

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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N.F., E.W., AND S.K., PARENTS OF MINOR  
CHILDREN ENROLLED IN CHESTER  
COMMUNITY CHARTER SCHOOL,

Intervenor Plaintiffs,

v.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF EDUCATION, RON  
TOMALIS, SECRETARY OF EDUCATION,  
CHESTER-UPLAND SCHOOL DISTRICT,  
AND CHESTER-UPLAND SCHOOL DISTRICT  
BOARD OF SCHOOL DIRECTORS

Defendants.

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Case No. 2:12-cv-00132-MMB

**AMENDED COMPLAINT IN INTERVENTION**

Intervenor Plaintiffs respectfully allege as follows:

**Introduction**

1. Intervenor Plaintiffs are parents of minor children enrolled in the Chester Community Charter School ("CCCS"), located in Delaware County, Pennsylvania.
2. CCCS is currently not receiving the public funds it is statutorily entitled to in order to provide Intervenor Plaintiffs' children with a free and appropriate education to which they are entitled. CCCS serves approximately 3000 students from kindergarten through eighth grade, with nearly 700 with special education needs.
3. CCCS has stated that it is in danger of stopping operations due to lack of funding.

4. Much of CCCS's daily operating budget comes from statutory entitlements that, pursuant to the Charter School Law<sup>1</sup>, the Chester-Upland School District and the Chester-Upland School District Board of Directors (collectively, "the School District Defendants") are required to pay to CCCS.

5. Since March 2011, the School District has not paid all of the statutory funds they admit are due and owed to CCCS.

6. Instead, since March 2011, the School District has used the funds they were required to pay to CCCS for their own use.

7. CCCS has requested that the Department of Education ("PDE") and the Secretary of Education (collectively, "the Commonwealth Defendants") provide CCCS with funds since the School District has not, pursuant to 24 P.S. § 17-1725-A(a)(5).

8. CCCS received some funds from the PDE, however, the PDE has only paid CCCS sporadically and only a portion of the funds owed.

9. Beginning in February of 2012, the Secretary and his designees began conditioning any payments to CCCS on the submission of invoices by CCCS to the PDE so that the PDE could determine whether they constitute "essential expenditures."

10. So far, the Secretary has deemed only payroll as an "essential expenditure" while denying payments for rent, which he has deemed "non-essential."

11. The Secretary has no authority under the law to decide which expenses are "essential" as a prerequisite to payments under the Charter School Law.

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<sup>1</sup> Act of June 19, 1997, P.L. 2225, 24 P.S. §§ 17-1701-A-17-1751-A.

12. Upon information and belief, the Secretary is not applying the Charter School Law, 24 P.S. § 17-1725-A, the same way with respect to all Charter Schools in the Commonwealth.

13. Intervenor Plaintiffs are not aware of other instances where the Secretary has required charter schools to undergo the process it has required CCCS to undergo, or of the Secretary reviewing other charter schools' invoices to see if they are "essential" prior to providing payment.

14. The Secretary has not been delegated the authority to alter statutory funding to CCCS as he has done and is doing.

15. Due to Chester-Upland School District's and the Secretary's withholding of payments to CCCS, there is an imminent threat to the provision of services to special education students at CCCS. As such, the current school funding policies discriminate against special education students enrolled in CCCS in violation of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

16. The Chester-Upland School District also seeks to fund only the education of its students at the expense of charter school students and asks the Commonwealth to cut off or reduce educational funding of charter school students in favor of its students.

### **Jurisdiction**

17. This Court has jurisdiction over this matter under 20 U.S.C. § 1415(i)(2) for those claims asserted under the IDEA. Intervenor Plaintiffs' claims are brought pursuant to 28 U.S.C. § 1331, in that claims are asserted under the law of the United States. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because (1) at least one of the Defendants resides in this district; (2) all of the Defendants reside in this state; and (3) a substantial part of the events giving rise to the claims in this action occurred in this district.

**Parties**

19. D.S.B. is an 11 year old student in the fifth grade at CCCS who has been diagnosed with developmental dyslexia and a speech and language disorder for which he receives certain special education assistance. D.S.B.'s parent is N.F.

20. J.W. is a 6 year old student in kindergarten at CCCS who has been diagnosed with cerebral palsy. J.W. requires total assistance at school and has an aid that stays with her throughout the day. J.W.'s parent is E.W.

21. J.W. is a 9 year old student in the third grade at CCCS. Since attending CCCS, J.W. has entered a mainstream classroom since beginning in a resource room. J.W.'s parent is E.W.

22. J.W. is a 9 year old student in the third grade at CCCS. J.W. is currently enrolled in a resource room. J.W.'s parent is E.W.

23. M.G. is a student in the sixth grade at CCCS and enrolled in an accelerated program. M.G.'s parent is S.K.

24. A.G. is a student in the fifth grade at CCCS and enrolled in an accelerated program. A.G.'s parent is S.K.

25. U.G. is a student in the fourth grade at CCCS and is part of a remedial reading group. U.G.'s parent is S.K.

26. M.G. is a student in the third grade at CCCS and is enrolled in a mainstream classroom. M.G.'s parent is S.K.

27. S.G. is a student in the second grade at CCCS and is part of a remedial reading group. S.G.'s parent is S.K.

28. U.G. is a student in the first grade at CCCS and is enrolled in a mainstream classroom. U.G.'s parent is S.K.

29. Defendant Pennsylvania Department of Education is a state government agency that oversees the public education system in the Commonwealth of Pennsylvania, including the Chester-Upland District.

30. Defendant Ron Tomalis, Secretary of Education for the Commonwealth of Pennsylvania is the agency head of the PDE.

31. Defendant Chester-Upland School District is a public school district with a principal business address of 1720 Melrose Avenue, Chester, PA 19013.

32. Defendant Chester-Upland School District Board of School Directors manages and operates Chester-Upland School District and has a principal business address of 1720 Melrose Avenue, Chester, PA 19013.

### **Statutory Framework**

33. The funding provision of the Charter School Law, 24 P.S. § 17-1725-A, exclusively governs statutory funding for charter schools.

34. With respect to non-special education students, the statute provides:

For non-special students, the charter school shall receive for each student enrolled no less than the budgeted total expenditure per average daily membership of the prior school year, as defined in section 2501(20), minus the budgeted expenditures of the district of residence for nonpublic school programs; adult education programs; community/junior college programs; student transportation services; for special education programs; facilities acquisition, construction and improvement services; and other financing uses, including debt service and fund transfers as provided in the Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems established by the department. This amount shall be paid by the district of residence of each student. 24 P.S. § 17-1725-A(a)(2)

35. With respect to special education students, the statute provides:

For special education students, the charter school shall receive for each student enrolled the same funding as for each non-special education student as provided in clause (2), plus an additional amount determined by dividing the district of residence's total special education expenditure by the product of multiplying the combined percentage of section 2509.5(k) times the district of residence's total average daily membership for the prior school year. This amount shall be paid by the district of residence of each student. 24 P.S. § 17-1725-A(a)(3)

36. With respect to the mandatory and ministerial duties of CUSD and the Secretary, the statute provides:

Payments shall be made to the charter school in twelve (12) equal monthly payments, by the fifth day of each month, within the operating school year ... If a school district fails to make a payment to a charter school as prescribed in this clause, the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district after receipt of documentation from the charter school. 24 P.S. § 17-1725-A(a)(5).

37. The duties of the Secretary under this provision are mandatory and ministerial. "[T]here is no air in Section 1725-A(a)(5). The Secretary's responsibility to withhold subsidies is mandatory and ministerial. There is no discretion to exercise because the estimated amount to be withheld is determined by the charter school's documentation." *CCCS v. Commonwealth of Pa.*, 996 A.2d 68, 77-78 (Pa. Cmwlth. 2010).

38. The School District Defendants, like the Secretary, have mandatory and ministerial duties under the Charter School Law. The language of Section 17-1725-A(a)(5) is unequivocal and compels a school district to act without discretion: "[p]ayments *shall be made* to the charter school in twelve (12) equal monthly payments, by the fifth day of each month, within the operating school year." 24 P.S. § 17-1725-A(a)(5) (emphasis added).

39. The funding provision of the Charter School Law, therefore, requires a school district to submit funding to charter schools receiving students from the district. Payments by the

school district are set by statutory formulas and must be made on a fixed schedule. The Charter School Law mandates that a school district shall pay a charter school according to two express and unequivocal statutory formulas (one for non-special education students and one for special education students). 24 P.S. § 17-1725-A(a)(2)-(3).

40. Additionally, the Charter School Law provides that "[i]f a school district *fails to make a payment* to a charter school as prescribed in this clause, the secretary *shall deduct* the estimated amount, as documented by the charter school, from any and all State payments made to the district after receipt of documentation from the charter school." 24 P.S. § 17-1725-A(a)(5); *see also Slippery Rock Area Sch. Dist. V. Pa. Cyber Charter Sch.*, 31 A.3d 657, 666 (Pa. 2011) (noting that 24 P.S. § 17-1725-A(a)(5) applies when "faced with a recalcitrant school district").

41. The Charter School Law requires the District to make monthly payments to CCCS.

42. The duties created in the Charter School Law are mandatory and do not leave any discretion to the District or Commonwealth Defendants.

43. The Charter School Law does not condition payments to charters, like CCCS, on the ability of a school district to repay the Commonwealth.

44. Likewise, the Secretary has no discretion, under any circumstances, to refuse to make the statutorily calculated payments to charter schools, like CCCS, that the charter school documents as being owed by a school district.

45. Moreover, the Charter School Law, as written, is to be applied uniformly and equally as to all charter schools in the Commonwealth and does not provide the Secretary with any basis to apply this law differently, as he is doing, to different charter schools.

46. The Individuals with Disabilities Education Act (“IDEA”), 29 U.S.C. §§1400, *et seq.*, provides funding to the states for the purpose of giving children with disabilities special education and related services to help them overcome the effect of their disabilities on their educational performance. The IDEA covers children with a broad range of disabilities, including children with health impairments, serious emotional disturbances and learning disabilities.

47. As a condition to accepting federal funds under the IDEA, states are required to set up a system through which students in need of special education are identified, evaluated and provided with a free appropriate public education (“FAPE”) by their local educational agencies (LEA) in conformity with federal law. 20 U.S.C. § 1412.

48. The IDEA requires that students be provided services in the least restrictive environment (LRE) appropriate to their disabilities. 20 U.S.C. §1412(a)(5)(A). The IDEA also requires that states have policies and procedures which ensure that a state funding mechanism which distributes state funds on the basis of type of setting in which a child is served does not result in placements that violate the LRE requirement. 20 U.S.C. §1412(a)(5)(B).

**Defendants Fail to Pay CCCS Required Public Funds**

49. Notwithstanding the District's mandatory payment obligations under the Charter School Law, the School District Defendants have not made all required payments in full since March 2011.

50. As required by the Charter School Law, CCCS wrote the PDE demanding payment of the funds that the School District Defendants admitted they owed CCCS.

51. From April through August, the PDE paid CCCS most of the funds that were due and owed.



52. In September 2011, the School District Defendants again failed to pay to CCCS \$2,729,115.07 in statutory funding it was required by law to pay.

53. Upon information and belief, CCCS, by letter dated September 6, 2011, demanded from PDE \$2,729,115.07 in statutory funding. At the discretion of the Secretary, the PDE failed to provide all funds to CCCS for September.

54. In addition, on September 23, the PDE notified the Chester-Upland School District that the PDE would be withholding the entirety of any and all State payments due to the District for September and October 2011, because the PDE already *had advanced the School District Defendants* \$3.5 million to cover operational costs for the District in June 2011.

55. The letter to the District also stated that notwithstanding PDE's receipt of CCCS's September 6 demand letter the PDE "will be unable to satisfy CCCS's withholding request until funds become available for payment to [the District] in December 2011."

56. Since that time, neither the School District Defendants nor the Commonwealth Defendants have paid CCCS in full the money needed to continue to provide appropriate levels of education to CCCS students.

57. Upon information and belief, the School District Defendants have no intention to remit to CCCS its fully statutory entitlement for the 2011-2012 school year.

58. The PDE has refused to assure CCCS that it will provide such funding to CCCS notwithstanding its admitted obligation to do so.

59. Indeed, the District recently sent a letter to Governor Corbett demanding an \$18.7 million advance from funds held by the Commonwealth to permit the District to satisfy its debts. The District's letter makes clear that the School District Defendants have overspent their budget and have no money to pay CCCS.

60. In response to the District's demand, Secretary of Education Ron Tomalis denied the request because of, among other things, the School District Defendants' failure to control spending, despite numerous advances of moneys from the Commonwealth.

61. In light of these letters, it appears that no Defendant plans to, or will, fully fund CCCS for the balance of the 2011-2012 school year.

62. At a January 12, 2012 Court hearing before this Court, lawyers for the PDE admitted that it was statutorily required to make payments to CCCS for the benefit of Intervenor Plaintiffs pursuant to the Charter School law. Despite acknowledging that obligation, lawyers for the PDE stated that the PDE would not make any further payments to CCCS without further Order of Court.

63. Further, Secretary Tomalis has acknowledged that payments to the District, when amounts are owed to CCCS, constitute violations of the School Code. Secretary Tomalis has stated:

Section 1725-A(a) of the School Code requires the Secretary to withhold from any and all state payments those funds that are allocated to a charter school to educate children enrolled in such charter schools. It is not a disputable issue: the law requires this withholding. As Secretary; I am not at liberty to disregard state statutes; only the General Assembly may change the law.

*See 1/6/12 letter from Secretary Tomalis (emphasis original) attached as Exhibit "A."*

64. If CCCS is not paid, Intervenor Plaintiffs' children will face perilous consequences, as CCCS has an action pending against Defendants in the Commonwealth Court of Pennsylvania stating that it will be unable to continue to educate CCCS's approximately three thousand public school students, including 670 special education students.

65. PDE's refusal to fully fund CCCS also has the imminent danger of depriving CCCS special education students of a free and appropriate education. PDE has also created the

imminent threat of a continuing deprivation of this right by stating it will not fund CCCS without further order of the Court.

66. Without the funding of CCCS, the CCCS parents' children will be forced back into the CUSD, where the CUSD has already said they do not have the funds to provide a free and appropriate education to the students currently in CUSD, let alone additional students.

67. Moreover, forcing CCCS students into CUSD would be detrimental to the CCCS parents' children. In 2011, CCCS's Adequate Yearly Progress score for "IEP-Special Education" in reading was "SHC" (Group met target using Safe Harbor with Confidence Interval) and in math was "SH" (Group met target using Safe Harbor). CUSD's scores for both metrics were "group did not meet measure." As such, the special education students in CCCS are receiving a benefit from their education (FAPE), whereas CUSD special education students do not appear to be receiving a benefit.

68. The PDE's decision to previously advance additional funds to the CUSD beyond what it was entitled, without ensuring that CCCS received all funds to which it is currently entitled, constituted a funding mechanism that discriminates against CCCS students based on the type of setting that the CCCS students are being educated, namely the charter school instead of the traditional public school.

69. CUSD seeks to further exacerbate this discrimination by asking this Court to end or reduce further entitled funding of CCCS.

70. Despite the ongoing violation of the Charter School Law, the Secretary has withheld funding earmarked for CCCS. Instead, the Secretary has demanded CCCS provide individual invoices for expenses to be approved by the Secretary. The Secretary is deciding what expenses he thinks are "essential" and providing funding for those services only.

71. These actions by the PDE and CUSD also violate the Equal Protection Clause by discriminating against the charter school students over similarly situated CUSD students attending traditional public school.

72. This conduct also violates the Equal Protection Clause by discriminating against CCCS students over similarly situated students enrolled in charter schools throughout the Commonwealth by not complying with the Charter School Law in providing funding to CCCS.

73. These are disastrous and irreparable outcomes that must be immediately and permanently avoided through relief from this Court.

**Count I: Violation of the Charter School Law by Secretary Tomalis**

74. Paragraphs 1-73 are incorporated by reference as if fully repeated herein.

75. Secretary Tomalis must prospectively comply with the Charter School Law, which requires that upon receipt of documentation by a charter school that it has not been paid statutory funds, the Secretary “shall deduct” the amount documented and remit the same to the charter school. 24 P.S. § 17-1725-A(a)(5); CCCS, 966 A.2d at 77-78.

76. Section 17-1725-A(a)(5) provides as follows: “If a school district fails to make a payment to a charter school as prescribed in this clause, the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district after receipt of documentation from the charter school.” 24 P.S. § 17-1725-A(a)(5).

77. The secretary has a ministerial duty to comply with the provisions of the Charter School Law and is not permitted to exercise discretion in remitting funding to charter schools.

78. By refusing to remit properly documented amounts owed, and initiating invoice by invoice determinations of whether CCCS’ expenses are, in his opinion, “essential,” the

Secretary is acting outside of the ministerial powers delegated to him and without any authority whatsoever.

79. The General Assembly, when it drafted the Charter School Law, was specifically concerned with preventing harm to charter school students that results from untimely payment; thus, injunctive relief merely puts the parties in the positions that the legislature intended. *See CCCS*, 996 A.2d at 78 ("It is clear ... that as between the school district and the charter school, the legislature has decided that more harm will befall a charter school that is not paid timely and accurately than upon a school district that may experience a delay in the receipt of the state subsidy to which it is entitled.").

80. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against Secretary Tomalis and ask for an order from this Court:

- (a) ordering Secretary Tomalis not to improperly distribute funds to the School District that should be remitted to CCCS;
- (b) compelling Secretary Tomalis to comply with the Charter School Law and provide funds to CCCS upon documentation of non-payment by the School District;
- (c) enjoining Secretary Tomalis from acting outside of the ministerial duties delegated to him with respect to funding under the Charter School Law;
- (d) enter permanent injunctive relief;
- (e) grant Intervenor Plaintiffs their costs and attorneys fees;
- (f) grant such additional relief as is just and appropriate.

**Count II: Violation of the Charter School Law by School District Defendants**

81. Paragraphs 1-80 and incorporated by reference as if fully repeated herein.

82. The School District Defendants must make payments for the education of Intervenor Plaintiffs' children attending CCCS. Pursuant to the Charter School Law, payments are to be made by the School District Defendants to CCCS on the fifth day of each month. See 24 P.S. § 17-1725-A(a)(5) ("Payments shall be made to the charter school in twelve (12) equal monthly payments, by the fifth day of each month ...").

83. The School District Defendants have a corresponding duty to perform the act of payment in full under the same provision. There is no discretion in Section 17-1725-A(a)(5), it simply and unequivocally mandates that payments to a charter school shall be made on the fifth day of each month.

84. The School District Defendants have failed that duty each month since March 2011.

85. Injunctive relief is necessary because Intervenor Plaintiffs are entitled to have CCCS receive the funds being withheld, to provide them with their right to a free and appropriate education.

86. Injunctive relief is necessary to avoid an injury to Intervenor Plaintiffs that cannot be compensated by damages: cessation of CCCS's operations, leaving approximately 3000 students, including many special education students, without a school to attend.

87. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against District Defendants and ask for an order from this Court:

- (a) ordering the School District Defendants not to improperly withhold funds that should be remitted to CCCS;
- (b) compelling Defendants to immediately remit all admittedly due and owing funding to CCCS for any months presently outstanding;

- (c) enter permanent injunctive relief which requires Defendants to distribute funds so that CCCS receives the statutory funding for its students;
- (d) grant Intervenor Plaintiffs their costs and attorneys fees;
- (e) grant such additional relief as is just and appropriate.

**Count III: Violation of Equal Protection Clause by Commonwealth Defendants**

88. Paragraphs 1-87 are incorporated by reference as if fully repeated herein.

89. Defendants have violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in that the manner in which the Secretary of Education is withholding payments to CCCS discriminates against students enrolled in CCCS over similarly situated public school students.

90. The PDE has provided to CUSD, through payments or advances, all money to which it is entitled for the 2011-2012 school year to educate students in CUSD.

91. Through the date of this Complaint, CCCS has not received all money it is entitled to under 24 P.S. § 17-1725-A(a)(2) or (3), to educate students at CCCS.

92. The Commonwealth Defendants do not have a legitimate governmental purpose for depriving charter school students of statutory funding while providing all statutory funding for the education of similarly situated traditional public students.

93. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against Commonwealth Defendants and ask for an order from this Court:

- (a) ordering PDE not to improperly distribute funds to the School District that should be remitted to CCCS;

- (b) enter permanent injunctive relief which requires Defendants to prospectively comply with the Charter School Law and provide statutory funds to CCCS as required;
- (c) grant Intervenor Plaintiffs their costs and attorneys fees;
- (d) grant such additional relief as is just and appropriate.

**Count IV: Violation of Equal Protection Clause by Commonwealth Defendants**

94. Paragraphs 1-93 are incorporated by reference as if fully repeated herein.

95. Defendants have violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution in that the manner in which the Secretary of Education is withholding payments to CCCS discriminates against students enrolled in CCCS over similarly situated students enrolled in other charter schools throughout the Commonwealth of Pennsylvania.

96. By failing to comply with the Charter School Law as to CCCS in the same manner as other charter schools, the Commonwealth Defendants are favoring students in other charter schools over CCCS students.

97. Instead of complying with the Charter School Law, the Secretary has conditioned any payments to CCCS on the submission of invoices by CCCS to the PDE so that the PDE can determine whether they constitute “essential expenses.”

98. Upon information and belief, no charter school outside of Chester-Upland School District has been required to submit invoices in order to receive its statutory funding.

99. Secretary Tomalis has stated publicly, and testified at legislative hearings, that CCCS is not the cause of the financial problems facing CUSD.



100. The Commonwealth Defendants do not have a legitimate governmental purpose for failing to fund CCCS students in compliance with the Charter School Law, while following the Charter School Law to fund the education of similarly situated students enrolled in other charter schools.

101. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against Commonwealth Defendants and ask for an order from this Court:

- (a) ordering PDE not to improperly distribute funds to the School District that should be remitted to CCCS;
- (b) compelling Defendants to prospectively apply the Charter School Law equally to all charter schools in the State;
- (c) enjoining the Commonwealth Defendants from acting outside of the ministerial duties delegated to the Secretary with respect to funding under the Charter School Law;
- (d) grant Intervenor Plaintiffs their costs and attorneys fees;
- (e) grant such additional relief as is just and appropriate.

**Count V: Violation of the Pennsylvania Constitution by Secretary Tomalis**

102. Paragraphs 1-101 are incorporated by reference as if fully repeated herein.

103. The Constitution of the Commonwealth of Pennsylvania provides that “the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa. Const., art. III, § 14.

104. The General Assembly enacted the Public School Code, 24 P.S. § 1-101 et seq., to govern the funding of public education in the Commonwealth. The Charter School Law is part of the Public School Code.

105. The PDE has conceded that it is statutorily required to make payments to CCCS for the benefit of Intervenor Plaintiffs pursuant to the Charter School law. The PDE simultaneously stated that it would not make any further payments to CCCS without further Order of this Court.

106. This withholding of statutorily entitled funding by the Secretary of Education is unconstitutional.

107. Beginning in February 2012, the Secretary has conditioned any payments to CCCS on the submission of invoices by CCCS to the PDE so that the PDE could determine whether they constitute “essential expenses.”

108. So far, the Secretary has deemed only payroll as an “essential expense,” while denying payments for rent, which it has deemed “non-essential.”

109. The Secretary has no authority under the law to decide for which expenses it will reimburse CCCS, and such conduct is unconstitutional.

110. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against Commonwealth Defendants and ask for an order from this Court:

- (a) ordering PDE not to improperly distribute funds to the School District that should be remitted to CCCS;
- (b) enter permanent injunctive relief which requires Defendants to prospectively comply with the Charter School Law and provide statutory funds to CCCS as required;
- (c) grant Intervenor Plaintiffs their costs and attorneys fees;
- (d) grant such additional relief as is just and appropriate.

**Count VI: Violation of the IDEA by Commonwealth Defendants**

111. Paragraphs 1-110 are incorporated by reference as if fully repeated herein.

112. Defendants have violated the IDEA by failing to provide funding and creating the imminent danger that CCCS will be unable to continue to support disabled children in the least restrictive programs in CCCS and by providing a funding mechanism which fails to ensure that special education students continue to receive a free and appropriate education.

113. By failing to ensure that CCCS has resources to continue to adequately provide special education students with an appropriate education, Defendants have violated the IDEA by creating the threat that CCCS students would be forced back into the CUSD, where the CUSD has already said they do not have the funds to provide a free and appropriate education. This would result in the placement of children in extremely restrictive environments not appropriate to their disabilities.

114. Defendants' actions and failures to act are actionable violations of the IDEA pursuant to 20 U.S.C. § 1415(i)(2).

115. Wherefore, Intervenor Plaintiffs respectfully request judgment in their favor and against Commonwealth Defendants and asks for an order from this Court:

- (a) Ordering PDE not to improperly distribute funds to the School District that should be remitted to CCCS;
- (b) enter permanent injunctive relief which requires Defendants to prospectively comply with the IDEA and provide statutory funding to CCCS for its special education students as required;
- (c) grant Intervenor Plaintiffs their costs and attorneys fees;
- (d) grant such additional relief as is just and appropriate.

Respectfully submitted,

/s Jeffery A. Dailey

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Dated: March 7, 2012

Counsel for Parents of Students at Chester  
Community Charter School

**CERTIFICATE OF SERVICE**

I, Natalie Lesser, hereby certify that on the 7th day of March, 2012, a true and correct copy of Parents of Students at Chester Community Charter School's Amended Complaint in Intervention was served upon the following counsel of record:

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# EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA  
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The Honorable Andrew E. Dinniman  
Democratic Chairman  
Senate Education Committee  
183 Main Capitol  
Harrisburg, PA 17120

Dear Senator Dinniman:

I have reviewed your press statement criticizing the Governor and Department of Education for the situation that has developed in the Chester Upland School District (CUSD). Your criticisms are misplaced and your facts are simply wrong.

First, I think it is critical to restate some of the undisputed issues and decisions made by the CUSD as it failed to adjust to the district's economic reality:

- The District failed to satisfy obligations it incurred in the 2010-11 school year, and instead deferred those payments to the 2011-12 school year, including but not limited to more than \$1 million owed to the intermediate unit for services rendered and several million dollars in payments to professional staff.
- Perhaps it was unknown to you, but CUSD was actually cash flow negative LAST SPRING, and had run out of monies to cover its ongoing obligations. Had it not been for the swift and unprecedented action of the Corbett Administration to address that situation (detailed below), CUSD would have defaulted on bond payments in June.
- Despite a projected budget deficit of \$20 million for the 2011-12 school year, the District rehired or recalled dozens of previously furloughed professional and other staff at a cost of approximately \$6.45 million that the District clearly acknowledges it does not have.
- The District admittedly failed to account for more than \$27 million of expenditures in its 2011-12 budget, including unpaid invoices, payroll and medical insurance expenses from 2010-11, and unemployment compensation, repayment of the state basic education subsidy, special education and increased



charter school costs for 2011-12. For the employees it actually furloughed, it budgeted nothing for unemployment compensation: alone a \$2.2 million error.

The fact is that this District spends more than \$17,000 to educate each student enrolled in a District school while the state average is \$13,700 per student.

Second, your statements that the Administration's decisions caused the financial situation in CUSD are blatantly wrong. Here are the facts:

- When enrollment in the CUSD decreased almost 300 students this current year over last year, state Basic Education Funding (BEF) for CUSD increased in 2011-12, even when taking into account loss of federal ARRA funds:
  - 2010-11 total actual BEF was \$43,909,437 (including ARRA and EdJobs).
  - 2011-12 total estimated BEF is \$49,251,802.
- For CUSD, the State BEF increase alone is \$10,319,445, or more than 26 percent; even with the loss of federal ARRA funding, the overall increase is \$5,342,365, or 12 percent.

As was apparent to the legislature and all school districts at the time that the ARRA funding was allocated, the stimulus money was a one-time infusion of funds that were not to be relied upon for ongoing expenses. The Governor recognized that because ARRA funds were built into the BEF, it was critical that the STATE contribution to this main funding source for public education increase for the 2011-12 fiscal year (a line item that I know you are aware disproportionately benefits poorer school districts). As I know you are aware, but failed to note in your statement, because of the importance of this funding stream and the flexibility it affords school districts to address their educational and financial needs, this line item was substantially INCREASED this year – over \$620 million – at a time when others were reduced.

Moreover, CUSD has been the beneficiary of extraordinary state assistance for years. In addition to the normal state subsidies appropriated to the Commonwealth's school districts, the Department has provided financial support and technical assistance to the District, including but not limited to the following:

- Since 2003, the District has received nearly \$31 million in additional financial assistance above that which was appropriated to the District pursuant to the School Code.
  - Of this \$31 million, between June 2010 and March 2011, the District received a total of \$9.5 million in special appropriations over and above those provided through the traditional means of funding all Pennsylvania's school districts.

- Upon notification from the District, the Department advanced \$16.35 million in basic education funding in the 2010-11 school year so that the District was able to satisfy financial obligations, avoid default on payments and continue its operations.
- This year, the Department identified and deployed experts in education accounting and operations to assist the District in implementing sound fiscal policies, including understanding its revenue streams, financial obligations and overall cash flow position.

The Department's unprecedented financial support and technical assistance were aggressive measures to assist the District in its ability to ensure continued operations; however, as we have repeatedly indicated, they were not a permanent solution for financial recovery. In spite of this extraordinary assistance, the District still ran a significant deficit in 2010-11, and carried over that financial irresponsibility into its 2011-12 budget.

Third, your criticism of my decisions to comply with state statutes—duly enacted by the General Assembly—is nothing short of astounding.

- You state, "While PDE is refusing to send funds to the Chester Upland School District, they have taken money during this school year from the district's account and sent it to charter school operators." In fact, Section 1725-A(a) of the School Code requires the Secretary to withhold from any and all state payments those funds that are allocated to a charter school to educate the children enrolled in such charter schools. It is not a disputable issue; the law requires this withholding. As Secretary, I am not at liberty to disregard state statutes; only the General Assembly may change the law.
- You further state that I had the responsibility to declare CUSD to be fiscally distressed under Section 691 of the School Code. Again, you ignore what the law actually says. Despite the seriousness of CUSD's financial situation, it meets none of the criteria of the law: the statute sets out seven different criteria under which the Secretary may declare fiscal distress, and none even arguably apply here. The Secretary is not permitted to declare distress and order a change in governance whenever he wants to; he may do so only when the law authorizes it. Here, the law does not authorize it. Again, it is up to the General Assembly to change the law if it does not meet the needs of the current economic reality.

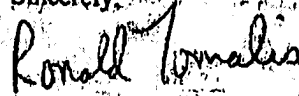
Finally, you criticize the decision not to advance funds to the District. This simply ignores the reality of the points described above. Advancing funds now would not solve anything. The District knows that it budgeted improperly, and it knows it overspent available revenues. In addition, the fact is that what the District is asking for is not merely an advance of funding, but for Commonwealth taxpayers to provide it with \$20 million more than the General Assembly appropriated in the current budget.

Advancing the funds now from payments scheduled for later in the year simple "kicks the can down the road," a practice that has led us to the situation the Commonwealth and the District finds itself in today.

Senator, regardless of all this discussion regarding money, I would be remiss if I did not express the fact that the main concern of the Administration since taking office and inheriting this situation is the opportunities afforded the students in the district, regardless of the decisions that had or were being made. That is why, over the past 12 months, the Department of Education has dedicated countless resources -- direct financial, technical support, and other assistance -- to the CUSD to assist it as it addressed its financial difficulties, resources that greatly exceed those given other districts in the Commonwealth. In fact, understanding the severity of the situation and the lack of viable alternatives under existing law, the Administration has proposed specific statutory language to the Legislature, both in the spring and again in the fall, to provide the necessary tools to address the situation in CUSD and similar districts in the Commonwealth.

As I have outlined here, the Governor and the Department remain committed to ensuring that all children in the Commonwealth have an opportunity to experience a high-quality education, and will continue employ the necessary tools under the law to ensure that happens.

Sincerely,



Ronald J. Tomalis