

**In The Matter Of:**

*Pocono Mountain School District  
Pocono Mountain Charter School*

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*June 10, 2009*

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*Donna Kenderdine Reporting*

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POCONO MOUNTAIN SCHOOL DISTRICT  
BOARD OF DIRECTORS

- - -

In re: Pocono Mountain Charter School

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Transcript of proceedings held in the  
above-captioned matter before the Pocono Mountain School  
District Board of Directors, Administration Building,  
Swiftwater, PA on Wednesday, June 10, 2009, commencing at  
or about 6:35 o'clock p.m.

- - -

- HENRY E. BOCKELMAN, President
- JANE NIERING, Member
- JOHN H. DAVIS, Member
- RICK SMITH, Member
- MEG DILGER, Member
- LEO COLGAN, Board Member
- MICAH EL STERN, Member
- JEFFREY D. LITTS, ESQ., Solicitor

- - -

APPEARANCES:

KING, SPRY  
BY: ELLEN C. SCHURDAK, ESQ.  
100 West Broad Street, Suite 700  
Bethlehem, PA 18018  
-- For the Administration

ANDERS & MASINGTON  
BY: C. WILLIAM SHILLING, ESQ.  
18 North Eighth Street  
Stroudsburg, PA 18360  
-- For Pocono Mountain Charter School

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P R O C E E D I N G S

Wednesday, June 10, 2009

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MR. BOCKELMAN: I'd like to call this public hearing to order. At this time I will turn the proceeding over to Attorney Jeffrey Litts.

MR. LITTS: Thank you. Good evening. This is the time and place for the hearing in the matter involving the proposed revocation of the charter for the Pocono Mountain Charter School. I am Jeffrey D. Litts with the lawfirm of Kegel, Kelin, Almy & Grimm of Lancaster, Pennsylvania, and I have been retained by the school board to preside over these proceedings.

For purposes of compliance with Section 1729-A of the Charter School Law, we are required to have a public hearing that had been previously advertised. I believe there is evidence placed into the record regarding the public advertisement.

Additionally, I need to advise folks that we do have a stenographer in order to keep a record for these proceedings and she will be transcribing any and all testimony and statements this evening.

Also, it is my understanding that we do have a sign-in sheet in the back of the room for anyone that is attending the proceeding and we would ask that you do please

1 sign in.

2 All the hearing sessions will be open to the  
3 public. I will advise the public per the Charter School Law  
4 there will be a time and place for the receipt of public  
5 comment, but that will be at the end of the testimony.  
6 Based upon my initial discussions with both counsel for the  
7 school district administration and the charter school I  
8 believe we'll have multiple sessions where we hear evidence  
9 and it won't be for some time before we have that, but we  
10 will notify the public of that opportunity and we'll also  
11 advise of the opportunity to submit any public comment via  
12 letter or e-mail, if deemed appropriate, and we'll advise of  
13 that in the future. But, there will be no public comment  
14 session at tonight's hearing session.

15 With those preliminary remarks I'd like  
16 everyone to introduce themselves for the record and I'd like  
17 each of the school board members that are present to  
18 identify him or herself and I will start at my far right.

19 MR. DAVIS: John Davis.

20 MS. DILGER: Meg Dilger.

21 MR. POLINSKI: Randy Polinski.

22 MR. FORTE: Bill Forte.

23 MR. BOCKELMAN: Henry Bockelman.

24 MS. NIERING: Jane Niering.

25 MR. COLGAN: Lee Colgan.

1 MR. STERN: Michael Stern.

2 MR. SMITH: Rick Smith.

3 MR. LITTS: I see that the administration is  
4 represented by counsel. Miss Schurdak, can you please  
5 identify yourself for the record and identify anyone for the  
6 administration that's here with you this evening?

7 MS. SCHURDAK: Yes. Good evening, Officer  
8 lifts. My name is Ellen Schurdak. I am here representing  
9 the administration. Lucas Repka is also to my right. He is  
10 here as co-counsel and the superintendent is sitting in the  
11 middle of counsel table and that is Dr. Dwight Pfennig.

12 MR. LITTS: Thank you. I see we also have  
13 counsel for the charter school this evening. Sir, could you  
14 please identify yourself for the record?

15 MR. SHILLING: C. William Shilling of the firm  
16 of Anders and Masington, LLC. I'll be putting in as  
17 co-counsel along with Marshall Anders and Dan Fennick for  
18 Pocono Mountain Charter School.

19 MR. LITTS: Thank you, sir. Is there any  
20 representatives from the charter school this evening?

21 MR. SHILLING: There are none.

22 MR. LITTS: And I'm sure you'll advise your  
23 clients they do have the opportunity to attend any and all  
24 hearing sessions.

25 MR. SHILLING: Will do.

1 MR. LITTS: Thank you. As I stated before,  
2 we have a number of preliminary issues that we have to get  
3 through and, with that in mind, Miss Schurdak, do you have  
4 anything to present at this time on preliminary issues?

5 MS. SCHURDAK: I do, Officer Litts, and I did  
6 have a black binder, which is actually behind the  
7 solicitor -- yes. Thank you.

8 I have provided also a set of proposed exhibits  
9 to opposing counsel to ease this process.

10 I thought for this evening as background  
11 exhibits that I would offer the following into evidence.  
12 The first is actually the May 21st, 2008, revocation notice  
13 that was a resolution passed by this board and that is  
14 attached as Exhibit No. 1.

15 Exhibit No. 2 is an Affidavit of Service that  
16 demonstrates that the charter school was served with the  
17 notice Of revocation On May 22nd of 2008.

18 Exhibit No. 3 is the resolution passed by this  
19 board on April 15th of this year. It is a resolution  
20 appointing you as the hearing officer and also adopting what  
21 I call a hearing officer model for hearing evidence at  
22 future times.

23 Exhibit No. 4 is proof of publication in the  
24 Pocono Record of this evening's hearing. It was published  
25 in the Pocono Record as you can see from the underlying

1 exhibit this past Friday.

2 I also have a proposed Exhibit No. 6 and 7  
3 which are your scheduling orders, Officer Litts. One is  
4 dated November 7th of last year and one is dated May 14th of  
5 this year.

6 And, I would move for admission of 1 through 7  
7 into evidence.

8 MR. LITTS: Did we skip over Exhibit No. 5?

9 MS. SCHURDAK: I'm sorry. Did I?

10 MR. SHILLING: Yes.

11 MS. SCHURDAK: Exhibit No. 5 is the underlying  
12 charter for the Pocono Mountain Charter School which will be  
13 a critical document during the hearing.

14 MR. LITTS: Any objection to these exhibits  
15 coming into evidence?

16 MR. SHILLING: There is not.

17 MR. LITTS: Good. Can we mark these as joint  
18 exhibits then?

19 MS. SCHURDAK: I have no opposition to that.

20 MR. SHILLING: That's fine.

21 MR. LITTS: Fine. Then we will mark those  
22 exhibits, Exhibits 1 through 7, as joint exhibits and they  
23 will be moved into the record. Thank you.

24 Anything else, Miss Schurdak?

25 MS. SCHURDAK: In terms of background exhibits,



1 no. I'm not sure how you wish to proceed, if you want  
2 opening statements.

3 MR. LITTS: Is there any -- from your  
4 perspective are there any other procedural issues as far as  
5 the hearing goes?

6 MS. SCHURDAK: I am asking the board --  
7 there's ongoing litigation in the Court of Common Pleas and  
8 I understand that the board is not bound by that ongoing  
9 litigation. The charter school laws do not provide for  
10 discovery. However, I will advise the board that the  
11 attorneys did agree to voluntarily exchange discovery and  
12 there are ongoing disputes currently occurring in the  
13 Court of Common Pleas.

14 I'm, therefore, asking for latitude in terms of  
15 how the proceedings will occur. Because we are continuing  
16 to exchange information, there may be a need instead of just  
17 calling a witness one time recalling the witness as more  
18 information is gathered. So, I am asking for the board's  
19 indulgence on that.

20 MR. LITTS: So, there's no other preliminary  
21 issues from your perspective.

22 MS. SCHURDAK: I did want the charter school to  
23 put on the record that they agree to this model of hearing  
24 evidence.

25 MR. LITTS: Well, we'll take that -- I want to

1 see if there are any preliminary issues and we'll discuss  
2 the hearing resolution and I have spoken to at least one of  
3 the co-counsel about that. So, we will place on the record  
4 and see if there is any objection. So, with that, thank  
5 you.

6 Any preliminary issues regarding the charter  
7 school?

8 MR. SHILLING: There are. One is that  
9 initially we would like to place on the record an objection  
10 to these hearings being held in its entirety since there is  
11 outstanding discovery issues. We received no discovery from  
12 the school board as per the order of court. I understand  
13 the hearing officer's position, but we would like that on  
14 the record, that we are objecting to that.

15 MR. LITTS: We'll accept the objection of  
16 record and we will note that we have been advised by your  
17 co-counsel and attorney for the charter school of Judge  
18 Cheslock's order seeking to enjoin the proceedings  
19 presumably due to the underlying discovery issues. That was  
20 denied as well as the Commonwealth Court's denial of that  
21 appeal.

22 The other thing is that Section 1729A of the  
23 Charter School Law does not require parties to engage in  
24 discovery. So, we will note the objection for the record.

25 MR. SHILLING: I appreciate that from the

1 hearing officer. The question we have is as the hearing  
2 officer are you going to be conducting the hearing and then  
3 making recommended findings of fact at the end or is the  
4 school board. Prior to convening the formal hearing we did  
5 have discussions with your colleague, Mr. Fennick, and Miss  
6 Schurdak. We had several joint telephone conference calls.

7 I also conferred with the board and based upon  
8 Joint Exhibit No. 3 the proposed model for the hearing would  
9 be as follows:

10 This evening we have, you know, a kickoff  
11 hearing, for lack of a better term, in the evening so that  
12 board members would be present. Based upon the availability  
13 of the necessary parties, it's contemplated that we would  
14 schedule additional public sessions probably starting in the  
15 morning or at least at a time that's mutually convenient to  
16 all in which I would preside at those proceedings and we  
17 would receive any witness testimony or presentation of  
18 evidence at those sessions.

19 To be clear, all of those sessions will be open  
20 to the public and if board members are able to attend they  
21 will be permitted to attend to hear the testimony as well as  
22 any member of the public that would be interested in  
23 attending those proceedings; they would have the opportunity  
24 to attend and observe those proceedings.

25 In the event that board members are not

1 available we will have copies of the transcript available  
2 for them to review as well as copies of any and all exhibits  
3 that would be available to review and with that in mind and  
4 to the extent possible counsel for both sides could provide  
5 two sets of copies of any types of exhibits so we can keep a  
6 copy of exhibits here for board members to review if they  
7 wish to schedule a time to do that for that.

8 And, it's also anticipated with an early start  
9 date we could hopefully go a little bit later than we could  
10 in the evening and that way both sides, depending on who is  
11 testifying, which side is testifying, we would have the  
12 expectation that there would be sufficient evidence for  
13 several hours of testimony on each of those days.

14 So, that's the expectation based upon my  
15 discussions with Mr. Fennick and Ms. Schurdak. Does that --

16 MS. SCHURDAK: That's my understanding of our  
17 conversation as well.

18 MR. LITTS: And that's basically what's set  
19 forth in Joint Exhibit 4. Does anyone have any objections  
20 to that process?

21 MR. SHILLING: No.

22 MR. LITTS: You also asked -- and I neglected  
23 to answer or respond. After the completion of the testimony  
24 and since the charter school [sic] does have the burden of  
25 proof by preponderance of evidence to demonstrate violations

1 of 1129 or rational for revocation under that section, the  
2 charter school would have the opportunity to present any  
3 evidence. We'd then have a period of public comment which I  
4 referred to earlier and then it would be my expectation that  
5 we'd probably have some briefs if counsel wishes to submit  
6 briefs for consideration.

7 Based upon all that information I will assist  
8 the board to prepare an adjudication with findings of fact  
9 and conclusions of law to the extent that proves to be  
10 necessary. The board could determine there isn't a basis to  
11 revoke the charter and they can simply enter an order to  
12 that effect.

13 If they were to decide there was a basis to  
14 revoke the charter then consistent with the precedent  
15 established by CAV, the charter school appeals board, there  
16 would be findings of fact and conclusions of law provided to  
17 the parties.

18 Obviously, any decision to revoke, and I don't  
19 mean to suggest that's what's going to happen here, I don't  
20 know the evidence and neither does the board, would be  
21 subjected to review by the charter school appeals board.  
22 So, that's at the tail end of the process. To respond to  
23 your question.

24 MR. SHILLING: I think that also answered my  
25 other question which was just to make sure that you'd hear

1 all the evidence presented by the school board and that we'd  
2 respond or defend and not go issue by issue and from your  
3 response it's my understanding we'll do it that way.

4 MR. LITTS: Yes.

5 MR. SHILLING: They put on all of their  
6 evidence and then we'll respond and defend.

7 The other thing is that we'd like to move for  
8 the dismissal of the 27 issues, 27 grounds that are listed  
9 for lack of specificity on the part of the school board.

10 MR. LITTS: What's your basis?

11 MR. SHILLING: Because they failed to set forth  
12 with the specificity that's required the 27 factors as set  
13 forth as to the -- and I believe that they're set forth in  
14 the first resolution, the resolution that's Exhibit 1, and  
15 we'd move for dismissal of those 27 factors because they do  
16 lack specificity in their charges.

17 MR. LITTS: Ms. Schurdak, would you like to  
18 respond?

19 MS. SCHURDAK: Yes, if I may. There are 27  
20 specific items and I don't know how one can get more  
21 specific.

22 No. 1: Operation of the business and  
23 educational program of the charter school in such a manner  
24 as to constitute an unconstitutional entanglement of church  
25 and state.

1           No. 4 -- I'm just going to highlight some of  
2 these. No. 4: Failure of the board of trustees to file  
3 Ethics Act statements annually. How much more specific can  
4 one be?

5           No. 6: Violation of procedure pursuant to  
6 IRS regulations in establishing not-for-profit salaries.  
7 I don't understand why one doesn't know what this resolution  
8 is saying.

9           No. 7: Violation of state ethics law by  
10 employment of relatives by the charter school and creating  
11 conflicts of interest.

12           I could go on. There's allegations within  
13 this resolution of entering into a lease transaction at less  
14 than an arm's length and with unreasonable advantage to the  
15 landlord. This is very specific.

16           I note that no cases were cited by counsel to  
17 support his request to have this dismissed and that's  
18 because I think there are no cases to support this position.

19           Additionally, this has been raised in phone  
20 conferences with Attorney Fennick, myself, and you and while  
21 those phone conferences were not of record my recollection  
22 is that you advised counsel "Put it in writing. Tell me  
23 what numbers here you have a problem with and I will then  
24 review it and issue an order accordingly." Those phone  
25 conversations probably occurred in April. I haven't

1 received anything and I suspect I haven't received anything  
2 from you because you haven't received anything.

3 I'd ask that their request be denied.

4 MR. LITTS: Counsel, if there are no further  
5 arguments on this, Section 1729-A of the Charter School Law  
6 requires notice of the proposed grounds for revocation with  
7 reasonable specificity. We do have a resolution that was  
8 adopted almost a year ago and you are correct, Miss  
9 Schurdak, that we did have a prior conference where I was  
10 suggested that.

11 In light of the hearing process, that the  
12 school district has the burden of proof and that the charter  
13 school will have the opportunity to hear testimony on each  
14 of the purported grounds they are relying upon for this,  
15 I don't believe that the precedent interpreting that section  
16 developed by CAV or appellate court requires dismissal and  
17 I'm not aware of any such precedent.

18 I will say this for the record. To the extent  
19 the charter school believes that there's a lack of  
20 specificity with regards to any of the proposed grounds if  
21 they submit those objections to me in writing within 10 days  
22 and copy Ms. Schurdak on that and, if necessary, I will rule  
23 on that and could potentially deny the request for greater  
24 specificity or direct Miss Schurdak to provide greater  
25 specificity on that.



1           So, we'll give you 10 days to submit that and  
2 I will make sure you have my e-mail address and all that  
3 good stuff so that you can contact me. Please copy Miss  
4 Schurdak on that and if the parties are able to amicably  
5 resolve those issues on their own within that period of time  
6 I would ask Miss Schurdak to respond within 10 days of  
7 receipt of that.

8           MS. SCHURDAK: Certainly.

9           MR. LITTS: Thank you.

10          MR. SHILLING: The last item that we'd have,  
11 Mr. Hearing Officer, is the fact that we have not received  
12 any expert reports as was requested by you prior to even  
13 anything going to the Court of Common Pleas. You had set  
14 up, I believe, deadlines. We do not have any expert reports  
15 specifically as to the accounting issues and that if they do  
16 have those reports they should have gotten them to us. If  
17 they don't then that's a problem we have with getting the  
18 information from them.

19          MS. SCHURDAK: It is true you issued a  
20 scheduling order with a bunch of deadlines and that's a  
21 joint exhibit. It's also true that both parties have  
22 completely disregarded, with no disrespect to you, those  
23 deadlines and, honestly, we became consumed in discovery-  
24 related disputes in the Court of Common Pleas.

25          When I get expert reports I'm going to disclose

1       them to the other side. One of the problems is we've had a  
2       hard time getting information and I can't get an expert  
3       report until I have, for example, you know, the current tax  
4       returns for the charter school. 2008, don't have it.

5               So, they will be forthcoming, they will be  
6       given to the charter school in advance of the hearing date,  
7       but both sides, quite frankly, have not abided by your  
8       order.

9               MR. LITTS: We do have as a Joint Exhibit 6 my  
10       November 7th, 2008, letter setting forth what I understood  
11       to be an agreement of the parties on discovery issues and I  
12       think, as you both alluded to, both sides haven't complied  
13       with any of those deadlines and let me respond to both of  
14       counsel about this.

15               Again, this board, in reviewing the proposed  
16       revocation, needs to do so in compliance with the Charter  
17       School Law as well as the Local Agency Law and specifically,  
18       again, I keep referring back to Section 1729-A, but that's  
19       the section that deals with revocations or termination of  
20       charters.

21               That section provides absolutely no right of  
22       discovery to either the school district or the charter  
23       school. I'm not aware of any provision that applies to  
24       local agencies in the Local Agency Law that provides any  
25       right to discovery for either party and, so, to the extent

1 that this board has jurisdiction to hear that there simply  
2 isn't any discovery right and, therefore, I don't think that  
3 the board is required to provide either party with written  
4 discovery.

5 I do understand, however, that the parties did  
6 agree to a format before the Monroe County Court of Common  
7 Pleas to engage in discovery to resolve some civil  
8 litigation that was filed prior to these proceedings and to  
9 the extent that the Monroe County Court of Common Pleas  
10 still retains jurisdiction on those discovery issues you are  
11 free to go to the Court of Common Pleas to litigate those  
12 things.

13 So, if there are those discovery disputes  
14 that's where they should be taken up.

15 That being said, once we actually get to the  
16 substantive issues of presenting evidence in these  
17 proceedings I do expect and hope that both sides will treat  
18 each other with respect and courtesy as far as exchanging  
19 information to the extent it's reasonable and appropriate  
20 and I think I've heard one, if not both counsel, allude to  
21 that fact tonight.

22 Again, the Charter School Law requires the  
23 school district to provide reasonable notice with  
24 specificity as to the underlying charges and I'll make sure  
25 that happens.

1           To the extent we can work on some of other  
2 issues regarding the presentation of evidence that may cause  
3 some legal concerns like FERPA issues and student records  
4 we'll try to facilitate those things, but I'm not going to  
5 hold up the hearing for either side on discovery issues.

6           So, again, the judge has the ability to order  
7 you guys, he was the one that gave youf evidence and the  
11 like I'm assuming you'll both be cooperative and  
12 particularly on the issue of expert reports I anticipate  
13 there will be some level of cooperation.

14           The other thing is that since the school  
15 district does have the burden you'll hear all this stuff  
16 before we ever schedule a hearing session and, so, I expect  
17 you will have some reasonable notice as to the underlying  
18 reports or evidence that may be presented in support of the  
19 proposed revocation of the charter.

20           So, I'll deny that issue on the discovery with  
21 regards to expert reports.

22           MR. SHILLING: That's it.

23           MR. LITTS: Any other preliminary issues?

24           MS. SCHURDAK: Yes. Just in light of  
25 Attorney Schilling's arguments, I would move for the

1 admission of Exhibits 13 and 16 into evidence and  
2 Exhibit No. 13 [sic] is actually Judge Cheslock's order  
3 dated May 20th of this year which denied the charter  
4 school's motion to enjoin the proceeding this evening.

5 Exhibit No. 16 is the order from the  
6 Commonwealth Court that is actually dated today. That's in  
7 response to the charter school filing not only a notice of  
8 appeal, but an expedited application that was heard today by  
9 the Court asking for a stay of tonight's proceedings which  
10 was also denied.

11 MR. LITTS: Just so I'm clear, what is under  
12 Tab 16 is a June 10th, 2009, order denying an application  
13 for stay signed by Barry F. Feudale, Senior Judge of the  
14 Commonwealth Court. I believe you referred to Judge  
15 Cheslock's order denying the charter school's motion to  
16 enjoin here and I believe that's under Tab 11.

17 MS. SCHURDAK: I apologize. You're right, it  
18 is 11.

19 MR. LITTS: Exhibits 11 and 16. Again, we can  
20 take judicial notice of that fact or is there any objection  
21 to the entry of those orders into evidence?

22 MR. SHILLING: You may take judicial notice.

23 MR. LITTS: Fine. So, we'll put those in the  
24 record as well and we'll remark those as Joint Exhibits 9  
25 and 10.

1 MS. SCHURDAK: I think it's 8 and 9.

2 MR. SHILLING: 8 and 9.

3 MR. LITTS: Exhibits 8 and 9. Thank you.

4 Any other preliminary legal issues?

5 MS. SCHURDAK: I thought we covered everything.  
6 I mean, there are going to be some issues which I don't know  
7 if you want to address right here and now, but I think that  
8 the attorneys and the board and yourself need to come up  
9 with a system with respect to FERPA records which is one of  
10 the issues.

11 Under FERPA you can't ordinarily disclose a  
12 student's educational records. Now, you can, my  
13 understanding of the law, is pursuant to a court order which  
14 I have obtained against the charter school on -- you have to  
15 provide, I believe, an opportunity for notice to the  
16 parents. That's issue one.

17 The second issue dealing with the records  
18 actually during the hearing process is a coding system to  
19 protect the minor child's identity because it is somewhat --  
20 it's privileged information. I would like, because I  
21 anticipate calling some parents, that that level of  
22 confidentiality actually go to the parents as well. We  
23 would have an internal code, so to speak, so we all know who  
24 we're talking about, but that the identity of the student is  
25 not revealed publicly.

1                   MR. LITTS:  Would you like to speak on this  
2                   issue at all?

3                   MR. SHILLING:  No.  I think -- as far as the  
4                   confidentiality I understand the reasoning behind it and I  
5                   agree that there should be confidentiality as far as the  
6                   name of the students and probably the parents also.

7                   MR. LITTS:  Here's my reaction on this.  
8                   Obviously, I think the district, and I think I can speak for  
9                   the board, obviously, are concerned about protecting the  
10                  privacy rights of school-age children and their parents.

11                  One of the challenging pieces, of course, is  
12                  that we're required by law to have a public hearing.  So,  
13                  with that in mind I think, one, to the extent we still have  
14                  the avenue for discovery before the Court of Common Pleas it  
15                  may behoove both sides, if they intend to enter into  
16                  evidence any student records, to obtain a court order and go  
17                  through the process of notifying their parents of the intent  
18                  to do that and that will very clearly address any FERPA  
19                  concerns about presenting that evidence in this type of  
20                  proceeding.

21                  Assuming that is done and we eliminate that  
22                  FERPA concern, to the extent that the parties are sharing  
23                  any types of student records I am working off the  
24                  presumption for purposes of this proceeding that they will  
25                  fulfill their duties as set forth in the FERPA regulations

1 to maintain the confidentiality of those records and not  
2 engage in any further disclosure to third parties outside of  
3 this forum for any other purpose and I fully expect both  
4 sides will do that.

5 When it comes time to the presentation of any  
6 type of evidence or records before the board or myself if  
7 I'm sitting as the hearing officer, what I am going to  
8 suggest to the parties, but if you have other thoughts we  
9 can take those under advisement, is that the student's names  
10 be redacted and we do some type of identifier whether we  
11 want to use initials, whether we want to use a number  
12 system, I'm not ready to -- one or the other, whatever  
13 works, but if we redact those names and then I think if we  
14 develop a code, so to speak, so that we know that if we're  
15 talking about Andy Adams and we've identified Andy Adams as  
16 AA -- we would have a master list so that at least the  
17 attorneys will know what those are referring to to the  
18 extent that's necessary and that way any of those type of  
19 student records that are admitted into evidence and become  
20 part of any certified record that may be developed those  
21 records have the names redacted and -- but at the same time  
22 there's enough information for counsel to make arguments for  
23 the board to understand the potential arguments relating to  
24 those documents and we can protect the confidentiality.

25 The other challenging piece, and we may need



1 some cooperation with the media, to the extent that there is  
2 testimony by anyone and merely by identifying themselves by  
3 name with regard to the testimony, for example, if a parent  
4 were to testify about their child's education, it may be  
5 easier to identify who that child is and it would be my hope  
6 that the media would exercise a great deal of discretion in  
7 disclosing the full names of those parents in order to  
8 protect the rights of the child for privacy. We can talk to  
9 the media about that, if necessary, but as far as the  
10 attorneys go that's the process I'm envisioning and unless  
11 you have any strong objections I think that's probably the  
12 best we way we can go forward.

13 MR. SHILLING: We have no objection.

14 MS. SCHURDAK: No.

15 MR. LITTS: So, if there isn't any further  
16 legal issues or preliminary issues, here would be our  
17 expectation going forward. It would be -- I know prior to  
18 the hearing I spoke with both counsel and we provided a  
19 number of dates for potential hearings. So, when we recess  
20 this hearing we won't recess to a date certain because we  
21 don't have the dates, but I would ask for purpose of the  
22 record based upon the dates that we discussed prior to the  
23 convening of this hearing if -- I would charge Miss Schurdak  
24 with doing this, that if you could talk with opposing  
25 counsel and provide at least three dates for hearing

1 sessions that we could schedule and we can hopefully get  
2 that done by this Friday.

3           Once those dates are determined again I'm going  
4 to charge Miss Schurdak with providing the suitable  
5 advertisement in the local paper to notify the public of  
6 those dates and times for those hearings.

7           Again, the expectation is is what we'll  
8 probably do is start in the morning around 10:00 and try to  
9 go as late as possible as evidence permits so we can  
10 expedite the consideration of the evidence.

11           So, if there's no objection to that that's what  
12 I would be asking you to do.

13           The other thing that we need to do is what I am  
14 expecting as far as the presentation of evidence. I will  
15 give both sides the opportunity for an opening statement at  
16 our next session as to the substance of that unless they are  
17 prepared to do that tonight and want to do that, but if not  
18 tonight then both sides will be given the opportunity for an  
19 opening statement.

20           After that opportunity's been extended I will  
21 then turn it over to the administration to begin its  
22 presentation of its testimony and other forms of evidence  
23 in support of their revocation of the charter.

24           Unless counsel -- I understand schedules and  
25 things like that, you agree to some other format, I would

1 have the administration present its case and at the end of  
2 that Defense would have the opportunity to present its case  
3 in defense and to the extent we have experts, you know,  
4 we'll work around their schedules to the extent we possibly  
5 can and the administration would have the opportunity to  
6 present rebuttal evidence at the end of that process. I  
7 understand there is a request for that and I think that that  
8 is appropriate there.

9 At the end of the presentation of the evidence  
10 the hearing will be recessed. By law we are required to  
11 allow the public to present public comment and we will have  
12 an opportunity for public comment before any action is taken  
13 by the board.

14 As I alluded to earlier, I would assist the  
15 board and advise them legally as to the process so the board  
16 can decide to deny the request to revoke and if that occurs  
17 the charter school will continue to operate as it's  
18 currently operating.

19 If the board were to grant the request to  
20 revoke then it would be required to present an adjudication  
21 with findings of fact and conclusions of law which we'll try  
22 to reference to the record in support of that determination  
23 and that would become final if there's no appeal or  
24 depending on what happens on CAV that's going to decide what  
25 will happen.

1           So, it will go one of those two routes unless  
2 something else happens that I'm not thinking about.

3           So, that's the anticipated process and I want  
4 to say that for the record so both counsel understands that.

5           So, anything from the board?

6           Is there anything from either counsel?

7           MS. SCHURDAK: I am prepared to give an  
8 opening.

9           MR. LITTS: If you're prepared to give an  
10 opening, by all means, I'll allow you to do that.

11           MS. SCHURDAK: Thank you. May it please the  
12 board, I am Ellen Schurdak and I'm here and will be here  
13 representing the administration in this revocation  
14 proceeding.

15           This case can be summed up in three simple  
16 words: Control, power, and money. This case is about  
17 control, power, and money as it relates to one individual.  
18 Pastor Dennis Bloom.

19           His background, according to his own resume,  
20 is that of an ex-New York City transit cop. Today he  
21 presents himself to your community as the head of two  
22 not-for-profit churches -- two not-for-profit corporations.  
23 One: Shawnee Tabernacle Church. No. 2, Pocono Mountain  
24 Charter School.

25           This personal control that he exercises doesn't

1 benefit just himself. It benefits his wife, Mrs. Crystal  
2 Bloom. It has benefited in the past his son and his  
3 daughter. Why do I say that? The evidence will show his  
4 wife, his daughter, his son have worked for the charter  
5 school.

6 The personal benefit that Pastor Bloom is  
7 receiving amounts to almost a million dollars a year. An  
8 alarming sum of money.

9 The evidence is going to show that the charter  
10 school has entered into a lease agreement with the church.

11 The evidence is going to show that these  
12 buildings are actually physically connected. They share a  
13 common hallway. You can't enter that charter school without  
14 also sharing space with the church. It's an alter ego,  
15 it's one entity.

16 In 2007-2008 the taxpayers of this district  
17 provided the charter school with almost 3.4 million dollars.  
18 Approximately one-third of that has gone to salaries for  
19 Pastor Bloom, his wife, and for the lease.

20 In June 2006 the board, and I'm not sure if  
21 it's the current board or not, but the board renewed the  
22 charter. You gave the charter school a chance. You were  
23 very, very specific. There are over 60 conditions listed  
24 in that charter and that's because it's clear there were  
25 concerns about what is going on with the charter school.

1           The additional conditions placed in the charter  
2 were aimed at monitoring Pastor Bloom, making sure that the  
3 public monies were being spent appropriately, making sure  
4 that the children of the charter school are receiving the  
5 education that they should be; if they're Special Ed.  
6 students they're deserving and receiving what they should.

7           In May of last year this board adopted a  
8 resolution. You outlined 27 areas of concern and some of  
9 those areas of concern are duplicative, but No. 1 speaks  
10 volumes. Unconstitutional entanglement of the church and  
11 state. What does that mean? Well, one example. How can  
12 you have a fair rental agreement between the charter school  
13 and the church? Pastor Bloom has signed public documents  
14 that say, "I, Pastor Bloom, am the president of Shawnee  
15 Tabernacle Church." He's the landlord.

16           You're going to hear evidence that Pastor Bloom  
17 is the CEO of the charter school. How can you have an arm's  
18 length transaction when Pastor Bloom is head of the charter  
19 school and he's head of the church. You can't. It's  
20 impossible.

21           It's also going to be shown through a recent  
22 mailing that the charter school sent out to the public.  
23 It advertises its services. "Come enroll your child here."  
24 It lists a phone number for you to call for more information  
25 about the charter school. The phone number is 570-894-9560.

1 Call the number. The evidence is going to show it's  
2 answered by an answering machine: Shawnee Tabernacle  
3 Church.

4 They're not two separate entities, they're the  
5 same entity.

6 The lease agreement. Over \$940,000.00 a year  
7 for space. For space. On top of that, the charter school  
8 doesn't have exclusive possession of its own space. The  
9 lease agreement says, "Charter School, you have the space  
10 Monday through Friday during the school calendar year from  
11 7:00 a.m. to 5:00 p.m." Over \$900,000.00 for space that you  
12 only can occupy pursuant to the terms of the lease for  
13 limited hours?

14 There's no separate billing between the church  
15 and the school for utilities. The evidence is going to show  
16 all utility bills go to the charter school.

17 One questions whether or not this space that  
18 the charter school is renting from the church is even  
19 marketable on the open market. It's physically attached to  
20 a church.

21 The unconstitutional entanglement, the alter  
22 ego of the church and this publicly-funded school, is shown  
23 in a recent incident this past November. The charter school  
24 was selected as one of the voting polling places. During  
25 the school day the evidence is going to show that students

1 were handing out packets of material to the public as they  
2 waited in line to vote. The evidence is going to show that  
3 these packets of materials weren't handed outside, they were  
4 handed out inside the building. A bag was given out.  
5 Outside of the bag, Pastor Bloom and the first -- and his  
6 first lady, Crystal Bloom, Shawnee Tabernacle Church.

7 Inside the bag, the evidence is going to show,  
8 there were promotional materials, promotional materials  
9 about Shawnee Tabernacle Church and promotional materials  
10 about the charter school. Why are children of a publicly-  
11 funded school doing this? Why are they ask asked to do  
12 this? Pastor Bloom: Control, power, money.

13 Pastor Bloom's salary is tied, you're going to  
14 see, to the superintendent's. He makes 80 percent of  
15 whatever the superintendent makes here.

16 Are the two comparable? The evidence is going  
17 to show for the year 2007-2008 approximately 11,384 students  
18 attended this school district. Approximately 385 students  
19 from this school district attended the charter school.

20 You're going to hear legal argument about  
21 whether or not this scenario is even legal. There are  
22 Financial Statements of Interest that have to be filed  
23 annually. To date the charter school has produced zero.  
24 Even if they're produced, when you're looking over the  
25 evidence you have to look and see when were they filed?



1 The law requires that they be filed by all members of the  
2 board and at minimum, at minimum by Pastor Bloom, the CEO.

3 Look at what's disclosed on those annual  
4 statements. Is it disclosed about this lease agreement?  
5 Because I submit to you that the statute in Pennsylvania  
6 requires that one reveal any direct or indirect interest in  
7 any real estate lease agreement.

8 It also defines conflict of interest and the  
9 statute says, "Use by a public official or public employee  
10 of the authority of his office or employment or any  
11 confidential information received through his holding  
12 public office or employment for his or her private pecuniary  
13 benefit."

14 Pastor Bloom's salary without benefits, not  
15 accounting for health care, retirement, is over \$120,000.00.  
16 His wife, and, again, you'll see her resume, no background  
17 in education, assistant CEO, is approximately 70,000.  
18 Again, without health care benefits. Almost \$200,000.00.

19 There are also laws about not-for-profit  
20 corporations and the laws in Pennsylvania, the statute,  
21 says a contract, a lease agreement is absolutely voidable,  
22 unenforceable if there is a financial interest between an  
23 officer or a director of one not-for-profit and another and  
24 that that person has a personal gain. That's the situation  
25 here.

1           Pastor Bloom, president of Shawnee Tabernacle  
2 Church, head of Shawnee Tabernacle Church, puts himself out  
3 to the community as the head -- also head of the school.

4           This entanglement has even been seen in  
5 Stroudsburg in the Court of Common Pleas. There's been  
6 ongoing litigation. Interestingly, Marshall Anders,  
7 Stroudsburg lawyer, Dan Fennick, an out-of-town lawyer,  
8 are representing Dennis Bloom personally, Crystal Bloom  
9 personally, Shawnee Tabernacle Church, and Pocono Mountain  
10 Charter School. They are of record. They are representing  
11 all of them. The attorneys don't feel there's a conflict of  
12 interest and I submit to you that's because essentially this  
13 boils down to one person, Pastor Bloom. Power, control,  
14 money.

15           The concern is also over Special Education  
16 students. You're going to hear alarming statistics. You're  
17 going to hear and see that Pastor Bloom has announced  
18 publicly that 25 percent of Special Ed. students, once they  
19 come to his school, no longer require services. They are  
20 decertified, they are declassified.

21           You're going to hear in contrast to that that  
22 that is an alarming statistic. Most children who have a  
23 disability have it for life. They require accommodations.  
24 It's not something you grow out of, it's something you learn  
25 to compensate for.

1           You're also going to hear that in one year at  
2 the start of the school year 13 students being identified as  
3 special needs students were declassified or decertified by  
4 the charter school within a period of 90 days of starting  
5 the school.

6           You're going to hear testimony that this is  
7 alarming, that normally when a child comes into the district  
8 here and has been known to be a Special Ed. student nothing  
9 is done other than to monitor that them, look over their  
10 records, and monitor them, but you're certainly not going to  
11 begin a process of declassifying because it's too new. The  
12 child's making adjustments. It's too fast, it's too quick,  
13 but it's done here.

14           You're going to hear from parents, parents who  
15 took their child out of this district, put them in the  
16 charter school and guess what? Put them back here. You're  
17 going to hear from parents who'll say, "They declassified my  
18 child. My child came back here and they received the  
19 services."

20           The evidence is going to develop. There is one  
21 central theme, control, power, and money, and that is your  
22 obligation to this community that you live in to make sure  
23 that the taxpayer money is going to the students and for  
24 their needs and is it possible, given the relationship  
25 between the church here, Shawnee Tabernacle Church, and the

1 charter school, that they can continue to operate with  
2 public funds?

3 I am hopeful that at the conclusion of this  
4 hearing, not today, but the very conclusion of the hearing,  
5 after you review all of the evidence, the briefs, the  
6 arguments that you will revoke this charter. It's your  
7 obligation to the taxpayers. Thank you.

8 MR. LITTS: Thank you, Counsel. Attorney  
9 Shilling, would you like to make an opening statement now?

10 MR. SHILLING: We'll defer until the next  
11 public meeting.

12 MR. LITTS: Thank you. I'm assuming you're not  
13 prepared to present any evidence this evening.

14 MS. SCHURDAK: No. It was a rather busy day.

15 MR. LITTS: I will remind the board members  
16 that what we heard tonight is an opening statement by  
17 counsel, it is not evidence, and we will be receiving  
18 evidence in our subsequent proceedings.

19 As I alluded to earlier, we intend to recess  
20 the hearing to an unspecified date, but once we get that  
21 nailed down there will be an advertisement in the local  
22 newspaper to advise the public of those dates. Since  
23 counsel is -- I gave them dates I expect them to communicate  
24 and advise me what that date is and we'll pass that  
25 information along to the charter school, the administration,

1 and the board members.

2 So, with that, we'll recess the hearing at  
3 7:41 and we thank you.

4 - - -

5 (Whereupon, the above hearing concluded at  
6 6:48 o'clock p.m. on Wednesday, June 10, 2009.)

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C E R T I F I C A T I O N

I, Donna G. Kenderdine, R.P.R., do hereby certify that the foregoing was taken stenographically by me on June 10, 2009, and that this transcript is a true and correct transcript of the same, fully transcribed under my direction, to the best of my ability and skill.

I further certify that I am not a relative or employee of any of the parties in this action; that I am not a relative or employee of any attorney in this action; and that I am not financially interested in the event of this action.

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Donna G. Kenderdine, R.P.R.  
Notary Public

|  |  |  |   |  |
|--|--|--|---|--|
|  | <b>60</b> 28:23  | 25:7;32:18   | <b>Attorney</b> 3:6;14:20;<br>19:25;35:8<br><b>attorneys</b> 8:11;21:8;<br>23:17;24:10;33:11<br><b>authority</b> 32:10<br><b>availability</b> 10:12<br><b>available</b> 11:1,1,3<br><b>avenue</b> 22:14<br><b>aware</b> 15:17;17:23   | 19:15<br><b>business</b> 13:22<br><b>busy</b> 35:14  |
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| <b>\$120,000.00</b> 32:15<br><b>\$200,000.00</b> 32:18<br><b>\$900,000.00</b> 30:11<br><b>\$940,000.00</b> 30:6  | 7 7:2,6,22;14:9<br>7:00 30:11<br>7:41 36:3<br>70,000 32:17<br>7th 7:4;17:10  |  |   |  |
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