

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION: In re: Appointment of a Receiver
for the Chester Upland School
District

CIVIL CASE NO. 2012-009781

NATURE OF MATTER FILED: *(please check one)*

- | | | |
|--|--|--|
| <input type="checkbox"/> Petition Pursuant to Rule 206.1 | <input type="checkbox"/> Response to Petition | <input type="checkbox"/> Motion for Judgment on the Pleadings Pursuant to Rule 1034(a) |
| <input type="checkbox"/> Motion Pursuant to Rule 208.1 | <input checked="" type="checkbox"/> Response to Motion | <input type="checkbox"/> Summary Judgment Pursuant to Rule 1035.2 |
| <input type="checkbox"/> Family Law Petition/Motion Pursuant to Rule 206.8 | | |

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the ____ day of _____, _____, which:

☐ Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date _____, _____.

☐ Requires all parties, to appear at a hearing/conference on the ____ day of _____, _____, at ____ in Courtroom ____, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

☐ Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: _____, _____ at 10:00 AM in Courtroom ____.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

☐ Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

☒ Has been assigned to Judge Barry C. Dozor.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

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**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL DIVISION**

IN RE: APPOINTMENT OF A RECEIVER FOR
THE CHESTER UPLAND SCHOOL DISTRICT

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CASE NO.: 2012-009781

**ANSWER AND NEW MATTER OF PARENT REPRESENTATIVES
JAZMINE CAMPOS, LATOYA JONES, TIFFANY RAYMOND, PRECIOUS SCOTT,
AND THE DELAWARE COUNTY ADVOCACY & RESOURCE ORGANIZATION
TO THE MOTION OF CHESTER COMMUNITY CHARTER SCHOOL
TO REQUIRE CUSD & RECEIVER TO FOLLOW
THE REQUIREMENTS OF THE COURT'S MAY 14th ORDER**

Parent Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization (together, "Parent Representatives") submit this Answer and New Matter to the Motion of Chester Community Charter School ("CCCS") filed on November 19, 2020, which requests this Honorable Court to issue an order requiring CUSD and the Receiver to follow the requirements of the Court's May 14th Order;

reference certain statutory requirements in their RFP; and amend the RFP to revise the current evaluation criteria and incorporate the statutory requirements set forth in 24 P.S. §6-641-A, in addition to scheduling a status conference (“CCCS Motion”).

In response to CCCS’s Motion, Parent Representatives aver as follows:

1. Admitted.
2. Admitted.
3. Admitted in part; denied in part. Parent Representatives admit that responses to the October 26, 2020 Request for Proposals attached to the CCCS Motion (the “RFP”) are due December 14, 2020. The remaining allegations in this paragraph are conclusions of law to which no response is required. By way of further answer, Parent Representatives refer to their New Matter, as set forth herein.
4. Admitted in part; denied in part. Parent Representatives admit that Chester Upland School District (“CUSD”) is categorized by the Pennsylvania Department of Education as being in severe financial distress and deny that CUSD is one of only two school districts in the Commonwealth with this status. By way of further answer, Duquesne City School District and Harrisburg School District are also in severe financial distress status.
5. Admitted.
6. Admitted.
7. The allegations in this paragraph are conclusions of law to which no response is required.
8. The allegations in this paragraph are conclusions of law to which no response is required.
9. Admitted.

10. Admitted.

11. Admitted in part; denied in part. Parent Representatives admit that on May 14, 2020, the Honorable Judge Barry C. Dozor issued an order (“Order”) and a letter (“Letter”) in this proceeding. To the extent that the allegations in this paragraph purport to characterize the Order and Letter, Parent Representatives refer to the Order and Letter for their full and complete contents and deny anything inconsistent therewith.

12. Admitted in part; denied in part. Parent Representatives admit that no Request for Interest (“RFI”) has been presented to the Court for review or approval. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph. By way of further response, Parent Representatives have been unable to locate a copy of the RFI described in this paragraph and note that the RFI is not accessible on CUSD’s public website.

13. Admitted in part; denied in part. Parent Representatives admit that the RFP was issued without Court review or approval. To the extent that the allegations in this paragraph purport to characterize the RFP, Parent Representatives refer to the RFP for its full and complete contents and deny anything inconsistent therewith.

14. Admitted in part; denied in part. Parent Representatives admit that the Letter and Order contain the provisions cited and deny that this paragraph includes all of the provisions of the Letter or Order, which speak for themselves. By way of further response, Parent Representatives refer to their New Matter, as set forth herein.

15. Admitted in part; denied in part. Parent Representatives admit that they have been unable to locate the Restated June 30, 2018 audit on the CUSD website or the Court’s docket for this proceeding, and there is no other indication that this audit was filed as of record with the

Court. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph regarding CCCS's conduct.

16. Admitted in part; denied in part. Parent Representatives admit that they have been unable to locate the Restated June 30, 2019 audit on the CUSD website or the Court's docket for this proceeding, and there is no other indication that this audit was filed as of record with the Court. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph regarding CCCS's conduct.

17.

- a. Admitted.
- b. Admitted
- c. Admitted.
- d. Admitted.

18. Admitted in part; denied in part. Parent Representatives admit that counsel for CCCS sent a letter dated June 4, 2020 to the Court requesting a telephone status conference. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph regarding the concerns underlying the communication.

19. Admitted.

20. Admitted in part; denied in part. Parent Representatives admit that on June 22, 2020, the Court held a conference and that on June 26, 2020, counsel for CUSD sent an email attaching a document titled "Update from Receiver, Dr. Juan Baughn, RE: Status of the

Recovery Plan Initiatives as of June 22, 2020” (“Letter & Receiver Update”). To the extent that the remaining allegations in this paragraph purport to characterize the Letter & Receiver Update, Parent Representatives refer to the document for its full and complete contents and deny anything inconsistent therewith.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted in part; denied in part. Parent Representatives admit that the June 26 Letter & Receiver Update does not include any reasons or explanations for the delay in completing and filing the audits. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

27. Admitted.

28. Denied. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

29. Admitted.

30. Denied. After reasonable investigation, Parent Representatives are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

31. Admitted in part; denied in part. Parent Representatives admit that CUSD is in financial recovery status and is operating under an approved Revised Financial Recovery Plan. The remaining allegations in this paragraph are conclusions of law to which no response is required.

32. Admitted in part; denied in part. Parent Representatives admit that the May 14, 2020 Order incorporates the requirements of 24 P.S. § 6-641-A but deny that this paragraph accurately and completely states the provisions of § 6-641-A, and therefore respond that this paragraph contains conclusions of law to which no response is required. To the extent further response is required, Parent Representatives refer to § 6-641-A for its full and complete contents and deny anything inconsistent therewith.

33. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a response is required, Parent Representatives deny that § 6-641-A only sets forth four requirements for a Financial Recovery Plan and refer to § 6-641-A for its full and complete contents and deny anything inconsistent therewith. By way of further answer, Parent Representatives refer to their New Matter, as set forth herein.

34. Denied. The allegations in this paragraph are conclusions of law to which no response is required or purport to characterize the contents of the Order, which speaks for itself. To the extent a response is required, this paragraph is denied. By way of further answer, Parent Representatives refer to their New Matter, as set forth herein.

35. Admitted in part; denied in part. Parent Representatives admit that this paragraph quotes Section 7(d) of the Order. Parent Representatives refer to the Order for its full and complete contents and deny anything inconsistent therewith.

36. Admitted.

37. Admitted.

38. Denied. The allegations in this paragraph mischaracterize the RFP or are conclusions of law to which no response is required. Parent Representatives refer to the RFP for its full and complete contents and deny anything inconsistent therewith. By way of further answer, 24 P.S. § 6-641-A contains more than four requirements, and nothing in § 6-641-A or the Court's Order, which requires proposals to meet the "goals and recommendations" of §6-641-A, suggests that those criteria are exclusive or that the Receiver cannot consider additional criteria to determine whether a proposal is in the interest of CUSD or its students.

39. Admitted in part; denied in part. Parent Representatives admit that page 24 of the RFP contains the language identified in the averment. The remaining allegations in this paragraph mischaracterize the RFP and are denied or are conclusions of law to which no response is required. Parent Representatives refer to the RFP for its full and complete contents and deny anything inconsistent therewith. By way of further answer, nothing in the Order prohibits the Receiver from imposing additional conditions on qualifying proposals.

40. Admitted in part; denied in part. Parent Representatives admit that page 24 of the RFP contains the language identified in the averment. The remaining allegations in this paragraph mischaracterize the RFP and are denied or are conclusions of law to which no response is required. Parent Representatives refer to the RFP for its full and complete contents and deny anything inconsistent therewith. By way of further answer, nothing in the Order prohibits the Receiver from imposing additional conditions on qualifying proposals.

41. Denied. The allegations in this paragraph mischaracterize the RFP or are conclusions of law to which no response is required. Parent Representatives refer to the RFP for its full and complete contents and deny anything inconsistent therewith. By way of further

answer, 24 P.S. § 6-641-A contains more than four requirements, and nothing in § 6-641-A or the Court's Order, which requires proposals to meet the "goals and recommendations" of §6-641-A, suggests that those criteria are exclusive or that the Receiver cannot consider additional criteria to determine whether a proposal is in the interest of CUSD or its students.

42. Admitted in part; denied in part. Parent Representatives admit that the Honorable Judge Dozor approved the Revised Financial Recovery Plan. The remaining allegations in this paragraph mischaracterize the Court's Order and RFP and are denied or are conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied and Parent Representatives refer to their New Matter, as set forth herein. By way of further answer, 24 P.S. § 6-641-A contains more than four requirements, and nothing in § 6-641-A or the Court's Order, which requires proposals to meet the "goals and recommendations" of § 6-641-A, suggests that those criteria are exclusive or that the Receiver cannot consider additional criteria to determine whether a proposal is in the interest of CUSD or its students.

43. Denied. The allegations in this paragraph are conclusions of law to which no response is required or inaccurately characterize 24 P.S. § 6-641-A. Parent Representatives refer to § 6-641-A for its full and complete contents and deny anything inconsistent therewith. By way of further response, Parent Representatives refer to their New Matter, as set forth herein.

44. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. By way of further answer, 24 P.S. § 6-641-A contains more than four requirements, and nothing in § 6-641-A or the Court's Order, which requires proposals to meet the "goals and recommendations" of § 6-641-A, suggests that those criteria are exclusive or that the Receiver cannot consider additional criteria to determine whether a proposal is in the interest of CUSD or its students.

45. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a response is required, this paragraph is denied. By way of further answer, nothing in § 6-641-A or the Court's Order suggests that those criteria are exclusive or that the Receiver cannot consider additional criteria to determine whether a proposal is in the interest of CUSD or its students.

46. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a further response is required, this paragraph is denied, and Parent Representatives refer to their New Matter, as set forth herein.

47. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a further response is required, this paragraph is denied, and Parent Representatives refer to their New Matter, as set forth herein.

48. Denied. The allegations in this paragraph are conclusions of law to which no response is required. To the extent a further response is required, this paragraph is denied, and Parent Representatives refer to their New Matter, as set forth herein. By way of further answer, nothing in the Order prohibits the Receiver from imposing conditions on qualifying proposals.

49. Admitted.

NEW MATTER

The Receiver's RFP Process Violates this Court's Requirements for Preparing, Requesting, and Evaluating Proposals to Outsource Educational Services in CUSD

50. In its May 14, 2020 Order, the Court established detailed requirements for preparing, soliciting, and evaluating proposals to outsource the management and delivery of educational services in CUSD.

51. Several of those requirements were put in place to ensure that the RFP process would be public and transparent and that Parent Representatives would be able to defend their

legally enforceable interests, including the right to certain educational standards and protections, the right to an education in a non-charter school, and federal and state civil rights of children with disabilities. *See, e.g.*, 24 P.S. § 15-1504 (mandating at least 180 days and certain requisite hours of instruction); 24 P.S. § 6-642-A(a)(iii)(E)(3) (requiring that where an existing school or portion of a school is converted to a charter school, alternative arrangements must be made available for students who choose not to attend the charter school); Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. seq. (2004). *See also Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963); *Reichley v. N. Penn Sch. Dist.*, 537 A.2d 391, 399 (Pa. Commw. Ct. 1988).

52. Over the past several months, the Receiver has repeatedly failed to adhere to these requirements, including but not limited to requirements to make information public and accessible, thereby impairing Parent Representatives' ability to review, evaluate, and provide comment throughout the RFP process, and to ensure that the resulting RFP is legally sufficient.

53. In violation of Section 3 of the Order, the Restated June 30, 2018 and June 30, 2019 audits have not been "filed of record" with the Court, and the Receiver has failed to file a status report explaining the delay in completing and/or submitting the audits. Moreover, the Receiver has initiated the RFP process despite the fact that Section 1 of the Order expressly requires these audits be completed and filed as a precondition of the outsourcing of management of schools, and despite the fact that in the absence of these audits, it is impossible to assess the financial impact of any proposal. As this Court emphasized, it is "paramount that this information be available to decisionmaker(s), Receiver, consultants and advisers, the School District, the Pennsylvania Department of Education, all parties, and general public, and this Court." *See* Order at ¶ 1(b).

54. In violation of Paragraph 9(b) of the Order, the Receiver has also failed to post on CUSD's website either the July 30, 2020 Request for Interest ("RFI") or the RFP that was subsequently issued on October 26, 2020. As a result, neither the Court nor Parent Representatives were able to review and evaluate the criteria used in the RFI, the Providers to whom the RFI was distributed, or the Providers invited to respond to the RFP, among other critical matters.

55. In violation of 24 P.S. §§ 6-642-A(a)(2)(i), (a)(iii)(E)(10), and Paragraph 7(c) of the May 14 Order, the timeline for completing the RFP Process does not provide any meaningful opportunity for input and review of the submitted proposals in a public manner.

56. The RFP indicates that initially the Review Task Force must evaluate several complex applications and recommend finalists within a one-week period, and then subsequently must recommend the final Provider(s) within two days of presentations. *See* RFP at 28-29. It is unclear whether members of Review Task Force have been identified or on what basis members have been or will be selected. Moreover, it is unclear whether the Review Task Force will be obligated to conduct its evaluation process in a public manner. *See id.* at 27.

57. The current timeline also does not assure any opportunity for the community to question the RFP finalists, or any mechanism for receiving input and comments before a final Provider is selected and submitted to the Court for approval, in contravention of the May 14 Order and the Financial Recovery Law. *See* 24 P.S. §§ 6-642-A(a)(2)(i), (a)(iii)(E)(10); May 14 Order at ¶ 7(c).

The October 26, 2020 Request for Proposals Violates State Law and this Court's Orders

58. The Request for Proposals issued by the Receiver on October 26, 2020, also suffers from numerous critical defects.

59. In violation of 24 P.S. § 6-642-A(a)(iii)(E) and Paragraph 7(b) of the Court's May 14, 2020 Order, the RFP fails to require Providers proposing charter school options to establish alternative quality arrangements for students who do not chose to attend the conversion charters, or to solicit the information necessary to accurately assess the costs of those alternatives.

60. This omission jeopardizes parents' legal rights to keep their children in their non-charter schools in CUSD and to access quality educational alternatives if their schools are closed.

61. In violation of Paragraph 7(b) of the May 14 Order, the RFP fails to solicit the information necessary to ensure that Providers proposing any strategic option for managing CUSD's pre-kindergarten through twelfth grade schools, or any school or portion thereof, can provide continuity of quality educational curriculum and extra-curriculum programs, and meet the needs of current and future students with disabilities.

62. In violation of 24 P.S. § 6-642-A(a)(2)(i), (a)(2)(iii), (a)(10), and Paragraph 7(c) and (e) of the Court's May 14, 2020 Order, the RFP fails to require Providers to demonstrate that their proposal will result in financial savings, and fails to request information necessary to assess any claim of savings. This information is essential to enable compliance with § 6-642-A(a)(10), which requires CUSD to "present a three-year cost comparison of the services as currently provided and as projected under the proposed agreement demonstrating that the proposed agreement will result in financial savings."

63. The RFP does not require Providers to detail what services they will require CUSD to provide so that the Receiver and Court can accurately assess the proposed cost to CUSD of those services. *See, e.g.*, RFP, Section 8 (Costs). For example, if a proposal contemplates that CUSD will continue to provide students with transportation, the cost of that

transportation will depend upon factors such as the hours students are required to be in school, the extra-curricular programs offered, and any adjustments for social distancing, among others.

64. In violation of Paragraph 7(d) of the May 14 Order, the RFP fails to require Providers to address how they will meet all the goals and recommendations set forth in 24 P.S. § 6-641-A, and the terms and conditions of the Court's Order.

65. In violation of Paragraph 7(e) of the May 14 Order, the RFP fails to ensure that any proposal to outsource management or operation of CUSD schools will be evaluated not only for its potential cost savings but also for its impact on CUSD, on the effective delivery and quality of educational services, and on the quality of services to children with disabilities.

66. In violation of Paragraph 7(e) of the May 14 Order, the RFP references a "non-exclusive list of elements likely to be considered by the CUSD" and explains that the evaluation of the proposals involves "a weighing of different economic and non-economic interests" but fails to prioritize academic results and does not require potential providers to comparatively assess its academic results; attendance and truancy; financial challenges; deferred maintenance; operational, administrative, and financial requirements; special education; or the delivery of quality safe education with what CUSD provides. For example, the RFP does not require Providers to document cost savings, or that the Provider will provide a better quality safe education for current students, including students with disabilities, than CUSD. *See* RFP at 26-27.

67. Moreover, the RFP presupposes that contracts will be awarded to Providers that are the "best fits" or the "best matches," in contravention of the May 14 Order's mandate that a Provider only be selected if it can demonstrate it will qualitatively improve outcomes for students and produce cost savings for CUSD. *See* May 14 Order at ¶ 7(e).

68. The RFP also fails to contemplate any comparative evaluation of CUSD's current programs or any consideration of whether a submitted proposal is superior in quality to what CUSD could provide. *See* RFP at 15, 27. As a result, the RFP permits the award of a contract to Providers whose programs may not be improvements over what CUSD is able to offer.

69. The Receiver's repeated failures to adhere to the May 14 Order and the Financial Recovery Law have impaired Parent Representatives' ability to review, evaluate, and provide comment throughout the RFP process, and to ensure that the resulting RFP is legally sufficient.

WHEREFORE, for all the foregoing reasons, Parent Representatives respectfully request that this Honorable Court grant their Motion to Compel Compliance with the Court's May 14, 2020 Order, which is being filed simultaneously with this New Matter.

Date: December 4, 2020

Respectfully submitted,

/s/ Michael Churchill

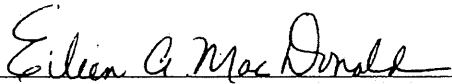
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VERIFICATION

I verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: December 3, 2020


Eileen MacDonald, Executive Director of
the Delaware County Advocacy &
Resource Organization

CERTIFICATE OF COMPLIANCE

I, Michael Churchill, Esq., certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Michael Churchill
Michael Churchill (Bar No. 04661)

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL DIVISION**

IN RE: APPOINTMENT OF A RECEIVER FOR
THE CHESTER UPLAND SCHOOL DISTRICT

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CASE NO.: 2012-009781

CERTIFICATE OF SERVICE

I hereby certify that on this date, December 4, 2020, I caused the foregoing Answer and New Matter to be served by the means identified below on the following:

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Dated: December 4, 2020

/s/ Darlene Jo Hemerka
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Attorney for Parent Representatives Jazmine
Campos, Latoya Jones, Tiffany Raymond,
Precious Scott, and the Delaware County
Advocacy & Resource Organization