

217 CD 2024

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Katherine M. Fitz-Patrick, Esq. (Pa. Attorney I.D. No. 208863)
fitz-patrick@bmc-law.net
Ball, Murren & Connell, LLC
2303 Market Street
Camp Hill, PA 17011
Counsel for Commonwealth Charter Academy

**IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

COMMONWEALTH CHARTER
ACADEMY CHARTER
SCHOOL,

Petitioner,

v.

SUSAN SPICKA AND
EDUCATION VOTERS OF PA,
Respondents.

Civil Action No. 2022 CV 07857

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DAUPHIN COUNTY

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NA

NOTICE OF APPEAL

Notice is hereby given that Commonwealth Charter Academy Charter School, Petitioner above named, hereby appeals to the Commonwealth Court of Pennsylvania from the Order of the Court of Common Pleas of Dauphin County, dated February 6, 2024. This Order has been entered in the docket as evidenced in the attached copy of the docket entry.

Respectfully submitted,

Katherine M. FitzPatrick

Katherine M. Fitz-Patrick, Esq.

Philip J. Murren, Esq.

Counsel for Commonwealth Charter Academy

Date: March 5, 2024

Cases Discontinued
2724 Alley

ORIGINAL

COMMONWEALTH CHARTER
ACADEMY CHARTER SCHOOL,
Petitioner,

v.

SUSAN SPICKA AND EDUCATION VOTERS
OF PA,
Respondents

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

CIVIL ACTION
NO. 2022 CV 7857

DAUPHIN COUNTY
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JP

ORDER

AND NOW, this 6th day of February, 2024, upon consideration of the Petition for Review of Commonwealth Academy Charter School, the Response of Susan Spika and Education Voters of PA, the Briefs of the parties, oral argument and the *in camera* submission to this Court under cover dated September 26, 2023, it is hereby ORDERED that:

We summarily AFFIRM the Final Determination of the Office of Open Records ("OOR") filed September 22, 2022, for the reasons set forth therein.

We reject Petitioner's claim that, even with redactions as directed by OOR, the identity of a student/and or their parent would be discoverable. We find that the REDACTED example of the Community Class Registration Form, as submitted to the Court *in camera*, meets the directive of the OOR.

Further, we do not find that Petitioner's proposal of production of an Excel Spread Sheet, rather than production of the documents themselves, adequately responds to the Request.

Accordingly, Petitioner shall, within 60 days of the date of this ORDER, provide the requested Community Class Registration Forms redacted of:

MAR 05 2024

I hereby certify that the foregoing is a true and correct copy of the original filed.

Matthew R Krupp
Notary

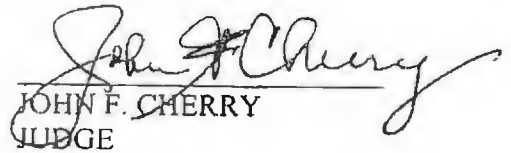
Student names

Student Identification Numbers

Parent/Caretaker/Guardian Names and Signatures

The names of the business or organization and its entity number or Tax ID Number.

BY THE COURT:


JOHN F. CHERRY
JUDGE

Distribution:

Katherine M. Fitz-Patrick, Esq., and Philip J. Murren, Esq.,
2303 Market Street, Camp Hill, PA 17011

Fitz-patrick@bmc-law.net

Bmc-law2@msn.com

Counsel for Commonwealth Charter Academy

Benjamin D. Geffen, Esq., and Caroline Ramsey, Esq.,
2 Penn Center, 1500 JFK Blvd., Suite 802, Philadelphia, PA 19102

bgeffen@pubintl.org

cramsey@pubintl.org



PROTHONOTARY OF DAUPHIN COUNTY

Matthew R. Krupp
Prothonotary



Autumn D. Heck
First Deputy

Jennifer L. Klinger
Second Deputy

Commonwealth Charter Academy Charter School
vs.
Education Voters of PA (et al.)

Case Number
2022-CV-07857

Case Participants

Plaintiff

Commonwealth Charter Academy Charter School

Defendant

Susan Spicka
Education Voters of PA

Attorney

Caroline Ramsey, Esquire

2 Penn Center

(267) 546-1314

1500 JFK Boulevard, Suite 802
Philadelphia, PA19102

Benjamin Geffen, Esquire

2 Penn Center

(267) 546-1308

1500 JFK Blvd., Suite 802
Philadelphia, PA19102

Philip J Murren, Esquire

2303 Market St

(717)232-8731

Camp Hill, PA17011

Attorney Relationships

Plaintiff Attorney

Philip J Murren, Esquire

Plaintiff

Commonwealth Charter Academy Charter School

PROTHONOTARY DOCKET ENTRIES

Entry Date Description

02/07/2024 AND NOW, February 6, 2024, It is hereby ORDERED that we summarily AFFIRM the Final Determination of the Office of Open Records ("OOR") filed September 22, 2022, for the reasons set forth therein. J.F. Cherry, Judge

MAR 05 2024
Pages 2

I, hereby certify that the foregoing is a true and correct copy of the original filed.

Matthew R. Krupp

Prothonotary

09/12/2023	AND NOW, this 11th day of September, 2023, the Court having heard oral argument of counsel regarding application of the Pennsylvania Supreme Court decision in Central Dauphin School District v. Hawkins, 286A.3d 726 (Pa. 2022), it is hereby ORDERED that: Counsel for the Commonwealth Charter Academy ("CCA") shall submit to the Court, for in camera review, the unredacted documents at issue in the Right to Know proceedings as suggested by Susan Spicka and Education Voters of PA, as well as the Excel spreadsheet suggested by counsel during argument. Within 30 days of the date of this ORDER, counsel for CCA shall hand deliver such documents and the Excel spreadsheet to the chambers of the undersigned in a sealed envelope marked "CONFIDENTIAL. To be reviewed by the Honorable John F. Cherry ONLY." /s/ JOHN F. CHERRY, P.J.	1
08/15/2023	Brief of Petitioner Commonwealth Charter Academy	16
08/15/2023	Brief of Respondents	15
08/07/2023	Certification of Record	71
05/31/2023	AND NOW, May 31, 2023, It is hereby ORDERED that: 1. The Court shall conduct an in-person Settlement Conference on July 13, 2023 at 1:30 PM. Persons with settlement authority shall attend. J.F. Cherry, President Judge	2
03/17/2023	Respondents' Answer to Petition for Review.	18
03/16/2023	AND NOW, on this 16th day of March 2023, the Initial Conference scheduled for May 3, 2023 at 10:30 am has been rescheduled for May 31, 2023 at 9:30 am in Courtroom 1. J. Cherry, Judge	3
03/14/2023	Benjamin Geffen, Esquire enters appearance on behalf of Defendants.	2
03/08/2023	AND NOW, this 7th day of March 2023, Respondents' Uncontested Motion to Lift Stay is GRANTED. The Court SHALL hold an initial conference on May 3, 2023 at 10:30 am in Courtroom 1. J. Cherry, Judge	3
02/21/2023	Respondents' Uncontested Motion to Lift Stay.	24
12/16/2022	Caroline Ramsey, Esquire enters appearance on behalf of Defendants.	2
10/21/2022	AND NOW, October 20, 2022, A STAY IS ISSUED, pending a final decision in Central Dauphin School District v. Hawkins, 88 MAP 2021, of the Final Determination of the Office of Open Records which directs Petition to provide redacted educational records. J.F. Cherry, President Judge	1
10/13/2022	Philip J. Murren Esquire and Katherine M. Fitz-Patrick, Esquire enters appearance on behalf of Commonwealth Charter Academy Charter School	2
10/13/2022	Petition for Review of a Final Determination Issued by the Pennsylvania Office of Open Records	69

Total Number of Pages: 231

March 05, 2024

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on March 5, 2024, a true and correct copy of the Notice of Appeal together with the Request for Transcript was served as follows:

Via First-Class Mail, postage prepaid, and electronic mail upon:

Caroline Ramsey, Esquire
Benjamin D. Geffen, Esquire
Public Interest Law Center
2 Penn Center, 1500 JFK Blvd, Suite 802
Philadelphia, PA 19102
Counsel for Susan Spicka and Education Voters of PA

Kyle Applegate, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Via Hand Delivery upon:

Judge John F. Cherry
Dauphin County Courthouse
Courtroom # 2, Third Floor
101 Market Street
Harrisburg, PA 17101

Sharon Y. Alexander
Chief Court Reporter
Dauphin County Courthouse (Basement)
101 Market Street
Harrisburg, PA 17101

Katherine M. Fitz-Patrick

Katherine M. Fitz-Patrick, Esq.

Philip J. Murren, Esq.

Ball, Murren & Connell, LLC

2303 Market Street

Camp Hill, PA 17011

Counsel for Commonwealth Charter Academy

CERTIFICATE OF COMPLIANCE

I, Katherine M. Fitz-Patrick, 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.

3/5/2024
Date

Katherine M. FitzPatrick
Signature

copy

Philip J. Murren, Esq. (Pa. Attorney I.D. No. 21426) murren@bmc-law.net
Katherine M. Fitz-Patrick, Esq. (Pa. Attorney I.D. No. 208863) fitz-patrick@bmc-law.net
Ball, Murren & Connell, LLC
2303 Market Street
Camp Hill, PA 17011
Counsel for Commonwealth Charter Academy

RECEIVED
DAUPHIN COUNTY
CLERK OF COURT
SEP 22 2022
12:21
[Handwritten signature]

**IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA**

COMMONWEALTH CHARTER :
ACADEMY CHARTER :
SCHOOL, :
Petitioner, :
v. : Civil Action No. 2022 CV 07857
SUSAN SPICKA AND :
EDUCATION VOTERS OF PA, :
Respondents. :

CONCISE STATEMENT OF THE MATTERS COMPLAINED OF ON APPEAL

Pursuant to Local Rule 227.1A, Petitioner, Commonwealth Charter Academy Charter School ("Charter School" or "CCA"), by and through its attorneys, Ball, Murren & Connell, LLC, submits this Concise Statement of the Matters Complained of on Appeal.

1. The trial court abused its discretion and/or committed an error of law by summarily affirming the Final Determination of the Office of Open Records ("OOR") filed on September 22, 2022.

2. The trial court abused its discretion and/or committed an error of law by rejecting CCA's claim that, even with redactions to the Community Class Reimbursement ("CCR") forms, the identity of a student and/or their parent would be discoverable.

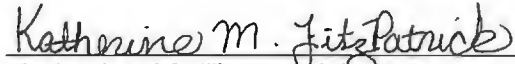
3. The trial court's finding of fact that the production of an Excel Spreadsheet containing the requested information from the Community Class Reimbursement forms does not adequately respond to the Request is not supported by competent evidence, and this conclusion is also an abuse of discretion and/or an error of law.

4. The trial court abused its discretion and/or committed an error of law by failing to engage in a "context-specific, case-by-case, fact-sensitive examination[], which turn[s] on reasonableness" in accordance with the Pennsylvania Supreme Court's decision in *Hawkins v. Central Dauphin School District*, 286 A.3d 726, 744 (Pa. 2022).

5. The trial court abused its discretion and/or committed an error of law by failing to defer to the obligation of the Charter School to ensure the removal of all personally identifiable information as required by the Family Educational Rights and Privacy Act ("FERPA").¹

6. The trial court abused its discretion and/or committed an error of law by failing to defer to the obligation of the Charter School to balance the students' and their parents' interests in controlling access to dissemination of personally identifiable information protected by the constitutional privacy rights.

Respectfully submitted,



Katherine M. Fitz-Patrick, Esq.
Philip J. Murren, Esq.
Counsel for Commonwealth Charter Academy

Date: March 5, 2024

¹ Contemporaneously with this filing and in recognition of its obligation to control access to and dissemination of student and parent information as mandated by federal law, CCA will provide Susan Spicka and Education Voters of PA, through their counsel, an Excel Spreadsheet containing the requested information from the CCR forms.

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on March 5, 2024, a true and correct copy of the foregoing Concise Statement of Matters Complained of on Appeal was served as follows:

Via First-Class Mail, postage prepaid, and electronic mail upon:

Caroline Ramsey, Esquire
Benjamin D. Geffen, Esquire
Public Interest Law Center
2 Penn Center, 1500 JFK Blvd, Suite 802
Philadelphia, PA 19102
Counsel for Susan Spicka and Education Voters of PA

Kyle Applegate, Esquire
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

Via Hand Delivery upon:

Judge John F. Cherry
Dauphin County Courthouse
Courtroom # 2, Third Floor
101 Market Street
Harrisburg, PA 17101

Katherine M. Fitz-Patrick

Katherine M. Fitz-Patrick, Esq.

Philip J. Murren, Esq.

Ball, Murren & Connell, LLC

2303 Market Street

Camp Hill, PA 17011

Counsel for Commonwealth Charter Academy

CERTIFICATE OF COMPLIANCE

I, Katherine M. Fitz-Patrick, 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.

3/5/2024
Date

Katherine M. Fitz-Patrick
Signature



DAUPHIN COUNTY

REQUEST FOR COURT REPORTER TO PREPARE TRANSCRIPT OF COURT PROCEEDING OR REQUEST FOR COPY OF AN EXISTING TRANSCRIPT OF COURT PROCEEDING

Are you requesting a copy of an existing transcript? [X] YES [] NO If no, complete only Section I, II, III and V. (SKIP SECTION IV) If you are requesting the court reporter to prepare the transcript of a court proceeding, complete entire form.

copy

I. CASE INFORMATION
Case Name: Commonwealth Charter Academy Charter School v. Susan Spicka and Education Voters of PA
Docket Number: 2022-CV-07857
Presiding Judge: John F. Cherry (President Judge)
Date(s) of Proceeding: May 31, 2023 and September 8, 2023
Is this transcript request associated with an appeal that has already been filed? [X] YES [] NO
Is this transcript request associated with a Children's Fast Track Appeal (as defined in Rule of Appellate Procedure 102 as any appeal from an order involving dependency, termination of parental rights, adoptions, custody or paternity)? [] YES [X] NO
II. REQUESTOR INFORMATION
Name: Katherine M. Fitz-Patrick, Esq.
Complete Mailing Address: 2303 Market Street, Camp Hill, PA 17011
Email Address: fitz-patrick@bmc-law.net Telephone Number: 717-232-8731
Check one of the three boxes below. If you are the attorney of record, please state the name of the party that you represent. I am: [] Self-Represented Party [] Not a party to this action [X] Attorney of Record for: Commonwealth Charter Academy Court Appointed? [] YES [X] NO Governmental Agency Rate (if applicable)? [] YES [] NO
III. TRANSCRIPT INFORMATION (check the portions you are requesting)
Trial: [] Voir Dire [] Opening Statements [] Testimony [] Closing Arguments [] Jury Instructions
[] Entire Proceeding (testimony and jury instructions) Hearing other than a trial: [] Entire Proceeding
[] Include Word Index [X] Other (specify): Oral Argument
IV. DELIVERY TIME (check one) *Time starts at date of payment
[] Non-Ordinary Transcript: A transcript requested by a party when no matters are open before the court or where the transcript is requested by a non-party. Delivery time is 30 days. Cost: \$2.50 per page for electronically filed original, and copy charge of \$0.50 per page if ordered in electronic format.
[X] Ordinary Transcript: A transcript necessary for an appeal (delivery time 14 days) or to otherwise advance litigation (delivery time is 30 days). Cost: \$2.50 per page for electronically filed original, and copy charge of \$0.50 per page if ordered in electronic format.
[] Expedited Delivery: A transcript delivered within 72 hours of a request not including weekends or official court holidays. Cost: \$3.50 per page for electronically filed original, and copy charge of \$0.75 per page if ordered in electronic format.
[] Daily Transcript: A transcript delivered within 18 hours of a request not including weekends or official court holidays. Cost: \$4.50 per page for electronically filed original, and copy charge of \$1.00 per page if ordered in electronic format.
[] Same Day Delivery: A transcript delivered within 6 hours of the close of the court session. Cost: \$6.50 per page, and copy charge of \$1.25 per page if ordered in electronic format.
[] Complex Litigation (\$1.00 per page surcharge) [] Real Time Feed (\$1.00 per page surcharge)
* Expedited, Daily and Same Day Delivery cannot be guaranteed. These services are only available if the court reporter has that capability.
V. MANNER OF DELIVERY
Original: If a hard copy is filed, \$0.25 per sheet surcharge added.
Copy for Requestor: [X] Electronic (PDF) format [] Paper Copy (\$0.25 per sheet surcharge added) [] No copy requested

Handwritten signature/initials

Requestor's Signature: Katherine M. FitzPatrick Date: 3/5/2024

Pursuant to Pa.R.J.A. 4007(A), this form must be completed by any person requesting a transcript for any court proceeding. Additional requirements may be found in the Dauphin County Local Rules of Judicial Administration at: http://www.dauphincounty.org/government/Court-Departments/Local-Rules-of-Court/Pages/default.aspx. If the cost of the transcript presents an economic hardship, there are reduced rates available to those who qualify. See Pa.R.J.A. 4007(E). Copies of this request must be filed in the appropriate filing office with copies served on the presiding judge, the court reporter, the Court Administrator's Office and opposing counsel or the self-represented opposing party.

MANDATORY SUPPLEMENT TO REQUEST FOR TRANSCRIPT OR COPY FORM

"Ordinary Transcript" is defined as a transcript necessary for an appeal or to otherwise advance litigation. If the case is on appeal, the Court Reporter is obligated to provide the transcript within 14 days after the deposit is received by Court Administration. If the case is not on appeal, the Court Reporter must provide the transcript within 30 days after the deposit is received.

Notwithstanding these deadlines, please enter the date you would like to receive the transcript. (Enter date) within 14 days. There is no obligation for the Court Reporter to provide the transcript by this date but we will attempt to accommodate.

A government attorney or court-appointed attorney should not request an expedited, daily or same-day transcript without attaching an explanation as to why the transcript is needed outside the time-frames listed above. Court administration will contact the court for approval before this request will be accommodated.

Please complete all of the following information for each opposing counsel or self-represented party. The Request for Transcript Form will not be entertained without this information.

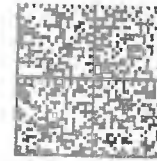
<u>Caroline Ramsey, Esquire</u>	
<i>Opposing Counsel or Self-Represented Party's Name</i>	
<u>2 Penn Center, 1500 JFK Blvd, Suite 802, Philadelphia, PA 19102</u>	
<i>Complete Mailing Address (street address, city, state, zip)</i>	
<u>267.546.1314</u>	<u>cramsey@pubintl.org</u>
<i>Telephone Number</i>	<i>Email Address</i>
<u></u>	
<i>Opposing Counsel or Self-Represented Party's Name</i>	
<u></u>	
<i>Complete Mailing Address (street address, city, state, zip)</i>	
<u></u>	<u></u>
<i>Telephone Number</i>	<i>Email Address</i>
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<i>Opposing Counsel or Self-Represented Party's Name</i>	
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<i>Complete Mailing Address (street address, city, state, zip)</i>	
<u></u>	<u></u>
<i>Telephone Number</i>	<i>Email Address</i>



**DAUPHIN
COUNTY**

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FIRST-CLASS



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