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Precious Scott and the Delaware County Advocacy & Resource Organization*

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

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

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CASE NO.: 2012-009781

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**PRAECIPE TO FILE OF RECORD**

TO THE OFFICE OF JUDICIAL SUPPORT:

Kindly, file of record the Parent Representatives and the Delaware County Resource and Advocacy Organization's response to Chester Upland School District's filing regarding the recommended requirements for the Requests for Proposal/Requests for Information.

Respectfully submitted,

/s/Darlene Jo Hemerka

Darlene Jo Hemerka (Bar No. 322864)

Date April 24, 2020

# **RESPONSE OF THE PARENT REPRESENTATIVES AND DELAWARE COUNTY RESOURCE & ADVOCACY ORGANIZATION TO CHESTER UPLAND SCHOOL DISTRICT'S APRIL 15, 2020 PROPOSAL**

## **I. Background**

After the March 4, 2020 hearing regarding Chester Upland's Revised Financial Recovery Plan, counsel in the above-captioned matter were instructed to provide recommendations for Requests for Information (RFI) and Requests for Proposals (RFPs) in certain subject areas.

On March 20, 2020, the Petitioner Parents and the Delaware County Resource and Advocacy Organization submitted initial recommendations related to the "operations of schools."

On April 15, 2020, the Chester Upland School District (CUSD) filed its recommendations, which included a Framework for Chester Upland Strategic Options Initiative (SOI). The SOI lays out three options regarding the day-to-day management of CUSD's Pre-Kindergarten-12th grade schools. The three options are:

- A. Outsourced Management for Selected CUSD Schools
- B. Outsourced Management for All CUSD Schools
- C. Full Outsourcing of CUSD Operations

The SOI also describes the process CUSD will use to select one of the three options: CUSD will engage a strategic advisor, issue RFIs, and then issue RFPs.

Parents and the Advocacy Organization seek to ensure that any proposal to outsource management or operation of district schools be evaluated not only for its potential cost-savings, but for its impact on education quality, including for parents who want an alternative to charter school, and that it allow for public input. Because the SOI fails to address these concerns, we respectfully request the changes described below.

## **II. Legal Argument**

We note at the outset that CUSD's submission and proposed SOI is premature and violates the requirements of the Financial Recovery Act (FRA).

School districts in recovery status can exercise the powers set forth in the FRA only if such powers are included in an approved Recovery Plan and the proposed measures will effect needed economies (24 P.S. § 6-642-A). A Recovery Plan must provide for the delivery of effective educational services to all students enrolled in the district (24 P.S. § 6-641-A).

In this case, there is no approved Revised Recovery Plan that specifically authorizes use of specific powers under the FRA to carry out any of the options set forth in the Framework for Chester Upland School District Strategic Options Initiative ("SOI") including outsourcing management of selected schools, outsourcing management for all schools, or full outsourcing of

CUSD operations. The District has not yet submitted updated financials and audits<sup>1</sup>, which are critical to any review of a Revised Recovery Plan and any effort to move forward with the SOI.

Moreover, conversion charter arrangements implemented under the FRA must meet a number of requirements which are not fully addressed in the current proposal including (but not limited to) the following:

- i. Evidence that the arrangement will result in financial savings
- ii. A plan for the School board or Receiver<sup>2</sup> to designate and approve buildings/portions for conversion
- iii. An RFP process which requires applicants to demonstrate how the conversion will result in financial savings and the content and how dissemination of the RFP must be consistent with the purpose and requirements of Article XVII-A (the Charter School Law)
- iv. A process to ensure that each proposal is evaluated in a public manner
- v. A plan to establish alternative arrangements for students who choose not to attend the charter

While school districts have some authority under FRA for outsourcing of management, that authority must be properly exercised. In addition to effecting needed economies, outsourcing must also provide for delivery of effective educational services to all students in district.

To date, CUSD has not demonstrated in the Proposed Revised Recovery Plan that any of the options will effect needed economies nor has CUSD demonstrated that utilization of any of the three options identified in the SOI will provide for the delivery of effective educational services to all students in the district.

Because the requirements to invoke these powers under the FRA have not been satisfied, we assert that the proposed RFP process is completely premature. Moving forward with such a process in the absence of compliance with the aforementioned prerequisites in accordance with the timeline proposed will violate the FRA and therefore should be rejected on this basis alone.

Moreover, we note that Option C in the SOI ("Full outsourcing of CUSD operations") is not even discussed in the Proposed Revised Recovery Plan nor is there any provision of Section 6-642A which would authorize a complete transfer of a school district's functions (in contrast to entering contracts for operations of schools or groups of schools). Finally, the SOI does not discuss how any of the specific proposals throughout the Proposed Revised Recovery Plan will be implemented if Option C is adopted. Is it the intention of Option C to abandon the rest of the

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<sup>1</sup> On March 4, 2020 CUSD was granted a 60-day extension for submitting undated financial information. A suspension of all deadlines in light of the COVID-19 crisis was ordered on March 18, 2020.

<sup>2</sup> In Receivership, the Receiver is granted all powers of the school board with the exception of the power to levy taxes. 24 P.S. § 6-672-A.

provisions of the Proposed Revised Recovery Plan? Nothing in the statutory process appears to allow that result.

### **III. Specific Objections to the SOI**

#### **A. Selection of Strategic Advisor**

The SOI assigns significant responsibility for the selection process to an “independent strategic advisor.” This person will play a key role in developing an initial list of potential providers and developing the RFP. Despite the Strategic Advisor’s critical role in the RFP process, the SOI does not include any information regarding the minimum qualifications of the Strategic Advisor nor does the SOI explain how CUSD is going to ensure that the Strategic Advisor is independent.

Based on the foregoing, we request that the SOI include the following language: *“The selected Strategic Advisor must have demonstrated experience and expertise in leading successful school turnaround, successful experience in developing and administering an RFP process similar to the one defined by the SOI, and successful experience in fostering a process of meaningful public input and involvement in decisions about public schools. The Strategic Advisor shall have no conflict of interest, including past or present ties with any current representatives of CUSD, members of its School Board, any person or entity providing services to CUSD, any responding provider, or person or entity that contracts with a responding provider.”*

In addition, there is no reference to the cost of hiring this Strategic Advisor.

#### **B. RFP Review Group**

The SOI proposes forming an RFP Review Group comprised of the following participants: administrators, community members, District faculty, and staff. Parents of students enrolled in CUSD should also be included in the Group. Parents have an intimate understanding of their children’s needs and the needs of the community. They are also familiar with what happens on a day-to-day basis in their children’s schools. Therefore, in addition to community members, this Group must include at least one member from the parent council at each school.

Moreover, the RFP review group should also participate in site visits and will need to have a standardized rubric to determine what to look for and how to evaluate schools managed by applicants.

#### **C. Clarification Regarding Request for Interest/Information, Terminology, and Expectations**

The purpose of the SOI should be clarified and the RFI should be carefully constructed to collect important detailed information to determine key aspects of the RFP, including which option is being pursued. In addition, many key terms remained undefined such as “Model of District Reorganization” (p. 3) “strategic growth plan” (p. 3) and “capacity to serve CUSD’s needs” (p. 6). While the SOI references “expectations” to be defined in the RFP it does not define what those expectations might be or exactly how they will be developed. This process is important and there should be more information about how those expectations will be determined. In addition,

the SOI is often inconsistent. For example, in the 9th bullet on page 6 it references the applicant establishing performance goals, but elsewhere it indicates that the Receiver will establish those goals.

#### **D. Public Input**

As written, the SOI does not provide an opportunity for public input on the proposals or allow the public to ask the responding providers questions. We understand that having the opportunity for the public to ask questions of the responding providers was a very important and successful part of the evaluation process in York. Therefore, the Framework should state that any RFP should state responding providers will be required to attend a public meeting and respond to public comments.

In addition, prior to the issuance of an RFP, the Strategic Advisor should engage in a process to determine community priorities for outsourced management. Currently, there is no mention of this prior to the RFP process.

#### **E. Process for Selecting among the Three Options**

The SOI does not define a process to determine which of the three options are most appropriate to meet the needs of the District. If the decision is not made in advance and applicants are able to select and respond to different options then it will be extremely difficult to evaluate the responding providers because they will be proposing to meet different criteria. An effective RFP provides criteria up-front so that all applicants can be compared both against specific criteria and against each other. If there are three options on the table when the RFP is submitted then applications will not be able to be evaluated in a fair, valid, and reliable manner. In addition, the SOI does not provide a particularly clear description of any of the three options. For example, the Framework says that Option B gives a contractor “greater decision-making autonomy over the schools within its purview” but there is no information on how or why that is the case. As noted above, we do not believe there is any statutory authority for Option C.

#### **F. Need for Alternative Arrangements**

If either Option B or C is selected for the RFP (and if that model is a conversion charter model), then the applicant should be required to include a plan for alternative arrangements for students who do not choose to attend the conversion charters, along with estimated costs.

#### **G. Disclosure of Positive and Negative Results**

The RFP should make clear that applicants are required to submit complete information about experience, programs, and achievement, not only information about successes. The RFP should be constructed in a way that reduces the likelihood of cherry-picked information being submitted by an applicant.

#### **H. Effective Delivery of Educational Services**

The SOI lacks qualitative provisions to ensure all students receive effective educational services and that charter conversion or alternative management results in better or equivalent educational

outcomes for all students. In order to meet this goal, eligible providers must be required to demonstrate the following:

1. **Provision of High-Quality Educators.** Applicants should be required to provide the qualifications and experience levels of their staff to ensure they are equivalent to or surpass current CUSD teaching staff with regard to both years of experience and educational levels. If option B or C envision conversion charters, then applicants should describe the evaluation system they will use to determine the effectiveness of professional and temporary professional employees. If the schools are not conversion charters, then the applicants should describe the process they will use to administer the Educator Effectiveness System. In addition, if applicants are applying to operate one or more conversion charter schools, then applicants should be required to commit to hiring teachers that are at least as qualified (in terms of certification status and years of applicable experience) as the teachers currently working in the District.
2. **Academic achievement and growth rates.** Actions taken under the Financial Recovery Act need to assure the provision of effective educational services to all students. Applicants' academic achievement outcomes and student growth rates (as measured by the Pennsylvania Value-Added Assessment System) should be equivalent to or exceed those measures for the CUSD schools the provider is applying to take over. These measures must include academic achievement and growth rates for dis-aggregated student subgroups (*e.g.*, economically disadvantaged, racial and ethnic groups, English Learners and students with disabilities).
3. **Assurance of Student Achievement Results.** A track record of providing curriculum, instruction, and instructional support to other students in other circumstances is not sufficient to assure the same for students in the District because the curriculum, instruction and instructional supports currently provided in CUSD form a baseline from which continuity of service will need to be maintained. Consequently, the process must include detailed information about transition services and a crosswalk between current and proposed educational curriculum and programming. In addition, student achievement goals should be set by CUSD and included in the RFP as a standard expectation for the applicants. It becomes the job of each applicant to demonstrate how it will attain the goals set by the District, not to set its own goals. This will help standardize the RFP process.
4. **Establishing Performance Targets.** The SOI states that CUSD will maintain oversight and establish performance targets for providers. Those targets should be set now and become a part of the RFP, not established after a contract is signed.
5. **Additional Aspects of Quality Educational Programming:** Applicants should be required to provide information on student attendance, student discipline (including the prevalence of disciplinary practices that exclude students from typical instruction), transition beyond high school (for proposals involving middle and high schools), career and technical education, pre-K education (for proposals involving elementary schools),

gifted education, and other areas of the educational program that are not included in the current SOI. The RFP should include standards and expectations for each of these areas.

6. **Curricular Coordination.** If management of schools is awarded to more than one applicant and the District retains control of some schools, it will be important to build a coordinated curriculum across schools that are managed by different entities. In addition, if students from the District are transferred to a school with different management, the outside management entity should have a clear plan for linking seamlessly with the curriculum of the District. Curricular coordination is critical to minimize learning loss as a student moves across systems. The RFP should require any applicant to describe an explicit plan for curricular coordination.
7. **Continuity of Education:** The provider must have the ability to provide continuity of educational curriculum and extra-curricular programs for CUSD students. The RFP should define which aspects of the CUSD program are successful and should be continued by a management company. This analysis is important to define areas of continuity for students and the community.
8. **Students with Disabilities:** The SOI doesn't specifically ask applicants to provide information about their experience meeting the needs of students with disabilities, including low-incidence disabilities. A provider must be required to effectively demonstrate their ability to meet the needs of current CUSD students with disabilities, including providing sufficiently qualified and trained staff, staffing levels, and a range of appropriate classroom settings to ensure provision in the least restrictive environment for current CUSD students with disabilities. This assessment should include consideration of complaints and corrective investigation reports regarding students.
9. **English Learners:** The provider must demonstrate that it has and continues to deliver effective educational services to students who are English Learners by implementing a process for identifying and serving English Learners in compliance with federal law.
10. **School Discipline:** The provider must show that its current school disciplinary rates (*e.g.*, expulsions, suspensions, out-of-school and in-school suspensions, referrals to AEDY), including those disaggregated by student subgroup, are similar to or less than those of the CUSD schools it is applying to take over.
11. **Governance:** The provider must demonstrate a history of effective governance that meets or exceeds expectations as assessed through an authorization and renewal processes over the past five years of operation.
12. **Assurance of Student Social and Emotional Learning.** Social and emotional learning is a fundamental component of an effective education. The RFP should define the District's expectations in terms of programming for social and emotional learning and invite each applicant to describe how it will meet these expectations.
13. **Assurance of Extracurricular Activities.** Extracurricular activities also form a part of an effective educational program. Each applicant should be required to demonstrate their plan for providing comprehensive extracurricular programming and encouraging student

participation. In addition, if the RFP seeks partial outsourcing, then each applicant should demonstrate how their extracurricular programming correlates with programming in other schools within the District.

### **I. Assessment of Impact on CUSD**

One of the goals of outsourcing of operations is cost savings to CUSD. As written, the SOI does not require responding providers to submit enough information to verify that there would be cost savings under each option. In order for CUSD to accurately determine if there would be a cost savings under each option, the SOI must require either CUSD to conduct a survey or responding providers to provide a basis to determine the number of students who will continue to be educated in the District under Options A and B. Any provider submitting a proposal under Options A or B shall be required to identify all services to be provided by CUSD (e.g. transportation, state reporting, human services, payroll, etc.) and all additional expenses (e.g., unemployment, pension termination liability, facility expenses, etc.) which will be borne by the District as a consequence of the proposal.

### **Conclusion**

Any initiative must be authorized by a financial recovery plan and ensure the delivery of effective educational services to all students in the district in addition to providing cost savings. We therefore object to the current proposal on the ground that it is not authorized by an approved Recovery Plan and Option C is not authorized by the statute. In addition, it is clear that CUSD's proposal is significantly deficient and must be revised to incorporate public input and additional information from responding providers regarding both the delivery of educational services and the costs that will remain with CUSD. In the absence of these substantive revisions, it will be impossible for CUSD to evaluate whether any proposals will provide both quality education and cost savings as required by the Financial Recovery Act.

Respectfully submitted,

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I hereby certify that on this 24th day of April 2020, the foregoing PRAECIPE was served upon the following persons by electronic mail:

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