

in the Complaint; (2) whether the Hearing Panel possesses Subject Matter Jurisdiction arising from Charter School 1's defunct status; and (3) whether the Student received FAPE.

I. Procedural History:

Student filed a due process complaint on October 6, 2017 naming Charter School 1 and Delaware Department of Education (DDOE) as the respondents. Due to lack of any objections to the contrary, Charter School 1 received the Complaint on October 6, 2017.² Charter School 1 is a defunct Charter School, which allegedly ceased operations at the end of 2015-16 school year³. In accordance with the Delaware Department of Education ("DDOE") policy and procedures, DDOE received the Complaint and appointed an independent three (3) person hearing panel. In the initial correspondence to the panel and parties, DDOE notified School District 2. Upon consideration and possibly School District 2's objections, DDOE replaced a member of the appointed panel due to potential conflict of interests.

On October 12, 2017, DDOE filed a Motion to Dismiss the Complaint. Due to confusion surrounding School District 2's status as an official party, the Hearing Panel set a deadline of October 18, 2017 for any party to file a Motion to Join School

² Hearing Panel provided certified written correspondence on two (2) separate occasions, insuring that Charter School 1 had opportunities to participate in both pre-hearing teleconferences.

³ School District 2's Board of Education voted not to renew Charter School 1's charter on December 16, 2015. See School District 2 Resp. Pg. 2

District 2, which authorized the Charter for Charter School 1.⁴ On October 20, 2017, the Hearing Panel conducted a conference call for all interested parties⁵ and issued an Order establishing a timeline for responses to DDOE's Motion to Join School District 2 as a Necessary Party.

School District 2 filed an Answer to DDOE's Motion to Join School District 2 as a Necessary Party with the Hearing Panel on October 22, 2017. On October 25, 2017, the Student filed a Response to DDOE's Motion requesting the Hearing Panel deny DDOE's Motion to Join School District 2 as a Necessary Party. The Hearing Panel conducted a pre-hearing scheduling conference on October 26, 2017, which determined that the Hearing Panel needed an evidentiary hearing to determine the status of DDOE's Motion to Dismiss the Student's Complaint based on a statute of limitations issue. As of an October 26, 2017 pre-hearing conference, Charter School 1 failed to (1) timely answer the Complaint, (2) conduct a resolution meeting, and (3) participate in any pre-hearing matter.

On October 27, 2017, DDOE filed a Reply to School District 2's Answer. On October 31, 2017, the Panel issued an Order and Opinion denying DDOE's motion to join School District 2 as a necessary party, determining that an authorizer

⁴ The Hearing Panel also provided an opportunity for School District 2 to file a Motion to Intervene.

⁵ The term "interested parties" refers to Charter School 1, DDOE, as well as the inclusion of School District 2 is not an official party until and Panel issues an Order on the pending Motion to Join.

of a Charter School possesses no liability because of the clear and unambiguous language contained in 14 *Del. C.* § 504(d).

On November 9, 2017, the Hearing Panel granted an order extending the timeline for a decision in this matter, providing Counsel with the ability to submit written closing arguments following receipt of the final hearing transcript. Consistent with a pre-hearing order, DDOE filed an answer to the Complaint on November 15, 2017.

On November 15, 2017, DDOE filed a second Motion to Dismiss for Lack of Subject Matter Jurisdiction. Student filed a response to the Motion to Dismiss for Lack of Subject Matter Jurisdiction on November 22, 2017. DDOE filed a reply on November 27, 2017. Upon review of the issues presented in the Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Panel determined that it would proceed to an evidentiary hearing, conduct a full FAPE hearing, and allow the parties to brief the Panel on the legal issues arising from the two (2) pending Motions in their written closing arguments. On November 29, 2017, DDOE filed a Motion for Reconsideration regarding the Hearing Panel's decision to proceed with a hearing and not ruling on the pending Motions to Dismiss the Complaint. The Hearing Panel denied the Motion for Reconsideration and conducted an evidentiary hearing/FAPE hearing on December 5th and 6th of 2017.

II. Delaware Department of Education's Motion to Dismiss - Known or Should Have Known Date.

Upon receipt of the Student's Due Process Complaint, DDOE filed a Motion to Dismiss the Complaint alleging that Student's Complaint is time-barred under the appropriate statute of limitations. "The due process complaint shall allege a violation that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint." 14 DE Admin. Code 926.7.2; 20 U.S.C. § 1415(f)(3)(C). The central issue this Hearing Panel must assess in deciding DDOE's motion to dismiss is whether Student's Parent knew or should have known about the alleged action prior to October 5, 2015⁶.

In the Complaint, Student alleges that his/her family became aware of the denial of FAPE upon receipt of the School District 1 Evaluation and subsequent Individualized Education Plan meeting on March 2, 2016.⁷ As a result of this evaluation, Student specifically alleges that the known or should have known date ("KOSHK") is March 2, 2016. DDOE's motion to dismiss challenges the KOSHK, asserting that specific facts in the Complaint illustrate that the KOSHK occurred much earlier in Student's academic career.

⁶ Student filed the Complaint on October 6, 2017.

⁷ Student's Compl. P. 14 ¶¶ 2-3.

In DDOE's Motion to Dismiss, DDOE's challenge to the KOSHK relies upon several fact sensitive issues that are not abundantly clear on the face of the Complaint. First, DDOE asserts that Student's family's decision to remove Student from Charter School 1, following the Student's x grade school year (2014-2015) creates the KOSHK. In addition, DDOE cites that Student's family should have known that problems existed with Student's education at Charter School 1 because of (1) an IEP progress report dated March 31, 2013 illustrating Student failed to make sufficient progress towards annual goals, (2) failure to meet modified grade level standards on Student's yearly report cards, and (3) failure to meet his/her IEP goals during his/her x grade year at Charter School 1.

Given the fact sensitive nature of the allegations contained in the present controversy, the Hearing Panel elected to conduct an evidentiary hearing to assess DDOE's Motion to Dismiss. The Panel conducted the evidentiary hearing during the first day of the scheduled FAPE hearing on December 5, 2017 and also received testimony affecting their rationale on December 6, 2017.

A. Issues Regarding a Complete Comprehensive Education Record of the Student.

The accuracy and completeness of the Student's comprehensive educational file (hereinafter referred to as "Student's File") created paramount confusion regarding (i) information affecting the Student, and (ii) a series of unanswered questions, which plagued the Hearing Panel throughout the pre-hearing process as well as the

issues addressed during the Hearing conducted on December 5th and 6th, 2017. Consistent with the Scheduling Order, Student and DDOE complied with the five (5) day disclosure requirement⁸, exchanging information and providing documentation to the Hearing Panel on or before November 28, 2017. Unfortunately, Student and DDOE failed to stipulate facts, which would benefit the Hearing Panel in considering the issues presented in both the pending motions as well as the raised during the hearing.

After the parties exchanged their five (5) day disclosures, Student's counsel raised concerns that DDOE failed to comply with Student's original request to review any records in DDOE's possession. Student asserted that documents contained in DDOE's five (5) day disclosures differed from records in the Student's File and immediately renewed a request to review all records either in DDOE's possession or available to them in preparation for the Hearing. DDOE maintained that due to the nature of their involvement in this Hearing, DDOE had no legal responsibility to provide this additional documentation to Student. As a result of the exchange between Student's Counsel and DDOE's Counsel, the parties and the Hearing Panel conducted an emergency pre-hearing telephone conference on

⁸ See 14 Del. Admin. Code 927, 11.0.; Pre-Hearing Order dated October 30, 2017, ¶ 15.

December 4, 2017 to assess the issues regarding the Student's File and Student's record request.

During the pre-hearing telephone conference on December 4, 2017, DDOE asserted that the Student's file would follow Student to every educational institution Student attended during his/her educational career. In preparation for the Hearing, DDOE requested educational records from Charter School 2; however, DDOE asserted that because DDOE was not the authorizer of Charter School 1, DDOE did not possess or maintain any additional records of the Student. Throughout the course of pre-hearing issues, DDOE maintained that School District 2, the authorizer of Charter School 1, possessed all of Student's records including Student's comprehensive educational file. Unfortunately, DDOE and Student never subpoenaed nor requested School District 2 to produce any educational records related to Student. However, DDOE's position regarding Student's records and Student's ability to review any record DDOE collects is misguided. As the SEA, DDOE collected records related to Student and Charter School 1, and as a result any information DDOE received or collected should have been made available to Student prior to a due process hearing⁹.

⁹ See 14 Del. Admin. Code 927, 11.0.

The Hearing Panel determined that DDOE failed to provide Student with the appropriate opportunity to review the records that DDOE collected. Despite this issue, Student's Counsel indicated that Student was prepared to proceed to a hearing given the assurances that the information provided in the five (5) day disclosures represented most, if not all, of the additional information available to DDOE. While the Hearing Panel was troubled with DDOE's position regarding Student's ability to review this additional information, the Panel was satisfied with proceeding to a Hearing based on Student's Counsel's position.

Throughout the pre-hearing procedures, DDOE maintained that all of Student's records would be in possession of School District 2, authorizer of Charter School 1, because School District 2 collected and maintained all of Charter School 1's files when Charter School 1 closed following the 2015-16 academic year. DDOE's position provides a credible explanation regarding the whereabouts of educational files; however, this rationale does not apply to this Student's comprehensive educational file. During the hearing, the record is abundantly clear that Student left Charter School 1 following his/her x grade academic year, 2014-2015. As a result of Student enrolling in School 2 in the School District 3, the School District 3 requested and received educational records from Charter School

1¹⁰. The records that the School District 3 received eventually followed the Student to School 1.

As a result of the five (5) day disclosures, DDOE, Student, and Panel learned that the records that followed Student to School 1, failed to include numerous documents related to the Student's education and created an incomplete comprehensive educational file. DDOE's claim that School District 2 collected all educational records from Charter School 1, fails to provide an appropriate rationale regarding Student's incomplete comprehensive educational file because Student left Charter School 1, one year prior to Charter School 1's closure. Student's complete educational file should have been transferred to School 1, via School District 3; however, the record clearly reflects that this did not occur.

Instead, a more plausible explanation regarding the incompleteness of Student's File arises from Charter School 1's compliance with School District 3's request for records. Charter School 1 maintained two (2) separate educational files for Student, one specifically containing all of the Student's special educational information. Upon receipt of the School District 3 request, the record appears to reflect that information contained in the special educational file may not have been provided to the School District 3. Due to Charter School 1's closure following the 2015-16 school year, the information that Charter School 1 failed to provide the

¹⁰ Student Exhibit 14, S-38.

School District 3 is most likely in the possession of School District 2; however, there is no guarantee that any information exists.

Unfortunately, neither DDOE nor Student specifically requested information or records from School District 2. Despite Student's objections to documents presented at the Hearing as well as Student's inability to review records that DDOE collected, Student opted to proceed to a Hearing on December 5th and 6th based on their ability to review the information DDOE provided in their five day disclosures.¹¹

The Hearing Panel believes that the information available to the Parties and the Hearing Panel represents an incomplete Student File. Student's decision to proceed with the Hearing required the Panel to determine Facts based on testimony, the credibility of the testimony of each witness, as well as the exhibits provided to the Hearing Panel. Despite knowledge that there is an incomplete Student File, the Facts as Determined at the Hearing represent the necessary information to arrive at a decision based on the merits of this case.

B. Facts as Determined in Evidentiary Hearing:

1. Student's background and family life.

At birth, Student weighed only x pounds and the Mother delivered Student with complications. Prior to Student's enrollment in x grade, Student's parents

¹¹ Pre-Hearing Conference Transcript, Dec. 4. 2017, at Page 23, 9-16.

separated; however, the parents shared joint custody of Student.¹² After Student's parents separated, Student lived with his/her Parent (hereinafter referred to as "Student's Parent") for a portion of every week. There was no formal custody agreement between the Student's Father and Mother for Student; however, the parents seemed to provide a normal routine of exchanging Student on Wednesdays.¹³ The Student's Parent indicated that this was a flexible schedule and that on occasion, each parent accommodated changes to the schedule as events arose.

Student's Parent indicated that near the end of Student's x grade school year, Parent gained full custody of the Student. Student's Parent indicated that Delaware Division of Family Services requested Parent have full custody of Student, arising from an incident. Following the incident, Student solely resided with Student's Parent.

2. X grade at Charter School 2

Student attended Charter School 2 for x grade during the 2011/2012 academic year. During Student's attendance at Charter School 2, Student's Parent indicated that he/she deferred to Student's Parent regarding educational decisions affecting the Student.

¹² Testimony of Student's Parent indicates that the Student shared his/her time residing with both parents during the week with a typical switch occurring on Wednesday.

¹³ Student's Parent indicated that the normal routine was sometimes altered due to either Parent's availability.

While in x grade, Charter School 2 performed a series of evaluations of Student in an effort to provide adequate support for Student. Charter School 2 performed a psycho-educational evaluation (hereinafter referred to as “Charter School 2 Evaluation”) of the Student.¹⁴ The purpose of the psycho-educational evaluation was to assess the appropriate support that the Student required to succeed in an educational setting.

Doctor performed the evaluation and provided Charter School 2 with a written report. After receipt of the Charter School 2 Evaluation, Charter School 2 convened an Evaluation Summary Meeting and an Individualized Education Plan (“IEP”) Meeting. As part of the Charter School 2 protocol, Student’s parents should have received a copy of the Delaware Procedural Safeguards; however, the record fails to adequately reflect if the parents received such safeguards. Charter School 2’s special education director indicated that he/she routinely provided the procedural safeguards to parents as part of an evaluation summary meeting or an IEP meeting; however, there is no documentation in the record that clearly indicates Student’s parent or specifically Student’s Parent received the Delaware Procedural Safeguards.¹⁵

¹⁴ Psycho-educational evaluation performed via two (2) observations on December 9th and 14th, 2011, DDOE Binder 1, Exhibit 5, DDOE 47-54.

¹⁵ Transcript, Page 119-120.

On February 23, 2012, Charter School 2 held the IEP meeting, which both Student's Mother and Student's Father participated. During this meeting, Charter School 2 reviewed the Charter School 2 Evaluation and provided Parents with an Evaluation Summary Report.¹⁶ The special education director at Charter School 2 compiled an Evaluation Summary Report, which included the recommendations of Doctor.¹⁷ Doctor indicated that:

1. "[the Student's] assessment [should be] shared with Student's parents. . .for them to better understand the finer nuances of his/her learning profile, including significant difficulties with attention and intellectual functioning."¹⁸
2. "[Student should] attend the rest of his/her x grade year at a specialized x grade facility in the district in which he/she lives. . .[which] will be able to provide speech, language, occupational and physical therapy and possibly special wrap-around care that he/she will require in order to benefit from his/her academic environment."¹⁹

¹⁶ DDOE Binder 1, Exhibit 6, DDOE 63-74.

¹⁷ DDOE Binder 1, Exhibit 6, DDOE 66.

¹⁸ DDOE Binder 1, Exhibit 6, DDOE 66

¹⁹ DDOE Binder 1, Exhibit 6, DDOE 66.

3. “[Student’s] abilities should be reassessed after one year in order to determine whether or not he/she has made progress in a more individualized setting.”²⁰

In addition to the above, the recommendations also encouraged (i) an occupational therapist evaluation, (ii) an audiological evaluation, and (iii) a neurological evaluation.²¹

During the same February 23, 2012 meeting, the Student’s Parents and professionals at Charter School 2 conducted an IEP Meeting. During this meeting, the Student’s parents voiced concerns about Student’s academic growth and accommodations; however, they indicated a willingness to do whatever necessary to ensure success.²² As a result of this IEP meeting, Charter School 2 implemented an IEP (hereinafter referred to as “Charter School 2 IEP”) for Student, providing “individualized support in the areas of reading and math by . . . reading specialists, special education teacher, and special education paraprofessional.”²³ The Charter School 2 IEP established four (4) unique educational needs: (i) identifying letters

²⁰ DDOE Binder 1, Exhibit 6, DDOE 66.

²¹ DDOE Binder 1, Exhibit 6, DDOE 66.

²² Transcript, Page 86.

²³ Transcript Page 88.

and sounds – first sound fluency, (ii) reading comprehension skills, (iii) fine motor skills used in the classroom, and (iv) number recognition.²⁴

As a result of the Charter School 2 IEP, Charter School 2 provided Student with a variety of services including one-on-one instruction; special education professionals provided support either inside Student’s general education classroom or via pull-out services, and weekly instruction from a reading specialist.²⁵ Charter School 2 also performed an Occupational Therapy evaluation²⁶ and a Physical Therapy evaluation²⁷, and attempted to provide a hearing evaluation²⁸, which led to Charter School 2 providing Student with thirty (30) minutes of Occupational Therapy weekly.²⁹

Student’s Parent indicated that he/she never received any notice of the evaluation meeting or an IEP Meeting from Charter School 2.³⁰ Despite Student’s Parent’s suggestion, Student’s Parent indicated that during Student’s x grade year,

²⁴ DDOE Binder 1, Exhibit 7.

²⁵ Transcript Page 88-89.

²⁶ DDOE Binder 1, Exhibit 8, DDOE84-86.

²⁷ DDOE Binder 1, Exhibit 9, DDOE 87-88.

²⁸ DDOE Binder 1, Exhibit 9.

²⁹ Transcript Page 97-98.

³⁰ Transcript, Page 190 at 13-24, Page 191 at 1-18.

Charter School 2 performed an evaluation³¹; however, despite going to Charter School 2 several times he/she did not specifically recall attending an IEP meeting.³² Despite Student's Parent's testimony, Student's Parent's signature appears on Page 9 of the Evaluation Summary Report³³ as well as the IEP meeting that occurred on February 23, 2012³⁴.

While there are issues regarding the comprehensive educational file of the Student³⁵, it is impractical to believe that Charter School 2 or DDOE would create documents or maintain a document, which does not accurately reflect the proper attendance of an IEP meeting. While there may be questions about the whereabouts of the Student's File, it appears that the Student's Parent attended a meeting at Charter School 2 on February 23, 2012, reviewed the Charter School 2 Evaluation and participated in the IEP meeting. While the record lacks specific documentation, the Hearing Panel concluded that the Student's Parent most likely received a copy

³¹ Transcript, Page 374, at 8-10.

³² Transcript, Page 378 at 1-16.

³³ DDOE 74.

³⁴ DDOE 75, 83.

³⁵ The complete whereabouts of the Student's Comprehensive Educational File are largely at issue throughout the entire pre-hearing calendar as well as during the Hearing.

of the Delaware Procedural Safeguards based on the testimony of the special education director at Charter School 2.

Charter School 2 promoted Student from x grade to the x Grade; however, Student's final report card for x grade illustrated that student fell below grade level in the areas of reading and math³⁶. After Student's x grade year, Student's Parent opted to enroll Student at Charter School 1 for x Grade. Student's Parent acknowledges that during this time of Student's academic career, Student's Parent typically deferred to the Student's Parent regarding these educational decisions.

3. Student's Time at Charter School 1

3.1 Student's X Grade Year

Based on the decision of Student's Parent, Student enrolled at Charter School 1 for his/her x grade year. During Student's x grade year, Charter School 1 relied upon both the Charter School 2 Evaluation and the Charter School 2 IEP.³⁷ Despite the Charter School 2 Evaluation recommending closely monitoring the Student and further evaluation within one (1) year, Charter School 1 relied upon the Charter School 2 Evaluation for three (3) years.³⁸

³⁶ Student Exhibit 1.

³⁷ Transcript Pg 279, 7-15.

³⁸ Transcript Pg 280, 1-24, Pg 281 1-6.

During the month of October in the Student's x grade year, Charter School 1 received the cumulative educational file of Student and speech records from Charter School 2.³⁹ Upon receipt of the Student's records, Charter School 1 utilized the Charter School 2 IEP. Unfortunately, the record fails to reflect any progress reports from Charter School 1 regarding Student's progress towards meeting the educational objectives identified in the Charter School 2 IEP.

During Student's X Grade year, Charter School 1 unsuccessfully attempted to contact Student's parents regarding three (3) separate IEP meetings; however, Student's parent indicated that he/she never received any notices of any IEP meeting during the Student's x grade year. Ultimately, Charter School 1 convened an IEP meeting on April 24, 2013.

Special Education Director⁴⁰ indicated that the IEP team met with Student's Parent and reviewed Student's performance toward the Charter School 2 IEP, the Student's overall education performance as well as developed an annual IEP.⁴¹ One

³⁹ Student's Exhibit 3, S-5.

⁴⁰ Special Education Director was the Special Education Director at Charter School 1 during the beginning of Student's X Grade School Year and became the Executive Director during the later part of Student's X Grade School Year through Student's completion of the X Grade.

⁴¹ DDOE Binder 1, Exhibit 11, DDOE 97-98; Transcript Pg 280, 1-24, Pg 281 1-6.

of the main concerns that the IEP team identified was Student regularly arriving late to school, which affected his/her performance in his/her first period class.⁴²

Charter School 1 apparently relied upon the Charter School 2 Evaluation, which clearly indicated that the Student should be re-evaluated after one (1) year to further assess and monitor the cognitive function and support necessary for this Student. Unfortunately, Charter School 1 failed to re-evaluate the Student until late in his/her X Grade year; however, relied upon the Charter School 2 Evaluation and input from the Student's Parent to implement an IEP on April 24, 2013 (hereinafter referred to as "X Grade IEP").⁴³ The X Grade IEP identified five (5) unique educational needs and characteristics: (i) sight words, (ii) reading comprehension, (iii) math computation, (iv) numerical recognition, and (v) improvement regarding tardiness.⁴⁴ The X Grade IEP did provide the Student with support services, including (i) small group instructions for sight words and reading comprehension and (ii) small group instruction, the use of manipulatives, and a modified content and assessments in math computation and numerical recognition.⁴⁵

⁴² Transcript Pg 296 3-24. DDOE Binder 1, Exhibit 12, DDOE 97.

⁴³ DDOE Binder 1, Exhibit 13.

⁴⁴ DDOE Binder 1, Exhibit 13.

⁴⁵ DDOE Binder 1, Exhibit 13.

Despite the X Grade IEP, the record fails to reflect any detailed notes regarding the Student's performance regarding meeting the specific benchmarks identified in the Charter School 2 IEP. There is controversy regarding the production of the X Grade IEP, which arises from the Student's Comprehensive Educational File; however, produced evidence was most likely printed from IEP PLUS as a result of Student filing the Complaint, which sufficiently indicates that Charter School 1 implemented the X Grade IEP.

During the X Grade year, Student struggled to meet the education benchmarks established in the X Grade IEP, as evidenced in the Charter School 1's progress report dated May 31, 2013.⁴⁶ Unfortunately, the Charter School 1 progress report dated May 31, 2013 only provides one progress narrative for each educational objective and fails to accurately demonstrate how the Student progressed throughout his/her X Grade year. Rather it appears that Charter School 1 only monitored Student's progress towards the X Grade IEP at the end of the Student's X Grade year. Despite these shortcomings, Charter School 1 indicated that Student made sufficient progress towards each of the five (5) educational objectives identified in the X Grade IEP.

⁴⁶ Student's Exhibit 4, S-7-8.

Student's X Grade Report Card illustrates that the Student approached the educational standard in all four (4) educational components⁴⁷ and illustrated a pattern of tardiness.⁴⁸ Despite testimony during the hearing from Special Education Director, the Student's X Grade Report card does not indicate a modified curriculum for the Student. Charter School 1 promoted Student from Grade x to Grade x, despite Student merely approaching the Educational Standard for his/her grade level.

3.2 Student's X Grade Year

During Student's X Grade Year, Charter School 1 kept adequate records regarding Student's academic progress towards the X Grade IEP. In a progress report dated December 11, 2013, Charter School 1 indicated that Student made sufficient progress towards his/her reading comprehensions goals; however, noted that he/she failed to make sufficient progress towards his/her math related objectives.⁴⁹ As the x grade year progressed, a progress report dated April 18, 2014 illustrates that Student continued to make academic strides; however, there were still some areas that Student failed to master sufficiently.⁵⁰

⁴⁷ English Language Arts, Mathematics, Science, Social Studies.

⁴⁸ Student's Exhibit 5, S-9.

⁴⁹ Student's Exhibit 6, S-10-11.

⁵⁰ Student's Exhibit 7, S-14-16. Student failed to correct his/her tardiness during the 3rd marking period and was not making sufficient progress regarding sight word recognition.

Similar to the x grade year, Charter School 1 conducted an IEP meeting with Student's Parent near the end of the Academic Year. Charter School 1 convened an IEP meeting on April 23, 2014 and indicated that Student still needs to address the tardiness issue; however, he/she made excellent progress towards his/her IEP goals.⁵¹ Once again, Student's Parent did not participate in the IEP meeting; however, it appears that Student's Parent never received notice of an IEP Meeting.

As a result of the IEP Meeting on April 23, 2014⁵², Charter School 1 and Student's Parent implemented a new IEP (hereinafter referred to as "X Grade IEP"). The X Grade IEP provided four (4) unique educational needs and characteristics: (i) reading comprehension, (ii) double digit computations, (iii) sight words continued, (iv) tardiness.⁵³ The X Grade IEP provided small group instruction in both the general education classroom as well as pull-out instruction in the special education room to assist in reading comprehension, double digit computations, and sight words.⁵⁴ Despite the support provided to the Student, the IEP contained no speech language, occupational therapy, audiology, or psycho-educational evaluations.⁵⁵

⁵¹ Student's Exhibit 8, S-18.

⁵² The IEP Meeting may have occurred on April 23rd or April 29, as the hand written notes suggest a meeting occurred on April 23; however, the Student Exhibit 9 indicates a meeting date of April 29, 2014.

⁵³ Student's Exhibit 9.

⁵⁴ Student's Exhibit 9.

⁵⁵ Transcript Pg 470 13-18, Student's Exhibit 11, S-20.

Additionally, despite the clear language indicating a need for further evaluation appearing in the Charter School 2 Evaluation, Charter School 1 appeared to continue to rely on this assessment in creation of the IEP. Student's progress during the x grade year resulted in a promotion to the t x Grade, while the student approached the standard in both English Language Arts and Mathematics, based on a modified curriculum in both areas.⁵⁶

3.3 Student's X Grade Year

During Student's X Grade Year at Charter School 1, Student lived with Student's Parent on a full-time basis, which greatly assisted in Student's attendance at school and alleviate Student's tardiness issue. Due to the adoption date of the X Grade IEP, Charter School 1 utilized the X Grade IEP for most of the Student's X Grade Year. As the school year progressed, Charter School 1 attempted to schedule an IEP meeting with Student's Parent as well as obtain permission to re-evaluate Student. Student's Parent re-scheduled the IEP meeting on three (3) separate occasions and still failed to appear for the scheduled IEP meeting.⁵⁷

At the time that Charter School 1 convened the IEP team during the Student's X Grade, the Charter School 2 Evaluation was over three (3) years old. Charter School

⁵⁶ Student's Exhibit 11.

⁵⁷ DDOE Binder 2, Exhibit 3.

1 relied upon this evaluation in creating an IEP at the end of the Student's x grade year, with an initiation date of April 30, 2015. The X Grade IEP provided three (3) unique educational needs: (i) reading comprehension, (ii) sight word recognition, and (iii) double digit computation.⁵⁸ Despite Student's X Grade report card as well as his/her present level of educational performance, Charter School 1 continued to maintain the same or similar services, aids and modifications to assist Student.⁵⁹

After implementing this IEP during the X Grade year, Charter School 1 finally received Parent's permission to evaluate the Student on April 27, 2015.⁶⁰ Charter School 1 utilized an independent professional to evaluate the Student on May 24 and 26, 2015. While the record fails to adequately contain documentation demonstrating the Student's Parent received a copy of the Delaware Procedural Safeguards, the Hearing Panel concluded that based on the testimony presented at the Hearing, Student's Parent most likely received a copy of the Delaware Procedural Safeguards as a result of his/her participation in the IEP/Evaluation process.

An independent professional, a school psychologist, provided a report to Charter School 1.⁶¹ Due to the dates of the evaluations and the un-dated report, it is

⁵⁸ DDOE Binder 2, Exhibit 5.

⁵⁹ DDOE Binder 2, Exhibit 5.

⁶⁰ DDOE Binder 2, Exhibit 5.

⁶¹ DDOE Binder 2, Exhibit 7.

unclear how Charter School 1 utilized this report. Despite Student failing to meet the educational objectives as well as failing to approach a modified standard, Charter School 1 promoted Student to the X Grade at the end of Student's X Grade year.⁶²

4. Student's X Grade Year

After Student completed the X Grade at Charter School 1, Student's Parent intended to move his/her family, including Student. However, due to some unforeseen circumstances, Student's Parent delayed moving his/her family and Student attended X Grade in Delaware. Student's Parent initially enrolled Student at his/her neighborhood school in the School District 3.⁶³ Shortly after the start of Student's x grade year, Student's Parent enrolled Student at School 1 in the School District 1. The beginning of Student's x grade year was marred by flip-flopping between these two schools, before Student's Parent consented to Parent's desire for Student to attend School 1.

School 1 (hereinafter referred to as "School 1") received the Student's educational files from the School District 3.⁶⁴ During Student's x grade year, School

⁶² Student's Exhibit 12.

⁶³ Charter School 1 transferred Student's records to District 3 at the Request of Student's new school. Charter School 1 remained open during the 2015-16 School year; however, it closed after School District 2 did not renew the School's Charter. All of the Student's records should have followed Student to District 3; however, the Comprehensive Educational file of Student is at question throughout this Hearing.

⁶⁴ Based on issues prevalent in this Hearing, it is unclear whether District 3 or District 1 received the Comprehensive Educational file.

1 completed a comprehensive evaluation of the Student (hereinafter referred to as “School District 1 Evaluation”), assessing Student’s speech and language needs⁶⁵, occupational therapy needs⁶⁶, and audio logical needs.⁶⁷ Additionally, School 1 performed a comprehensive psychoeducational evaluation⁶⁸, which examined Student’s basic cognitive and behavioral functioning, non-verbal intelligence, memory and learning, academic achievement, ADHD-related needs, executive functioning deficits, and adaptive skills. School 1 conducted evaluations and assessed Student’s need for the use of assistive technology.

As a result of the School District 1 Evaluation, School 1 discovered that Student possessed low average- average intelligence; however, Student’s academic skills and performance fell well below of Student’s cognitive capacity.⁶⁹ After School 1 convened an IEP meeting, Student received a plethora of extensive supports and services, which addressed the following areas of need: decoding, sight word vocabulary, reading comprehension, reading fluency/accuracy, math computation, math problem solving, spelling, basic sentence structure, etc. School

⁶⁵ Student’s Exhibit 19, S 82-85.

⁶⁶ Student’s Exhibit 17, S 48-49.

⁶⁷ Student’s Exhibit 15, S 39-42.

⁶⁸ Student’s Exhibit 18, S 50-81.

⁶⁹ Student’s Exhibit 20, S 86-106.

1 determined and implemented 1:1 or 1:2 assistance, as well as determining that Student qualified for an IEP based on an Other Health Impairment and as a student with a learning disability.⁷⁰

The School District 1's comprehensive evaluation and IEP team implemented several strategies to assist Student in making appropriate educational progress; however, none of these similar strategies were utilized during Student's time at Charter School 1. Following Student's x grade year at School 1, Student's Parent moved the family to another state where Student continues his/her educational career with the support of these additional educational services.

C. Issue Presented:

Whether the Student's Parent knew or should have known of the allegations forming the basis of the Student's Complaint prior to October 6, 2015.

D. Analysis:

The IDEA requires states receiving federal education funding to provide a free and appropriate public education ("FAPE") to children with disabilities.⁷¹ A FAPE "consists of educational instruction specially designed to meet the unique needs of the [child with a disability], supported by such services as are necessary to permit

⁷⁰ Student's Exhibit 21, S 107-140.

⁷¹ 20 U.S.C. § 1400(d)(1)(A).

the child to benefit from the instruction.”⁷² In providing FAPE, LEA’s with the assistance of parents and teachers create IEPs, which provide a package of individually tailored special education and support services designed to best meet the needs of the child with a disability.⁷³ IDEA provides parents with a series of procedural safeguards, which permit the parent to file a Due Process Complaint “with respect to any matter relating to . . . the provision of [FAPE] to such child.”⁷⁴

A Complaint is timely filed when the Student submits an impartial due process request “within 2 years of the date the parent . . . knew or should have known about the alleged action that forms the basis of the complaint.”⁷⁵ This two (2) year statute of limitation shall not apply if (i) the Local Education Authority (LEA) made specific misrepresentations that the LEA resolved the problem forming the basis of the due process complaint, or (ii) the LEA withheld information from the Student, which was required to be provided to the Student.⁷⁶

Pursuant to Fed. R. Civ. P. 12(b)(6), Student’s Complaint shall survive DDOE’s Motion to Dismiss, provided that the Student plead facts sufficient to “state

⁷² Ridley Sch. Dist. v. M.R., 680 F.3d 260, 268-69 (3d. Cir. 2012).

⁷³ See 20 U.S.C. § 1414 (d)(1)(B).

⁷⁴ 20 U.S.C. § 1415(b)(6).

⁷⁵ 20 U.S.C. § 1415(f)(3)(C).

⁷⁶ See 34 CFR 300.511(f).

a claim to relief that is plausible on its face.⁷⁷” In evaluating DDOE’s Motion to Dismiss, allegations contained in the Complaint are accepted as true and the Panel evaluates the evidence, including favorable inferences arising there from, in the light most favorable to the non-moving party.⁷⁸

The sole issue arising from DDOE’s Motion to Dismiss involves the KOSHK, which is a matter resolved based on the developed factual record.⁷⁹ Issues involving the KOSHK and the statute of limitations require a fact sensitive analysis of the Student’s educational record, parental participation, and the LEA’s action or inaction, which permit a proper determination of the KOSHK and whether the statute of limitations bar the filing of the Complaint.⁸⁰ “[T]he limitations period of § 1415(f)(3)(C) 'begins to run once the plaintiff did discover or a *reasonably diligent plaintiff* would have discovered the facts constituting the violation -- whichever comes first.⁸¹”

⁷⁷ Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009)(quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

⁷⁸ See Windom v. Ungerer, 903 A.2d 276, 280 (Del. 2006).

⁷⁹ See Benjamin A. v. Unionville-Chadds Ford Sch. District, 70 IDELR 150 (E.D. Pa. 2017).

⁸⁰ See K.H. v. New York City Dep’t of Educ., 63 IDELR 295 (E.D. NY 2014); Swope v. Central York Sch. Dist., 58 IDELR 32 (M.D. Pa. 2012). See also 71 Fed. Reg. 46, 706 (2006).

⁸¹ *G.L. v. Ligonier Valley School Dist. Auth.*, 802 F.3d 601, 614 (3d Cir. 2015) (emphasis added) (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 653, 130 S. Ct. 1784, 176 L. Ed. 2d 582 (2010)).

DDOE's firmly believes that Student's departure from Charter School 1 in June 2015, creates the KOSHK, which would permit this Court to dismiss the Complaint. DDOE's assertion relies on the belief that inadequate educational support and Student's failure to make meaningful academic progress directly resulted in his family's decision to find a different educational setting. The record clearly refutes DDOE's claim, as the Student left Charter School 1 for other reasons despite his/her lackluster academic progress at Charter School 1. However, refuting this causal relationship does not complete the evaluation of the KOSHK, rather it simply rejects DDOE's suggestion that the KOSHK should align solely with Student's departure from Charter School 1 without additional factors or supporting rationale.

DDOE effectively demonstrated that Charter School 2 and Charter School 1 provided Student's Parent with the Delaware Procedural Safeguards. While there is some concern regarding adequate documentation of every notice sent to the parent, serious lapses in the comprehensive educational file, there is sufficient credible testimony that establishes a routine practice to demonstrate that the Student's Parent received a copy of the Delaware Procedural Safeguards in X Grade from Charter School 2 and in X Grade from Charter School 1. While it is important that Student's Parent received the Delaware Procedural Safeguards, the exact date is not relevant in the determination of the KOSHK. While the Student's or Student's

Parent's receipt of the Procedural Safeguards does not directly result in the KOSHK, it is an important consideration in regards to whether Student could rely on one of the two (2) exceptions in filing a claim outside the two (2) year statute of limitations. The Hearing Panel does not believe that either of these exceptions applies to Student's Complaint.

Student asserts that the KOSHK is March 2, 2016, which is the date of the School District 1 Evaluation. Student's claim is that the School District 1 Evaluation highlighted all of the necessary services, which Student deserved to receive to ensure FAPE and that without this new information, Student's Parent was not aware of the Student's academic difficulties and the failure of Charter School 1. While the School District 1 Evaluation provides a comprehensive analysis, we find Student's claim regarding the KOSHK unpersuasive. While, The Hearing Panel does not whole-heartedly agree with DDOE's KOSHK analysis; we find that DDOE provides a more compelling argument than Student regarding the KOSHK.

Student's Parent's knowledge and participation in the Charter School 2 Evaluation of Student provides the Student's Parent with crucial foundational knowledge regarding the Student. Specifically, Student's Parent learned of the deficiencies surrounding Student's academic and intellectual abilities and the required educational support necessary for the Student to achieve academic success. During Student's X Grade year, Charter School 2 performed a series of evaluations

on the Student, which included a comprehensive psycho-educational evaluation of the Student on February 9, 2012, as well as an occupational evaluation.

While the Student's Parent challenges the adequacy of the Charter School 2 Evaluation and disputes his/her participation in the evaluation process, the record clearly establishes that Charter School 2` initially evaluated the Student in X Grade. Despite the Student Parent's credible testimony regarding much of the Student's academic career, the Hearing Panel firmly determined that the record demonstrates that the Parent attended the evaluation summary meeting on February 9, 2012.

The psycho-educational evaluation discussed at the February 9, 2012 meeting provides a comprehensive summary of the Student's educational issues and most notably provides Student's Parent with some basic fundamental challenges facing the Student academic career. These basic fundamental challenges provide an important distinction, which establish some foundational knowledge regarding the necessary steps to ensure a successful educational path for Student. It is naïve for Student's Parent to assert that only upon receipt of the School District 1 Evaluation did he/she discover Student's learning issues, because there is sufficient detail contained in the Charter School 2 Evaluation that illustrate the Student possessed some severe educational challenges.

The Charter School 2 Evaluation placed Student's Parent on notice that "[Student's] level of attention, motivation and cooperation serve as indicators of significant academic and intellectual difficulties at this point in his/her development.⁸²" Further, this evaluation recommends that Student should attend the rest of his/her x grade year at a specialized x grade facility and that "Student's abilities should be re-assessed after one year in order to determine whether or not he/she has made progress in a more individualized setting[. ⁸³]"

Student's Parent's receipt of the Charter School 2 Evaluation creates a foundation, which clearly establishes that Student possessed (i) significant academic difficulties, (ii) will require a re-assessment or further evaluation after one (1) year to better assess Student's abilities, and (iii) would greatly benefit from a specialized educational facility. This Hearing Panel is consciously aware of the *Jana K. v. Annville Cleona School District* decision,⁸⁴ which clearly rejected the District's contention that the Parent knew or should have known date arose upon receipt of an initial evaluation. The Charter School 2 Evaluation differs substantially from the evaluation considered in the *Jana K.* decision, which only addressed whether a Student was eligible for wrap-around services. The *Jana K.* Court concluded that

⁸² DDOE-53.

⁸³ DDOE-54.

⁸⁴ 39 F. Supp. 3d 584 (M.D. Pa. 2014).

based on Student's Parent's lack of specialized training and knowledge of special education and IDEA, the receipt of the wrap-around evaluation failed to create the KOSHK date, because the evaluation failed to provide specific recommendations for special education, related services and other accommodations.⁸⁵ The Charter School 2 Evaluation is not a perfect evaluation; however, it does provide simple, straight forward information to the Student and Student's Parent that the student's significant academic and intellectual abilities require additional specialized support.

The Hearing Panel does not believe that this completes the KOSHK analysis. While the Charter School 2 Evaluation does not create the KOSHK date, it creates an important piece of the Student's Parent's knowledge of Student and Student's academic endeavor, which are important pieces in determining the KOSHK date.

Student's Parent's receipt of the Charter School 2 Evaluation and his/her participation in the psycho-educational evaluation creates initial notice regarding the Student's academic ability and need for further evaluation. Additionally, Student's Parent does not dispute and rather relies upon on this evaluation in the Complaint to demonstrate a pattern of schools promoting Student despite Student's failure to meet grade level standards. Specifically, the Complaint indicates that Charter School 2

⁸⁵ See 39 F. Supp. 3d 584 (M.D. Pa. 2014).

promoted Student from X Grade to the x grade despite “below grade level skills in many areas of math and reading.”⁸⁶

Consistent with the Student’s Parent’s testimony, the Hearing Panel believed that Parent deferred to the Student’s Parent regarding educational decisions for the Student. Despite relying upon Student’s Parent, Student’s Parent indicated that despite not receiving many items from Charter School 1, Parent did generally review the Student’s report cards. The record also indicates that while the Student’s Mother and Student’s Father did not live together, they regularly communicated about their children to accommodate changes to their weekly custody schedule.

The Hearing Panel concludes that upon receipt and inspection of the Student’s x and x report cards, Student and Student’s Parent knew or more specifically should have known that Charter School 1 was failing to provide FAPE to the Student. The Student’s x grade report card demonstrates that the Student’s final grades approached the Standard in areas of English language arts, mathematics, and science.⁸⁷ Additionally, Student’s X Grade report card illustrates that Student continued upon the same educational trajectory, merely approaching the standard in areas of English language arts and mathematics.⁸⁸ The X Grade report card also

⁸⁶ Student’s Compl. P. 3 ¶¶ 4.

⁸⁷ Student Exhibit 5, S-9.

⁸⁸ Student Exhibit 11, S-34.

provides a notation that the Student was evaluated based on a modified curriculum.⁸⁹ While the Parent indicated that he/she believed the Student maintained adequate progress because he/she was promoted in both grades, we do not find this assessment to provide adequate weight considering Student's Parent's knowledge of the Charter School 2 Evaluation.

Due to the filing of the Complaint, it is not vital to identify the exact KOSHK date because the KOSHK date arose at the end of the X Grade year and the Complaint is not timely filed. For purposes of this analysis we conclude that the KOSHK date is the date of X Grade Report Card, which occurred on the final school day of the Student's X Grade year. The Hearing Panel arrives at this KOSHK date because the Student's Parent possessed certain knowledge and understanding from his/her receipt of the Charter School 2 Evaluation. That knowledge required Student to receive specialized instruction as well as to be re-evaluated within one (1) year to better assess the Student's disabilities and the necessary support to achieve satisfactory educational support. Student's claims that he/she did not know or could not have known the extent of the underperformance of the Student at Charter School 1, until receipt of the School District 1 Evaluation are unpersuasive.

While the determination of the KOSHK date is unique to this individual case and set of facts, the combination of the Student's parent's knowledge gained from

⁸⁹ Student Exhibit 11, S-34.

the Charter School 2 Evaluation and the Student's grades based on a modified curriculum in the X Grade clearly illustrate that the Student's parent knew or should have known of the allegations, which form the basis for the Complaint.⁹⁰ The Student's Parent gained important insight about the educational support necessary to address Student's academic and intellectual difficulties; however, despite this knowledge, the Student's Parent believed the Student made adequate progress because Charter School 2 and Charter School 1 continued to promote Student from grade to grade. While the Third Circuit concluded that parents "may not be sufficiently sophisticated to comprehend the problem" that a student may encounter in an educational setting⁹¹, Student's Parent's argument is unpersuasive because the Student's Grades need to be evaluated based on the Student's Parent's knowledge gained from the Charter School 2 Evaluation.

The Hearing Panel believes the finer details of the report cards in consideration of the knowledge gained from the Charter School 2 Evaluation, provide ample support that the Student was not making adequate academic progress during the X Grade. In summary, we conclude the KOSHK date is the date of the

⁹⁰ See *Jefferson County Bd. of Educ. v. Lolita S.*, 977 F. Supp 2d 1091, (N.D. ALA 2013) (affirming a decision that did not permit Parent to bring forth action based on the Statute of Limitations because Parent receipt of grades provided notice to parent that the student was not adequately progressing).

⁹¹ See *M.C. v. Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. 1996).

X Grade report card as a result of the Student's Parent's foundational knowledge gained from the Charter School 2 Evaluation and his/her review of the X and X Grade Charter School 1 Report Cards, which clearly demonstrate that the Student failed to make meaningful academic progress.

In addition the reasons set forth above, if the Panel applied the facts developed to the reasonably diligent Petitioner, a similar KOSHK date would be established. It is well settled, that the Third Circuit clarified that IDEA contains a traditional statute of limitations that requires a party to file IDEA claims within two years of reasonable discovery of those claims – that is, within two years of the knew or should have known (“KOSHK”) date for the claims.⁹² In addition to clarifying the two year statute of limitations standard, the limitations period of § 1415(f)(3)(C) "begins to run once the plaintiff did discover or a reasonably diligent plaintiff would have discovered the facts constituting the violation — whichever comes first."⁹³ This permits the Hearing Panel to consider, based on the factual record created, when a reasonable parent knew or should have known the allegations that form the basis for the Complaint.

⁹² *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015).

⁹³ See *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015), quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 653, (2010).

The Hearing Panel believes that in applying the reasonably diligent petitioner standard to the same set of facts that were used above, that there is no doubt that the KOSHK date occurred later than the end of the Student's X Grade year at Charter School 1. First, a reasonably diligent parent would have understood that specialized education was essential to the development of the Student because of the recommendations contained in the Charter School 2 Evaluation.

While Student's Parent was aware of the Charter School 2 Evaluation, the Student advocates that the KOSHK date should only occur upon receipt of the School District 1 Evaluation. The Student's Parent indicates that the promotion of the Student from grade to grade demonstrated to him/her that Student made sufficient progress. In light of the Student's Parent participating in the Charter School 2 Evaluation and receiving a copy, the Student's position regarding the report cards is unsettling. A reasonably diligent parent would have carefully reviewed the report card in light of the Charter School 2 Evaluation to ensure certain progress was made. Most notably, the X Grade report card clearly references a modified curriculum, which a reasonably diligent parent would have noticed and most likely asked questions and strongly advocated for their Student.

In the current case, Student's Parent cares deeply about the Student and offered extremely credible testimony regarding the Student's case. However, every negative fact, possible document sent home, or attempt to meet with school

personnel was met with unsatisfactory reasoning of deference to the Student's Parent regarding educational decisions or that Student's Parent never received documentation. While the Student's Parent's testimony was credible, there were times where the testimony seemed to fit Student's narrative because of the incomplete comprehensive educational file.

While Student's Parent deferred to Student's Parent regarding educational decisions, when Student's Parent gained full time custody of the Student at the end of the X Grade, the Hearing Panel believes that a reasonable diligent petitioner would have paid closer attention to the educational progress of the Student. A reasonably diligent parent would have carefully reviewed the X Grade report card, noticed that the Student received a modified curriculum, attended the X Grade IEP Meeting at Charter School, and carefully reviewed the X Grade report card. Based on all of this information in light of the Student's Parent's participation at the Charter School 2 Evaluation, we believe that no later than the conclusion of the Student's X Grade year, a reasonably diligent petitioner would have known or should have known the allegations that form the basis of the Complaint.

III. Delaware Department of Education's Motion to Dismiss – Subject Matter Jurisdiction.

Charter School 1 is a defunct Charter School, which failed to file an answer or participate in any pre-hearing activities. Prior to a scheduled hearing on December 5th, 2017, DDOE filed a motion to dismiss the complaint, citing that this Hearing

Panel lacks subject matter jurisdiction to find DDOE, the State Educational Agency (SEA), liable for inactions of the Charter School 1 to provide FAPE to the Student.

DDOE argues that this Hearing Panel and Forum are inappropriate because the insolvency of a Delaware Corporation shall lie exclusively within the jurisdiction of the Delaware Court of Chancery. DDOE claims that Charter School 1, a Delaware Corporation established under 14 Del. C. § 504(a), must comply with all of requirements of Delaware Corporate law. DDOE acknowledges that at the time of filing the motion to dismiss, it is unknown whether Charter School 1 still exists or whether the Corporation sought dissolution following the closure of the Charter school 1 following the 2015-2016 academic year.

DDOE asserts that because Charter School 1 failed to appear in this proceeding and defend the allegations contained in the Complaint, Student cannot bring forth an action against DDOE, the SEA, until Student first brings forth an action against Charter School 1 in the Court of Chancery. DDOE suggests that a Complaint involving a defunct Charter School⁹⁴, which also names DDOE, the SEA, are barred in this forum, until the Court of Chancery determines the insolvency of the defunct Charter School, which is Delaware Corporation.

⁹⁴ All Charter Schools in Delaware are incorporated as a Delaware Corporation pursuant to 14. Del. C. § 504(a).

Student refutes DDOE's challenge to subject matter jurisdiction citing that the Complaint does not seek a violation of Delaware Corporate law but rather a remedy for a violation of the Individuals with Disabilities Education Act ("IDEA"). Student argues that the Hearing Panel is the proper forum because Student's complaint arises out of IDEA and concerns the provisions of FAPE to this Student.

Student argues that a Charter School is a local educational agency("LEA") that must provide children with disabilities with a FAPE. Student claims that IDEA imposes a direct obligation on DDOE, specifically that DDOE, the SEA, is responsible for setting up policies and procedures to ensure local compliance with IDEA. In addition, Student asserts that IDEA requires the SEA to fill in for LEAs that are unable or unwilling to establish and maintain compliance with IDEA. Student rejects the need to determine the insolvency of Charter School 1 through the Court of Chancery, claiming that an independent statutory obligation exists for DDOE to provide compensatory education as the SEA.

A. Issue Presented

Whether Hearing Panel can hear a due process complaint against the SEA, when the complaint is filed against a defunct Charter School, when it is unknown whether the Corporation continues to exist or the Corporation is insolvent, and the Student did not first seek relief from the Court of Chancery.

B. Analysis

While both sides make compelling arguments regarding whether the Hearing Panel provides appropriate forum, it is not necessary to address the appropriateness of this forum because of the decision reached on DDOE's Motion to Dismiss the Complaint arising from the KOSHK.

IV. FAPE Hearing

For the reasons set forth above, the Student's Complaint fails to survive DDOE's Motion to Dismiss and the issues raised in the FAPE Hearing are not addressed.

Decision

For the reasons stated above, DDOE's Motion to Dismiss the Complaint arising from the challenge to the Statute of Limitations is **GRANTED**.

SO ORDERED this **10th day** of **January, 2018**.

/s/ Charles T. Armbruster, III

Charles T. Armbruster, III, Esquire
Panel Chairperson

/s/ Vicki D. McGinley, Ph. D

Vicki D. McGinley, Ph. D
Educator Panelist

/s/ Nancy Horstmann

Nancy Horstmann
Layperson Panelist

Date: January 10, 2018

cc: Lauren M. O'Connell-Mahler, Esquire, Parent's Attorney (via e-mail)
Valerie Dunkle, Esquire, DOE's Attorney (via e-mail)
Registered Agent – Charter School (via mail)
Chairman of the Board – Charter School (via mail)
Nancy Horstmann, Layperson Panelist, (via e-mail)
Vicki McGinley, Ph.D., Educator Panelist, (via e-mail)
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