

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parents, on behalf of Student,<sup>1</sup></b>	)	
<b>Petitioners,</b>	)	
	)	<b>Hearing Dates: 2/27/24; 2/28/24</b>
<b>v.</b>	)	<b>Hearing Officer: Michael Lazan</b>
	)	<b>Case No. 2023-0239</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. 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 8, 2023. The Complaint was filed by the Student’s parents (“Petitioners”). On December 19, 2023, Respondent filed a response. A resolution meeting was held on December 21, 2023, without an agreement being reached. The resolution period expired on January 7, 2024.

**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 January 5, 2024, a prehearing conference was held. Attorney A, Esq., Attorney B, Esq., Attorney C, Esq., Attorney D., Esq., Attorney E, Esq., and Attorney F, Esq., counsel for Petitioners, appeared. Attorney G, Esq., counsel for Respondent, appeared. On January 12, 2024, a prehearing conference order was issued, summarizing the rules to be applied in the hearing and identifying the issues in the case.

The matter proceeded to trial on February 27, 2024, and February 28, 2024. Attorney A, Esq., Attorney B, Esq., Attorney C, Esq., Attorney D., Esq., Attorney F, Esq., and Attorney H, Esq., counsel for Petitioners, appeared. Attorney G, Esq., counsel for Respondent, appeared. The hearing was conducted through the Microsoft Teams videoconferencing platform, without objection. During the proceeding, Petitioner moved into evidence exhibits P-1 through P-42 without objection. Respondent moved into evidence exhibits R-1 through R-32 without objection.

On February 12, 2024, Petitioners moved to amend the Complaint. No opposition was filed. An order granting the motion was issued on February 20, 2024, resetting the timelines to reflect an April 17, 2024, Hearing Officer Determination (“HOD”) due date.

Petitioner presented as witnesses, in the following order: herself; Witness A, a physician (expert in pediatrics); Witness B, an educational advocate (expert in special education); Witness C, an educational advocate (expert in special education); and herself. Respondent presented as witnesses: Witness D, a special education teacher (expert in special education and Individualized Educational Program (“IEP”) programming);

Witness E; a manager of DCPS medical support programs; Witness F, a pediatrician and medical consultant for DCPS (expert in pediatrics); and Witness G, a manager for DCPS (expert in special education).

After the completion of testimony and evidence on February 28, 2024, the parties agreed on a briefing schedule. Petitioners filed a brief on March 21, 2024. DCPS filed a brief on March 25, 2024.

#### **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 DCPS deny the Student a Free Appropriate Public Education (“FAPE”) when it failed to provide the Student with appropriate IEPs since the start of the 2022-2023 school year?**

Petitioners contended that the Student needs to attend school through virtual instruction, and that Respondent’s proposed placement is not in the least restrictive environment (“LRE”). As stated at the prehearing conference and memorialized in the prehearing conference order, the Complaint also contains claims of systemic violations, but this Hearing Officer has no jurisdiction for such systemic claims, and these claims must therefore be dismissed.

As relief, Petitioner is seeking compensatory education and an order for Respondent to provide the Student with specialized instruction and related services in his/her LRE, including virtual access to his/her peers, during both the school year and extended school year (“ESY”).

## **V. Findings of Fact**

1. The Student is an X-year old who is eligible for services. The Student has been diagnosed with a SCN8A gene mutation, a rare genetic disorder that causes cognitive impairment, chronic lung disease, chronic respiratory insufficiency, cortical visual impairment, hypotonia, impaired swallowing, and neuromuscular weakness, among other things. The Student is non-ambulatory and non-verbal. The Student requires a special respiratory treatment four to five times a day to prevent mucus from building up in his/her lungs. The Student needs special equipment to eat and sleep, needs specialized equipment for positioning, uses a wheelchair, and takes approximately thirty medications to control seizures, reflux, and secretions, to strengthen his/her respiratory system, and for related issues. The Student has a history of hospitalization due to viral infections and requires nursing services. The Student cannot wear a mask or wash his/her hands independently and cannot move away from another individual by him/herself. P-15; P-16; P-17; P-18; P-19.

2. The Student is susceptible to severe illness. The Student's disability causes such issues as respiratory insufficiency, ineffective breathing pattern, and chronic aspiration pneumonia. Testimony of Witness A.

3. The Student's family has implemented protocols such as wearing masks, avoiding others with illness, changing their clothes, and washing their hands to try to ensure that the Student does not get ill. The Student's father does not leave the house often, but when he does, he wears a mask. The Student and his/her family also have limited interactions with their extended family to protect the Student from illness. Testimony of Petitioner; P-15.

4. The Student began receiving Home and Hospital Instruction Program (“HHIP”) instruction from DCPS in 2017. During the 2018-2019 school year, the Student’s April 19, 2019, IEP recommended that the Student receive 23.5 hours of specialized instruction per week, with an additional four hours of specialized instruction per month, all outside general education. The Student was also recommended for 240 minutes of speech-language pathology per month, 240 minutes of occupational therapy per month, and four hours of physical therapy per month, all outside general education. The IEP indicated that the Student needed visual supports as per vision instruction; access to adaptive equipment; shiny, lighted visual targets; and consistent access to the following medical equipment: ventilator, suction, oxygen, nebulizer, feeding pump, and cough assist. The IEP also indicated that the Student required access to the following for positioning and movement: gait trainer, stander, and a chair with trunk and arm supports. The IEP indicated that the Student had made little progress because of his/her profound disabilities, which required a full-time a nurse in the home, feeding through a tube, and movement while physically tied to an adaptive chair, and because the Student gets sick easily and, as a result, s/he does not get taken out into the community often. The IEP indicated that a simple cold could result in the Student’s hospitalization and reported that the 2018-2019 school year was difficult for the Student due to his/her health. P-2.

5. During the 2019-20 school year, until the pandemic commenced, the Student continued to receive HHIP services and have difficulty making progress due to his/her health. In the first advisory period, the Student was unable to make progress. In the second advisory period, s/he had difficulty due to a decline in his/her health. But in the third advisory period, the Student made some progress. P-3-5.

6. After the pandemic commenced, the Student's April 27, 2020, IEP recommended the same exact services as the prior IEP. During the 2020-2021 and 2021-2022 school years, the Student participated virtually by logging into the Medical and Education Support Program ("MES") classroom each day, supported by his/her parents and other caregivers. Testimony of Petitioner. The MES program is designed for students who have complex medical conditions and severe cognitive impairments. Respondent operates an MES classroom at School A. Testimony of Witness E; P-17-3.

7. The MES classroom is comprised of up to eight students, most of whom are non-ambulatory, which means that they are in some type of adaptive seat, wheelchair, or stroller. These students are mainly non-verbal. The MES classroom has two paraprofessionals. Testimony of Witness D. Many of the students have issues during virtual instruction because they need a more kinesthetic approach. Testimony of Witness E.

8. During the 2021-2022 school year, which was virtual, the Student was in a mixed-grade classroom with six to eight students. The students were on mute to help eliminate distractions. The Student would lie down with the device positioned to show his/her face. Sometimes the Student would sleep. The Student did manage to engage with the instruction and the other students, as determined through his/her spatial facial movements. The Student made progress in this environment. Testimony of Witness D. The Student responded to home-based programming with a teacher's instruction and guidance. Literacy was taught through virtual story time, and math was taught through songs that included counting. The Student befriended another student in the class and looked forward to interacting with that student each day. Testimony of Petitioner. The

Student was able to work on his/her IEP goals virtually and s/he received and benefitted from virtual speech therapy, occupational therapy, physical therapy, and vision therapy.

Testimony of Witness B.

9. While the Student was receiving virtual services, the Student was evaluated at Hospital A. According to Hospital A's chief of pulmonary and sleep medicine (and professor of pediatrics), the Student seemed more comfortable and more animated than in the past. P-17-3. He said: "This was the first time I saw [the Student] during the pandemic and I was pleasantly surprised with the fact that [s/he] appeared to be more comfortable and more animated than in the past. Although [s/he] still requires significant care, [s/he] has not worsened and if anything [s/he] has shown some improvement, especially in terms of not being as labile as in the past." P-17-2. DCPS reported that the Student could attend to instruction, as indicated by him/her blinking eyes, changing facial expressions, and using total communication. P-3-9-11.

10. An IEP was written for the Student on March 31, 2021. The IEP did not change the Student's services mandate but added accommodations. The IEP added that the Student required access to the following for positioning and movement: supine stander with chest harness, seat belt, knee straps, footrest, tray, and headrest; adaptive chair with headrest, chest harness, seat belt, arm supports, and tray; and footrest with tilt capability for secretions. The IEP indicated that the Student tolerated daily activities, such as virtual school and therapies, and during lessons s/he was engaged with the presenter. The IEP indicated that the Student tolerated sensory and art activities and enjoyed engaging with special teachers throughout the day. P-4-3-4.

11. An IEP was written for the Student on May 26, 2022. The IEP again did not change the services mandate of 23.5 hours of specialized instruction per week and four hours of specialized instruction per month, all outside general education. P-7. The IEP stated that the Student's intensive education and health needs required a specialized, full-time setting in a separate classroom with access to typically developing peers. The IEP stated that the Student was attentive during virtual lessons and was engaged with the presenter. The Student responded with changes in facial expressions, such as opening his/her mouth or raising his/her eyebrows, to indicate an answer or preference. The Student also demonstrated the ability to vocalize through a speaker. The Student was considered generally happy in school unless s/he was tired. The IEP reported that, during circle time, the Student responded to questions about feelings, days of the week, weather, and song choices. The Student engaged in read-aloud and math instruction and was able to answer two-choice questions. P-7-4. The Student's instruction at the time included direct, teacher-led instruction, circle time, and virtual related services, including physical therapy, occupational therapy, speech therapy, and vision therapy. Instruction also included specials, such as music, French, and library. P-36; P-40.

12. At the May 26, 2022, IEP meeting, the team did not discuss transitioning the Student to in-person services. From May 2022 through the end of the school year, Respondent implemented the Student's IEP virtually, allowing him/her access to the MES classroom and his/her peers. Testimony of Petitioner.

13. On August 22, 2022, DCPS staff met with Petitioners and another parent in regard to virtual instruction. The parents were told that virtual instruction would end, and that all students would return to the classroom. The parents were told that a "whole

setup” would be required, including cameras and specially trained teachers, in order to provide virtual instruction to the Student. Testimony of Witness E; Testimony of Witness G.

14. The 2022-2023 school year began without a virtual program for the Student, who declined to attend school in person. On or about January 3, 2023, staff at Hospital A wrote a letter urging that the Student receive virtual schooling. The letter indicated that the Student had a complex medical history, including chromosome anomaly, encephalopathy, epilepsy, hypotonia, chronic respiratory insufficiency, chronic lung disease, sialorrhea, neurogenic bladder and bowel, vesicostomy, oral dysfunction, gastrojejunostomy tube, chronic GERD, constipation, cortical visual impairment, sleep difficulty, and global developmental delay. The letter indicated that the Student was at risk for severe illness and worsening respiratory failure from common colds and should avoid high-risk exposure due to his/her severe lung disease and risk for infection. P-20-1.

15. Petitioners wrote to Respondent on July 3, 2023, again asking for virtual instruction with access to peers, evaluations, and compensatory education for the Student. DCPS did not change its position. The Student continued to decline to attend school. P-22-1.

16. An IEP was proposed to Petitioners on September 28, 2023. This IEP again provided for 23.5 hours of specialized instruction per week and four hours of specialized instruction per month, all outside general education, with the same mandate of related services as before. P-8. The IEP stated that the Student’s home environment had been his/her LRE. P-8. On November 1, 2023, Respondents held an IEP meeting for the Student, during which Respondent offered the Student in-person instruction and

related services with no access to peers. R-22. Petitioner did not agree with the recommendations. Testimony of Petitioner.

17. On November 15, 2023, Respondent sent Petitioner a proposed schedule for the Student's in-person HHIP services. R-23. Respondent proposed that the Student start with 1.5 hours of in-person specialized instruction per week, plus limited related services. Petitioner did not agree with the recommendations. Testimony of Petitioner.

18. Respondent offers its HHIP program with personal protective equipment, which significantly reduces the risk of disease transmission. Testimony of Witness F. The HHIP provides interim instructional support to students who have a medically diagnosed physical or psychiatric condition that is acute or catastrophic in nature and that confines the students to the home or a hospital for two weeks or more from the time a referral is submitted during the traditional school year. R-26-3. The HHIP Parent Guidebook states, "[s]essions may also include logging into class via computer to access instruction." R-26-8.

## **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). Since the issues relate to the appropriateness of the Student's program or placement, the burden of persuasion is on the school district if Petitioners present a *prima facie* case.

**Did DCPS deny the Student a FAPE when it failed to provide the Student with appropriate IEPs since the start of the 2022-2023 school year?**

Petitioners contended that the Student needs to attend school through virtual instruction, and that the proposed placement is not in the LRE.

In Endrew F. v. Douglas County School District, 137 U.S. 988 (2017), the Court held that an IEP must be reasonably calculated “in light of the child’s circumstances.” Id. at 999-1000. The Court also held that parents can fairly expect school authorities to offer a “cogent and responsive explanation” for their decisions, and that its ruling “should not be mistaken for an invitation to the courts to substitute their own notions of sound educational policy for those of school authorities, to whose expertise and professional judgment deference should be paid.” Id. at 1001-1002.

The Endrew F. decision reaffirmed the Court’s holding in Board of Education v. Rowley, 458 U.S. 176 (1982), in particular the statement that if a child is fully integrated into a regular classroom, passing marks and advancement from grade to grade through the general curriculum will ordinarily satisfy the IDEA standard. However, a footnote to the opinion warns that this “guidance should not be interpreted as an inflexible rule” and is not a holding that every child advancing from one grade to the next “is automatically receiving an appropriate education.” Id. at 1001 n.2 (citation omitted).

In addition to the IDEA requirement that IEPs be “reasonably calculated to enable the child to receive educational benefits,” Rowley at 206–07, the IDEA also requires that children with disabilities be placed in the “least restrictive environment.” 20 U.S.C. Sect. 1412(a)(5)(A). Indeed, courts in this jurisdiction have underscored the importance of the LRE requirement repeatedly, stating, for example, in Roark ex rel. Roark v. District of Columbia, 460 F. Supp. 2d 32, 42–43 (D.D.C. 2006), that mainstreaming of children

eligible for special education services under the IDEA is “not only a laudable goal but is also a requirement of the Act.”

Courts have ruled that home-based services or online services should be available to students who need them. In one case, where a district stopped offering home instruction altogether, either as an official policy or an unofficial practice, that district violated the IDEA by omitting home instruction from its continuum of preschool placements. Switzerland of Ohio Local Sch., 123 LRP 14133\_(SEA Ohio 03/27/23). In S.P. ex rel. J.A.P v. Fairview Sch. Dist., No. CIV.A. 13-96E, 2014 WL 4924885, at \*1 (W.D. Pa. Sept. 30, 2014), a Pennsylvania district sought to educate a teenager who had migraine headaches in a traditional high school setting by offering the student a full-time “cyber school” program that the student could access from home. The district court held that the student’s frequent absences, coupled with his documented need to remain in a quiet, dark room for twelve to sixteen hours when he had a migraine, showed that the restrictive placement was necessary to meet the student's unique needs.

Here, there is undisputed evidence, including from medical staff at a reputable hospital, that this Student benefits from virtual instruction because it exposes the Student to peers, and that the Student can only get that peer access through virtual instruction. The Student’s instruction includes direct, teacher-led instruction, circle time, and virtual related services, including physical therapy, occupational therapy, speech therapy, and vision therapy. The instruction also included specials such as music, French, and library.

Witness B explained that, as with all children, access to and interaction with peers is important for the Student’s social-emotional development. In the virtual setting, the Student was more engaged when his/her peers were present, and peer interaction gave

him/her something to look forward to each day, which helped his/her mental health.

Witness B said that, during the pandemic, virtual instruction was the only chance that the Student had to interact with peers. Witness B also said that related services could be provided in a virtual setting, explaining that the school could send the family a link to log in to a group of students, a classroom setting, or a one-to-one session with a related service provider. The Student could participate in all aspects of education with the assistance of an adult in the home, and a teacher could provide a schedule and list of required supplies, as the Student's teacher did, to implement a multi-sensory approach to learning. Witness B also discussed how virtual related services could be managed.

Moreover, Witness C, a special educator with many years of years of experience, said that the Student's experience with virtual instruction was his/her first time with peers.

In response, Respondent proffered testimony by Witness E, who said that some students with significant medical needs may not experience independent socialization among peers due to severe and profound cognitive impairment. Witness E suggested that students with disabilities as severe as the Student's may not be aware of who is around them. But the record indicates that this Student was aware of the other students in the virtual classroom and benefitted from their presence. Witness E did not see the Student in the classroom or meet the Student. Moreover, there is no exception to the LRE requirement for severely disabled children who cannot talk or walk. If anything, given their impairments, these children need even more access to typically developing peers. Nor is there any exception to the LRE requirement in the context of virtual instruction. To the contrary, United States Department of Education Guidance, released on March 21, 2020, states that, "ensuring compliance with the IDEA ... should not prevent any school

from offering education programs through distance education.” U.S. Dept. of Ed. Office of Civil Rights, “Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities,” 120 LRP 10632 (OSERS/OSEP) (Mar. 21, 2020). The guidance continues to explain that the Office of Civil Rights and the Office of Special Education and Related Services understand that a FAPE may include, where appropriate, special education and related services provided through distance instruction — virtually, online, or via telephone. Id. The guidance emphasizes that federal disability law allows flexibility in determining how to meet the individual needs of a student with disabilities.

DCPS argued that it might be difficult, costly, or illegal to set up virtual instruction in the Student’s classroom, but as Petitioners pointed out, Respondent’s HHIP Parent Guidebook states that sessions may also include logging in to class via computer to access instruction. Moreover, during the 2020-2021 and 2021-2022 school years, the Student participated virtually by logging in to the classroom each day, supported by his/her parents and other caregivers. Additionally, Respondent’s argument did not provide many clarifying details about the cost or difficulties of providing virtual instruction. Nor did DCPS clearly refute Petitioners’ argument, through Witness B, that virtual instruction could easily be set up in the Student’s assigned classroom through a Zoom link.

DCPS’s argument was also undercut by Petitioners’ persuasive argument that the Student’s health and safety could be imperiled were s/he to attend school in person. There is no evidence or argument that Petitioners overstated or embellished these claims. The HHIP protocols do not include mandatory testing or contact tracing, and the HHIP

illness checklist does not require an HHIP provider to conduct a “self-check” for any of the listed symptoms. Witness F testified that individuals in HHIP classes could be COVID-19 positive, or have other respiratory illnesses, and be asymptomatic. Courts have been receptive to parents who argue that their child’s safety and health concerns prevent the child from attending a school. D.C. ex rel. E.B. v. New York City Dep’t of Educ., 950 F. Supp. 2d 494, 512–13 (S.D.N.Y. 2013) (a seafood allergy rendered placement inappropriate); In re: Student with a Disability, 114 LRP 19510 (SEA KY 02/12/14) (noting that a child’s allergy condition is “a relevant inquiry in determining whether FAPE has been provided”).

For all these reasons, this Hearing Officer agrees with Petitioners that Respondent denied the Student a FAPE by failing to provide the Student with a virtual program during the 2022-2023 and 2023-2024 school years.

### **RELIEF**

Petitioner seeks an order that DCPS implement the Student’s IEP in a virtual setting. Respondent suggested that this Hearing Officer has no authority to order a school district to provide virtual instruction to a student, but this argument is counter to legislative authority and caselaw. The Supreme Court has indicated that due process decision-makers in IDEA cases have discretion as broad as that of courts. Forest Grove Sch. Dist. v. T.A., 557 U.S. 230, 243 n.11 (2009) [“... we reject the District’s argument that because § 1412(a)(10)(C)(ii) authorizes ‘a court or a hearing officer’ to award reimbursement for private-school tuition, whereas § 1415(i)(2)(C)(iii) only provides a general grant of remedial authority to ‘court[s],’ the latter section cannot be read to authorize hearing officers to award reimbursement. That argument ignores our decision

in Burlington, 471 U.S., at 363, 370, which interpreted § 1415(i)(2)(C)(iii) to authorize hearing officers as well as courts to award reimbursement notwithstanding the provision's silence with regard to hearing officers.”] The only apparent exception is the ability of a hearing officer to award attorneys’ fees to prevailing parties. As the Supreme Court has stated, the IDEA statute directs hearing officers to “grant such relief as [the hearing officer] determines is appropriate.” School Committee of the Town of Burlington v. Dep’t of Education, Massachusetts, 471 U.S. 359, 371 (1985). The ordinary meaning of these words confer broad discretion on a hearing officer, since the type of relief is not further specified, except that it must be “appropriate.” 20 U.S.C. Sect. 1415(i)(2)(C)(iii). It is therefore appropriate for a hearing officer to order a school district to implement an existing IEP, revise an IEP to meet a student’s needs, develop an IEP, comply with a hearing officer’s order, evaluate a student, or institute a particular placement. Sch. Bd. of Manatee Cnty., Fla. v. L.H. ex rel. D.H., No. 808-CV-1435-T-33MAP, 2009 WL 3231914, at \*3 (M.D. Fla. Sept. 30, 2009).

As indicated in the “Issues” section of this HOD, Petitioner’s requested relief is reasonable, feasible, and authorized by law. Justice William Brennan explained, in Honig v. Doe, 484 U.S. 305, 309 (1988), that before the passage of the IDEA, one out of every eight of these children was excluded from the public school system altogether, and many others were simply “warehoused” in special classes or neglectfully shepherded through the system until they were old enough to drop out. See H.R. Rep. No. 94–332, p. 2 (1975); cf. S.P. ex rel. J.A.P v. Fairview Sch. Dist., 2014 WL 4924885, at \*1 (upholding virtual instruction requested by school district).

DCPS objected because this kind of arrangement would inevitably involve working closely with the parents, but such an arrangement is not inappropriate in this case, where the Student's disabilities are severe, and the Student has legitimate health and safety concerns that must be addressed. DCPS argued that virtual instruction is not specifically mentioned in the continuum, which is located at 5-A D.C.M.R. Sect. 3002.3. However, there is nothing in the regulations or the continuum to prevent a school district from implementing a virtual instruction program, which was made clear throughout the country during the pandemic. Indeed, 5-A D.C.M.R. Sect. 3002.2 1 suggests that school districts need to do what they can to find a placement for a student and that the continuum is not exhaustive. The regulation says that the local educational agency "shall provide the full continuum of alternative placements to accommodate the needs of a child with a disability, regardless of a lack of existing placement options that exist at the time of enrollment or because educating the child with a disability would result in additional costs, administrative inconvenience, or changes to school programming, staff, or schedule."

Petitioner also seeks compensatory education in the form of 205 hours of one-to-one specialized instruction, eighty-two hours of arts instruction, and sixty-six hours each of speech therapy, occupational therapy, and physical therapy. Hearing officers may award "educational services to be provided prospectively to compensate for a past deficient program." Reid v. District of Columbia, 401 F.3d 516, 521-23 (D.C. Cir. 2005). The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. Id., 401 F.3d at 524; Friendship Edison Public Charter School

v. Nesbitt, 532 F. Supp. 2d 121, 125 (D.D.C. 2008) (compensatory award must be based on a “qualitative, fact-intensive” inquiry to craft an award “tailored to the unique needs of the disabled student”). A parent 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).

Petitioners seek compensatory education through the testimony of Witness C, who testified that the Student requires one-to-one instruction to catch up for the school time s/he lost, and who recommended that compensatory services be implemented virtually to keep the Student safe. Witness C came across credibly, and her recommendations correspond to the services recommended in the Student’s IEP. Indeed, the request for 205 hours of specialized instruction is modest, since the Student has missed almost two years of instruction and an average student attends school for at least 100 hours per month. Respondent did not put forward any evidence to undermine the recommendation for compensatory education, which will be ordered in full.

It is worth noting that Witness F went out of her way to praise Petitioners as credible, which also suggests to this Hearing Officer that the proposed relief is reasonable.

## **VII. Order**

As a result of the foregoing:

1. As compensatory education, the Student is hereby awarded 205 hours of one-to-one specialized instruction, eighty-two hours of arts instruction, and sixty-six hours each of speech therapy, occupational therapy, and physical therapy;

2. These services shall be provided via videoconference or online by professionally licensed providers at their usual and customary rate in the community;

3. Respondent is ordered to provide the Student with specialized instruction and related services in his/her least restrictive environment, including virtual access to his/her peers, during both the school year and extended school year.

Dated: April 17, 2024

Michael Lazan  
Impartial Hearing Officer

cc: Office of Dispute Resolution  
Attorney A, Esq.  
Attorney B, Esq.  
Attorney C, Esq.  
Attorney D, Esq,  
Attorney E, Esq.  
Attorney F, Esq.  
Attorney H, Esq.  
Attorney I, Esq.  
Attorney J, Esq.

### **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 USC Sect. 1415(i).

Date: April 17, 2024

Michael Lazan  
Impartial Hearing Officer