

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

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

CIVIL CASE NO. 2012-009781

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

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

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

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

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

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

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

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

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

Has been assigned to Judge _____.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

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

IN RE: APPOINTMENT OF A RECEIVER FOR :
THE CHESTER UPLAND SCHOOL DISTRICT : CASE NO.: 2012-009781
:

ORDER

AND NOW, this _____ day of _____ 2020, upon consideration of the Petition to Intervene of Parent Representatives and the Delaware County Advocacy & Resource Organization, any responses thereto, and any hearing thereon, it is hereby ORDERED that the Petition is GRANTED, and proposed Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization may intervene as parties in this action.

BY THE COURT:

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

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

:
:
:
:

CASE NO.: 2012-009781

**PETITION OF PARENT REPRESENTATIVES AND THE DELAWARE COUNTY
ADVOCACY & RESOURCE ORGANIZATION TO INTERVENE**

Proposed Intervenors, parents of children attending elementary and middle schools within the Chester Upland School District (“District”), and the Delaware County Advocacy & Resource Organization (the “Advocacy Organization”), an organization whose members include parents of children attending elementary and middle schools within the District, file this Petition to Intervene as parties in this litigation pursuant to Pennsylvania Rules of Civil Procedure 2327 and 2328 and aver the following in support thereof:

PROCEDURAL AND FACTUAL BACKGROUND

1. On November 5, 2019, Chester Community Charter School (“CCCS”) filed a Petition to Amend/Expand the Scope of the Revised Recovery Plan to Provide for the Conversion of Existing School Buildings to Charter Schools (“CCCS Petition”).
2. Under existing orders entered by the Court, a Revised Financial Recovery Plan (“Revised Plan”) was due to be filed by December 19, 2019. (Doc. 549 ORDER).
3. The Court scheduled a hearing for December 4, 2019 on the CCCS Petition.
4. Several entities and individuals, including some of the Proposed Intervenors, filed petitions to intervene prior to the December 4, 2019 hearing in order to respond to the CCCS Petition. (Docs. 597, 587, 582 PETITIONS).
5. The Court held a hearing on December 4, 2019 and denied CCCS’s Petition.
6. In light of this ruling on December 4, the Court concluded that the basis for seeking intervention had been resolved, thereby rendering the petitions moot. Accordingly, the Court denied all of the petitions to intervene without prejudice.
7. On December 20, 2019, the District filed the Revised Plan with the Court.
8. On January 8, 2020, the Court issued an Order to Show Cause why the Revised Plan complies adequately with the School District Financial Recovery Law, 24 P.S. § 6-601 et seq., and scheduled an evidentiary hearing for March 3-4, 2020. The purpose of the hearing is to address “the merits of the plan, the delivery of effective educational services to all students, financial recovery requirements, and any and all initiatives, that may include Requests for Proposals (RFP).... ”
9. Proposed Intervenors seek to intervene in these proceedings in order to respond to and inform development of an approved Revised Plan.

PROPOSED INTERVENORS

10. Proposed Parent Intervenor are parents of children who attend elementary and middle schools within the District.
11. Parent Intervenor are residents of the District, are actively engaged in the education of their children, and have a significant interest in the quality and safety of the schools in which their children are educated.
12. Parent Intervenor Jazmine Campos has a child J.C. who is eight years old and in second grade at Stetser Elementary School. Stetser Elementary School is not only the highest performing school in the District, but its academic scores are higher than any of the current charter schools in the District.
13. Ms. Campos has another child J.C. who has attended Stetser Elementary School since second grade and is presently in fourth grade.
14. The Revised Plan does not provide Ms. Campos, who wants her children to continue to attend a non-charter school in the District, with alternatives to charter schools, as required by state law. Ms. Campos wants to ensure that her children's legal rights to attend a non-charter school in the District are preserved, particularly in view of the fact that the charter schools' track records for academic results are markedly inferior to the elementary school her children are currently attending.
15. Parent Intervenor Latoya Jones has a child J.J. who is eight years old and in second grade at Main Street Elementary School. Her child has attended Main Street Elementary School since Pre-K
16. Ms. Jones is the president of the Parent Teacher Organization ("PTO") at Main Street Elementary School and has held that position for three years.

17. Ms. Jones has another child K.J. who is 12 years old and in sixth grade at Toby Farms Intermediate School.
18. Ms. Jones is a member of the PTO at Toby Farms Intermediate School.
19. Ms. Jones has a third child T.J. who is 14 years old and in ninth grade at STEM Academy at Showalter.
20. Ms. Jones is a member of the PTO at STEM Academy at Showalter.
21. Ms. Jones wants to ensure that her children can remain in a non-charter school in the District because she believes these schools are more accountable than charter schools. The Revised Plan has no provision for evaluating its alternative models based on quality of education and Ms. Jones fears that cost savings will be the determinative factor in her children's educations.
22. Proposed Intervenor Tiffany Raymond has a child C.H. who is eight years old and in second grade at Chester Upland School for the Arts.
23. Ms. Raymond has another child E.H. who is ten years old and in fourth grade at Chester Upland School for the Arts.
24. Ms. Raymond is a member of the PTO at Chester Upland School for the Arts.
25. Ms. Raymond also has a child A.S. who is 14 years old and in eighth grade at Toby Farms Intermediate School.
26. Ms. Raymond is a member of the PTO at Toby Farms Intermediate School.
27. Ms. Raymond also has a child V.S. who is 15 years old and receives special education services as a child with a disability. V.S. is currently in eighth grade at STEM Academy at Showalter.
28. Ms. Raymond is the Secretary of the Parent Teacher Student Association at STEM Academy at Showalter.

29. Ms. Raymond also has a child K.S. who is 16 years old and in tenth grade at Chester High School.
30. Ms. Raymond is a member of the PTO at Chester High School.
31. Ms. Raymond wants to ensure that children can continue to attend non-charter District schools because she believes her daughter's current school, STEM Academy at Showalter, provides services that are more effective for students who receive special education. The Revised Plan makes no provision for review of whether the proposed conversion or management alternatives would adequately provide special education programs or related services.
32. Proposed Intervenor Precious Scott has a child P.S. who is currently in second grade at Main Street Elementary School. Her child has attended Main Street Elementary School since Pre-K.
33. Ms. Scott is a member of the PTO at Main Street Elementary School.
34. Ms. Scott has another child J.S. who is 13 years old and receives special education services as a child with a disability. J.S. is currently in eighth grade at STEM Academy at Showalter.
35. Ms. Scott also has a child D.S. Jr. who is 15 years old in ninth grade at Commonwealth Charter School, a cyber-charter school.
36. Ms. Scott wants to ensure that should her child P.S.'s current school be closed under the Revised Plan, the new school will provide educational outcomes equivalent to or better than the current school. The Revised Plan has no provision for evaluating its alternative models based on quality of education and Ms. Scott worries that cost savings will be the determinative factor in her child's education.

37. Proposed Organizational Intervenor the Delaware County Advocacy & Resource

Organization (the “Advocacy Organization”) is a membership-based, non-profit organization that has advocated for people with intellectual and developmental disabilities since its incorporation in 1956. The Advocacy Organization provides technical assistance and advocacy to many parents of students with disabilities in District and oversees a program at Toby Farms Intermediate School. The Advocacy Organization’s members include parents of students in the District, many of whom are parents of students with disabilities who receive special education services in the District.

BASIS FOR PROPOSED INTERVENTION

38. Pursuant to Pennsylvania Rule of Civil Procedure 2327, this Court may permit a party to intervene “at any time during the pendency of an action” if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa.R.C.P. 2327(4).

39. All of the Proposed Intervenor have legally enforceable interests in the Revised Plan that is at issue in this litigation. For example, Pennsylvania law mandates in part that public schools provide at least one hundred eighty days of instruction and that students receive a certain requisite hours of instruction. 24 P.S. § 15-1504. Public schools are also required to undertake specific duties, responsibilities, and actions to ensure that the education provided to students complies with state standards for the full school year and that they employ the necessary qualified professional employees and substitutes to enforce the state curriculum requirements. *See, e.g.*, 24 P.S. § 11-1106; 22 Pa. Code § 4.4.

40. The Revised Plan will also have a significant impact on the quality of the education that children in the District receive, including children of proposed Parent Intervenor. The

Revised Plan is required to “[p]rovide for the delivery of effective educational services to all students enrolled in the . . . district.” 24 P.S. § 6-641-A(1).

41. Similarly, the Revised Plan will have a significant impact on the quality of education for the students of parents who are members of Proposed Intervenor the Advocacy Organization. *See Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (Pa. 2013) (“[A]n association has standing as representative of its members to bring a cause of action even in the absence of injury to itself, if the association alleges that at least one of its members is suffering immediate or threatened injury as a result of the action challenged.”).
42. The Revised Plan recommends that the District initiate a request for information about the potential savings of two alternative management models: converting K-8 schools to charter schools or entering into a management services agreement for K-8 schools. However, the Revised Plan fails to address the need to evaluate whether the alternative management models provide better or even equivalent educational outcomes *See* Revised Plan at 107.
43. The failure to evaluate the educational benefits (if any) of the alternative models threatens to harm students in the District, including children of Proposed Intervenors. Under the Revised Plan presented by the receiver (and supported by the District and PDE), the District’s schools could be operated by entities whose academic outcomes are markedly inferior to the outcomes of schools that students in the District are currently attending.
44. This failure to evaluate the impact on students is detrimental to their interests. The Pennsylvania System of School Assessments, which is designed to evaluate school performance, shows that the largest charter authorized by the District has educational outcomes far poorer than the District’s. In fact, the percentage of students at proficient or

above at that charter school, CCCS, are significantly below four out of the five non-charter District schools.¹

45. The Revised Plan also fails to address how the District would monitor the provision of educational services under these alternative arrangements.
46. The Revised Plan does not consider the cost of re-opening District schools in the event of a breach or failure by the vendor to provide satisfactory educational services.
47. Pennsylvania's Charter School Law requires that any plan to convert a school to a charter provide alternatives for parents who do not want their children to attend charters. 24 P.S. § 17-1717-A(e)(3).
48. The Revised Plan fails to explain how the District will provide such alternatives, and how to evaluate whether those alternatives ensure the provision of "effective educational services" at least as good as those currently provided. 24 P.S. § 6-641-A(1).
49. The Revised Plan will directly impact students with disabilities in a number of ways that have not been addressed.
50. Students like V.S. who are eligible for special education services under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. 1400 *et seq.*, and state law, 22 Pa. Code 14.1 *et seq.*, also have a legal right to receive a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE") and are entitled to a school placement that is individualized and based on the child's Individual Education Program ("IEP"). *See* 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. 300.101 and 300.114; 34 C.F.R. § 300.116(a)(2)(b); 22 Pa. Code § 14.102(a)(2)(xiii).

¹ PSSA percentages by school can be found at <https://www.education.pa.gov/DataAndReporting/Assessments/Pages/PSSA-Results.aspx>

51. Parents whose children are eligible for special education services are an important subset of District parents who have legally enforceable interests. Parents are legally entitled to enforce such rights and have the right to notice of any changes to their child's placement, educational program, and related services. They have the right to challenge any proposed change while their child remains in his/her current placement until any dispute has been finally resolved. 20 U.S.C. §§1415(b) and 1415(j). Chapter 14 separately requires the provision of quality special services and programs for students with disabilities, 22 Pa. Code § 14.102(a), and mandates that school facilities be made available to appropriately educate students with disabilities, 22 Pa. Code § 14.144.
52. The Revised Plan makes no provision for review of whether the proposed conversion or management alternatives would adequately provide for provision of the FAPE in LRE by offering a continuum of placements. The Revised Plans fails to address this issue for both students with IEPs who attend the converted schools and students who do not wish to attend a charter but are left attending school in a district with few or no disabled students.
53. The Revised Plan does not require any conversion proposal to effectuate parents' rights to maintain the status quo placement pending a final court resolution.
54. The Revised Plan also fails to address how the District or the alternatives will fulfill the IDEA's requirement to identify and evaluate all students who are reasonably suspected of having a disability. *See P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir.2009) (citation omitted); *see* 20 U.S.C. § 1412(a)(3) (LEAs must "identif[y], locate[], and evaluate[]" all children with disabilities who are in need of special education, and must develop "a practical method ... to determine which children with disabilities are currently receiving needed special education and related services").

55. Proposed Intervenors' participation in examining witnesses and presenting evidence will materially aid this Court in assessing the impact of the Revised Plan (and any revisions thereto) on its compliance with numerous laws. These laws include the Financial Recovery Act, federal and state laws designed to protect children's rights to an effective education and to be educated in a non-charter school if they so wish, and federal and state civil rights laws that protect the rights of children with disabilities.
56. This Court is the only forum where Proposed Intervenors can be heard because any opportunity to provide public comment to the School Board means only providing comments to the receiver, the very party who created the Revised Plan. *See* 24 P.S. § 6-673-A(a)(2) ("The appointment of a receiver under this subdivision shall have the effect of: ... (2) [s]uspending the authority of the elected and appointed officials of the school district to exercise power on behalf of the school district pursuant to law, charter, resolution, ordinance, rule or regulation....")
57. This suspension of authority of the School Board is critical because unlike School Board members who are accountable to voters, the receiver has no accountability to the District residents or parents.
58. Proposed Intervenor the Advocacy Organization has additional legally enforceable interests that are affected by determinations in this lawsuit. The Advocacy Organization's core mission is "to advocate for inclusive public policy and provide social and recreational opportunities for individuals with intellectual and developmental disabilities to assist them in achieving their full potential as individuals, as employees and as members of their communities."² If the Revised Plan does not ensure the provision of effective educational services at least as good as those

² <https://www.delcoadvocacy.org/>

currently provided, the Advocacy Organization will be forced to divert resources from its other activities to advocate for even more families on an individual level to obtain supports and services for children with developmental or intellectual disabilities.

THERE EXISTS NO BASIS ON WHICH TO DENY THIS PETITION FOR INTERVENTION

59. The interests of Proposed Intervenors are not adequately represented in this proceeding.
Pa.R.C.P. 2329(2).
60. None of the parties represent the interests of parents with children attending District schools, and in particular none of them represent parents of children with disabilities.
61. The inadequacy of representation of these parents' interests is evidenced by the failure of any existing party to raise issues pertaining to the quality of education and the rights of students and parents impacted by the Revised Plan. The receiver, District, and PDE are all proponents of this Revised Plan. The Board, to the extent it has any rights independent of the receiver and District, supported the CCCS Petition without raising these concerns. All parties had multiple opportunities to raise the above issues but failed to prioritize effective educational services.
62. Proposed Intervenors have not unduly delayed in making their application for intervention nor will their proposed intervention unduly delay, embarrass, or prejudice the trial or the adjudication of the rights of the parties. *See* Pa.R.C.P. 2329(3).
63. Granting this intervention will not unduly prejudice the adjudication of this matter by opening up the floodgates to any and all parents in the District. Not only have no other District parents sought to intervene, but if they did at a later time, those parents would need to establish that the Proposed Intervenors do not adequately represent their rights under the

statutes and explain why they did not seek to intervene in a timely matter before a hearing on the Revised Plan.

64. If this Petition to Intervene is granted, Proposed Intervenors will participate in the evidentiary hearing scheduled for March 3-4, 2020.

CONCLUSION

WHEREFORE, Proposed Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott, and the Delaware County Advocacy & Resource Organization request this Honorable Court grant this Petition to Intervene in the above-captioned proceeding,

Respectfully submitted,

/s/Darlene Jo Hemerka
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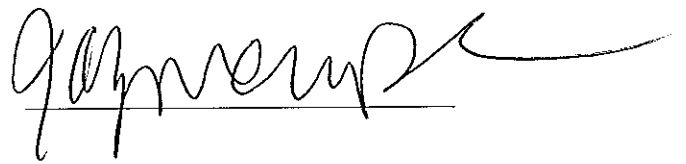
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Attorneys for Proposed Intervenors Jazmine Campos, Latoya Jones, Tiffany Raymond, Precious Scott and the Delaware County Advocacy & Resource Organization.

Date: January 31, 2020

VERIFICATION

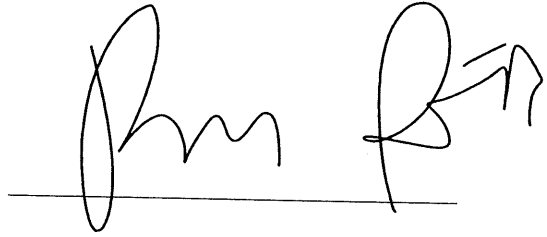
I verify that the statements made in the foregoing Petition to Intervene are true and correct to the best of my own personal knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be "G. J. [unclear]".

Dated: January 31, 2020

VERIFICATION

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

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a series of loops and a final flourish that resembles a stylized 'M' or 'N'. The signature is written above a horizontal line.

Dated: January 31, 2020

VERIFICATION


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

A handwritten signature in black ink, appearing to read "S. J. Tom", written over a horizontal line.

Dated: January 31, 2020

VERIFICATION

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



EXECUTIVE DIRECTOR

Dated: January 31, 2020

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

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

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CASE NO.: 2012-009781

**MEMORANDUM OF LAW IN SUPPORT OF PARENT REPRESENTATIVES' AND
THE DELAWARE COUNTY ADVOCACY & RESOURCE ORGANIZATION'S
PETITION TO INTERVENE**

Since 2012, the Chester-Upland School District (“District”), for profit and non-profit corporations, and appointed and elected officials have sought to address the serious financial challenges confronting the District in proceedings before this Court. To date, however, the proceedings have not included the voices of District parents and their children who are focused on the quality of education provided to students and the safety of their school environment. Now,

faced with a financial recovery plan (“Revised Plan”) that recommends that the District “evaluate outsourced management concepts,” including converting *all* K-8 schools to charter schools, the undersigned parents (“Parent Representatives”) and the Delaware County Advocacy & Resource Organization (“Advocacy Organization”) seek to intervene in these proceedings to protect their legal interests and ensure that the quality of their children’s education remains paramount in these proceedings.

Pennsylvania law requires that effective educational outcomes be the first goal of any recovery plan. The need for a representative of parents to participate in the recovery process is evident from the fact that the Revised Plan, which was filed with the approval of the receiver, the District and the Pennsylvania Department of Education (“PDE”), recommends that any charter conversion be evaluated according to its potential cost-savings, but without any consideration of whether the conversion will improve or imperil the education of students. Indeed, the Revised Plan fails to consider the impact of conversion on students who have been attending better performing District schools, students who do not wish to attend a charter, and students with disabilities who have additional and specific protected rights under federal and state law. Accordingly, parents of students who will be affected by the Revised Plan—and whose interests are not represented by any other party to this proceeding—should be permitted to intervene.

ARGUMENT

Under Pennsylvania Rule of Civil Procedure 2327, this Court may permit a party to intervene “at any time during the pendency of an action” if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.” Pa. R.C.P. 2327(4). If a proposed intervenor satisfies this requirement, and no grounds for refusing the petition exist under Pa. R.C.P. 2329, “[a]llowance

of intervention is mandatory.” *T.H. Props., L.P. v. Upper Salford Twp. Bd. of Supervisors*, 970 A.2d 495, 499 (Pa. Commw. Ct. 2009); *see also In re Pa. Crime Comm'n Subpoena*, 309 A.2d 401, 408 n.11 (1973) (if a petitioner satisfies Rule 2327, “the allowance of intervention is not discretionary, but is mandatory, unless one of the grounds for refusal of intervention enumerated in Rule 2329 is present”).

Pennsylvania courts define a “legally enforceable interest” as a substantial, direct, and immediate interest in the outcome of the litigation. *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205, 1215 (Pa. Commw. Ct. 2018) (en banc) (citations omitted). “A substantial interest in the outcome of the litigation is one that surpasses the common interest of all citizens in procuring obedience to the law. A direct interest requires a causal connection between the asserted violation and the harm complained of. An interest is immediate when the causal connection is not remote or speculative.” *Id.* Both the Parent Representatives and the Advocacy Organization (collectively, “Proposed Intervenors”) have the requisite substantial interest to intervene in this lawsuit, and no grounds exist for refusing the Petition to Intervene under Pa. R.C.P. 2329, rendering intervention mandatory.

A. The Proposed Intervenors Have Legally Enforceable Interests Concerning The Quality Of Education In The District That Are Not Adequately Represented By Other Parties.

The Parent Representatives whose children attend District schools and the Advocacy Organization whose members have children who attend District schools have a substantial interest in ensuring that the Revised Plan provides for the delivery of effective educational services to all students in the District. Specifically, under the Financial Recovery Act, the Revised Plan submitted in this case is required to “[p]rovide for the delivery of effective educational services to all students enrolled in the ... district.” 24 P.S. § 6-641-A(1). In addition,

the Parent Representatives have specific rights under Pennsylvania’s Charter School Law (“Charter School Law”), which requires in part that any plan to convert a school to a charter must provide alternatives for parents who do not want their children to attend charters. 24 P.S. § 17-1717-A(e)(3). The Charter School Law also requires that conversion be supported by more than fifty percent of parents, 24 P.S. § 17-1717-A(b)(2)(ii), and that an evaluation of an application include the capability of the charter school applicant to provide “comprehensive learning experiences to students,” 24 P.S. § 17-1717-A(e)(2)(ii).

The Parent Representatives’ interests are directly affected by the Revised Plan, which recommends that the District initiate a request for information about the potential savings of two alternative management models—converting K-8 schools to charter schools or entering into a management services agreement for K-8 schools—but fails to address the need to evaluate whether the alternative management models provide better or even as good educational outcomes as the “status quo.” The Revised Plan similarly fails to require any evaluation of alternatives for students who do not wish to participate in a conversion. *See* Revised Plan at 107.

Moreover, the proposal to transfer students to completely different entities comes at a time when academic results are improving in the District elementary schools in English Language Arts, and at the STEM Academy at Showalter in all grades in both English and Math. *See* Revised Plan at 15-19. Conversely, the Pennsylvania System of School Assessments (PSSA) shows that the largest charter authorized by the District has educational outcomes far poorer than the District’s. In fact, the percentage of students at proficient or above at that charter school, CCCS, are significantly below four out of the five non-charter District schools.¹ In short,

¹ PSSA percentages by school can be found at <https://www.education.pa.gov/DataAndReporting/Assessments/Pages/PSSA-Results.aspx>

Parents must be able to intervene to ensure that under the Revised Plan the quality of education provided to students is a core focus of any alternative management model and that students are not sent to schools operated by entities whose academic track record is markedly inferior to the schools they are currently attending, solely because the cost is “less.”

The Proposed Intervenors’ interests are immediate because the parties are scheduled to consider the Revised Plan at the upcoming March hearing before this Court. The interests of the parents of these students is not speculative, but very real because the Revised Plan fails to address how the District will ensure the quality of education or offer alternatives to students who do not want to attend charter schools. This case presents precisely the type of circumstance where intervention is warranted.

Importantly, none of the other parties adequately represent the interests of parents with children attending District schools. Under Rule 2329 of the Pennsylvania Rules of Civil Procedure, a court may deny a petition to intervene—even when a party has demonstrated an enforceable interest in the matter—if any one of four factors is present, including whether the interests of the proposed intervenors are adequately represented by other parties in the case. Here, the inadequacy of representation of these parents’ interests is evidenced by the failure of any existing party to raise issues concerning the quality of education, delivery of educational services, school safety, or the impact of the Revised Plan on students. The Receiver, District, and PDE approved the filing of the Revised Plan. The Board (to the extent it has any rights independent of the Receiver and District) supported the CCCS Petition without raising these concerns, and CCCS and other parties did not raise these issues in connection with its Petition, which shared the same defects as the Revised Plan.

In their Petition, the Proposed Intervenors focus specifically and uniquely on protecting

the quality of their children’s education and the safety of their school environment. In addition, the Proposed Intervenors point out that any Revised Plan must take into account state and federal legally enforceable rights such as rights to a certain number of days of instruction, 24 P.S. § 15-1501, compliance with state standards and use of qualified employees, and state curriculum requirements, *see, e.g.*, 24 P.S. § 11-1106; 22 Pa. Code § 4.4, as well as disability laws that require all public schools to ensure appropriate placements for students with disabilities in the least restrictive environment with the requisite staff and services to confer a free, appropriate, public education. *See* Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et. seq.* (2004) (“IDEA”); Chapter 14 of the Pennsylvania School Code, 22 Pa. Code 14.1 *et. seq.*

Finally, this Court is the only forum where the Proposed Intervenors can be heard because any opportunity to provide public comment to the School Board as provided in the Recovery Act means only providing comments to the receiver, the very party who created the Revised Plan. *See* 24 P.S. § 6-673-A(a)(2) (the appointment of a receiver under this subdivision shall have the effect of: [“s]uspending the authority of the elected and appointed officials of the school district to exercise power on behalf of the school district pursuant to law, charter, resolution, ordinance, rule or regulation.”) The receiver neither represents nor is accountable to the parents whose children attend the District schools. Moreover, although the Recovery Act requires posting a plan or proposed revisions on a district’s website, as of the date of this petition for intervention that has not been done. *See* 24 P.S. 6-663-A(b) and 24 P.S. 6-652-A(b). Nor was a public meeting of the School District scheduled on the website at which public comment could be received by the Receiver.

B. Parents of Students With Disabilities Have Additional And Distinct Legally Enforceable Interests That Are Not Adequately Represented By Other Parties.

Parents of students with disabilities, or who may have disabilities, are an important subset of Parent Representatives and members of the Advocacy Organization. These parents have legally enforceable interests under the IDEA, 20 U.S.C. § 1400 *et. seq.*, and state disability laws, *e.g.*, 22 PA Code 14.1 *et. seq.* These parents must be permitted to participate in this receivership proceeding and approval of the Revised Plan in order to safeguard the critical rights of their children.

Under the IDEA, students with disabilities are entitled to a “free appropriate public education” designed to meet their unique needs. 20 U.S.C. § 1400(d)(1)(A). As the Supreme Court explained in its unanimous decision in *Andrew F. v. Douglas County. School District 137* S. Ct. 988, 999 (2017), for a local educational agency “to meet its substantive obligation under the Individuals with Disabilities Education Act (IDEA), a school must offer [a child] an IEP [individualized education program] reasonably calculated to enable [the] child to make progress appropriate in light of the child’s circumstances.” The IDEA requires a school to offer a “continuum” of alternative placements so that children with disabilities are guaranteed that they will be educated in the least restrictive environment. *See* 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114-.115. The IDEA also imposes continuing obligations on local educational agencies like the District to identify and evaluate all students who are reasonably suspected of having a disability. *P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); *see* 20 U.S.C. § 1412(a)(3) (LEAs must “identif[y], locate[], and evaluate[]” all children with disabilities who are in need of special education, and must develop “a practical method ... to determine which children with disabilities are currently receiving needed special education and related services”).

Parents of students covered under the IDEA also have the right to receive prior written notice of a proposed action by a public agency including a description of, and the reasons for a proposed change in placement or the addition or denial of services. 34 C.F.R. § 300.503(a)-(b). Failure to provide such notice may constitute a substantive denial of “free, appropriate, public education” (“FAPE”) to a child if it causes a loss of educational opportunity or benefit for the student. *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010). In *Letter to Autin*, 20 IDELR 1157 (OSEP, Oct. 19, 1993), which concerned the closure or consolidation of schools, the Office of Special Education Programs acknowledged that a “class closing” or “class consolidation” may represent a change in placement for a child with a disability that therefore may trigger the written notice requirements to parents under 34 C.F.R. § 300.504 and implicate the rights of students with disabilities to be placed in a new school, which requires the consent of an IDEA parent. In addition, school boards cannot close schools and transfer students with disabilities to other schools that fail to provide these children with the provision of a free appropriate public education to such child. *See* 20 U.S.C. § 1415(b)(1)(E).

The Revised Plan will directly impact students with disabilities in a number of ways and yet fails to address the rights of this student population. The Revised Plan does not address how students with disabilities will be offered a continuum of placements, educated in the least restrictive environment with non-disabled peers, or provided appropriate services and supports to benefit from a FAPE, or how the RFP process will safeguard the rights of these students. Notably, conversion of a district school to a charter school raises significant issues for students with disabilities in part because charter schools are not required to comply with all of the state requirements set forth in Chapter 14 that govern district schools but instead are governed by Chapter 711 of the Charter School Law, 22 Pa. Code § 711.1 *et seq.* In addition, data shows that

charter schools in Pennsylvania—including CCCS—serve disproportionately fewer children with more significant disabilities than non-charter schools. For example, during the 2018-2019 school year, of the students receiving special education services at Chester Upland, 11.4% were children with autism whereas only 4.6% of the students served at CCCS were students with autism, far below the state average. Similarly, Chester Upland reported 11.7% with intellectual disabilities and 12.9% with emotional disturbance while CCCS reported 7.7% with intellectual disabilities and 7.9% with emotional disturbance.²

The Proposed Intervenors’ interests are separate and distinct from the general interests of other parties and are not adequately represented by the District, School Board, or PDE. The interests of parents in ensuring their children receive a FAPE in the least restrictive environment are often at odds with a school district or school board. Indeed, many parents are forced to challenge proposed school placements or the failure of school districts to provide needed support and services by filing administrative or due process complaints against their school districts and the state under the IDEA. *See, e.g., Charlene R. v. Solomon Charter Sch.*, 63 F. Supp. 3d 510, 515-16 (E.D. Pa. 2014).

PDE, as the State Education Agency (“SEA”), is ultimately responsible for the provision of FAPE to a student, 34 C.F.R. § 300.149(a)(1), and also may be sued by parents. While PDE has discretion to delegate responsibility to local agencies, federal law mandates that PDE, as the SEA, is ultimately responsible for ensuring the appropriate implementation of special education

² *See* Pennsylvania Department of Education Special Education Data Reports at Pa. Dep’t of Educ., Special Educ. Data Reporting, Data at a Glance: By District, <https://penndata.hbg.psu.edu/Public-Reporting/Data-at-a-Glance> (Select “School District by Alphabetical”; then select “Chester-Upland SD” or “Chester Community CS”; then select “2018-2019 Report”). Notably, CCCS also serves a significantly higher percentage of students with speech or language impairments (14.3%) relative to Chester Upland (3.9%).

services for the students across the state. Under these circumstances, parents of students with disabilities cannot be adequately represented by other parties to this proceeding as their interests are often adverse to the District and the Department. *See United States v. Bd. of Sch. Comm'rs of City of Indianapolis, Ind.*, 466 F.2d 573, 575 (7th Cir. 1972) (“Representation is adequate if ... the representative does not have or represent an interest adverse to the proposed intervenor and if the representative does not fail in the fulfillment of his duty.”) (citation omitted). *See also Martin v. Kalvar Corp.*, 411 F.2d 552, 553 (5th Cir. 1969); *Stadin v. Union Electric Co.*, 309 F.2d 912, 919 (8th Cir. 1962); *Moore v. Tangipahoa Parish Sch. Bd.*, 298 F. Supp. 288, 291 (E.D. La. 1969); *Peterson v. United States*, 41 F.R.D. 131, 133 (D. Minn. 1966).

The ability of parents of students with disabilities to intervene in proceedings based on their legally enforceable interests under the IDEA against the Department and District has been recognized as distinct and not adequately represented by their school district in a variety of contexts. For example, in *Chester Upland School District v. Pennsylvania*, 284 F.R.D. 305 (E.D. Pa. 2012), a lawsuit brought by the District and its School Board to address the District’s dire financial condition, the court found that District parents of students receiving services under the IDEA had standing to intervene against the state, obtain class certification, and participate in the class settlement. *Id.* at 313 (finding “the prospective injury to the class, in the form of imminent violations of their rights under the IDEA and Section 504” was “sufficiently real and immediate” to establish standing).

Parents and parents of students with disabilities have also been permitted to intervene in desegregation cases on the theory that a ruling would have a substantial impact on the lives and education of their children where the school board would not adequately represent their interests. For example, in *Graves v. Walton County Board of Education*, 686 F.2d 1135, 1141–42 (5th Cir.

1982), the court found that the school boards' primary motivation for implementing the 1968 desegregation decree was to prevent the loss of federal aid to their school systems. As long as they continued to receive federal funds under the decree, the school boards were content with the directive, and had no motivation to represent the interests of the parent intervenors. "An interest in operating funds based upon numbers of students, however, does not equate with the criteria used for selecting specific students for particular schools." *Id.* at 1142. Since the issues the parent intervenors sought to represent related to the education provided to their children, the court concluded that the new group had a significant claim, which it alone could best represent, and intervention should have been permitted. *Id.*

In this case, the Revised Plan focuses on cost savings and developing a School Consolidation Plan "for a more optimal use of all school buildings," including a proposal to convert all the K-8 District schools to charter schools. The Revised Plan includes no mention of the impact of such a change on students with disabilities or on the quality of education provided to all students. It also fails to address how the RFP process will safeguard the federal and state rights of students with disabilities. Nor does the Revised Plan identify alternatives to be provided to those who opt out of attending the charter school. In addition, there is little focus on curriculum or compliance with the Safe Schools Act—or delivery of "effective educational services" as required under the Financial Recovery Act. 24 P.S. § 6-641-A(1). Accordingly, parents of students who will be most impacted by the Revised Plan must be permitted to participate.³

³ This situation is easily distinguishable from other cases where the court has denied intervention. For example, in *Robinson Twp., Washington Cty. v. Com.*, No. 284 M.D. 2012, 2012 WL 1429454, at *4 (Pa. Commw. Ct. Apr. 20, 2012), *aff'd sub nom. Robinson Twp. v. Com.*, 624 Pa. 219, 84 A.3d 1054 (2014), the court held that the Industry's interests were adequately represented by other parties. In that case, all parties acknowledged the

C. The Advocacy Organization Has Additional Legally Enforceable Interests Based On Its Organizational Standing That Are Not Adequately Represented By Other Parties.

Injury to an organization in the form of forced diversion of the organization’s resources establishes a legally enforceable interest. *E.g.*, *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 Pa. Commw. Unpub. LEXIS 756, at *22-23 (Pa. Commw. Ct. Jan. 17, 2014) (finding organizational standing where “[t]he Voter ID Law, and Respondents’ ever-changing implementation of it, caused [the League of Women Voters] and NAACP to divert scarce resources from their core missions (voter registration and encouraging full participation by citizens in elections) to other efforts”); *see also Robinson v. Block*, 869 F.2d 202, 207, 210 n.9 (3d Cir. 1989) (finding standing for an organization of welfare recipients that “ha[d] been forced to expend time, money and resources advocating on behalf of recipients denied or threatened with denial of benefits”).

Here, the Advocacy Organization’s core mission is “to advocate for inclusive public policy and provide social and recreational opportunities for individuals with intellectual and developmental disabilities to assist them in achieving their full potential as individuals, as employees and as members of their communities.” The Advocacy Organization is directly involved in supporting parents and students in the Chester Upland School District. If the Revised Plan does not ensure the provision of “effective educational services” at least as good as currently

Commonwealth's duty to defend the constitutionality of Act 13 based on the legal theories that petitioners also sought to advance. Accordingly, permitting an additional party to intervene to assert the same claim would not change the outcome. In contrast, in this case, District parents seek to assert the rights of students with disabilities and other interests that have not been asserted in this matter. Similarly, this case is also unlike *Pennsylvania Ass’n of Rural & Small Sch. v. Casey*, 613 A.2d 1198, 1201 (1992), where the proposed intervenor had a legally enforceable interest, but the court found that the Appellants’ desire to pursue a different litigation strategy or defense theory was duplicative of other parties and did not warrant permitting Appellants to intervene.

provided, the Advocacy Organization will be forced to divert resources from its other activities to advocate for even more families on an individual level to obtain needed supports and services for their children with a developmental or intellectual disability.

D. There Is No Other Basis to Deny this Petition

Finally, none of the other applicable factors warranting a denial of this petition under Pa.R.C.P. 2329 is present. Proposed Intervenors have not unduly delayed in making application for intervention nor will their proposed intervention unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties. Pa.R.C.P. 2329(3).

CONCLUSION

In this case, proposed intervenors have demonstrated that they have legally enforceable interests that will be directly affected by determinations in this proceeding, thereby qualifying them to intervene pursuant to Pa. R.C.P. 2327(4). Accordingly, in the absence of any grounds for denial, Parent Representatives and the Advocacy Organization respectfully request that this Court grant their Petition to Intervene in this matter.

Respectfully submitted,

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Date: January 31, 2020

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

IN RE: APPOINTMENT OF A RECEIVER FOR :
THE CHESTER UPLAND SCHOOL DISTRICT : CASE NO.: 2012-009781
: :
:

CERTIFICATE OF SERVICE

I hereby certify that on this date, January 31, 2020, I caused the foregoing Petition to Intervene of Parent Representatives and the Delaware County Advocacy & Resource Organization to be served by the means identified below on the following:

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