This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: X.J.
Date of Birth: [redacted]
Date of Hearing: June 24, 2015

CLOSED HEARING

ODR Case Numbers:

15961-1415AS
15962-1415AS

Parties to the Hearing:	Representative:
Parent[s]	Kevin Golembiewski, Esquire David Berney, Esquire 8 Penn Center 1628 J.F.K. Boulevard / Suite 1000 Philadelphia, PA 19103
Walter D. Palmer Leadership Learning Partners Charter School 910 North 6th Street Philadelphia, PA 19123	Unrepresented
Pennsylvania Department of Education 333 Market Street / 9th Floor Harrisburg, PA 17101	M. Patricia Fullerton, Esquire Elizabeth Anzelone, Esquire 333 Market Street / 9th Floor Harrisburg, PA 17101
Date Record Closed:	July 27, 2015
Date of Decision:	August 11, 2015
Hearing Officer:	Jake McElligott, Esquire

INTRODUCTION

[Student] ("student")[1] is [an elementary school-aged] student residing in the City of Philadelphia. The student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEIA")[2] for specially designed instruction/related services as a student with autism and speech/language impairment.

As set forth more fully below, the procedural background in these matters is complex. For the purposes relevant to these consolidated cases, from the 2011-2012 school year through December 2014, the student attended the Walter D. Palmer Leadership Learning Partners Charter School ([ ] "CS"). The CS suddenly ceased operations in December 2014, and the student began to attend the School District of Philadelphia ("SDOP").

In March 2015, the parents filed a special education due process complaint against the CS, alleging that the charter school had denied the student a free appropriate public education ("FAPE"). Due to the closure of the CS, the parents' complaint also named the Pennsylvania Department of Education ("PDE") as a responding party, alleging that, to

[1] The generic use of "student", rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student. At times, the student's initials may also be used.

[2] It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 ("Chapter 14").

the extent [the] CS was not in a position to provide any remedy for the alleged denial of FAPE, PDE must.

For the reasons set forth below, the record supports a finding that the CS denied the student FAPE and that the student is entitled to compensatory education. Because [the] CS is unable to provide a remedy for the denial of FAPE, PDE must provide the compensatory education.

ISSUES

Was the student denied FAPE by [the] CS
for the period March 2013 through December 2014?[3]

If so, is the student entitled to compensatory education?

If so, must PDE provide the compensatory education remedy?

PROCEDURAL HISTORY

A. In early March 2014, parents filed a complaint against the CS and PDE, alleging denial of FAPE. (Hearing Officer Exhibit ["HO"]-2).

B. The complaint was initially assigned to another hearing officer from the Office for Dispute Resolution ("ODR"). A number of complaints were filed by parents' counsel on behalf of multiple students, including [Student]. To promote judicial economy and consistency, all complaints, including the complaint in the instant case, were subsequently transferred to this hearing officer. (HO-14, HO-14a).

C. PDE responded to the complaint, seeking to dismiss the complaint and, in the alternative, challenging the sufficiency of the complaint. PDE's motion asserted that ODR, with whom the

[3] In the view of this hearing officer, the relevant portions of the IDEIA at 34 C.F.R. Sections 300.507(a)(2) and 300.511(e) promulgate a 2-year look-back period, from the date of the filing of the complaint. Here, then, parents' claim for remedy ranges back to March 1, 2013, two years prior to the filing of the complaint on March 1, 2015.

parents filed their complaint, did not have jurisdiction over PDE. (HO-3, HO-9).

D. Over the ensuing weeks, parents filed a response to PDE's motion to dismiss. PDE then filed a reply to the parents' response, and parents filed a sur-reply to PDE's reply. (HO-10, HO-11, HO-12, HO-15, HO-17).

E. From the time parents filed their complaint, counsel for [the] CS could not be identified. ODR was unable to identify counsel, and parents' requests for the identity of [the] CS went unanswered. (HO-23, HO-23a, HO-24).

F. Ultimately, an administrator from [the] CS, communicating from a CS email account, responded, indicating that the student was attending a [school district] school and that the administrator's understanding was that the [school district] was responsible for parents' complaint. The administrator indicated that an attorney for [the] CS would be contacted. (HO-25).

G. An attorney responded, indicating that he was the liquidating trustee for the CS and was not entering an appearance in the instant matter. The liquidating trustee indicated that the CS was, in effect, insolvent, with over $30 million dollars in "aggregate secured and unsecured claims" against it. The liquidating trustee indicated that, to his knowledge, [the] CS had an insurance policy for special education due process claims. Ultimately, no insurance policy was available. (HO-25a; Parents' Exhibit ["P"]-13).

H. In April 2014, a ruling was issued on PDE's motion to dismiss.[4] PDE's motion to dismiss was denied, with the hearing officer finding that PDE, as the state educational agency, had potential obligations where a parent brings a denial-of-FAPE complaint against a defunct charter school. Therefore, PDE must remain involved in the proceedings. (HO-13).

I. As part of the hearing officer's ruling, one requisite aspect of the parents' complaint (the school which the student was then attending) was not provided. Parents were ordered to file an amended complaint which contained this information. A timely amended complaint was filed. (HO-4, HO-13).

[4] The hearing officer asserted jurisdiction over eight complaints, as in this case filed in pairs against the [the] CS and PDE, for three students in addition to [Student]. Each of the other three cases involved similar pre-hearing filings, and rulings in all four cases were issued at the same time. (HO-18).

J. After denial of PDE's motion to dismiss, the parties and the hearing officer turned their attention to hearing planning and scheduling. A hearing date was scheduled for June, including the fact that PDE, as the state education agency, did not need to hold a resolution meeting under IDEIA. (HO-5, HO-19, HO-20, HO-21, HO-22).

K. In May 2014, claiming that parents had not been able to obtain records from the CS, parents filed a motion to compel the production of records. The hearing officer granted the motion and provided a framework and timeline for access to the CS property for parents' counsel to retrieve educational records for the student. (HO-29, HO-30).

L. Because the order related to the motion to compel implicated access to the property of the CS, the liquidating trustee was provided with a copy of the order. Counsel for the liquidating trustee became involved in communications. Ultimately, parents' counsel was granted access to the CS property and some records were retrieved. The hearing officer declined to draw a negative inference against CS based on the handling of the student's records. (HO-26, HO-27, HO-28, HO-30, HO-31, HO-32, HO-33).

M. In anticipation of the hearing, counsel for parents and PDE held a conference call. (HO-22a).

N. On June 24, 2015, the hearing was concluded in one session. No one from the CS, including any counsel, appeared at the hearing. Following the hearing, a transcript of the proceedings was provided to the CS administrator who had been communicating with the hearing officer and the parties. (HO-5, HO-6; see generally Notes of Testimony ["NT"] at 6-12, 38-39, 42-44, 191-192).

O. The parents and PDE submitted written closing statements. (HO-7, HO-8).

FINDINGS OF FACT

1. The student has been identified as a student with autism and speech/language impairment. (P-6).

2. The student attending the CS in the 2011-2012 school year, the student's kindergarten year. (NT at 59).

3. The documentary evidence related to the student's educational programming is sparse. Due to the defunct status of [the] CS and its non-participation in these proceedings, this is no fault of the parents. (See *Procedural History* above at E, F, G, K, L, N).

4. The student transitioned from early intervention services to kindergarten at [the] CS. (P-1; NT at 57-59).

5. The student received special education and related services in early intervention, special education and related services which were continued upon the student's enrollment at [the] CS. (P-1; NT at 60).

6. After the student's enrollment at [the] CS, an IEP was created, and the student received special education and related services under an IEP for the 2011-2012 and 2012-2013 school year, the student's kindergarten and 1st grade years. (Pennsylvania Department of Education Exhibit ["PDE"]-12; NT at 60-67).

7. In the 2013-2014 school year, the student began 2nd grade at [the] CS. (P-2; NT at 67).

8. In September 2013, the student's IEP team met for its annual revision of the student's IEP. (P-2).

9. The September 2013 IEP identified needs in attention/atypicality, below average achievement in reading, mathematics, and writing, physical therapy needs, and occupational therapy needs. (P-2 at page 12).

10. The September 2013 IEP contained eight goals, two each in reading, mathematics, speech/language, and occupational therapy. (P-2 at pages 16-17).

11. The student was included in the regular education environment for most instruction. The student was pulled out three times per week for learning support services, and once weekly each for a speech/language session and an occupational therapy session. (P-2 at page 21; PDE-16).

12. The student's parents testified that the student's IEP was not implemented in the regular education setting and the student did

not receive pull-out services. (P-3; PDE-15; NT at 67-73, 99-105, 107-108).

13. In April 2014, the student was re-evaluated by [the] CS, which issued a re-evaluation report ("RR"). (P-6).

14. The April 2014 RR indicated that the student's full-scale IQ was 82. There was no significant discrepancy between the student's IQ score and achievement scores, but, due to below average achievement scores, the evaluator recommended that the student receive supports in academic areas. (P-6 at pages 10-14, 23).

15. The April 2014 RR indicated, on an assessment of the student's social/emotional functioning, that the student's classroom teacher rated the student's behaviors as clinically significant for aggression, attention, and study skills. The student's mother did not return the rating instrument. (P-6 at pages 15-17).

16. The April 2014 RR indicated, on an assessment for autism rating scales, that the student's classroom teacher rated the student as unlikely for an autism identification. The student's mother did not return the rating instrument. Without updated medical diagnostic information or parental input, the evaluator recommended continuing the autism identification. (P-6 at pages 17-18, 23).

17. The April 2014 RR included evaluation results from a speech/language therapist. The speech/language therapist recommended continued services for speech/language. (P-6 at pages 18-23).

18. The April 2014 RR recommended that the student be identified as a student with autism and speech/language disability, as well as recommendations for academic support in mathematics, reading, and attention. The RR also recommended a follow-on occupational therapy evaluation. (P-6 at pages 22-25).

19. In May 2014, [the] CS had ostensibly reported mastery of the student's reading and mathematics goals from the September 2013 IEP. (P-7 at page 9; PDE at page 12).

20. In May 2014, the student's IEP met to revise the student's IEP in light of the April 2014 RR. (P-7; PDE-20).

21. The May 2014 IEP indicated, for the first time, that the student did not have communication needs, although speech/language goals and services were part of the IEP. (P-7 at page 5).[5]

22. The May 2014 IEP contained two goals in reading, one goal in writing, two goals in mathematics, one goal in social skills, one goal in speech and language, two goals in occupational therapy, and five goals in physical therapy. (P-7 at pages 17-30; PDE-20 at pages 20-36).

23. The May 2014 IEP contained baseline information for the academic goals. (P-5; PDE-20 at pages 20-36, PDE-23).[6]

24. In June 2014, a physical therapy progress report indicated that the student had made steady progress in gross motor skills. The evaluator recommended that, over the summer of 2014, the student continue to receive services of a compensatory nature and then be re-evaluated in the fall of 2014 to see if the student continued to require physical therapy services. (PDE-17, PDE-18).

25. At the end of 2nd grade, the student failed language arts/reading. (P-4).

26. The student continued at [the] CS for 3rd grade. The student's mother testified that the student did not receive pullout services for academic support and did not receive related services. Aside from one occupational therapy session in mid-December 2014, there is no progress monitoring or information related to the student's 3rd grade year. (PDE-11; NT at 77-80).

27. In late December 2014, parents received a letter dated December 26, 2014 from [the] CS indicating that, due to financial

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[5] PDE also offered the May 2014 IEP as an exhibit (PDE-20). The date for the IEP at P-7 is May 6, 2014; the date for the IEP at PDE-20 is May 13, 2014. Where the two documents differ in a material way, as at page 5 of P-7 and page 8 of PDE-20, or at page 34 of P-7 and page 39 of PDE-20, or at pages 37-39 of P-7 and pages 41-43 of PDE-20, the difference is resolved in favor of parents.

[6] In the table of contents for their exhibits, the parties erroneously identified this May 2014 benchmark information as progress monitoring on the September 2013 IEP. (P-5; PDE-23; NT at 76-77). This is understandable, as the exhibits speak of progress and, at points, use terms like "limited progress", or "moderate progress", or "no progress". By the terms of the exhibits, however, it is clear that the content refers to baselines for the goals being contemporaneously drafted in May 2014 and not progress-monitoring on the goals contained in the September 2013 IEP. (*See also* P-7 at page 9; PDE-20 at page 12).

difficulties, the school would cease operations as of December 31, 2014. (P-9).

28. By letter dated January 2, 2015, parents contacted [the] CS with concerns about the student's lack of programming in the 3rd grade. (P-8).

29. After the closure of the CS, the student began to attend 3rd grade at [the school district]. (NT at 51-52, 88-89).

30. In February and March 2015, the SDOP conducted reading and mathematics achievement testing. The student was at an early kindergarten level in reading and early 1st grade level in mathematics. (P-14, P-15).

31. In early March 2015, the student's parents filed the special education due process complaint that led to these proceedings. (HO-2).

32. In late March 2015, PDE, having been informed of the parents' claims as a result of the parents' complaint, initiated an investigation through its Bureau of Special Education ("BSE"). (P-17; PDE-2, PDE-3, PDE-4, PDE-5, PDE-13).[7]

33. In May 2015, PDE issued its CIR. The CIR concluded that the student was eligible for compensatory education. The investigator calculated 572 hours (and a fractional amount) of compensatory education. (P-17; PDE-13; see generally NT at 113-190).

34. In June 2015, in the run-up to the hearing in this matter, parents' counsel contacted the liquidating trustee, who indicated

[7] A state educational agency complaint investigation, pursuant to 34 C.F.R. §§300.151-300.153, is a separate procedure from a special education due process complaint filed pursuant to 34 C.F.R. §§300.507-300.515 (the filing which led to these proceedings). Documentation related to the BSE complaint investigation procedure indicates that a parent must initiate the complaint investigation procedure by submitting a signed, completed complaint form. (PDE-3, PDE-4). Here, the record is silent as to whether parent submitted the BSE complaint; it appears, though, that BSE undertook a complaint investigation on its own without a complaint by parent being filed with BSE. (NT at 123-124). In its closing statement (HO-8), PDE argues that conducting its own investigation and issuing a complaint investigation report ("CIR") should not be a party to the proceedings. Notwithstanding a potential argument that a self-initiated complaint investigation could be viewed as self-serving, it seems clear, however, that IDEIA contemplates two separate processes by which parents might seek redress for alleged problematic behavior by local education agencies.

that the claims against the CS liquidation estate far exceeded the assets and potential receivables. (P-19).

35. The one-session hearing was held on June 24, 2015. (HO-5).

DISCUSSION AND CONCLUSIONS OF LAW

To assure that an eligible child receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). 'Meaningful benefit' means that a student's program affords the student the opportunity for "significant learning" (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3rd Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3rd Cir. 1996)).

Denial of FAPE

In this matter, the record fully supports a finding that the CS denied the student FAPE. While documentary evidence related to the scope of the claim (March 1, 2013 through December 2014) is sparse, the refusal of [the] CS to participate in the hearing leaves the evidence weighing decidedly in favor of parent. Parents testified credibly that the student did not receive special education and related services. What non-

testimonial evidence is present (especially the student's report card, the recognition by the physical therapist that services were not provided, and the [school district] intake achievement testing) supports a finding that the student was not provided with FAPE, and countermands the "goal mastery" reported on the September 2013 IEP goals. And, while not accepted as findings of fact for this decision, the CIR issued by BSE further supports a finding through this decision that [the] CS denied the student FAPE.

Accordingly, the CS denied the student FAPE for the period of March 1, 2013 through December 2014, when the CS closed its doors.

Compensatory Education

Where a local education agency has denied a student FAPE under the terms of the IDEIA, compensatory education is an equitable remedy that is available to a claimant. (Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990); Big Beaver Falls Area Sch. Dist. v. Jackson, 615 A.2d 910 (Pa. Commonw. 1992)). The right to compensatory education accrues from a point where a school district knows or should have known that a student was being denied FAPE. (Ridgewood; M.C.). The U.S Court of Appeals for the Third Circuit has held that a student who is denied FAPE "is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem." (M.C. at 397).

Here, the CS denied the student FAPE. Therefore, compensatory education is owed to the student. Due to its closure and insolvency, however, the CS is, and will be, unable to provide this remedy. As set forth more fully in the section below, PDE will be responsible for providing the compensatory education remedy.

Accordingly, the student is entitled to compensatory education.

PDE & Compensatory Education Remedy

PDE must provide the compensatory education remedy set forth in the section above. In support of this assertion, there are various legal findings necessary, namely (1) that special education due process has jurisdiction over PDE, (2) that PDE is a proper party to these proceedings, and (3) that, where a charter school is defunct yet has been found to have denied a student FAPE, PDE must provide remedy to the student.

Jurisdiction over PDE. The IDEIA defines various agencies within the statute's parameters. These are: A local education agency ("LEA"), which is most commonly understood as a school district and explicitly includes charter schools (20 U.S.C. §1401(19); 34 C.F.R. §300.28)); an "educational service agency", which in Pennsylvania are called intermediate units (20 U.S.C. §1401(5); 34 C.F.R. §300.12)); and the "state educational agency" (SEA), which, in Pennsylvania, is PDE.

The IDEIA also includes an umbrella term called a "public agency", which "includes the SEA, LEAs, (educational service agencies), nonprofit public charter schools…and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (20 U.S.C. §1412(a)(11); 34 C.F.R. §300.33)).

The special education due process provisions of IDEIA (*see generally* 20 U.S.C. §1415; 34 C.F.R. §§300.500-300.536) require that "each public agency establishes, maintains, and implements procedural safeguards that meet the requirements" related to the entirety of the due process provisions. (20 U.S.C. §1412(a); 34 C.F.R. §300.500)). The SEA in every state, PDE in the case of Pennsylvania, is responsible for ensuring that these requirements are met. (20 U.S.C. §1412(a); 34 C.F.R. §300.500)). Under the terms of IDEIA, then, as a public agency as defined in the statute, PDE is subject to special education due process.

PDE as a Party. Whenever a parent brings a special education due process complaint, the special education due process hearing is held between the parent and LEA. (20 U.S.C. §1415(f)(1)(A); 34 C.F.R. §300.511(a)). The hearing is conducted by the SEA, or the public agency directly responsible for the education of the child. (20 U.S.C. §1415(f)(1)(A); 34 C.F.R. §300.511(b)). In Pennsylvania, special education due process hearings are most often heard against the LEA through ODR, as authorized by the coordination of services with the

Commonwealth's Secretary of Education. (22 PA Code §14.162(p)). Hearings conducted through ODR meet the standards of IDEIA for the impartiality of hearing officers and the necessary due process and other requirements of the hearing process itself, regardless of the public agency (PDE, intermediate unit, school district, or charter school) involved in the hearing. (*See generally* 20 U.S.C. §§1415(f),(h); 34 C.F.R. §§300.511-300.515); 22 PA Code §14.162). In this matter, the hearing officer declined to dismiss the complaint as to PDE. The complaints at 15961-1415AS, filed against the CS, and 15962-1415AS, filed against PDE, were consolidated for hearing and led to these consolidated decisions. (HO-13).

PDE's Responsibility for Remedy. As indicated above, where the claim is appropriately asserted, a special education due process proceeding has jurisdiction over PDE. The special education due process complaint in the companion case at 15961-1415AS is properly brought against the Charter School to hear claims of alleged denial of FAPE, and the consolidation of that complaint with the complaint at 15962-1415AS followed. Ultimately, though, does PDE bear an obligation for remedy to a student where a defunct charter school has been found to have denied the student FAPE?

While there is no precedent exactly on point, a Pennsylvania federal District Court considered a closely analogous question in

Charlene R. v. Solomon Charter School, 2014 WL 6676575, 64 IDELR 208 (ED Pa. 2014). In Charlene R., the Court found that a parent had recourse to PDE where an agreement reached between a parent and a charter school, which subsequently shut its doors shortly after entering into the agreement, was not fulfilled. The Court gives a detailed and persuasive framework as to why PDE maintains an obligation to stand in the place of a defunct charter school in the resolution of FAPE-related claims.

Obviously, the nature of PDE's potential obligation in Charlene R. is different from its obligation in the instant case. In Charlene R., the Court considered the question of whether PDE had potential obligations as the result of a resolution meeting agreement (reached through the statutorily mandated resolution process and explicitly enforceable in state or federal court pursuant to 20 U.S.C. §§1415(f)(1)(B); 34 C.F.R. §§300.510) where the defunct charter school did not meet its FAPE-related obligations under that agreement. Here, the question presented is even more fundamental: Does PDE have potential obligations as the result of denial-of-FAPE allegations, made from whole cloth, against a defunct charter school?

As made clear in the implementing regulations of the IDEIA, at 34 C.F.R. §§300.1-300.818, the SEA, which in Pennsylvania is PDE, "is responsible for ensuring that the requirements of this part [34 C.F.R. §§300.1-300.818] are carried out and that each educational program for

children with disabilities administered within the State, including each program administered by any other State or local agency…is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA and meets the educational standards of the SEA." (34 C.F.R. §300.149(a)(1)-(2); *see also* 24 U.S.C. §1412(a)(11)(A)(ii)(II)).

Utilizing an expansive consideration of IDEIA FAPE-responsibility provisions as well as its funding provisions, including legislative intent related to those provisions, and citing Third Circuit precedent in Kruelle v. New Castle County School District, 642 F.2d 687 (3d Cir. 1981), the Court in Charlene R. reaches the following conclusion: Taken all together, these statutory and case law mandates "clearly signal that the SEA is to bear primary responsibility for ensuring that every child receives the FAPE that he or she is entitled to under (IDEIA). While the SEA ordinarily delegates actual provision of this education to LEAs, the SEA by statute must step in where a LEA cannot or will not provide a child with a FAPE." Charlene R., 2014 WL 6676575 at *5.

This hearing officer agrees. As part of this decision, it is explicitly held that, in the circumstance where parents whose denial-of-FAPE claims against a defunct charter school have not been resolved between the parents and the school by agreement and have not been the basis of any adjudication, name PDE in a complaint as the SEA with potential obligations for the provision of FAPE in a companion complaint against

the defunct charter school, the complaint against PDE must proceed alongside the complaint against the charter school. Furthermore, it is explicitly held that where, as here, parents carry their burden in proving a denial of FAPE and are entitled to remedy, PDE must stand in the shoes of the defunct charter school and provide that remedy.

Thus, not only is PDE subject to the jurisdiction of these proceedings, but it is also a proper party to the proceedings. Also, under the terms of IDEIA and as found in persuasive federal judicial opinion, PDE bears a substantive obligation to ensure that a student receives compensatory education where a defunct charter school has failed to provide FAPE.

Therefore, PDE is responsible for providing compensatory education to the student. This record, however, does not provide the hearing officer with a sense of confidence that he can craft an equitable compensatory education award. Parents argue, in their closing statement (HO-7), that the compensatory education offered by PDE is inadequate. On balance, however, in its self-initiated investigation PDE seems to have undertaken a good faith examination of how the student can be, and should be, provided with a compensatory education remedy. More critically, on this record, an amount of hundreds of hours of compensatory education is an equitable remedy. Therefore, the 573

hours of compensatory education determined by PDE will be adopted as the compensatory education remedy in this matter.[8]

In adopting this figure, two points must be made emphatically. First, this is not a "rubber stamp" of the findings in the CIR issued by BSE. The record in this matter, and findings of fact, are far more extensive than the investigation undertaken by PDE. And this is as it should be—as pointed out at footnote 7, a SEA's complaint investigation procedure is entirely separate from a special education due process complaint and hearing. Second (and therefore), the figure calculated by PDE is not binding on this hearing officer, or in a similar situation on any hearing officer; it is adopted here not by some type of necessity. It could easily be the case that a record in a case such as this could lead to a conclusion that some larger amount of compensatory education is an equitable remedy, and an additional amount of compensatory education is owed.[9] But these cautions are offered by way of dicta. Here, PDE's calculation of 573 hours of compensatory education is adopted as an equitable remedy.

Accordingly, PDE must provide 573 hours of compensatory education. As for the nature of the compensatory education award, the parents may decide in their sole discretion how the hours should be

[8] The 572.7 is hereby rounded up for convenience of calculation and record-keeping.
[9] Obviously, a hearing record might lead to a conclusion by a hearing officer that a smaller amount of compensatory education than that offered by PDE is a more equitable result.

spent so long as they take the form of appropriate developmental, remedial, or enriching instruction or services that further the goals of the student's current or future IEPs. These hours must be in addition to the then-current IEP and may not be used to supplant the IEP. These hours may occur after school, on weekends and/or during the summer months, at a time and place convenient for, and through providers who are convenient to, the student and the family.

There are limits, however, to the award of compensatory education hours. First, in the view of this hearing officer, this award of 573 hours of compensatory education represents the entirety of PDE's obligation in this matter. Second, there are financial limits on the parents' discretion in selecting the appropriate developmental, remedial or enriching instruction that furthers the goals of the student's IEPs. The costs to PDE of providing the awarded hours of compensatory education must not exceed an aggregate total figure utilizing an hourly rate for the average teacher's salary in [the school district].[10]

Accordingly, PDE is responsible for a compensatory education remedy as set forth in this section.

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[10] Access to a database through a large and reputable Pennsylvania newspaper (the *Morning Call*) indicates that, as of June 8, 2015, the average teacher's salary for an elementary education teacher in the [school district] was $70,806. http://www.mcall.com/news/nationworld/pennsylvania/mc-pa-teacher-salary-map-htmlstory.html (retrieved August 11, 2015). Given the minimum amount of 900 instructional hours per year in elementary education (22 PA Code §11.3(a)), this amounts to $78.67 per hour.

ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Charter School denied the student a free appropriate public education. Due to the closure and insolvency of the CS, however, it is unable to provide any compensatory education remedy to the student.

Therefore, the Pennsylvania Department of Education must provide the compensatory education remedy in this matter. The student is entitled to 573 hours of compensatory education. The nature and limits of the compensatory education are set forth above in the *PDE & Compensatory Education* section.

Any claim not specifically addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

August 11, 2015