

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 checked="" type="checkbox"/> Motion Pursuant to Rule 208.1 | <input 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: _____

**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

ORDER

AND NOW, this _____ day of _____ 2020, upon consideration of the Motion for Emergency Equitable Relief to Suspend the Request for Proposals Process by Parent Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization, any responses thereto, and any hearing thereon, it is hereby **ORDERED** that said Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Request for Proposals Process is **SUSPENDED** until such time as this Court has held a hearing and ruled on Parent Representatives' Motion to Compel Compliance.

BY THE COURT:

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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

**PARENT REPRESENTATIVES
JAZMINE CAMPOS, LATOYA JONES, TIFFANY RAYMOND, PRECIOUS SCOTT,
AND THE DELAWARE COUNTY ADVOCACY & RESOURCE ORGANIZATION'S
MOTION FOR EMERGENCY EQUITABLE RELIEF
TO SUSPEND THE REQUEST FOR PROPOSALS PROCESS**

Parent Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization (together, "Parent Representatives"), by and through their undersigned counsel, respectfully submit the following Motion for Emergency Equitable Relief to Suspend the Request for Proposals Process pursuant to Del.C.C.P. L.R. 208.3(b)(a)(3). Parent Representatives respectfully request that this Honorable

Court stay the request for proposals process seeking to outsource the management and delivery of schools that is currently underway (the “RFP Process”) until the Court can hold a hearing and rule on Parent Representatives’ Motion to Compel Compliance with the Court’s May 14, 2020 Order (“Motion to Compel Compliance”), which is being filed simultaneously. Specifically, Parent Representatives request that the RFP Process be suspended pending a determination of whether the RFP should be revised and submitted to the Court for approval before the RFP Process resumes.

Parent Representatives have legal rights to participate in these proceedings, including the RFP Process, because the end result will directly affect their children’s educations and futures. And while Pennsylvania law permits some district schools to be converted to charters or transferred to private education management organizations under certain conditions, the law requires this only be done if there are documented cost savings *and* it will provide a better quality education for current students, including students with disabilities. Moreover, if a school is converted to a charter, Pennsylvania law requires that parents be provided a quality alternative.

As detailed in Parent Representatives’ accompanying Motion to Compel Compliance and in this Emergency Motion, the current RFP Process -- conducted out of view of the public and in violation of the Court’s May 14, 2020 Order -- does not require bidders to detail alternatives for students who do not wish to attend charter schools, or to provide the information necessary to determine whether a bidder is offering a superior education at a cost savings, as mandated by law. In light of the pervasive non-compliance that has plagued the RFP Process, the wholesale deficiencies in the resulting RFP, and the detrimental impact these failings will have on students, parents, and the Chester Upland School District, equity favors suspending the RFP Process to ensure that the RFP complies with this Court’s Order and Pennsylvania law.

In support of their Emergency Motion, Parent Representatives aver as follows:

1. Parent Representatives are parents of children attending elementary and middle schools within Chester Upland School District (“CUSD”) and a disability advocacy organization whose members include parents of children attending elementary and middle schools within CUSD.
2. On February 24, 2020, the Court granted Parent Representatives’ Petition to Intervene in these proceedings, in order to inform the development of a proposed Revised Financial Recovery Plan (“Revised Plan”) and ensure that the Revised Plan is implemented in compliance with laws that implicate Parent Representatives’ educational rights, including but not limited to laws governing 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).
3. On May 14, 2020, the Court issued an order (“May 14 Order”) approving the Revised Plan and establishing detailed prerequisites and requirements for issuing RFPs to outsource the management and delivery of educational services in CUSD.
4. The May 14 Order required CUSD’s Court-appointed Receiver (the “Receiver”) to, *inter alia*:

- a. complete and file the Restated June 30, 2018 and June 30, 2019 audits as a precondition of the RFP Process, *see* May 14 Order at ¶¶ 1(b), 3;
- b. submit status reports in the event these audits are not timely completed and filed, *id.* at ¶ 3;
- c. timely post on CUSD’s website all RFPs and Requests for Information (“RFI”), *id.* at ¶ 9(b);
- d. conduct the RFP Process in a public manner, *id.* at ¶ 7(c); and
- e. ensure that the RFP incorporates important provisions of the School District Financial Recovery Law, 24 P.S. § 6-601 et seq. (the “Financial Recovery Law”) requiring the delivery of effective educational services to all CUSD students, including students with disabilities, and undertake a comparative analysis to determine whether any submitted proposal is superior in quality to what CUSD could provide, *id.* at ¶¶ 7(b)-(d).

5. On November 19, 2020, Chester Community Charter School filed a motion in this proceeding, and Parent Representatives learned for the first time that an RFP to outsource the management and delivery of schools in CUSD had been issued on October 26, 2020; that the RFP does not comply with the May 14 Order or the governing law; and that the Receiver is scheduled to receive completed bids to the RFP on December 14, 2020 as part of a two-phase RFP Process.

6. As set forth in detail in Parent Representatives’ Motion to Compel Compliance, the Receiver has conducted this RFP Process without filing the restated audits or explaining their delay; without making the RFI or RFP publicly available as required by the May 14 Order; without notifying parents, the community, or the public of the status of the RFP Process; without

providing the Court or parties with the information necessary to ensure that the RFP Process and resulting RFP are legally sufficient; and without the benefit of public review or input, in violation of the May 14 Order and the Financial Recovery Law. *See* Motion to Compel Compliance at ¶¶ 20-27.

7. The RFP itself also suffers from numerous critical defects in violation of the May 14 Order and the Financial Recovery Law. *See id.* at ¶¶ 28-38.

8. Accordingly, Parent Representatives filed the Motion to Compel Compliance seeking an order directing the Receiver to rescind and revise the RFP in conformity with the May 14 Order and the Financial Recovery Law. *See id.*

9. While the Motion to Compel Compliance is pending, Parent Representatives respectfully request that the RFP Process be stayed and the deadline to submit proposals be suspended until the Court has had an opportunity to hold a hearing and rule on the Motion to Compel Compliance.

10. This Court has the authority to stay the RFP Process pursuant to its inherent powers to make such orders as justice may require, and its broad authority to grant equitable relief when necessary to prevent irreparable injury. *See* 42 Pa.C.S. § 323; *Williams Tp. Bd. of Supervisors v. Williams Tp. Emergency Co., Inc.*, 986 A.2d 914 (Pa. Commw. Ct. 2009); *see also*, Equity, generally, 14 Standard Pennsylvania Practice 2d § 79:1.

11. In determining whether a stay is warranted, the Court should look to the standard governing injunctive relief, which is appropriate when “1) relief is necessary to prevent immediate and irreparable harm; 2) a greater injury will occur from refusing the injunction than from granting it; 3) the injunction will restore the parties to the status quo; 4) the alleged wrong is manifest and the injunction is reasonably suited to abate it; and 5) the plaintiff's right to relief

is clear.” *Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super 2007) (quoting *Walter v. Stacy*, 837 A.2d 1205, 1209 (Pa. Super. 2003)).

12. Here, it is clear that the Receiver’s failure to comply with the May 14 Order and governing law have impaired and continue to impair Parent Representatives’ ability to review, evaluate, and provide comment throughout the RFP Process by depriving them of the information necessary to evaluate potential providers. *See, e.g.*, Motion to Compel Compliance at ¶¶ 22, 24, 39.

13. A stay of the RFP Process is necessary to protect Parent Representatives’ legally enforceable interests, which will be irreparably harmed if the RFP Process is permitted to proceed in an unlawful manner without an opportunity to determine whether the RFP complies with the May 14th Order and governing law.

14. In addition, if the RFP Process is permitted to proceed in an unlawful manner, the significant and irreparable harm suffered by Parent Representatives in having their children’s school managed by a provider that fails to ensure a quality education for their children far outweighs any injury that may result to the Receiver from a temporary delay in completing the RFP Process.

15. Moreover, the public interest strongly favors granting the requested stay of the RFP process to ensure that the RFP meets *all* the requirements set forth in the May 14 Order and the Financial Recovery Law, and that the RFP Process can achieve its intended goal of “pursu[ing] a path to financial viability, stability, and recovery, as well as quality education and the return of control to the elected CUSD Board of Directors.” *See* May 14 Order at ¶ 6.

WHEREFORE, for all the foregoing reasons, and those stated in the accompanying Motion to Compel Compliance, Parent Representatives respectfully request that this Honorable

Court grant their Motion for Emergency Equitable Relief to Suspend the Request for Proposals Process until the Court can hold a hearing and rule on Parent Representatives' Motion to Compel Compliance with the Court's May 14, 2020 Order.

Date: December 4, 2020

Respectfully submitted,

/s/ Michael Churchill

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*Attorneys for Parent Representatives
Jazmine Campos, Latoya Jones, Tiffany
Raymond, Precious Scott, and the Delaware
County Advocacy & Resource Organization*

VERIFICATION

I verify that the statements made in the foregoing Motion for Emergency Equitable Relief to Stay the RFP Process 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

A handwritten signature in cursive script, reading "Eileen A. MacDonald", is written over a horizontal line.

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)

ATTORNEY CERTIFICATION OF GOOD FAITH

Pursuant to Delaware County Local Rule 208.3(b)(3)(iv)

I, Darlene Hemerka, Esq., counsel for Parent Representatives Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization, hereby certify and attest that:

1. I have made a good faith effort to give all parties affected by the Motion for Emergency Equitable Relief to Suspend the Request for Proposals Process as much advance notice as reasonably possible.

2. On Friday, December 4, 2020, I sent a letter via email informing all counsel of record that later that day, Parent Representatives would be filing a Motion for Emergency Equitable Relief seeking to suspend the request for proposals process until the Court can hold a hearing and rule on Parent Representatives' Motion to Compel Compliance with the Court's May 14, 2020 Order.

3. I emailed the letter and a copy of the Motion for Emergency Equitable Relief to all counsel of record at their email addresses on file with the Court:

- a. James R. Flandreau, Esq. and Sean A. Fields Esq. for the Pennsylvania Department of Education (jflandreau@pfblaw.com; sefields@pa.gov)
- b. Robert DiOrio, Esq., Williams A. Jacobs, Esq. and Jeffery Sultanik, Esq. for Chester Upland School District (ajacobs@schusterlaw.com; rdiorio@dioriosereni.com; jsultanik@foxrothschild.com)
- c. Rocco P. Imperatrice, III, Esq. and Kathleen O'Connor-Bell, Esq. for Widener Partnership Charter School (rimperatrice@iablegal.com; kbell@iablegal.com)

- d. Kevin M. McKenna, Esq. for Agora Cyber Charter, Chester Charter School for the Arts, Pennsylvania Cyber Charter School, and Commonwealth Connections Academy (kmckenna@mckennalawllc.com)
- e. Francis J. Catania, Esq., James J. Byrne Jr., Esq., and Kevin D. Kent, Esq. for Chester Community Charter School (fjc@fjccp.com; kkent@conradobrien.com; jjbyrne@mbmlawoffice.com)
- f. George Dawson, Esq. and Kenneth R. Schuster, Esq. for The Elected Board of Chester Upland School (gbdlaw@aol.com; ken@schusterlaw.com)
- g. Brian H. Leinhauser, Esq. for Achievement House Cyber Charter School, Pennsylvania Leadership Charter School, and Pennsylvania Distance Learning Charter School (bleinhauser@macmainlaw.com)
- h. Michael Puppio Esq. for Friends of Chester Community Charter School and Chester Charter School For the Arts (puppio@raffaelepuppio.com).

CERTIFIED TO THE COURT BY:

Date: December 4, 2020

/s/ Darlene Jo Hemerka

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

**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 Motion for
Emergency Equitable Relief to Suspend the Request for Proposals Process 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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Advocacy & Resource Organization