this case is as follows:

**Did Respondent fail to implement the Student's IEP during the 2021-2022 school year? If so, did Respondent act in contravention of precedent such as Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did Respondent deny the Student a Free Appropriate Public Education ("FAPE")?**

Petitioner contended that the Student's location of services did not provide the Student with sufficient hours of specialized instruction each week. The burden of persuasion is on Petitioner. As relief, Petitioner seeks compensatory education, including transportation expenses.

#### V. Findings of Fact

1. The Student is an X-year-old who is eligible for services as a student with Multiple Disabilities (Emotional Disturbance, Other Health Impairment). The Student has a history of extreme behaviors in the classroom, including threats. The Student is frequently off-task and disruptive. Testimony of Witness A; P-14; P-16; R-50. The Student also has significant academic concerns across all domains. The Student's short-term memory is impaired, which impacts his/her ability to retain information. The Student requires multiple repetitions to access the general education curriculum. P-7-86. The Student is most successful in a small classroom setting, which allows him/her to focus on a teacher, and allows the teacher to present scaffolded information. P-9-33; Testimony of Witness A.

2. On August 13, 2019, a due process complaint concerning the Student was filed with the Office of Dispute Resolution and assigned to Hearing Officer Peter Vaden. The due process complaint contended that DCPS should have identified and evaluated the

Student's issues beginning in October 2017, claimed that DCPS failed to conduct an appropriate initial evaluation of the Student during the 2018-2019 school year, and included a claim relating to educational records. Hearing Officer Vaden found that DCPS violated the Student's Child Find rights when the Student transferred from a public charter school to DCPS in fall 2017. An educational advocate presented Hearing Officer Vaden with a compensatory education proposal of 300 hours of academic tutoring and sixty hours of behavioral support services. The proposal was based on a period from the third term of the 2017-2018 school year through the Student's October 1, 2019, IEP, which provided the Student with ten hours per week of specialized instruction outside general education plus 240 minutes per month of behavioral support services. Hearing Officer Vaden adopted the proposal for compensatory education from the advocate insofar as the tutoring was concerned. On October 23, 2019, through an HOD, Hearing Officer Vaden awarded the Student 300 hours of academic tutoring, which corresponded to approximately fifty-seven weeks of FAPE denial. R-31; Testimony of Witness B.

3. An IEP meeting was held for the Student on May 27, 2020. At the time, the Student functioned below grade level, at the pre-kindergarten to kindergarten level, in all academic subjects. P-6-64. The Student experienced behavioral difficulties in class. The Student's general education teacher and special education teacher had created behavior trackers to use in their classrooms with rewards tied to positive behavior. None of the interventions had led to a consistently positive response. The Student was recommended for 13.5 hours of specialized instruction per week outside general education, with 240 minutes per month of behavioral support services and 120 minutes per month of occupational therapy. The Student's school, School A, also conducted a

Functional Behavior Assessment (“FBA”) to help address the Student’s behavioral issues. The FBA created a number of supports for the Student, including assigned preferential seating, proximity control, behavior trackers tied to rewards and incentives from prize boxes, prompted coping breaks, visual cues, sensory items for use in the “cool down corner,” “planned ignoring” of his/her behavior, one-on-one conversations, and frequent verbal and non-verbal reminders and prompts. P-6-58.

4. For the 2020-2021 school year, the Student attended School A. An IEP meeting was held for the Student on February 16, 2021. The resulting IEP again indicated that the Student had behavioral difficulties in class. The IEP indicated that, based on i-Ready testing from January 6, 2021, the Student performed at the kindergarten grade level in math. P-7-85. Based on Reading Inventory testing, the Student read at the “BR” level. The Student was again recommended for 13.5 hours per week of specialized instruction outside general education, with 240 minutes per month of behavioral support services, 120 minutes per month of occupational therapy, and sixty minutes per month of consultation services in speech-language pathology. P-7.

5. Much of the instruction at DCPS during the 2020-2021 school year was delivered virtually. During virtual instruction, the Student struggled to maintain focus and attention, even for short periods of time. The Student needed constant prompting and redirection to complete tasks. P-7-86.

6. The Student continued to attend School A for the 2021-2022 school year. In math, the Student’s beginning-of-year (“BOY”) i-Ready score, measured on September 9, 2021, was 351 overall, at the kindergarten level. P-9-122. The Student again scored at the “BR” level on the Reading Inventory, though in the classroom, s/he

was considered to be able to read and decode text at the late first grade/early second grade level. P-9-124. In both the general education and special education settings, the Student required ongoing support and redirection. Even with this support and redirection, the Student was often unable to focus on or engage in academic tasks. The Student was easily upset when his/her teacher did not call on him/her. When the Student had to work independently, s/he was often off-task and disruptive to the learning of him/herself and others. The Student was most successful in managing his/her behavior when s/he was in small groups, when s/he received specialized instruction, and when s/he had more support from the teacher. P-9-131-133. School staff called Petitioner frequently due to the Student's misbehavior. Testimony of Petitioner.

7. At School A during the 2021-2022 school year, the Student sometimes enjoyed spending time with his/her peers and engaged with his/her teachers, especially during preferred tasks. The Student was also able to complete tasks and meet goals when s/he was provided with a maximal level of redirection. P-12-181.

8. The Student's progress report for the first reporting period of the 2021-2022 school year indicated that s/he progressed on all goals where enough data was collected, except for his/her motor skills/physical development goals. The Student's progress report for the second reporting period of the 2021-2022 school year indicated that s/he progressed in all goals where enough data was collected, except for one motor skills/physical development goal. In math, the Student's middle-of-year ("MOY") i-Ready score increased twenty-three points to 374. On the Reading Inventory measure, as of January 21, 2022, the Student still read at the "BR" level. R-49; P-10-149; P-11; P-17; P-18.

9. By February 2022, the Student showed slow and steady progress, but continued to lack foundational skills in math. P-9-122. The Student's IEP of February 11, 2022, again recommended 13.5 hours per week of specialized instruction outside general education, with 240 minutes per month of behavioral support services, 120 minutes per month of occupational therapy, and sixty minutes per month of consultation services in speech-language pathology. The IEP included "Area of Concern" sections in math; reading; adaptive/daily living skills; communication/speech and language; emotional, social, and behavioral development; and motor skills/physical development. The IEP said that in math, reading, and writing, the Student struggled to maintain focus and attention and needed constant prompting and redirection to complete tasks. The IEP also said that the Student's disability impacted his/her ability to make progress in the general education setting. P-9.

10. The Student's February 2022 IEP reported testing on the Behavior Assessment Scale for Children-Third Edition ("BASC-3"). The BASC-3 indicated that the Student had difficulty attending and staying on task and that his/her impulsiveness and lack of focus adversely affected his/her ability to learn and establish meaningful relationships. P-9-128; Testimony of Petitioner. The IEP also reported a Strengths and Difficulties Questionnaire ("SDQ"), Teacher Version, administered on October 26, 2021. The Student's SDQ indicated very high scores in overall stress, behavioral difficulties, hyperactivity, and concentration difficulties, with very low scores in kind and helpful behavior. The IEP also reported that the Student had twenty-two documented behavioral incidents outside the classroom, including touching another student inappropriately, threatening peers with a blade, yelling and refusing to go to class, playing and climbing

in the restroom, disruptive behavior in the classroom, throwing a pencil and hitting a peer in the eye, bringing a needle to school, screaming and shouting in the classroom, throwing away another student's lunch, kicking peers in class, physical altercations with peers, repeated misuse of his/her mask, and misuse of school property. P-9. The IEP was amended on June 6, 2022, to add Extended School Year ("ESY") services. P-12.

11. The specialized instruction mandate in the February 2022 IEP was not implemented between February 2022 and the end of the school year. P-20. As a result, the Student received no specialized instruction outside general education between February 2022 and June 2022. During the period that the IEP was not implemented, the Student spent his/her time in a general education classroom, where other staff, such as a social worker, helped. The general education classroom contained approximately twenty-seven children. Some days, with redirection, the Student was able to stay in class. Other days, the Student walked out of the classroom. Testimony of Petitioner. In total, the Student did not receive specialized instruction for approximately eighty-seven school days. During this time, the Student's accommodations, classroom aids, and services were provided in the general education classroom. Testimony of Witness B.

12. On or about May 2, 2022, the interim principal of School A wrote a letter to the parents of the school's students, explaining that special education students did not receive all of their specialized instruction during the year. The letter stated: "At this time, there are a number of factors impacting the availability of specialized staff, including a nationwide shortage of qualified educators due to the impacts of the COVID-19 pandemic. As a result, the...students at [School A] have been without a consistent special education teacher since February, 2022." P-20.



13. The letter from School A's interim principal continued: "We recognize this information is concerning and want to assure you that we are working diligently with the DCPS' centralized hiring team to find qualified teachers for your child. During this interim period, our priority is to ensure that your child will continue to receive services and instruction from a qualified teacher." The letter also stated that the school's special education team, along with members of the DCPS Division of Specialized Instruction, were working together to develop a plan to provide specialized instruction until a new teacher was in place. The letter concluded that "we are collaborating with DCPS Central Services colleagues to determine the appropriate next steps for your child to address this interruption. You will receive notification from the DCPS Division of Specialized Instruction before the end of this school year with options and next steps." P-20.

14. The Student's progress report for the third reporting period of the 2021-2022 school year indicated that s/he progressed on goals that had not been recently introduced. R-49; P-10-149; P-11; P-17; P-18.

15. The Student's progress report for the last reporting period of the 2021-2022 school year indicated that s/he progressed in all goals in math, reading, adaptive/daily living skills, and emotional, social and behavioral development, as well as two motor skills/physical development goals. However, the Student did not progress in communication/speech and language goals and regressed in one motor skills/physical development goal. The progress report indicated that the Student made progress in math overall during the school year, and that the Student's end-of-year ("EOY") i-Ready math assessment was 389, an increase of thirty-eight points. The Student ended the year on a

kindergarten level in algebra, algebraic thinking, and geometry, but on a first grade level in “Number and Operations” and “Measurement and Data.” R-49.

16. The Student’s progress report indicated that s/he typically required three or more verbal cues from the teacher or the teacher’s aide to stay on task and reach his/her goals. The Student was observed to not raise his/her hand, blurt out off-topic comments, elope from classroom space, use profanity, and disrespect adults and peers. The progress report stated that the Student “continues to require a maximal level of support in order to have appropriate behavior in group settings.” The progress report also discussed an SDQ that was completed by a teacher on January 21, 2022. The SDQ indicated high or very high scores for the Student in overall stress, behavioral difficulties, hyperactivity and concentration difficulties, getting along with other children, and the “impact of any difficulties on the child’s life.” The same teacher completed another SDQ on June 2, 2022. This SDQ also indicated high or very high scores for the Student in overall stress, emotional distress, behavioral difficulties, hyperactivity and concentration difficulties, and the “impact of any difficulties on the child’s life.” The progress report noted that the Student improved in the areas of hyperactivity and concentration and getting along with other children, but had increased difficulties with overall stress, emotional distress, behavioral difficulties, and the lack of kind, helpful behavior. R-49.

17. In the 2022-2023 school year, the Student attends a new Local Educational Agency (“LEA”). The Student has done well in this new setting, where s/he is instructed in a smaller group. Testimony of Petitioner.

## VI. Conclusions of Law

The burden of proof in District of Columbia special education cases was changed in 2014. The law states that “(w)here there is a dispute about the appropriateness of the child’s individual educational program or placement, the public agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement” provided that the party requesting the due process hearing establishes “a *prima facie* case.” D.C. Code Sect. 38-2571.03(6)(A)(i). The issues here do not directly relate to the appropriateness of the Student’s program or placement. As a result, as indicated in the prehearing conference order, which was agreed to by the parties, the burden of persuasion is on Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005).

**Did Respondent fail to implement the Student’s IEP during the 2021-2022 school year? If so, did Respondent act in contravention of precedent such as Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007)? If so, did Respondent deny the Student a FAPE?**

The IDEA is violated when a school district deviates materially from a student's IEP. Wilson v. District of Columbia, 770 F. Supp. 2d 270, 275 (D.D.C.2011). A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP. Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir.2007). “(T)he materiality standard does not require that the child suffer demonstrable education harm in order to prevail.” Wilson, 770 F. Supp. 2d at 275 (emphasis in original) (quoting Van Duyn, 502 F.3d at 822). Rather, “it is the proportion of services mandated to those provided that is the crucial measure for purposes of determining whether there has been a material failure to implement.” Turner v. District of Columbia, 952 F. Supp. 2d 31, 41 (D.D.C. 2013) (citing Wilson, 770 F. Supp. 2d at 775).

There is no dispute that the Student's February 16, 2021, and February 11, 2022, IEPs called for DCPS to provide the Student with 13.5 hours of specialized instruction per week outside general education during the 2021-2022 school year. There is also no dispute that DCPS did not provide the Student with 13.5 hours of specialized instruction per week from February 2022 to June 2022. This fact was clearly established through a letter sent by the interim principal of School A to the parents of the school's students. Instead of receiving specialized instruction outside general education in small, structured classes, the Student was placed in a general education class with about twenty-seven other students for about four months.

As a result, the Student received zero percent of the required specialized instruction for four months. There is no genuine dispute that this deprivation was material. DCPS did not clearly argue that the absence of specialized instruction over a four-month period was immaterial (though DCPS did argue that the Student made some progress during the last four months of the school year). Even if the absence of specialized instruction over a four-month period could be argued to be immaterial, the testimony of Witness A and the IEP progress reports established that the Student was unable to adequately manage that many consecutive school days in such a large, unstructured setting. The record is full of references to the Student creating disturbances in school during the latter part of the 2021-2022 school year. This Hearing Officer therefore finds that DCPS denied the Student a FAPE when it failed to provide him/her with specialized instruction outside general education from February 2022 to June 2022.

## RELIEF

When remedying a violation of the IDEA, a hearing officer may “grant such relief as [he or she] determines is appropriate.” 20 U.S.C. Sect. 1415(i)(2)(C); Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359, 369 (1985) (discussing the “broad discretion” of the court to craft relief, limited only by the instruction that “relief is to be ‘appropriate’ in light of the purpose of the Act”). Compensatory education is an award of services “to be provided prospectively to compensate for a past deficient program.” Reid v. District of Columbia, 401 F.3d 516, 522 (D.C. Cir. 2005). This is a common form of relief awarded in IDEA cases. Glass, next friend of A.G. v. District of Columbia, No. CV 19-2148 (RC), 2020 WL 6799139, at \*8 (D.D.C. Nov. 19, 2020). If compensatory education is unavailable, a child’s access to appropriate education could depend on his or her parents’ ability to pull the child out of the deficient public program and front the cost of private instruction. This is a result “manifestly incompatible with IDEA's purpose of ‘ensur[ing] that all children with disabilities have available to them a free appropriate public education.’” Boose v. District of Columbia, 786 F.3d 1054, 1056 (D.C. Cir. 2015) (quoting Reid at 522–23 [citing to 20 U.S.C. Sect. 1400(d)(1)(A)]).

A compensatory education award is crafted to remedy what might be termed an education deficit created by an educational agency’s failure over a period of time to provide a FAPE to a student. Reid, 401 F.3d at 523. A petitioner need not “have a perfect case” to be entitled to a compensatory education award. Stanton v. District of Columbia, 680 F. Supp. 201 (D.D.C. 2011). Under the IDEA, if a student is denied a FAPE, a hearing officer may not “simply refuse” to grant one. Henry v. District of Columbia, 750 F. Supp. 2d 94 (D.D.C. 2010). Some students may require only short,

intensive compensatory programs targeted at specific problems or deficiencies. Reid, 401 F.3d at 524.

The main issue in this case is the amount of compensatory education that the Student should be awarded. Both sides agree that the Student should receive compensatory education to remedy the four months or so of FAPE deprivation. Petitioner, through Witness A, requested 250 hours of one-to-one tutoring as compensatory education for the Student. Respondent, through Witness B, suggested that 150–175 hours of one-to-one tutoring would be more appropriate, with thirty to fifty hours of behavior support services from a licensed social worker.

Witness A effectively advocated for an “hour-for-hour” calculation of the compensatory education award. That is, Witness A calculated that the Student missed 250 hours of services during the four-month period of FAPE deprivation. DCPS argued that such a formula-based approach is forbidden in this jurisdiction, pursuant to Reid, but this is not always so. As pointed out in Friendship Edison Pub. Charter Sch. Collegiate Campus v. Nesbitt, 532 F. Supp. 2d 121, 123 (D.D.C.2008) and Brown v. District of Columbia, 568 F. Supp. 2d 44, 53–54 (D.D.C. 2008), a formula-based award may in some circumstances be acceptable if it represents an individually tailored approach to meet a student’s unique prospective needs, as opposed to a backwards-looking calculation of educational units denied to a student.

But Witness A’s testimony did not establish that she calculated the proposed award with an individually tailored approach. Unlike the expert witness in Brown, who calculated that the subject student needed three hours a day of instruction to make up for the FAPE deprivation, Witness A merely reviewed some of the documents that related to

the Student, and then calculated the award based on the missed hours. Moreover, some of Witness A's testimony appeared to be flawed. For instance, at one point, Witness A testified that the Student would have made a full year's worth of progress during the four-month period of FAPE deprivation, even though there is nothing in the record to suggest that the Student could make gains at that rate, even with an optimal educational program.

Additionally, as Respondent pointed out, there was an unexplained inconsistency between Witness A's approach to compensatory education and the approach of a different advocate who appeared on behalf of the same Student before Hearing Officer Vaden in 2019. In the earlier case before Hearing Officer Vaden, which involved a Child Find claim by Petitioner relating to the Student, the advocate who then testified for Petitioner recommended less services than an "hour-for-hour" calculation would have provided. Hearing Officer Vaden eventually adopted the advocate's proposal for 300 hours of compensatory tutoring, even though the proposal amounted to far less than the actual hours that the Student had missed due to the lack of an IEP. Indeed, based on the undisputed testimony of Witness B, the FAPE deprivation before Hearing Officer Vaden<sup>2</sup> corresponded to 286 days of missed instruction, or 572 hours of specialized instruction

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<sup>2</sup> The case before Hearing Officer Vaden (R-31) involved a claim that the Student should have been identified and evaluated through Child Find beginning in October 2017, as well as claims that DCPS failed to conduct an appropriate initial evaluation of the Student during the 2018-2019 school year, and a claim relating to educational records. Hearing Officer Vaden found that DCPS violated the Student's Child Find rights when the Student transferred from a public charter school to DCPS in fall 2017. Hearing Officer Vaden was presented with a compensatory education proposal from an educational advocate who based her proposal of 300 hours of academic tutoring and 60 hours of behavioral support services on a time frame starting with the third term of the 2017-2018 school year through the Student's October 1, 2019, IEP, which provided for ten hours per week of specialized instruction outside general education plus 240 minutes per month of behavioral support services.

(since the IEP eventually written for the Student recommended that s/he receive ten hours of specialized instruction per week, or two hours of specialized instruction per day).

Petitioner argued that each case must be considered independently. This Hearing Officer agrees that an award in this case is not in any way bound by an award written by another hearing officer in a previous case. However, Witness A did not fully consider the Student's successes in math during the 2021-2022 school year, and courts often examine the effects of a district's denial of FAPE in determining compensatory education awards.

Phillips ex rel. T.P. v. District of Columbia, 932 F. Supp. 2d 42, 50 (D.D.C. 2013).

Indeed, compensatory education awards can be reduced or rejected entirely because no compensatory education is required for the denial of a FAPE, or because a student has flourished in his or her current placement. Cousins v. Dist. of Columbia, 880 F. Supp. 2d 142, 145 n. 3 (D.D.C.2012); Johnson v. Dist. of Columbia, No. 11-0894, 2012 WL 3758240, at \*8 (D.D.C. Feb. 15, 2012), rep. & rec. adopted, 873 F. Supp. 2d 382 (D.D.C.2012); Gill v. Dist. of Columbia, 751 F. Supp. 2d 104, 113 (D.D.C.2010), aff'd, 2011 WL 3903367 (D.C. Cir. Aug. 16, 2011).

DCPS convincingly argued that the Student made good progress in math during the period of FAPE denial, pointing to the Student's improvement in the i-Ready measure. The Student started the year on the kindergarten level in math, but ended the year on a first grade level in "Number and Operations" and "Measurement and Data." In i-Ready testing in math, the Student's score improved from 351 at the beginning of the year, to 374 in the middle of the year, to 389 at the end of the year. Petitioner did not dispute that the Student made progress in math during the school year.



However, the Student did not receive a FAPE at School A between February 2022 and June 2022. There is little in the record to indicate that the Student made meaningful gains in reading during this period. Moreover, the Student's end-of-year IEP progress report indicated that the Student engaged in behaviors that needed to be managed by special education teachers. This IEP progress report said that the Student typically required three or more verbal cues from the teacher or aide to stay on task, was observed to not raise his/her hand, blurted out off-topic comments, eloped from classroom space, used profanity, and acted disrespectfully to adults and peers. The IEP progress report also noted that the Student "continues to require a maximal level of support in order to have appropriate behavior in group settings."

Considering all the above factors, this Hearing Officer finds that an award of 175<sup>3</sup> hours of specialized instruction through individual tutoring is appropriate to allow the Student to make up for his/her approximately four months of FAPE deprivation. DCPS argued that the tutoring should be virtual, but the Student's February 16, 2021, IEP said that s/he struggled to maintain focus and attention during virtual instruction, even for short periods. The Student's tutoring should accordingly be provided in person by a special education teacher at the teacher's regular rate, provided that the rate is reasonable and customary in the community. If the tutoring cannot be arranged at the Student's home, the Student and his/her parent should be provided with transport to and from the tutoring location.

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<sup>3</sup> It is noted that, according to Witness B's calculation, which was not rebutted by Petitioner, the Student did not miss 250 hours of services as Witness A indicated. According to Witness B, the Student missed eighty-seven days of specialized instruction. At about 2.6 hours of specialized instruction per day, based on thirteen hours of specialized instruction per week, this means that the Student missed about 226.2 hours of specialized instruction.

Finally, this Hearing Officer declines to order behavioral support services in this award, at DCPS's suggestion. Petitioner did not request such services, and the record does not indicate that the Student was denied behavior support services during the 2021-2022 school year.

## **VII. Order**

As a result of the foregoing:

The Student is hereby awarded 175 hours of compensatory education in the form of one-to-one, in-person tutoring by a provider who is a special education teacher, at the teacher's regular rate, provided that the rate is reasonable and customary in the community.

Dated: April 21, 2023

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, Esq.  
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[REDACTED]/DCPS

### **VIII. Notice of Appeal Rights**

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 days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. Sect. 1415(i).

Date: April 21, 2023

Michael Lazan  
Impartial Hearing Officer