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October 13, 2022

Via Hand Delivery

Matt Krupp, Prothonotary
Dauphin County Court of Common Pleas
Dauphin County Courthouse
101 Market St, Room 101
Harrisburg, PA 17101

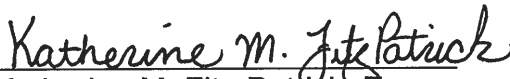
Re: *Commonwealth Charter Academy Charter School v. Susan Spicka and
Education Voters of PA*
Statutory Right-to-Know Law Appeal
Docket No. _____

Dear Mr. Krupp:

Enclosed please find an original and six copies of a Petition for Review of a Final Determination issued by the Pennsylvania Office of Open Records for filing in the above matter. Also enclosed is a check in the amount of \$202.00 for the filing fee. Please time-stamp the additional five copies and return to the undersigned.

If you have any questions regarding this matter, please contact our office.

Respectfully submitted,



Katherine M. Fitz-Patrick, Esq.

Philip J. Murren, Esq.

Counsel for Commonwealth Charter Academy

cc: Susan Spicka (via U.S. Mail)
Erin Burlew, Esquire (via U.S. Mail)

Enclosures

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

DAUPHIN COUNTY County



<i>For Prothonotary Use Only:</i>	
Docket No:	2022-CV-7857

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:	
<input type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
<input type="checkbox"/> Transfer from Another Jurisdiction	<input checked="" type="checkbox"/> Petition
	<input type="checkbox"/> Declaration of Taking
Lead Plaintiff's Name: Commonwealth Charter Academy Charter School	Lead Defendant's Name: Susan Spicka
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: Philip J. Murren, Esq., and Katherine M. Fitz-Patrick, Esq.	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

<p>TORT (do not include Mass Tort)</p> <input type="checkbox"/> Intentional <input type="checkbox"/> Malicious Prosecution <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Nuisance <input type="checkbox"/> Premises Liability <input type="checkbox"/> Product Liability (does not include mass tort) <input type="checkbox"/> Slander/Libel/ Defamation <input type="checkbox"/> Other: _____ _____	<p>CONTRACT (do not include Judgments)</p> <input type="checkbox"/> Buyer Plaintiff <input type="checkbox"/> Debt Collection: Credit Card <input type="checkbox"/> Debt Collection: Other _____ _____ <input type="checkbox"/> Employment Dispute: Discrimination <input type="checkbox"/> Employment Dispute: Other _____ _____ <input type="checkbox"/> Other: _____ _____	<p>CIVIL APPEALS</p> <input type="checkbox"/> Administrative Agencies <input type="checkbox"/> Board of Assessment <input type="checkbox"/> Board of Elections <input type="checkbox"/> Dept. of Transportation <input checked="" type="checkbox"/> Statutory Appeal: Other _____ Right-to-Know Law _____ <input type="checkbox"/> Zoning Board <input type="checkbox"/> Other: _____ _____
<p>MASS TORT</p> <input type="checkbox"/> Asbestos <input type="checkbox"/> Tobacco <input type="checkbox"/> Toxic Tort - DES <input type="checkbox"/> Toxic Tort - Implant <input type="checkbox"/> Toxic Waste <input type="checkbox"/> Other: _____ _____	<p>REAL PROPERTY</p> <input type="checkbox"/> Ejectment <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Ground Rent <input type="checkbox"/> Landlord/Tenant Dispute <input type="checkbox"/> Mortgage Foreclosure: Residential <input type="checkbox"/> Mortgage Foreclosure: Commercial <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Other: _____ _____	<p>MISCELLANEOUS</p> <input type="checkbox"/> Common Law/Statutory Arbitration <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Mandamus <input type="checkbox"/> Non-Domestic Relations Restraining Order <input type="checkbox"/> Quo Warranto <input type="checkbox"/> Replevin <input type="checkbox"/> Other: _____ _____
<p>PROFESSIONAL LIABILITY</p> <input type="checkbox"/> Dental <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional: _____ _____		

("OOR") on September 16, 2022. A true and correct copy of the Final Determination is attached hereto as Exhibit "A." In support thereof, the Petitioner avers as follows:

JURISDICTION

1. This Petition for Review is being filed pursuant to Section 1302(a) of the Right-to-Know Law ("RTKL"), 65 P.S. § 67.1302(a).

PARTIES

2. Commonwealth Charter Academy Charter School, petitioner herein, is a K-12 public cyber charter school duly organized and authorized under the laws of the Commonwealth of Pennsylvania, having its administrative offices at One Innovation Way, Harrisburg, Pennsylvania 17110.

3. CCA is a local agency subject to the RTKL. 65 P.S. § 67.102.

4. Respondent, Susan Spicka ("Requester"), is the Executive Director of Education Voters of PA, with an office located at 412 N 3rd Street, Harrisburg, Pennsylvania 17101.

5. Respondent, Education Voters of PA, is a statewide, non-profit, non-partisan public education advocacy organization.

BACKGROUND

6. On May 23, 2022, the Requester submitted a RTKL Request to CCA. Requester sought the following:

Copies of ALL 'Community Class Registration Forms' for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:

Course title:

Number of time[s] the class meets:

Start date:

Cost of the class:
Amount requesting for the reimbursement:

7. On May 31, 2022, CCA invoked a thirty-day extension of time to respond to the Request.

8. On June 30, 2022, CCA partially denied the request, insofar as it sought records exempt from disclosure under Section 708(b)(1), (6), and (15) of the RTKL. This notification also provided the aggregate cost of the classes for the 2019-2020 and 2020-2021 school years.

9. On July 21, 2022, the Requester appealed to OOR. The Requester used OOR's standard appeal form to file her appeal and did not attach additional documentation to address the grounds CCA raised in its response.

10. On July 21, 2022, OOR issued an Official Notice of the Requester's appeal and invited both parties to supplement the record. A true and correct copy of the Official Notice is attached hereto as Exhibit "B."

11. On August 8, 2022, CCA submitted a position statement to OOR, along with attestations, made under penalty of perjury, of the following employees of the Charter School: Natasha Shane, Vice President of Family Services, and Timothy A. Eller, Senior Vice President of Outreach and Government Relations. A true and correct copy of CCA's submission is attached hereto, incorporated herein, and marked as Exhibit "C."

12. The Requester did not submit additional factual allegations or legal argument to OOR.

FINAL DETERMINATION TO BE REVIEWED

13. CCA seeks this Court's review of the Final Determination issued by OOR on September 16, 2022, in the matter captioned *Susan Spicka and Education Voters of*

PA, Requester, v. Commonwealth Charter Academy Charter School, Respondent, OOR Docket No. AP 2022-1704. See Exhibit “A.”

14. The Final Determination was issued by Erin Burlew, Esquire, OOR Appeals Officer. *Id.*

15. As set forth in the “Conclusion” of the Final Determination: “... the Charter School is required to provide the registration forms only, redacted of any identifying information, within thirty days.” *Id.*

STANDARD AND SCOPE OF REVIEW

16. The standard of review in appeals to the Court of Common Pleas from an OOR Final Determination is full *de novo* review. *Bowling v. Office of Open Records*, 621 Pa. 133, 168-169, 75 A.3d 453, 474 (2013).

17. The scope of review in appeals to the Court of Common Pleas from an OOR Final Determination is “plenary” or, in other words, the “broadest scope of review.” See *Bowling*, 621 Pa. at 173, 75 A.3d at 476-77. A “plenary” scope of review enables the common pleas courts to “expand the record to fulfill their statutory role.” See *Id.*

GROUND FOR REVIEW AND ARGUMENT

18. The allegations contained in the foregoing paragraphs are incorporated herein by reference.

19. OOR erred by finding that the appeal was sufficient under Section 1101(a) of the RTKL, which mandates that an “appeal shall state the grounds upon which the requester asserts that the record is a public record, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.” 65 P.S. § 67.1101(a)(1).

a. To file an appeal under the RTKL, the Office of Open Records states,¹ in accordance with Section 1101(a)(1) of the RTKL, a requester must provide all of the following:

- “State why you believe the record is a public record. A general statement that the record is public under the RTKL is insufficient. It is advisable to explain why you believe a record documents a transaction or activity of an agency and explain why you believe it was created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency.”
- “Address all grounds that the agency raised in its denial. You must state why you believe each of the agency’s denial, arguments, and exemptions are incorrect – a general statement that the agency is incorrect is insufficient. Legal argument is not required, but requesters should try to explain why the agency’s reliance on an exemption is misplaced and why a record should be public.” (emphasis added).

b. The standard form does not include a space for a requester to explain or address such grounds as required by the RTKL nor does it direct the requester to attach a document with additional details. Instead, the standard appeal form contains the following stock language:

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

See Exhibit “B.”

¹ OOR, Citizens’ Guide:
<https://www.openrecords.pa.gov/Documents/RTKL/CitizensGuide.pdf> (last visited Oct. 7, 2022)

c. Reliance on this stock language does not satisfy a requester's statutory obligation to "specify in its appeal to Open Records the particular defects in an agency's stated reasons for denying a RTKL request." *Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Cmwlth. 2011).

20. OOR correctly concluded that the Community Class Registration Forms constitute education records that contain personally identifiable information protected by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA").

21. OOR erred to the extent the Final Determination requires CCA to redact and disclose the education records, which are specifically exempt from access under FERPA and Sections 102 and 305(a) of the RTKL.

a. OOR made legal errors in the Final Determination when addressing the protections afforded to education records pursuant to FERPA, and the relationship of FERPA to the RTKL.

b. Section 102 of the RTKL defines a "public record" as a record "including a financial record, of a Commonwealth or local agency that: is not exempt under section 708; *is not exempt from being disclosed under any other Federal or State law or regulation* or judicial order or decree; or is not protected by privilege." 65 P.S. § 67.102 (emphasis added).

c. Section 305(a) of the RTKL provides that records in the possession of a local agency shall be presumed to be a public record unless the record is exempt under section 708; is protected by a privilege; or is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305(a).

d. Section 306 of the RTKL further provides that “[n]othing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306.

e. FERPA and its implementing regulations, 34 CFR Part 99, protect education records and “personally identifiable information” contained therein.

f. Section 706 of the RTKL – requiring redaction of records – only applies to public records that contain information which is subject to access as well as information which is not subject to access. 65 P.S. § 67.706. Conversely, it does not apply if a record is exempt from disclosure under the RTKL. *Dep’t of Corr. v. St. Hillaire*, 128 A.3d 859, 865–66 (Pa. Cmwlth. 2015).

g. Consequently, since OOR concluded the Community Class Registration Forms constitute education records protected by FERPA, the forms are not public records and are exempt from disclosure under the RTKL; thus, the records need not be redacted.

22. For these reasons and for any other reasons that become apparent upon the filing of the Record in this matter, the OOR Appeals Officer erred in granting Requester’s appeal and directing the Charter School to provide redacted copies of the education records, i.e., the Community Class Registration Forms.

RELIEF SOUGHT

23. For the reasons set forth above, CCA respectfully requests that this Honorable Court review and reverse the September 16, 2022, Final Determination of

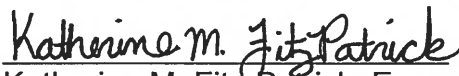
OOR that directs CCA to provide redacted education records, i.e., the Community Class Registration Forms.

24. Or, in the alternative, CCA respectfully requests that this Honorable Court provide the opportunity for CCA to present competent evidence and make legal argument at a hearing and in writing related to the nature and scope of the information contained in the Community Class Registration Forms, the nature and scope of the protections provided to student education records pursuant to FERPA, and the substantial likelihood of harm to CCA's parents and students should the requested information be disclosed.

25. Issue a stay pending issuance of a final decision in *Central Dauphin School District v. Hawkins*, 88 MAP 2021, wherein the Court granted the school district's Petition for Allowance of Appeal to consider: "Whether the Commonwealth Court committed reversible error by ordering disclosure and mandating redaction of a student education record that is exempt from public access under state and federal law - specifically, FERPA and Section[s] 102 and 305(a) of the Pennsylvania Right-to-Know-Law?"

26. Provide all other relief that this Court determines is just and proper.

Respectfully submitted,



Katherine M. FitzPatrick, Esq.

Pa. Attorney I.D. No. 208863

fitz-patrick@bmc-law.net

Philip J. Murren, Esq.

Pa. Attorney I.D. No. 21426

bmc-law2@msn.com

Ball, Murren & Connell, LLC

2303 Market Street

Camp Hill, PA 17011

Counsel for Commonwealth Charter Academy

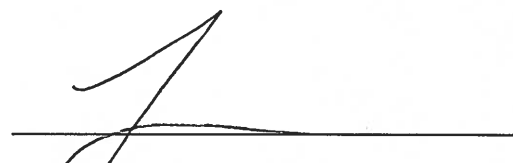
Dated: October 13, 2022

VERIFICATION

I, Thomas D. Longenecker, hereby verify that I am the President/Chief Executive Officer of Commonwealth Charter Academy Charter School and am authorized to provide this Verification. The facts set forth in the foregoing Petition for Review are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: October 13, 2022



Thomas D. Longenecker
President/CEO
Commonwealth Charter Academy

EXHIBIT “A”



pennsylvania

OFFICE OF OPEN RECORDS

FINAL DETERMINATION

IN THE MATTER OF	:
	:
SUSAN SPICKA AND EDUCATION	:
VOTERS OF PA,	:
Requester	:
	:
v.	:
	:
	:
COMMONWEALTH CHARTER	:
ACADEMY CHARTER SCHOOL,¹	:
Respondent	:

Docket No: AP 2022-1704

On May 23, 2022, Susan Spicka and Education Voters of PA (collectively “Requester”) submitted a request (“Request”) to Commonwealth Charter Academy Charter School (“Charter School”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.*, seeking:

- Copies of ALL “Community Class Registration Forms” for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:
- Course title:
- Number of time the class meets:
- Start date:
- Cost of the class:
- Amount requesting for the reimbursement:

¹ The Request was directed to Commonwealth Charter Academy Cyber Charter School; however, it refers to itself as Commonwealth Charter Academy Charter School in its submissions and therefore the caption is amended to reflect that name.

On June 30, 2022, following a thirty-day extension during which to respond, 65 P.S. § 67.902(b), the Charter School partially denied the Request, arguing, among other things, that the records are protected by FERPA and the constitutional right to privacy. The Charter School provided the aggregate cost of the classes for each school year.

On July 21, 2022, the Requester appealed to the Office of Open Records (“OOR”), challenging the denial and stating grounds for disclosure.² The OOR invited both parties to supplement the record and directed the Charter School to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).

On July 28, 2022, the OOR granted the Charter School’s request to keep the record open until August 8, 2022. *See* 65 P.S. § 67.1102(b)(3) (stating that “the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute”).

On August 8, 2022, the Charter School submitted a position statement reiterating its grounds for denial and asserting that the Requester failed to state the particular defects of the denial in her appeal. In support of its position, the Charter School submitted the attestations made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities, of Natasha Shane, Vice President of Family Services, and Timothy Eller, Senior Vice President of Outreach and Government Relations.

1. The appeal is sufficient under Section 1101 of the RTKL

The Charter School asserts that the appeal is deficient because the Requester failed to identify the particular defect in the state reasons for denial. *Pa. Dep’t of Corr. v. Office of Open Records*, 18 A.3d 429 (Pa. Commw. 2011). However, the Requester utilized the OOR’s standard

² The Requester granted the OOR a 30-day extension to issue a final determination. *See* 65 P.S. § 67.1101(b)(1) (“Unless the requester agrees otherwise, the appeals officer shall make a final determination which shall be mailed to the requester and the agency within 30 days of receipt of the appeal filed under subsection (a).”).

appeal form which provides that by submitting the form, the Requester is asserting that the “records do not qualify for any exemption under § 708 of the RTKL....” See *Barnett v. Pa. Dep’t of Public Welf.*, 71 A.3d 399, 406 (Pa. Commw. Ct. 2013). Generally, the OOR has found that this statement is sufficient to satisfy a requester’s burden under Section 1101(a). See, e.g., *Phillips and WHYY v. Pa. Dep’t of Env’tl. Prot.*, OOR Dkt. AP 2016- 1782, 2017 PA O.O.R.D. LEXIS 222; *Tomassi v. Municipality of Mt. Lebanon*, OOR Dkt. AP 2017-0644, 2017 PA O.O.R.D. LEXIS 896. Therefore, the appeal is sufficient under the RTKL.

2. The Charter School must provide redacted records

The Charter School asserts that the records are educational records protected by FERPA. FERPA protects “personally identifiable information” contained in “education records” from disclosure, and financially penalizes school districts that have “a policy or practice of permitting the release of education records ... of students without the written consent of their parents.” 20 U.S.C. § 1232g(b)(1). Regulations implementing FERPA define “education records” as those records that are “[d]irectly related to a student” and are “[m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 34 C.F.R. 99.3. While the express language of FERPA’s implementing regulation would appear to encompass all records held by an educational institution pertaining to a student, a review of case law interpreting FERPA reveals that not all of these records constitute “education records” as defined by FERPA. Just because a record involves a student does not automatically implicate the confidentiality provisions of FERPA. See *Bockis v. Agora Cyber Charter Sch.*, OOR Dkt. AP 2016-0845, 2016 PA O.O.R.D. LEXIS 848; *Newhouse v. Manheim Twp. Sch. Dist.*, OOR Dkt. AP 2016-0541, 2016 PA O.O.R.D. LEXIS 759.

Regulations implementing FERPA define “personally identifiable information” as:

- a) The student's name;
- b) The name of the student's parent or other family members;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number, student number, or biometric record;
- e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. § 99.3. While the RTKL does not require an evaluation of the circumstances surrounding the request for records, FERPA does. *See* 34 C.F.R. § 99.3(g).

Ms. Shane affirms that in order to obtain a Community Class Reimbursement ("CCR"), a parent/guardian is required to submit a Community Class Registration Form, Community Class Attendance Form, and proof of payment. Shane Attestation ¶ 9. These forms include various fields including the student's name, student identification number, the caretaker's name, a parent/guardian signature, and proof of payment, which includes personal financial information i.e. payment details, including card type, card number, and billing address. Shane Attestation ¶¶ 9(a)-(b), 14. She also affirms that the Charter School does not disclose this information without prior written consent from the appropriate party and that it does not have that consent in this matter. Shane Attestation ¶¶ 15-16. Ms. Shane affirms that even if the personal information is redacted, the remainder of the information on these forms can be linked to a specific student. Shane Attestation ¶ 17. Finally, she explains that the forms and proof of payment are submitted in a variety of ways but often as a single file (i.e. a scanned PDF or a single jpeg). Shane Attestation ¶¶ 11, 13. The Charter School maintains these forms and proof of payment in its electronic filing system in the folder specifically designated for each individual student. Shane Attestation ¶ 12.

Under the RTKL, a sworn affidavit or statement made under the penalty of perjury may serve as sufficient evidentiary support. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Charter School has acted in bad faith, “the averments in [the attestation] should be accepted as true.” *McGowan v. Pa. Dep’t of Env’tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)).

The Charter School has demonstrated that these are education records that contain personally identifiable information. They contain a variety of identifiers, including name and address. The forms directly relate to the student because they identify courses taken by a student and they are maintained by the Charter School in each student’s individual file. Thus, these records are protected by FERPA.

However, FERPA regulations permit schools to release education records without consent when the records have been “de-identified,” that is, when all personally identifiable information has been removed. 34 C.F.R. § 99.31(b)(1) (“An educational agency . . . may release the records or information without the consent required by §99.30...after the removal of all personally identifiable information provided that the educational agency or institution or other party has made a reasonable determination that a student's identity is not personally identifiable...”); *see also Easton Area Sch. Dist. v. Miller*, 232 A.3d 716, 729-30 (Pa. 2020).

The Charter School argues that even if student names, ID numbers, parent/caretaker/guardian names and signatures, and the name of the business or organization and its entity number or Tax ID number are redacted from the Registration form, the student can still be identified because the Requester “has infiltrated the [Charter School] community via Facebook

communities intended for parents, guardians, students, and caretakers” and the registration forms, with the attached attendance forms and proof of payment contain information that is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. However, the Request is for the registration forms only, not the attendance or payment forms. Thus, even if those are part of the same file, they may be redacted as they were not requested. Further redacting the registration forms of any information not sought sufficiently de-identifies the forms such that they may be released under FERPA. Additionally, with the redaction of personal identification information, there are no constitutional right to privacy concerns for the OOR to address.

For the foregoing reasons, the appeal is **granted**, and the Charter School is required to provide the registration forms only, redacted of any identifying information, within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Dauphin County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. 65 P.S. § 67.1303. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.³ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

³ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

FINAL DETERMINATION ISSUED AND MAILED: September 16, 2022

/s/ Erin Burlew

APPEALS OFFICER
ERIN BURLEW, ESQ.

Sent via email to: Susan Spicka; Katherine Fitz-Patrick, Esq., Philip Murren, Esq.; Evelyn De Jesus

EXHIBIT “B”

NOTICE OF DEADLINES

The appeal has been docketed by the OOR and it has been assigned to an Appeals Officer. The docket number and the Appeals Officer's contact information are included in the attachments you received along with this notice.

The Final Determination is currently due on **September 21, 2022**.

The timeline for this RTKL appeal may be extended by the OOR during the appeal This extension will allow the OOR the flexibility it requires to protect due process and to ensure that the agency and requester, along with any third parties, have a full and fair opportunity to meaningfully participate in the appeal.

Evidence, legal argument and general information to support your position must be submitted within seven (7) business days from the date of this letter, unless the Appeals Officer informs you otherwise. *Note: If the proceedings have been stayed for the parties to submit a completed mediation agreement, the record will remain open for seven (7) business days beyond the mediation agreement submission deadline.*

Submissions in this case are currently due on **August 1, 2022**.

If you are unable to meaningfully participate in this appeal under the above deadlines, please notify the Appeals Officer as soon as possible.

Due to delays in U.S. mail, we urge agencies and requesters to use email for all communications with the OOR to the extent possible.

Presently, the OOR is receiving postal mail on a limited basis. Accordingly, we urge agencies and requesters to use email for all communication with the OOR to the extent possible.

If you have any questions about this notice or the underlying appeal, please contact the Appeals Officer. The OOR is committed to working with agencies and requesters to ensure that the RTKL appeal process proceeds as fairly and as smoothly as possible.



pennsylvania
OFFICE OF OPEN RECORDS

July 21, 2022

Via Email Only:

Ms. Susan Spicka
Education Voters of PA
412 North Third Street
Harrisburg, PA 17101
sspicka@educationvoterspa.org

Via Email Only:

Evelyn DeJesus
Agency Open Records Officer
Commonwealth Charter Academy Cyber
Charter School
1 Innovation Way
Harrisburg, PA 17110
rtkl@ccaeducate.me

RE: OFFICIAL NOTICE OF APPEAL - Spicka and Education Voters of PA v. Commonwealth Charter Academy Cyber Charter School OOR Dkt. AP 2022-1704

Dear Parties:

Review this information and all enclosures carefully as they affect your legal rights.

The Office of Open Records (“OOR”) received this appeal under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. on July 21, 2022. A binding Final Determination (“FD”) will be issued pursuant to the timeline required by the RTKL, **please see the attached information for more information about deadlines.**

Notes for both parties (more information in the enclosed documents):

- The docket number above must be included on all submissions related to this appeal.
- Any information provided to the OOR must be provided to all parties involved in this appeal. Information that is not shared with all parties will not be considered.
- All submissions to the OOR, other than *in camera* records, will be public records. Do not include any sensitive information- such as Social Security numbers.

If you have questions about this appeal, please contact the assigned Appeals Officer (contact information enclosed), providing a copy of any correspondence to all parties involved in this appeal.

Sincerely,

Elizabeth Wagenseller
Executive Director

Enc.: Description of RTKL appeal process
Assigned Appeals Officer contact information
Entire appeal as filed with OOR

The Right-to-Know Law Appeal Process

Please review this information carefully as it affects your legal rights.

The Office of Open Records (“OOR”) has received the enclosed appeal, which was filed under the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101, et seq. A binding Final Determination will be issued by the OOR pursuant to the statutory timeline, subject to the notice of deadlines enclosed herein. If you have any questions, please contact the Appeals Officer assigned to this case. Contact information is included on the enclosed documents.

Submissions to the OOR

Both parties may submit evidence, legal argument, and general information to support their positions to the assigned Appeals Officer. Please contact the Appeals Officer as soon as possible.

Any information provided to the OOR must be provided to all parties involved in this appeal. Information submitted to the OOR will not be considered unless it is also shared with all parties.

Include the docket number on all submissions.

The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Generally, submissions to the OOR — other than *in camera* records — will be public records. Do not include sensitive or personal information, such as Social Security numbers, on any submissions.

Agency Must Notify Third Parties

If records affect a legal or security interest of a third party; contain confidential, proprietary or trademarked records; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.**

Such notice must be made by: (1) Providing a copy of all documents included with this letter; **and** (2) Advising relevant third parties that interested persons may request to participate in this appeal by contacting the Appeals Officer assigned to this case (see 65 P.S. Â§ 67.1101(c)).

The Commonwealth Court has held that “the burden [is] on third-party contractors... to prove by a preponderance of the evidence that the [requested] records are exempt.” (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)).

A third party's failure to participate in a RTKL appeal before the OOR may be construed as a waiver of objections regarding release of requested records.

NOTE TO AGENCIES: If you have questions about this requirement, please contact the Appeals Officer immediately.

Statements of Fact & Burden of Proof

Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Statements of fact or allegations submitted without an affidavit may not be considered.

Under the RTKL, the agency has the burden of proving that records are exempt from public access (see 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.**

The law requires the agency position to be supported by sufficient facts and citation to all relevant sections of the RTKL, case law, and OOR Final Determinations.

An affidavit or attestation is required to prove that records do not exist.

Sample affidavits are on the OOR website, openrecords.pa.gov.

Any evidence or legal arguments not submitted or made to the OOR may be waived.

Preserving Responsive Records

The agency **must** preserve all potentially responsive records during the RTKL appeal process, including all proceedings before the OOR and any subsequent appeals to court.

Failure to properly preserve records may result in the agency being sanctioned by a court for acting in bad faith.

See *Lockwood v. City of Scranton*, 2019-CV-3668 (Lackawanna County Court of Common Pleas), holding that an agency had “a mandatory duty” to preserve records after receiving a RTKL request. Also see generally *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.*, 185 A.3d 1161 (Pa. Commw. Ct. 2018), holding that “a fee award holds an agency accountable for its conduct during the RTKL process...”

Mediation

The OOR offers a mediation program as an alternative to the standard appeal process. To participate in the mediation program, both parties must agree in writing.

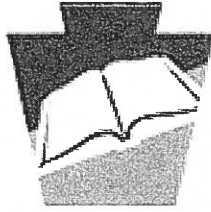
The agency must preserve all potentially responsive records during the RTKL appeal process. Mediation is a voluntary, informal process to help parties reach a mutually agreeable settlement. The OOR has had great success in mediating RTKL cases.

If mediation is successful, the requester will withdraw the appeal. This ensures that the case will not proceed to court — saving both sides time and money.

Either party can end mediation at any time.

If mediation is unsuccessful, both parties will be able to make submissions to the OOR as outlined on this document, and the OOR will have no less than 30 calendar days from the conclusion of the mediation process to issue a Final Determination.

Parties are encouraged to consider the OOR's mediation program as an alternative way to resolve disputes under the RTKL.



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Erin Burlew, Esq.

CONTACT INFORMATION:

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

FACSIMILE:

(717) 425-5343

EMAIL:

eburlew@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer.
Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <https://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.



pennsylvania

OFFICE OF OPEN RECORDS

IN THE MATTER OF

SUSAN SPICKA,
Requester

v.

COMMONWEALTH CHARTER
ACADEMY CYBER CHARTER SCHOOL,
Respondent

Docket No.: AP 2022-1704

This correspondence confirms the above-referenced Requester’s agreement to an additional thirty (30) day extension of time to issue a Final Determination in this matter as indicated in the Requester’s appeal form. Accordingly, pursuant to 65 P.S. § 67.110l(b)(l), the Office of Open Records will now issue a Final Determination in the above-captioned matter on or before September 21, 2022.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- An employee of the agency
- The owner of a record containing confidential or proprietary information or trademarked records
- A contractor or vendor
- Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

DC, OpenRecords

From: no-reply@openrecordspennsylvania.com
Sent: Thursday, July 21, 2022 12:48 PM
To: sspicka@educationvoterspa.org
Subject: [External] PA Office of Open Records - Appeal Confirmation

Follow Up Flag: Follow up
Flag Status: Flagged

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name:	Susan Spicka
Company:	Education Voters of PA
Address 1:	412 North Third Street
Address 2:	
City:	Harrisburg
State:	Pennsylvania
Zip:	17101
Phone:	717-331-4033
Email:	sspicka@educationvoterspa.org
Email2:	sspicka@educationvoterspa.org
Agency (list):	Commonwealth Charter Academy Cyber Charter School
Agency Address 1:	1 Innovation Way
Agency Address 2:	
Agency City:	Harrisburg
Agency State:	Pennsylvania
Agency Zip:	17110

Agency Phone:	717-710-3300
Agency Email:	rtkl@ccaeducate.me
Records at Issue in this Appeal:	Information from Community Class Registration forms submitted by students' families to CCA. The information requested does not include any information that would identify individual students or their families. We are only seeking information about the classes and costs.
Request Submitted to Agency Via:	e-mail
Request Date:	05/23/2022
Response Date:	06/30/2022
Deemed Denied:	No
Agency Open Records Officer:	Evelyn DeJesus
Attached a copy of my request for records:	Yes
Attached a copy of all responses from the Agency regarding my request:	Yes
Attached any letters or notices extending the Agency's time to respond to my request:	Yes
Agree to permit the OOR additional time to issue a final determination:	30 Days
Interested in resolving this issue through OOR mediation:	No
Attachments:	<ul style="list-style-type: none"> • CCA RTKL 2022-22 - S. Spicka - Final Response Community Class Registration Form.pdf • Community Class Registration Form RTK--5-23-2022.pdf • Community class attendance form .jpg • Community Class Registration Form RTK--5-23-20221.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.



June 30, 2022

Sent Via E-Mail to: sspicka@educationvoterspa.org
Susan Spicka
Education Voters of PA
412 N Third Street
Harrisburg, PA 17101

RE: RTKL Request 2022-22

Dear Ms. Spicka,

Thank you for writing to Commonwealth Charter Academy (CCA) to request records pursuant to Pennsylvania's Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 et seq. On May 23, 2022, you requested:

Copies of ALL "Community Class Registration Forms" for the 2019-2020 and 2020-2021 school year that were submitted to CCA[.]

On May 31, I wrote to you to inform you that we required an additional 30 days to respond to your request, and that we anticipated issuing a final response by June 30. Please accept this as CCA's final response to your request.

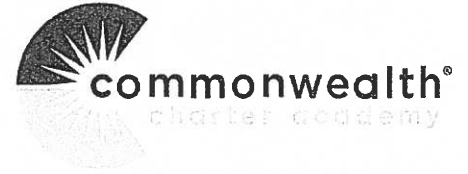
Your request is denied for the following reasons, as permitted by the RTKL.

The records you requested are exempt from disclosure under section 708 (b)(1), (6), and (15) of the RTKL. Disclosure of the records is also subject to the federal Family Educational Rights and Privacy Act (FERPA) and related state laws and rights to privacy under the Pennsylvania Constitution. See 65 P.S. §§ 67.305(a)(3) (removing presumption of public records for records exempted from disclosure under any other Federal or State law or regulation or judicial order or decree) and 67.306 ("Nothing in [the RTKL] shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.")

However, pursuant to section 708 (d) of the RTKL, we are providing aggregated data of the total community class reimbursement paid for the 2019-20 and 2020-21 school year.

- 2019-2020 School Year: \$60, 204.16
- 2020-2021 School Year: \$161,154.54

You have a right to appeal this response in writing to: Office of Open Records, 333 Market St., 16th Floor, Harrisburg, PA 17101-2234. Appeals can also be filed online at the Office of Open Records website, <https://www.openrecords.pa.gov>.



If you choose to file an appeal you must do so within 15 business days of the mailing date of the agency's response. See 65 P.S. § 67.1101. Please note that a copy of your original Right-to-Know request, the agency's extension notice, and this denial letter should be included when filing an appeal. More information about how to file an appeal under the Right-to-Know Law is available at the Office of Open Records website, <https://www.openrecords.pa.gov>.

If you have additional questions, you can contact me at 717-710-3300 ext. 11565, or by email at rtkl@ccaeducate.me.

Respectfully,

Evelyn De Jesus

Evelyn De Jesus
Paralegal
Open Records Officer

CC: Phil Murren, CCA Solicitor



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Commonwealth Charter Academy (Attn: AORO)

Date of Request: 5/23/2022 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Susan Spicka Company (if applicable): Education Voters of PA

Mailing Address: 412 N. Third Street

City: Harrisburg State: PA Zip: 17101 Email: sspicka@educationvoterspa.org

Telephone: 717-331-4033 Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Copies of ALL "Community Class Registration Forms" for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:

Course title:

Number of time the class meets:

Start date:

Cost of the class:

Amount requesting for the reimbursement:

DO YOU WANT COPIES? Yes, printed copies (default if none are checked)
 Yes, electronic copies preferred if available
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
 RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ~~X~~ \$100 (or) \$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ _____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
 More information about the RTKL is available at <https://www.openrecords.pa.gov>

Form updated Feb. 3, 2020



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Commonwealth Charter Academy (Attn: AORO)

Date of Request: 5/23/2022 Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: Susan Spicka Company (if applicable): Education Voters of PA

Mailing Address: 412 N. Third Street

City: Harrisburg State: PA Zip: 17101 Email: sspicka@educationvoterspa.org

Telephone: 717-331-4033 Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

Copies of ALL "Community Class Registration Forms" for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:

Course title:

Number of time the class meets:

Start date:

Cost of the class:

Amount requesting for the reimbursement:

DO YOU WANT COPIES? Yes, printed copies (default if none are checked)
 Yes, electronic copies preferred if available
 No, in-person inspection of records preferred (may request copies later)

Do you want certified copies? Yes (may be subject to additional costs) No
RTKL requests may require payment or prepayment of fees. See the Official RTKL Fee Schedule for more details.

Please notify me if fees associated with this request will be more than ~~XX~~ \$100 (or) \$ _____.

ITEMS BELOW THIS LINE FOR AGENCY USE ONLY

Tracking: _____ Date Received: _____ Response Due (5 bus. days): _____

30-Day Ext.? Yes No (If Yes, Final Due Date: _____) Actual Response Date: _____

Request was: Granted Partially Granted & Denied Denied Cost to Requester: \$ _____

Appropriate third parties notified and given an opportunity to object to the release of requested records.

NOTE: In most cases, a completed RTKL request form is a public record.
More information about the RTKL is available at <https://www.openrecords.pa.gov>



Community Class Registration Form

Complete one form per student, per class and email forms to Lucia Perez at lperez@ccaeducate.me
All fields **MUST** be complete. Missing or incomplete documents will be returned to you and will result in reimbursement being deferred to the following quarter.

Student Name:	Student ID #:
Caretaker Name:	
Name of Business or Organization offering the class:	
Course Title:	Number of times the class meets:
Start Date:	End Date:
Cost of the class:	Amount requesting for reimbursement:
<small>*CCA will reimburse up to \$250 per year per student. CCA will not cover registration fees, membership fees, rentals, equipment, costs associated with overnight accommodations, costumes, or uniform costs. We will only reimburse for the instructional component being delivered. *CCA is unable to reimburse Caretakers or Learning Coaches for instructing their own student. *If possible, please include a brochure /pamphlet about the class.</small>	
<small>Please include the business entity number found on the following website: https://www.corporations.pa.gov/search/corporatesearch</small>	
<small>If you are unable to find the business entity number, a tax ID must be provided.</small>	

Consent and Waiver:

I certify that my son/daughter _____ has undergone a physical examination by a licensed physician within the last year and is in sound physical condition for unrestricted participation in the activities and classes arranged by Commonwealth Charter Academy or other community business or organization. In my or another legal guardian's absence, I authorize the staff and/or teacher of the class to act for me and to exercise his/her best judgment in situations requiring first aid or medical attention for my child. I understand that participation in classes or physical activities has certain inherent risks and I assume full responsibility for those risks. I waive any liability claims that may be asserted by me or my child against Commonwealth Charter Academy or any of its employees, agents, volunteers or representatives as a result of participation by my child in any classes or activities, and I release Commonwealth Charter Academy, the staff/teacher, volunteers, administrators and the hosting site of the program from any and all liability for any injury my child might incur while participating in the program. I also will assume all costs associated with this program and understand that reimbursement of costs may be made only after completion of all requirements listed above and only to the extent covered above as a reimbursable cost.

Parent/Guardian Signature

Date

Proof of Payment:

You are required to submit proper proof of payment for the class. Please provide a detailed/itemized receipt or invoice from the business stating the student's name, how many classes were purchased, and the cost per class. Generic, lump sum receipts are not acceptable. You must submit proof of payment for the full amount of requested reimbursement.

EXHIBIT “C”

LAW OFFICES
BALL, MURREN & CONNELL, LLC
2303 MARKET STREET
CAMP HILL, PENNSYLVANIA 17011

PHILIP J. MURREN
TERESA R. MCCORMACK
DAVID R. DYE
KATHERINE M. FITZ-PATRICK

(717) 232-8731
FACSIMILE (717) 232-2142

WILLIAM BENTLEY BALL
(1916-1999)
OF COUNSEL
RICHARD E. CONNELL

August 8, 2022

Via Electronic Mail

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

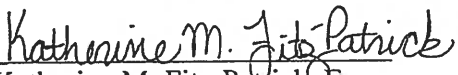
Re: Right-to-Know Law Appeal – Docket # AP 2022-1704
Susan Spicka v. Commonwealth Charter Academy Charter School

Dear Ms. Burlew:

On July 21, 2022, Commonwealth Charter Academy Charter School (CCA) received notice from the Office of Open Records (OOR) that it had received the above docketed appeal. The original deadline for submissions regarding this appeal was August 1, 2022. At the request of CCA, the deadline was extended to August 8, 2022.

This submission by CCA will serve to supplement the record pursuant to the notice of appeal, and to request that the appeal be denied.

Respectfully submitted,


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

cc: Susan Spicka (via electronic mail and U.S. Mail)

Enclosures

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

SUSAN SPICKA :
Requester, :
 :
v. : Docket # AP 2022-1704
 :
COMMONWEALTH CHARTER :
ACADEMY CHARTER SCHOOL, :
Respondent. :

COMMONWEALTH CHARTER ACADEMY'S RESPONSE TO RTKL APPEAL

I. PROCEDURAL HISTORY

On May 23, 2022, Susan Spicka (Requester) submitted a Right-to-Know Law (RTKL) request to Commonwealth Charter Academy Charter School (CCA). The Requester requested the following:

Copies of ALL 'Community Class Registration Forms' for the 2019-2020 and 2020-2021 school year that were submitted to CCA with the following UNREDACTED information:

- Course title:
- Number of time[s] the class meets:
- Start date:
- Cost of the class:
- Amount requesting for the reimbursement:

Along with the standard Right-to-Know Law Request Form, Ms. Spicka included a copy of the form referenced in her RTKL request.¹

By letter dated May 31, 2022, CCA notified the Requester that it required an additional thirty (30) days to respond to her request.

¹ The Community Class Registration Form is not a publicly accessible form. A parent/guardian or eligible student must be logged in to an edio account (CCA's proprietary learning management system) or private Facebook group to obtain the form. See Exhibit A, Affidavit of Natasha Shane at ¶ 10.

On June 30, 2022, CCA denied the request because the requested records are exempt from disclosure under Section 708(b)(1), (6), and (15) of the RTKL. Pursuant to Section 708(d) of the RTKL, CCA provided aggregate data of the total community class reimbursement paid for the 2019-20 and 2020-21 school year.

On July 21, 2022, Requester filed an appeal of CCA's response with the Pennsylvania Office of Open Records (OOR), using OOR's Appeal Form. Requester did not specify in her appeal "the particular defects in an agency's stated reasons for denying a RTKL request." *Pa. Dep't of Corr. v. Office of Open Records*, 18 A.3d 429, 434 (Pa. Cmwlth. 2011).

II. FACTUAL BACKGROUND

CCA does not disclose personally identifiable information without prior written consent of a parent/guardian or eligible student, except as specifically permitted by law. *See* CCA Policy 216. Student Records (last visited July 29, 2022); Family Educational Rights and Privacy Act (FERPA) Notice (last visited July 29, 2022). *See* Ex. A at ¶ 15. The parents/guardians of the students whose records are at issue have not consented to the release of the requested records – Community Class Registration Forms. *Id.* at ¶ 16.

CCA recognizes that vital student learning can occur outside a traditional school setting and therefore encourages students to engage in real world learning experiences as an extension of the CCA curriculum; consequently, CCA offers a Community Class Reimbursement (CCR) program wherein CCA will reimburse a parent/guardian for the instructional component of a class taken in the community.² *Id.* at ¶ 8. For the 2019-2020 and 2020-2021 school years, CCA reimbursed up to \$200 per school year per student. *Id.* In order to obtain a CCR, a parent/guardian is required to submit a Community Class Registration Form with the attached Community Class Attendance Form, and proof of payment. *Id.* at ¶ 9. The Community Class Registration Form includes the following fields:

- Student Name:

² The Charter School Law requires a cyber charter school to provide each student and family: "a description of the lessons and activities to be offered both online and offline"; a list of "all services that will be provided to the student by the cyber charter school"; all instructional materials; all equipment, including, but not limited to, a computer, computer monitor and printer; and "provide or reimburse for all technology and services necessary for the on-line delivery of the curriculum and instruction." 24 P.S. § 17-1743-A.

- Student ID#:
- Caretaker Name:
- Name of Business or Organization offering the class:
- Course Title:
- Number of times the class meets:
- Start Date:
- End Date:
- Cost of the class:
- Amount requesting for reimbursement:
- Please include the business entity number found on the following website:
<https://www.corporations.pa.gov/search/corpsearch>
- If you are unable to find the business entity number, a Tax ID must be provided.
- Parent/Guardian Signature
- Date

Id. The attached Community Class Attendance Form includes the following fields:

- [Class] Date[s]:
- Initials of Instructor:
- Student's Name
- ... attended _____ complete sessions of my class out of _____ total sessions offered.
- Please describe the structure of the class and provide a brief description of the instructional component delivered: _____
- Instructor Signature

Id.

Parents/Guardians submit completed Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment to CCA via email in a variety of ways, i.e., via a scanned PDF or .jpg image captured by a cell phone. *Id.* at ¶ 11. In many instances, the Community Class Registration Form, Attendance Form, and proof of payment are combined in a single document, either because a parent/guardian placed all three documents on a surface, took one picture on his/her cell phone, and emailed the image to CCA, or a parent/guardian scanned all three documents into a single PDF and emailed the PDF to CCA. *Id.* at ¶ 13. Once received, CCA maintains the completed forms and accompanying proof of payment in its electronic filing system. In the system, there is a folder specifically designated for each individual student, wherein the documentation is maintained. *Id.* at ¶ 12.

As a statewide public cyber charter school, CCA enrolls students from across the state. See Exhibit B, Affidavit of Timothy A. Eller at ¶ 11. To provide a way for caretakers and families to engage with one another and seek non-academic support and guidance from family mentors, the Commonwealth Charter Academy Family Services Mentoring Group Facebook group was created. *Id.* The group’s membership consists of only CCA caretakers and families and is governed by rules that “require[] mutual trust” and that “respect the privacy of all members of this group.” *Id.* As a private group on Facebook, “only members can see who’s in the group and what they post.” *Id.* The group is managed and overseen by family mentors who are caretakers of CCA students. *Id.*

As mentioned above, the Community Class Registration Form is not a publicly accessible form. A parent/guardian or eligible student must be logged in to an edio account (CCA’s private, proprietary learning management system) or private Facebook group to obtain the form. *Id.* at ¶ 10. On May 23, 2022,³ Ms. Spicka, the Executive Director of Education Voters of PA, posted an article to her blog, “Are cyber charters playing games with Pennsylvania tax dollars?” In her blog, Ms. Spicka reveals that “Education Voters of PA has obtained official emails and blank reimbursement forms along with screen shots from a Commonwealth Charter Academy Facebook page” and “Facebook posts in a CCA parent page show families discussing” activities. *Id.* at ¶ 5. In addition, Ms. Spicka offered to share the Facebook posts with the press upon request. *Id.* at ¶ 6. Ms. Spicka also posted the blog on the Education Voters PA Facebook Page. *Id.* at ¶ 7. Ms. Spicka removed the plethora of public comments that took issue with her post and likewise limited who could comment on the post. *Id.*

Ms. Spicka’s own comments thus show that she has infiltrated this private group and is willing to publicly share information in order to ridicule the parents and students who have chosen to participate in this learning opportunity. *Id.* at ¶ 12. Ms. Spicka’s actions have the intended or obvious effect of causing embarrassment and violating the privacy and confidence of CCA caretakers and families. *Id.* at ¶ 13.

³ On May 24, 2022, CCA issued a Press Release in response to Education Voters of PA’s recent attempt to malign and falsely accuse CCA of misusing taxpayer dollars. See Ex. B, Attachment 4b.

III. ARGUMENT

Section 102 of the RTKL defines a “public record” as a record “including a financial record, of a Commonwealth or local agency that: is not exempt under section 708; *is not exempt from being disclosed under any other Federal or State law or regulation* or judicial order or decree; or is not protected by privilege.” 65 P.S. § 67.102 (emphasis added). Section 305(a) of the RTKL further provides that records in the possession of a local agency shall be presumed to be a public record unless the record is exempt under section 708; is protected by a privilege; or is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree. 65 P.S. § 67.305(a). Additionally, Section 306 of the RTKL provides: “Nothing in this act shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.” 65 P.S. § 67.306. Moreover, pursuant to Section 708(b) of the RTKL, the following are exempt from access by a requester under the RTKL: “(1) A record, the disclosure of which: (i) would result in the loss of Federal or State funds by an agency or the Commonwealth[.]” 65 P.S. § 67.708(b).

A. THE COMMUNITY CLASS REIMBURSEMENT FORMS AND THE ATTACHED ATTENDANCE FORMS SUBMITTED BY PARENTS/GUARDIANS TO CCA ARE NOT PUBLIC AND ARE EDUCATION RECORDS EXEMPT FROM ACCESS UNDER THE RTKL.

The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations, 34 CFR Part 99, protect education records and “personally identifiable information” contained therein. The purpose of FERPA is two-fold:

to assure that parents and eligible students can access the student’s education records, and to protect their right to privacy by limiting the transferability of their education records without their consent. 120 Cong. Rec. 39862. *As such, FERPA is not an open records statute or part of an open records system. The only parties who have a right to obtain access to education records under FERPA are parents and eligible students. Journalists, researchers, and other members of the public have no right*

under FERPA to gain access to education records for school accountability or other matters of public interest, including misconduct by those running for public office.

73 Fed. Reg. at 74831 (emphasis added). FERPA imposes a responsibility on schools to safeguard student privacy, and any misstep may result in harm or embarrassment to students and families as well as a loss of federal funds. 20 U.S.C. § 1232g(a)(1)(A).

FERPA and its implementing regulations protect the privacy rights of parents and students attending educational institutions receiving federal funds⁴ by requiring schools to obtain parental consent before releasing: (1) education records; or (2) any personally identifiable information contained in an education record. *See* 20 U.S.C. § 1232g(b)(1),(2). FERPA defines “education records” as those records that are “[d]irectly related to a student” and “[m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); *see also* 34 C.F.R. § 99.3. The regulations define “personally identifiable information” as:

- a) The student’s name;

⁴ (b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization,..

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless--

(A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents and the student if desired by the parents, or

20 U.S.C. § 1232g(b)(1),(2).

- b) The name of the student's parent or other family members;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number, student number, or biometric record;
- e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

34 C.F.R. § 99.3.

The Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment constitute “education records” protected by FERPA. The forms and accompanying information contain information directly related to individual students, more specifically, the forms and accompanying information document the participation of a CCA student in a community learning experience; and the information is maintained by CCA in a folder designated for each individual student in its electronic filing system. And, as stated above, the parents/guardians have not consented to the release of such information. This should end the analysis – any record exempt from disclosure under federal law is not a public record subject to access under the RTKL – however, thus far, this issue remains pending before the Pennsylvania Supreme Court. *See Central Dauphin School District v. Hawkins*, 88 MAP 2021 (The Court granted the school district's Petition for Allowance of Appeal to consider the following issue: “Whether the Commonwealth Court committed reversible error by ordering disclosure and

mandating redaction of a student education record that is exempt from public access under state and federal law - specifically, FERPA and Section[s] 102 and 305(a) of the Pennsylvania Right-to-Know-Law?”).

Consequently, CCA will address whether “the [requested records] can be redacted to remove their personally identifiable information, the [requested records are] not exempt, and [they] therefore must be disclosed.” *School District of Philadelphia v. Calefati, et al.*, 2022 WL 108455 (Pa. Cmwlth. 2022) (Opinion Not Reported) (quoting *Easton Area School District v. Miller*, 232 A.3d 716,730-31 (Pa. 2020)).

In her request, by seeking unredacted information, Ms. Spicka acknowledges the protections afforded to parents and students regarding education records and the personally identifiable information contained therein. However, she presumes that CCA will redact the following information from the Community Class Registration Form:

- Student Name
- Student ID #
- Caretaker Name and Parent/Guardian Signature
- Name of Business or Organization offering the class
- Business Entity Number or Tax ID

Her requested redactions do not take into account the personally identifiable information on the accompanying, and in many cases attached, Attendance Forms and proof of payment documentation, which includes, student’s name; the name of the student’s parent or other family members; and the address of the student or student’s family. In addition, as Ms. Spicka has infiltrated the CCA community via Facebook communities intended for parents, guardians, students, and caretakers, even if personal information is redacted, the Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment contain information that alone, or in combination, is linked or linkable to a specific student that

would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

B. THE PARENTS/GUARDIANS AND STUDENTS HAVE A CONSTITUTIONALLY PROTECTED PRIVACY INTEREST.

Under Section 706(b)(1), public records are exempt from public access if disclosure “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” 65 P.S. § 67.708(b)(1)(ii). Beyond that statutory protection, in *Pennsylvania State Education Association v. Commonwealth*, the Pennsylvania Supreme Court held that individuals possess a constitutional right to privacy in certain types of personal information. 148 A.3d 142, 158 (Pa. 2016) (“The right to informational privacy is guaranteed by Article 1, Section 1 of the Pennsylvania Constitution, and may not be violated unless outweighed by a public interest favoring disclosure.”). When a request for records implicates personal information, such information may be withheld when an individual’s interest in informational privacy outweighs the public’s interest in disclosure. OOR and Pennsylvania courts have thus far determined the following types of information implicate privacy concerns, subject to the balancing test: home addresses, telephone numbers, and social security numbers. See *Pennsylvania State Education Association v. Commonwealth*, 148 A.3d 142, 158 (Pa. 2016). In balancing such interests, courts sometimes ask – does disclosure of the personal information reveal anything about the workings of government.

The information contained in the Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment, contain names of students⁵ and parents/guardians; contact information of students and parents/guardians; information on

⁵ Section 708(b)(30) exempts the following information from access: “A record identifying the name, home address or date of birth of a child 17 years of age or younger.”

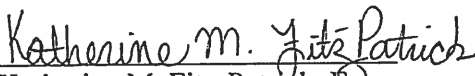
where/when a student may be on a particular time and date; payment details,⁶ including card type, card number, and billing address; cost to the parent/guardian of a course; and a description of the student's participation in the course as detailed by the parent. This information is very personal to a parent/guardian, and release of this very specific information about the extension of CCA's curricular program into the community for each individual student does not reveal anything about the workings of government, it reveals information about the parent's/guardian's personal choice related to what programs their child/children will participate in and the cost at which that participation comes.

In an effort to accommodate the requester, as well as the legal rights of its students and parents, CCA provided the requester with the aggregate data of the total community class reimbursement paid for the 2019-2020 and 2020-2021 school years. That is the appropriate balance of interests that should be struck under these circumstances.

IV. CONCLUSION

For the foregoing reasons, it is respectfully requested that the appeal of Requester be denied.

Respectfully submitted,



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

August 8, 2022

⁶ Section 708(b)(6)(i)(A) exempts the following personal identification information from access: "A record containing ... personal financial information, home, cellular or personal telephone numbers, personal e-mail addresses ... or other confidential identification number."

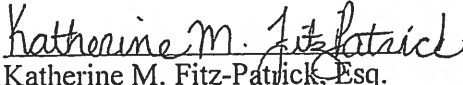
COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

Susan Spicka :
 :
 :
 v. : Docket # AP 2022-1704
 :
 Commonwealth Charter Academy :
 Charter School :

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on August 8, 2022, a true and correct copy of CCA's Response to RTKL Appeal was served via First-Class Mail, postage prepaid, and electronic mail upon:

Susan Spicka
Education Voters of PA
412 N. Third Street
Harrisburg, PA 17101
sspicka@educationvoterspa.org


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

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS**

SUSAN SPICKA	:
Requester,	:
	:
v.	: Docket # AP 2022-1704
	:
COMMONWEALTH CHARTER ACADEMY CHARTER SCHOOL,	:
Respondent.	:

AFFIDAVIT OF NATASHA SHANE

I, Natasha Shane, hereby declare under the penalty of perjury, pursuant to 18 Pa. C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

1. I have been employed with Commonwealth Charter Academy Charter School (CCA) since October, 2011, and currently serve as CCA's Vice President of Family Services (July 2019 – Present). My previous roles/titles at CCA include Parent Involvement Coordinator (October 2011 – July 2013), Family Involvement Manager (July 2013 – August 2017), and Director of Family Services (August 2017 – July 2019).
2. I am familiar with Susan Spicka's Right-to-Know Law request (Request), and subsequent appeal, seeking the Community Class Registration Forms that were submitted to CCA for the 2019-2020 and 2020-2021 school year.
3. Ms. Spicka attached a copy of CCA's Community Class Registration Form to both her initial request and appeal.
4. I worked with Evelyn De Jesus, CCA's Open Records Officer, to assess whether a requested record was within the possession, custody, or control of CCA, and we both worked with legal counsel to review the records for applicability of exemptions and redaction as appropriate.
5. On June 30, 2022, CCA denied Ms. Spicka's request. As part of the denial, CCA provided aggregate data of the total community class reimbursement paid for the 2019-2020 and 2020-2021 school years.
6. edio (Education for Individualized Outcomes) is CCA's proprietary relationship management system (RMS). Not only does edio function as a learning management system wherein students attend class and complete coursework, edio also functions as the communication system between school staff and the CCA school community.

Exhibit A

7. CCA recognizes that vital student learning can occur outside a traditional school setting and therefore encourages students to engage in real world learning experiences as an extension of the CCA curriculum.
8. CCA offers a Community Class Reimbursement (CCR) program wherein CCA will reimburse a parent/guardian for the **instructional** component of a class taken in the community. For the 2019-2020 and 2020-2021 school years, CCA reimbursed up to \$200 per school year per student.
9. In order to obtain a CCR, a parent/guardian is required to submit a Community Class Registration Form with the attached Community Class Attendance Form, and proof of payment. See Attachment Ia.

a. The Community Class Registration Form includes the following fields:

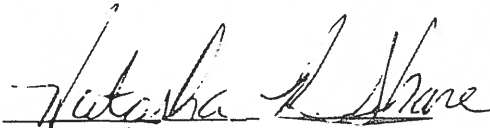
- Student Name:
- Student ID#:
- Caretaker Name:
- Name of Business or Organization offering the class:
- Course Title:
- Number of times the class meets:
- Start Date:
- End Date:
- Cost of the class:
- Amount requesting for reimbursement:
- Please include the business entity number found on the following website:
<https://www.corporations.pa.gov/search/corpsearch>
- If you are unable to find the business entity number, a Tax ID must be provided.
- Parent/Guardian Signature
- Date

b. The Community Class Attendance Form includes the following fields:

- [Class] Date[s]:
- Initials of Instructor:
- Student's Name
- ... attended _____ complete sessions of my class out of _____ total sessions offered.
- Please describe the structure of the class and provide a brief description of the _____ instructional _____ component _____ delivered:
- _____
Instructor Signature

10. The Community Class Registration Form, including the Attendance Form attachment, is not publicly available. A parent/guardian or eligible student must be logged in to an edio account to obtain the forms. The forms are also available as a file on the Commonwealth Charter Academy Family Services Mentoring Group; however, this private Facebook group is only for enrolled families.
11. Parents/Guardians submit completed Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment to CCA via email in a variety of ways, i.e., via a scanned PDF or .jpg image captured by a cell phone.
12. Once received, CCA maintains the completed forms and accompanying proof of payment in its electronic filing system. In the system, there is a folder specifically designated for each individual student, wherein the documentation is maintained.
13. In many instances, the Community Class Registration Form, Attendance Form, and proof of payment are combined in a single document, either because a parent/guardian placed all three documents on a surface, took one picture on his/her cell phone, and emailed the image to CCA, or a parent/guardian scanned all three documents into a single PDF and emailed the PDF to CCA.
14. The proof of payment documentation attached to the forms contain personally identifiable information of the student and parent/guardian and personal financial information of the parent/guardian, i.e., payment details, including card type, card number, and billing address.
15. CCA does not disclose personally identifiable information without prior written consent of a parent/guardian or eligible student, except as specifically permitted by law. See CCA Policy 216. Student Records (linked); Family Educational Rights and Privacy Act (FERPA) Notice (linked). CCA takes these steps in order to fulfill its statutory obligations to maintain the confidentiality of this information under FERPA.
16. The parents/guardians of the students whose records are at issue have not consented to the release of the requested records.
17. Even if personal information is redacted, the Community Class Registration Forms with the attached Community Class Attendance Form and proof of payment contain information that alone, or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

Date: August 8, 2022


Natasha Shane
Vice President of Family Services

Commonwealth Charter Academy



Community Class Registration Form

Complete one form per student, per class and email forms to Lucia Perez at lperez@ccaeducate.me

All fields MUST be complete. Missing or incomplete documents will be returned to you and will result in reimbursement being deferred to the following quarter.

Student Name:		Student ID #:	
Caretaker Name:			
Name of Business or Organization offering the class:			
Course Title:		Number of times the class meets:	
Start Date:		End Date:	
Cost of the class:		Amount requesting for reimbursement :	
<p><small>*CCA will reimburse up to \$200 per year per student. CCA will not cover registration fees, membership fees, rentals, equipment, costs associated with overnight accommodations, costumes, or uniform costs. We will only reimburse for the instructional component being delivered.</small></p> <p><small>*CCA is unable to reimburse Caretakers or Learning Coaches for instructing their own student.</small></p> <p><small>*If possible, please include a brochure /pamphlet about the class.</small></p>			
Please include the business entity number found on the following website: https://www.corporations.pa.gov/search/corpsearch			
If you are unable to find the business entity number, a Tax ID must be provided.			

Consent and Waiver:

I certify that my son/daughter _____ has undergone a physical examination by a licensed physician within the last year and is in sound physical condition for unrestricted participation in the activities and classes arranged by Commonwealth Charter Academy or other community business or organization. In my or another legal guardian's absence, I authorize the staff and/or teacher of the class to act for me and to exercise his/her best judgment in situations requiring first aid or medical attention for my child. I understand that participation in classes or physical activities has certain inherent risks and I assume full responsibility for those risks. I waive any liability claims that may be asserted by me or my child against Commonwealth Charter Academy or any of its employees, agents, volunteers or representatives as a result of participation by my child in any classes or activities, and I release Commonwealth Charter Academy, the staff/teacher, volunteers, administrators and the hosting site of the program from any and all liability for any injury my child might incur while participating in the program. I also will assume all costs associated with this program and understand that reimbursement of costs may be made only after completion of **all requirements** listed above and only to the extent covered above as a reimbursable cost.

_____/_____/____

Parent/Guardian Signature

Date

Proof of Payment:

You are required to submit proper proof of payment for the class. Please provide a **detailed/itemized receipt or invoice** from the business stating the student's name, how many classes were purchased, and the cost per class. Generic, lump sum receipts are not acceptable. You must submit proof of payment for the full amount of requested reimbursement.



Community Class Attendance Form

Please use the following form to track class attendance. Student must attend **80% or more** of the classes offered in order to be eligible for reimbursement. Form needs to be signed by the instructor of the class **after** completion. CCA will only reimburse the cost of the classes that are taken between the first and last day of school.

Date:		Initials of Instructor:	
Date:		Initials of Instructor:	
Date:		Initials of Instructor:	
Date:		Initials of Instructor:	
Date:		Initials of Instructor:	
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Date:		Initials of Instructor:	

***Please use additional sheets if necessary.

I hereby state that _____ (student's name),

attended _____ complete sessions of my class out of _____ total offered sessions.

Please describe the structure of the class and provide a brief description of the instructional component delivered:

____/____/____

Instructor Signature

Date

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF OPEN RECORDS

SUSAN SPICKA :
Requester, :
 :
v. : Docket # AP 2022-1704
 :
COMMONWEALTH CHARTER :
ACADEMY CHARTER SCHOOL, :
Respondent. :

AFFIDAVIT OF TIMOTHY A. ELLER


I, Timothy A. Eller, hereby declare under the penalty of perjury, pursuant to 18 Pa. C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

1. I have been employed with Commonwealth Charter Academy Charter School (CCA) since December 3, 2018, and serve as CCA's Senior Vice President of Outreach and Government Relations.
2. Prior to beginning my position with CCA, I served for eight years in various public relations positions in the Pennsylvania General Assembly; for almost four years as the Press Secretary and Director of Communications for the Pennsylvania Department of Education; and, for almost four years as the Director of the Keystone Alliance for Public Charter Schools, a charter school advocacy organization. I also served as an elected member of Susquenita School District's Board of School Directors.
3. I am familiar with Susan Spicka's Right-to-Know Law request (Request), and subsequent appeal, seeking the Community-Class Registration Forms that were submitted to CCA for the 2019-2020 and 2020-2021 school year.
4. On May 23, 2022, Ms. Spicka, the Executive Director of Education Voters of PA, posted an article to her blog, "Are cyber charters playing games with Pennsylvania tax dollars?". See Attachment 1b.
5. In her blog, Ms. Spicka reveals that "Education Voters of PA has obtained official emails and blank reimbursement forms along with screen shots from a Commonwealth Charter Academy Facebook page" and "Facebook posts in a CCA parent page show families discussing" activities.
6. In addition, Ms. Spicka offered to share the Facebook posts with the press upon request.

Exhibit B

7. Ms. Spicka also posted the blog on the Education Voters PA Facebook Page. Ms. Spicka then removed the plethora of public comments critical of her post and likewise limited who could comment on the post.
8. On May 23, 2022, abc27 (WHTM) ran a story on its website, "Education Voters of Pa. calls for audit of Commonwealth Charter Academy". See Attachment 2b. abc27 News also posted the article on its Facebook Page, which received many comments – some of them very critical of CCA and the choices CCA families make with respect to their children's education provider.
9. On May 23, 2022, the Scranton Times ran a story on its website, "Education group finds cyber charter school used taxpayer money for concert tickets, vacations, arcades". See Attachment 3b.
10. On May 24, 2022, CCA issued a Press Release in response to Education Voters of PA's recent attempt to malign and falsely accuse CCA of misusing taxpayer dollars. See Attachment 4b.
11. As a statewide public cyber charter school, CCA enrolls students from across the state. To provide a way for caretakers and families to engage with one another and seek non-academic support and guidance from family mentors, the Commonwealth Charter Academy Family Services Mentoring Group Facebook group was created. The group's membership consists of only CCA caretakers and families and is governed by rules that "require[] mutual trust" and that "respect the privacy of all members of this group." As a private group on Facebook, "only members can see who's in the group and what they post." The group is managed and overseen by family mentors who are caretakers of CCA students. See Attachment 5b.
12. Ms. Spicka's own comments show that she has infiltrated this private group, and is willing to publicly share information and to ridicule parents and students who choose to participate in this learning opportunity.
13. Ms. Spicka's actions have the intended or obvious effect of causing embarrassment and violating the privacy and confidence of CCA caretakers and families.

Date: August 8, 2022


Timothy A. Eller
Senior Vice President of Outreach and Government Relations
Commonwealth Charter Academy



Select Language ▼

Are cyber charters playing games with Pennsylvania tax dollars?



⬅️ BACK TO NEWS

Written by Susan Spicka

May 23, 2022

blog

Education Voters of PA has obtained official emails and blank reimbursement forms along with screen shots from a Commonwealth Charter Academy Facebook page that reveal during the 2021-2022 school year, CCA, Pennsylvania’s largest cyber charter school with enrollment of nearly 20,000 students, is using tax dollars to:

- Send every family a cash payment of \$150 (March 25, 2022)
- Provide a \$250 “community class” cash reimbursement for each student enrolled

- Provide a \$200 “personal field trip” cash reimbursement for each student enrolled

Facebook posts* in a CCA parent page show families discussing spending tax dollars provided by CCA to:

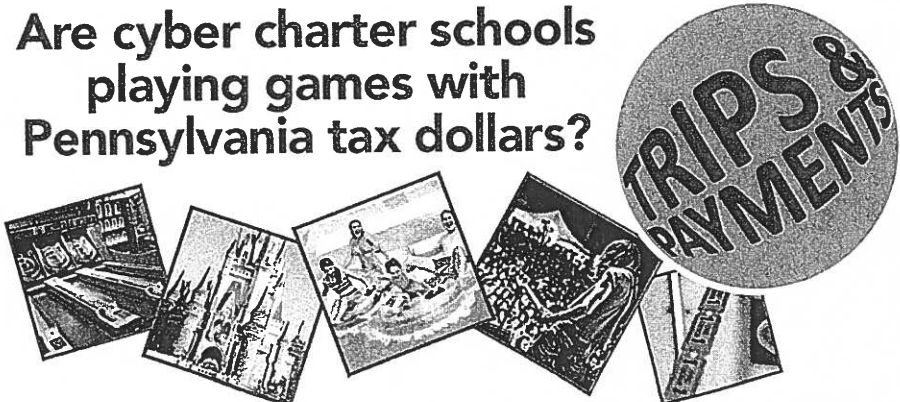
- Purchase meals and games Dave and Busters arcade
- Attend a Motley Crue concert
- Take a trip to Austria
- Buy Eagles tickets
- Take family vacations to Universal Studios and Disney
- Pay for scuba, ski, and horseback riding lessons

CCA is also using school field trips to market to families. On its website, CCA boasts that students are allowed to attend one paid field trip per month as part of more than 700 organized trips with the school for both individual and social field trips to locations including “Sky Zone in Lancaster County, where students can jump on trampolines and the Blue Mountain Resort’s Summit Ariel Park, where students will have access to four different ropes courses and have a chance to go ziplining or go through the obstacle course.” Other field trips offered by CCA include, “laser tag, rock climbing, bowling, and kayaking.”

These paid school field trips are *in addition to* the field trips families receive an annual \$450/student reimbursement for.

Click [HERE](#) to tell your state lawmakers that it is time to stop cyber charters from playing games with tax dollars.

**Are cyber charter schools
playing games with
Pennsylvania tax dollars?**



TRIPS & PAYMENTS

**EDUCATION VOTERS
of Pennsylvania**

An email from CCA to parents details that for the 2022-2023 school year CCA will:

- Provide families up to \$240/month for participation in group field trips by paying for students and two caretakers to attend two paid field trips per month at a rate of \$40/each per field trip (increased from \$40/month per family in 2021-2022)
- Provide families with \$75/month cash payments as part of their Instructional Technology Subsidy (increased from \$50/month in 2021-2022)
- Provide a \$300/student “community class” cash reimbursement for each student enrolled (increased from \$250 in 2021-2022)

It is unacceptable that while school districts are starving and property tax increases are squeezing home and business owners, cyber charter schools are so awash in excess tax money that they are using property tax dollars to pay for students’ private activities and trips and giving cash payments to families.

Because the legislature hasn’t required audits or reined in these excessive expenditures for so long, state lawmakers need to approve the full proposed \$1.75 billion increase in state funding for public schools this year to give school districts and taxpayers immediate relief. Moving forward they need to enact long-term fixes to these problems.

Click [HERE](#) to send a letter to your state lawmakers telling them to give districts immediate relief this year and to begin work on long-term fixes to these problems.

We are calling on Auditor General Timothy DeFoor to immediately open an audit of CCA to investigate these eye-popping abuses of tax dollars and answer the following questions:

- How much total money has CCA has sent to families as cash payments over the past two years, including those sent on March 23rd? Were these payments made with federal dollars or using funding from tuition payments made to CCA by school districts?
- How much tax money is CCA spending annually on field trips, including both the CCA-sponsored field trips and the reimbursed field personal field trips

for families and community classes for students?

- What exactly are “community class” and “personal field trip” cash reimbursements paying for?
- What other trips/activities, exactly, has CCA provided reimbursements for over the past two years?

CCA has not been audited by the state in nearly a decade and with annual expenditures in 2020-2021 of \$313 million, with no state oversight and as evidenced by public social media posts, the opportunities for waste, fraud, and abuse of tax dollars are extraordinary.

We have to question Auditor General’s motives for closing the AG’s Bureau of School Audits and ignoring the vast opportunities for waste in the cyber charter sector at the same time his office announced fund balance audits of 14 districts.

Why is a cyber charter school spending public dollars on Motley Crue concerts off limits, but school district fund balances are a priority for the Auditor General’s office?

If the Auditor General does not immediately open up an audit of CCA, we most strongly urge the General Assembly to enact legislation requiring the Auditor General’s office to conduct audits of CCA and other cyber charters both to learn how these schools are spending tax dollars and to help guard against the waste, fraud, and abuse of tax money by these schools. The order of the audits should be based on the size of the budgets at each cyber charter.

And we call on state lawmakers to immediately bring up a vote on House Bill 272, which would reform charter school funding to more closely match tuition payments to charter and cyber charter schools with their actual costs to end the state mandate that forces districts to send cyber charters funding in excess of what it costs them to educate students.

Click [HERE](#) to send a letter to your state lawmakers telling it’s time for the Pennsylvania legislature to stop cyber charter schools from playing games with tax dollars.

Today we will be in Harrisburg delivering this letter and this flier to each state lawmaker's office and holding a press conference in the Rotunda at noon and on via Zoom at 3:00. We also filed Right to Know requests with CCA seeking to learn what, exactly, they are paying for when they reimburse families for community classes and individual field trips. We will keep you posted on how that process goes.

Thank you for your support of public education.

Best,

Susan Spicka, Executive Director, Education Voters of PA

PS: Ed Voters is a small organization and we are the only organization in Pennsylvania working to expose the waste, fraud and abuse in the cyber charter sector. If you value this work, please consider making a donation today. We promise we will put it to good use!

*To protect families from potential retribution from CCA, we will share FB posts with redacted information with the press upon request and with the understanding that these posts will not be shared publicly.



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<https://www.abc27.com/local-news/harrisburg/education-voters-of-pa-calls-for-audit-of-commonwealth-charter-academy/>

Education Voters of Pa. calls for audit of Commonwealth Charter Academy

by: Daniel Hamburg

Posted: May 23, 2022 / 11:47 PM EDT

Updated: May 24, 2022 / 12:29 PM EDT

HARRISBURG, Pa. (WHTM) — An education group is calling for a state audit of a popular cyber charter school based in Harrisburg. It comes after the group learned what some families are spending their money on with cash reimbursements.

Education Voters of Pennsylvania wants the auditor general to investigate Commonwealth Charter Academy, saying CCA isn't spending taxpayer money wisely.

This year, Commonwealth Charter Academy gave students a one-time \$200 personal field trip reimbursement.

"We only did that this year because when we tried to plan field trips as a school, we had difficulty finding venues that would take large groups of students," said Tim Eller, senior vice president of outreach and government relations at CCA.

Facebook screenshots obtained by Education Voters of Pennsylvania show some families discussing using the money to take trips to Dave and Busters, amusement parks, and concerts.

"It is unacceptable that while school districts are starving and property tax increases are squeezing home and business owners, cyber charter schools are so awash in excess funding that they're using property tax dollars to pay for students' private activities and trips," said Susan Spicka, executive director of Education Voters of Pennsylvania.

Eller says it wasn't just free cash. "CCA reviewed the expenses to ensure that they were educational in nature or met some type of educational standard to be reimbursable. Some field trips were not reimbursed," Eller said.

In March, CCA also sent a one-time technology subsidy payment for \$150. "It was just not a one-time willy nilly payment to families. That was to compensate them for increased costs that they're experiencing, as well," Eller said.

South Middleton School District Superintendent Jim Estep says CCA is flush with money because of lawmakers.

"To some degree, I don't blame them for trying to figure out ways to pass it on to the kids. But is that what we should be doing with taxpayer dollars at the expense of the 500 regular public school districts?" said Estep.

Attachment 2b

Eller says this is a meritless attack. "We have an independent auditor that comes in every year that reviews our finances, reviews our books, and, you know, completes an audit of that just like a traditional public school district," Eller said.

CCA conducts its own independent audit apart from the state.

In an email to abc27 on Tuesday, the Pennsylvania Department of the Auditor General said, "We have received the request to do the audit and we are carefully considering, but it's important to remember that our staff resources are severely limited as we work to get our budget restored. We do have an audit of 12 school districts happening now through our Bureau of Performance Audits and need to complete that work first."

In March, the auditor general said school audits will return to the Pennsylvania Department of Education.

https://www.thetimes-tribune.com/news/education/education-group-finds-cyber-charter-school-used-taxpayer-money-for-concert-tickets-vacations-arcades/article_1f4410a6-19b5-590a-b579-78bb4e1f2de0.html

Education group finds cyber charter school used taxpayer money for concert tickets, vacations, arcades

BY SARAH HOFIUS HALL STAFF WRITER May 23, 2022 Updated Jun 14, 2022

The state's largest cyber charter school potentially spent \$10 million in taxpayer money this school year to provide cash payments to families and reimburse them for student trips and activities, including for European vacations, arcade games or scuba diving lessons.

The report by advocacy group Education Voters of Pennsylvania comes as school districts prepare final budgets for next year and attempt to reenroll students who left traditional schools for cyber charter schools during the pandemic. The Harrisburg-based organization also used the report to again push for charter school funding reform.

"It is unacceptable that while school districts are starving, and property tax increases are squeezing home and business owners, cyber charter schools are so awash in excess funding that they're using property tax dollars to pay for students' private activities and trips and giving cash payments to families," said Susan Spicka, executive director of Education Voters.

Commonwealth Charter Academy is one of 14 cyber charter schools across the state and has a family service center in Dickson City. Cyber charter schools are free for families, and school districts pay for students to attend. Officials at the school deny any wrongdoing.

With more than 18,000 students, Education Voters found the school is using taxpayer money to:

- Send every family a cash payment of \$150.
- Provide a \$250 "community class" cash reimbursement for each student enrolled.
- Provide a \$200 "personal field trip" cash reimbursement for each student enrolled.

Spicka obtained Facebook posts in a CCA parent Facebook group page that show families using the money to purchase meals and games at a Dave & Buster's arcade, attend a Motley Crue concert and buy tickets for a Philadelphia Eagles game.

CCA also offers more than 700 organized trips throughout the year, and students can attend one paid trip per month. Trips include going to trampoline parks, rock climbing, bowling and kayaking. Spicka said it was reasonable for CCA to pay for field trips as "community building" activities, but questioned how some of reimbursable expenses had educational value.

Starting in the fall, CCA will provide families:

Attachment 3b

- Up to \$240/month for participation in group field trips by paying for students and two caretakers to attend two paid field trips per month at a rate of \$40/each per field trip (increased from \$40/month per family).
- \$75/month cash payments as part of their instructional technology subsidy (increased from \$50/month).
- A \$300/student “community class” cash reimbursement for each student enrolled (increased from \$250).

Leaders of traditional schools across the state, who have also pushed for reform for years, expressed both frustration and outrage at the organization’s report. As Scranton continues in financial recovery, Superintendent Melissa McTiernan said she supports all students having every opportunity available. But the opportunities outlined in the report “far exceed the norm in our school district today,” she said.

“I continue to remain hopeful that our government officials can take steps to ensure equity and fair funding in our PA public schools,” she said.

In 2020, The Times-Tribune found that the Pennsylvania Department of the Auditor General had never audited six of the state’s 14 cyber charter schools. Despite a budget of more than \$300 million — exceeding Scranton’s budget by more than \$100 million — the state last audited CCA a decade ago.

Spicka sent a letter to the department Monday, asking for an audit of CCA’s expenses.

CCA responded to the report Monday by stating that cyber school law requires the school to provide families funding for technology and that the school prioritizes serving students and families “above all else.”

“More than 50% of students enrolled in CCA are from low-income families and, as a public school, we have a responsibility to ensure that all programs, services and activities are accessible to all students,” Timothy Eller, senior vice president of outreach and government relations, wrote in an email. “Perhaps, school districts should do the same and quit pointing the finger at cyber charter schools for their misplaced priorities.”



NEWS FOR IMMEDIATE RELEASE

May 24, 2022

Commonwealth Charter Academy Calls Out Education Voters of Pennsylvania's Ignorance of the State's Charter School Law and for Deliberately Misleading the Public

HARRISBURG – Commonwealth Charter Academy (CCA) President and CEO Thomas D. Longenecker today issued the following statement about Education Voters of Pennsylvania's recent attempt to malign and falsely accuse CCA of misusing taxpayer dollars:

"Education Voters of Pennsylvania, led by Susan Spicka, a former Shippensburg Area School District school board member who lost re-election in 2019, has been on a years-long crusade of criticizing and attacking CCA for the programs and services offered to students and families. It is becoming clearer that Ms. Spicka is ignorant about Pennsylvania's Charter School Law, specifically as it relates to public cyber charter schools.

"Section 1743-A of the Charter School Law requires public cyber charter schools to provide to each student and family 'a description of the lessons and activities to be offered both online and offline'; a list of 'all services that will be provided to the student by the cyber charter school'; 'all instructional materials'; 'all equipment, including, but not limited to, a computer, computer monitor and printer'; and 'provide or reimburse for all technology and services necessary for the on-line delivery of the curriculum and instruction.'

"Furthermore, cyber charter schools are expected to provide comprehensive learning experiences for students, including cooperative educational opportunities and social and educational field trips.

"CCA's Instructional Technology Subsidy, Community Class Reimbursement, and Student Loyalty field trip programs fall squarely within what is required by law, and has been standard operating procedure at CCA for more than 15 years. Unfortunately, Ms. Spicka is misleading and purposefully deceiving the public with the information she recently shared.

"CCA is audited on an annual basis by an independent auditor who reviews all revenues, expenditures, and fiduciary protocols of the school. All CCA programs and services are above board and are authorized by law.

Attachment 4b

"More than 50 percent of students enrolled in CCA are from low-income families and, as a public school, we have a responsibility to ensure that all programs, services, and activities are accessible to ALL students; this is not only required by law, but it is the right thing to do.

"In any school year, and especially during the pandemic, it is important for students to stay engaged and connected as part of their social development. CCA continues to seek out opportunities for students to explore the world around them.

"Ms. Spicka's unfounded accusations and trumped-up statements are nothing more than an attempt to influence state budget negotiations and misinform CCA families."




Media contact: Tim Eller, teller@ccaeducate.me, 717-710-3335

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ABOUT COMMONWEALTH CHARTER ACADEMY

Commonwealth Charter Academy (CCA) is Pennsylvania's largest public cyber charter school serving more than 22,000 students in grades K through 12. With nearly 20 years of experience in delivering online education, CCA provides flexible, personalized, and student-focused education programs and services. CCA is a family service organization that creates an educational experience and social learning opportunities for the entire family, including more than 700 annual field trips and events.

Commonwealth Charter Academy Family Services Mentoring Group

 22 new posts today
 717 in the last month
 3,684 total members
 + 6 in the last week
 Created 6 years ago

Group rules from the admins

- 1 Membership Approval**

To respect the privacy of our families, membership will be approved once enrollment is verified. Please complete the membership questions in their entirety to expedite your approval.
- 2 Be Kind and Courteous**

We're all in this together to create a welcoming environment. Let's treat everyone with respect. Kindness is required.
- 3 Communication is Key**

We ask that all members listen effectively and respond to opposing views without criticism.
- 4 No Promotions or Spam**

Business promotion, self-promotion, spam, and irrelevant information including outside organization links posted by members are not allowed in this group.
- 5 No Hate Speech or Bullying**

Make sure everyone feels safe. Bullying of any kind isn't allowed, and degrading comments about things like race, religion, culture, sexual orientation, gender, or identity will not be tolerated.
- 6 No Outside Group Promotion**

We ask that our members refrain from promoting outside groups within our group to maintain the objective of our mentoring group. Promotion of unofficial outside groups will be removed by admin.
- 7 Respect everyone's privacy**

Being part of this group requires mutual trust. Members will respect the privacy of all members of this group. Sharing content posted here, whether verbally, by screenshot, in summary, or otherwise will result in removal from the group. Authentic, expressive discussions make groups great, but may also be sensitive and private. What's shared in the group should stay in the group.

CERTIFICATE OF SERVICE

I, Katherine M. Fitz-Patrick, hereby certify that on October 13, 2022, a true and correct copy of the foregoing Petition for Review was served via First-Class Mail, postage prepaid, upon:

Susan Spicka
Education Voters of PA
412 N. Third Street
Harrisburg, PA 17101

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

Katherine M. Fitz-Patrick

Katherine M. Fitz-Patrick, Esq.

Philip J. Murren, Esq.

Ball, Murren & Connell, LLC

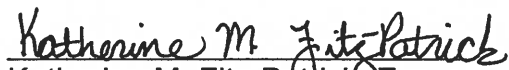
2303 Market Street

Camp Hill, PA 17011

Counsel for Commonwealth Charter Academy

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.



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

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

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

PROPOSED ORDER

AND NOW, on this ____ day of _____, 2022, upon consideration of
Petitioner, Commonwealth Charter Academy Charter School's Petition for Review of a
Final Determination from the Office of Open Records, it is hereby ORDERED that said
Petition is GRANTED and the September 16, 2022, Final Determination of the Office of
Open Records is hereby REVERSED as to the requirement to redact and disclose
education records.

BY THE COURT:

J.

Distribution List:

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