

1 POCONO MOUNTAIN SCHOOL DISTRICT BOARD OF DIRECTORS

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3 In re: Pocono Mountain Charter School

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5 Transcript of proceedings held in the
6 above-captioned matter before the Pocono Mountain School
7 District Board of Directors, Administration Building,
8 Swiftwater, PA on Thursday, June 10, 2010, 10:16 a.m.

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9 HENRY E. BOCKELMAN, President
10 WILLIAM FORTE, Board Member
11 RANDY POLINSKI, Board Member
12 MICHAEL STERN, Board Member
13 DOROTHY SIROLLI, Board Member
14 MEG DILGER, Board Member

15 JEFFREY D. LITTS, ESQ., Hearing Officer

16 - - -

17 APPEARANCES:

18 KING, SPRY
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22 -- For the Administration

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PROCEEDINGS

Thursday, June 10, 2010

- - -

MR. LITTS: All right. I note that it's 10:16.

Let's get the hearing session started. I call into session the hearing session regarding the proposed revocation of the Pocono Mountain Charter School on Thursday, June 10, 2010, at 10:16 a.m. We had a fire alarm incident, so that's why we're getting started now.

10 Today I note we have several board members
11 present at this hearing session and starting with my
12 immediate left if they could identify themselves for the
13 record.

14 MR. BOCKELMAN: Henry Bockelman.

15 MS. SIROLLI: Dorothy Sirolli.

16 MR. STERN: Michael Stern.

17 MR. POLANSKI: Randy Polanski.

18 MR. FORTE: Bill Forte.

19 MR. LITTS: After the last hearing session on
20 Friday I did meet with counsel for both sides and we agreed
21 to reconvene on Thursday. We also addressed a number of
22 issues regarding proposed witnesses for the charter
23 school -- let's wait.

24 (Off record.)

25 MR. LITTS: We spoke about --

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1 (Off record.)

2 MR. LITTS: I spoke with counsel on proposed
3 testimony of two witnesses for the charter school. In
4 addition, I made an en camera inspection of the school
5 district and the charter school's Special Education file
6 for Student No. 6.

7 It is my understanding at this point, Mr.
8 Fennick, you would like to call -- recall Helena Schneider-
9 Sabie.

10 MR. FENNICK: Yes, it is.

11 MR. LITTS: And could you represent for the
12 record the purpose of her testimony?

13 MR. FENNICK: We've had two issues come up with
14 regard to Student No. 6 because there was some confusion
15 during the testimony of Andy Klein regarding the existence

16 or non-existence of an IEP for this student starting in
17 October or November of 2008.

18 I think after our conversation in the back
19 room, the conversation between the attorneys, we were able
20 to piece together the chronology and I think it appears that
21 the student came to the charter school with an IEP. We have
22 already had testimony from earlier witnesses about what this
23 school knew when this student arrived.

24 But, in any event, it was determined in October
25 or November '08 that he was a Special Education student and
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1 the charter school met, continued the IEP that he had
2 arrived with. That IEP had been written in October of
3 '07 -- well, yeah, had been written in October of '07 and
4 the result of the meeting was that they would continue with
5 that IEP while the student was reevaluated.

6 As a result there is a NOREP from October of
7 '08, but there is not a new IEP dated October of '08 and we
8 were going to have Ms. Schneider Sable testify to those
9 facts and testify to the fact that she provided services to
10 the student.

11 Since we, I think, agreed as to what the
12 documents show, I'm offering her simply as to the fact that
13 he did receive services during the Fall of '08.

14 MR. LITTS: Miss Schurdak, your response.

15 MS. SCHURDAK: Well, my first response is that
16 Attorney Fennick clearly made a strategic decision to call
17 his witnesses in the order that he chose to. There is not a
18 procedure that I'm aware of to recall a witness in order to
19 clarify what you're own expert witness testified to. In
20 large part, I think this issue was created because the

21 charter school has refused to produce educational records to
22 the school district.

23 I am not willing to stipulate that services
24 were provided to the student. In fact, I believe Mr.
25 Klein's testimony speaks for itself and I'm opposing a

1989

1 recall of a witness.

2 MR. LITTS: Thank you. And I've already talked
3 to counsel about this issue and indicated where I was going
4 and I'll still go there, but I want to put this on the
5 record and there will be an order reflective of this.

6 I am going to deny Mr. Fennick's request to
7 recall Miss Schneider Sable. She's previously testified in
8 the case in chief for the charter school. The charter
9 school had a full and fair opportunity to ask her any
10 questions they believed to be relevant. The charter school
11 was aware of the school district administration's case with
12 regard to the, quote, Special Education issues relating to
13 all students, including Student No. 6, and the review of the
14 transcript shows that no questions were asked about Student
15 No. 6. So, I'm not going to give the charter school a
16 second bite at the apple. So, that's my ruling.

17 I do want to explain to both counsel, however,
18 because I -- you guys see the facts slightly differently
19 what I believe the relevance is. Mr. Fennick's chronology
20 is correct, and I think we already have that chronology
21 established through Mr. Klein's testimony, in that we had an
22 IEP for this student. He enrolled in the charter school.
23 That IEP was faxed to the charter school in September of
24 '08. There was a NOREP issued on 11-1-08, November 1st of
25 '08, which stated the continuation of learning support

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1 services per the transfer IEP that was signed by the parent
2 I believe on November 25th of '08.

3 A reevaluation was completed. Both of you have
4 copies of that reeval that was done in March of 2009 and at
5 that point in time, based on that reeval, there was a
6 recommendation made to remove this the student from Special
7 Education services by the charter school and I believe
8 there's district administration testimony that subsequently
9 that student reenrolled in the school district, they
10 evaluated the student, and he was placed back in Special Ed.

11 So, for purposes of our consideration of the
12 evidence, I'm inclined, though the board may disagree with
13 me, but I'm going to suggest to the board that really where
14 our focus is is what relevance is the lack of a development
15 of an IEP and both of you -- I heard argument on Friday
16 about that and I told you you could make those arguments
17 because we have the documents or an understanding of the
18 documents in the record, and, second, the significance of
19 the reevals with regard to whether the student should or
20 should not be in Special Ed. That's what our focus is going
21 to be on on No. 6.

22 So, whether or not Miss Schneider Sable would
23 have testified as to what Special Ed. services would have
24 been provided from September of '08 through March of '09
25 isn't going to be a focus of our deliberations with regard

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1 to that particular factual issue on No. 6.

2 So, with that, that's my ruling.

3 We also had a brief e-mail exchange. Mr.
4 Fennick, I believe you also wished to call Mr. Marina,
5 correct?

6 MR. FENNICK: That's correct.

7 MR. LITTS: And my understanding, based upon
8 your e-mail of June 4th, and I want to refer to it, you
9 advised as an offer of proof that you would call John Marina
10 to testify that the district often took action at meetings
11 which are not reflected in minutes; is that correct?

12 MR. FENNICK: Yes.

13 MR. LITTS: And subsequent to that I asked you
14 to provide information as an offer to support that and you
15 were kind enough to send three pages of notes which you're
16 relying upon as part of that offer. Is that correct, sir?

17 MR. FENNICK: Yes.

18 MR. LITTS: Is there anything else as far as
19 the offer?

20 MR. FENNICK: Well, the -- Mr. Marina's actual
21 statement differs slightly in that his statement relates to
22 the secretary's recording of public comment. But, other
23 than that, no, there's -- would be nothing else in the
24 offer.

25 MR. LITTS: And I'm assuming, Miss Schurdak,

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1 you're objecting to this proposed testimony.

2 MS. SCHURDAK: I'm objecting to it on the basis
3 of relevancy as well as -- I don't believe it's relevant
4 whether or not the school district has violated the Sunshine
5 Laws. I know you, Hearing Officer Litts, feel differently
6 on that issue, but the proffer provided does not establish
7 any violation of the Sunshine Laws.

8 MR. LITTS: I've heard everyone and reviewed
9 the documents. Here's where I am and I told this to counsel
10 on Friday. To the extent that I understand that the school
11 district administration is relying upon allegations that the

12 board of trustees for the charter school may or may not have
 13 complied with The Sunshine Act or may or may not have had
 14 certain actions taken by the board of trustees reflected in
 15 their official minutes, I advised Miss Schurdak that I would
 16 consider any relevant evidence in that arena that may be
 17 offered by the charter school and take it under advisement.
 18 And, I did ask Mr. Fennick if he could provide that
 19 information, what Mr. Marina would testify to, and we would
 20 look at it.

21 I've looked at it and the information that
 22 Mr. Marina did provide to Mr. Fennick, and he subsequently
 23 shared with counsel and myself, don't reflect that the
 24 school board took any action that was not reflected in the
 25 minutes. What it does reflect, based on my view, is that

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1 his comments or questions at a public meeting at which he's
 2 a citizen weren't characterized in a manner that he believes
 3 is accurate. But, based on his own notes he does state that
 4 his comments were, in fact, noted and, again, the
 5 characterization of the comments might not be to his liking,
 6 but they were noted and the only issue about any official
 7 board action dealt with the board refinancing, but that's
 8 reflected in the minutes based on his own notes. So, I
 9 don't think it meets that standard.

10 So, with that, I'm going to deny the request to
 11 call Mr. Marina. I note Mr. Fennick's objection and I would
 12 be happy to include the e-mail with an order explaining the
 13 ruling so you have it preserved for the record.

14 MR. FENNICK: Yes, I would ask that you do
 15 that.

16 MR. LITTS: So, what we have as far as the

17 e-mails is your original proffer, the e-mail exchange you
18 had with me with regards to Mr. Marina's proposed testimony,
19 what he had forwarded to you which included three pages of
20 notes, my response explaining how I'm viewing it and
21 asking -- my e-mails soliciting the opportunity for further
22 comments by counsel because we did have off-the-record
23 telephone calls to see if I understood the facts correctly
24 and I'll place that all in the record along with those
25 orders.

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1 So, I'll put out a separate order about both
2 of those evidentiary rulings and they will be placed in the
3 record so your objections will be preserved and, depending
4 on what the board does, it's reflected in the record.

5 So, with those rulings, Mr. Fennick, do you
6 have any other witnesses to call?

7 MR. FENNICK: No.

8 MR. LITTS: Okay. Does the charter school
9 rest?

10 MR. FENNICK: Other than the issues that I
11 raised in the e-mail regarding the introduction of some
12 documents into the record, but those do not need witness
13 testimony.

14 MR. LITTS: Why don't we talk about that?
15 There was a Motion to Dismiss and I tend to put the order --
16 and I don't think I issued an official order yet -- that the
17 motion's denied. I believe there's sufficient allegations
18 in the notice to proceed with that. The charter school
19 still does preserve the right to proceed with those legal
20 arguments at the end of that, you're not foreclosed from
21 making those arguments, but as far as a Motion to Dismiss
22 standard there's sufficient allegations that have been made

23 and I will put in the record an order, I will put in all the
24 motions and letters. I think previously I e-mailed
25 correspondence -- I'm sorry, e-mailed you what I thought

1995

1 that to be. I'll send it to you again, we'll work that out,
2 but I'll put the order and all that stuff together as a
3 Joint exhibit and we'll put it in the record as far as
4 ruling on that motion.

5 Anything further?

6 MR. FENNICK: Just the one letter that I think
7 is important that we include because it's the district's
8 response to, I think, Hearing Order No. 1, a letter of
9 August 11, 2009, from Miss Schurdak and then there was a
10 follow-up on Statements of Financial Interest that said
11 August '09, but didn't have the exact date filled out. I
12 just think to make a complete record we need to have those
13 letters in and, Miss Schurdak, if you have the right date
14 for that second --

15 MS. SCHURDAK: I actually -- as I said, I got
16 this e-mail after-hours last night. I don't have that
17 portion of the file with me. There were two responses by
18 me. I think to be fair, the entire correspondence, which
19 started in June, almost June 9th, I think, of last year
20 where there was a 10-day period of time for the charter
21 school to file something and they missed that deadline --

22 MR. LITTS: All --

23 MS. SCHURDAK: Everything should be there.

24 MR. LITTS: All the correspondence and filings
25 of the parties related to the motion I think -- we'll put it

1996

1 in with that so it's complete. So, we'll get those in.

2 Anything further, Mr. Fennick?

3 MR. FENNICK: No.

4 MR. LITTS: Okay. Miss Schurdak, you had
5 indicated previously -- and I think we had some things on
6 the record from Friday about rebuttal. Are you ready to
7 proceed with rebuttal?

8 MS. SCHURDAK: Yes, I am. I call Mr. Herman to
9 the stand.

10 MR. FENNICK: Mr. Litts, before he testifies
11 can we have on the record what the offer of proof was
12 because this was going to be very limited.

13 MR. LITTS: Miss Schurdak?

14 MS. SCHURDAK: The offer of proof is the same
15 that I've responded in writing I think on two separate
16 occasions. Mr. Herman is being offered to rebut
17 Mrs. Robertson's testimony where she testified that she
18 attempted to deliver educational records on August 18th,
19 2009, and that a man with a very white complexion refused to
20 take the records.

21 MR. FENNICK: Well, I just want to add, even
22 though Miss Schurdak has written two letters about this that
23 that goes beyond her original offer. Her original offer was
24 that Mr. Herman would testify that he does not have an
25 employee in the building matching that description.

1997

1 So, to the extent that any of his testimony
2 goes beyond that, we're going to object to it and possibly
3 ask for the opportunity to do surrebuttal. We want the
4 district to stick with the representations that it made.

5 MS. SCHURDAK: June 7th, 2010. "Mr. Herman's
6 testimony will rebut Mrs. Robertson's testimony regarding
7 her visit to the office in high school in August of 2008,"

8 and, actually, I put down the wrong year, it's 2009.

9 MR. FENNICK: Well, you see, obviously this is
10 incorrect and it's just silly to keep talking about how many
11 letters there were and --

12 MR. LITTS: Well, I agree that both sides have
13 been a little silly on some things, but, be that as it may,
14 let's take Mr. Herman's testimony.

15 MS. SCHURDAK: Thank you.

16 - - -

17 JAWN HERMAN, having been duly sworn according
18 to law, testified as follows:

19 DIRECT EXAMINATION BY MS. SCHURDAK:

20 Q Good morning, Mr. Herman.

21 A Good morning.

22 Q Can you tell me where it is that you work and
23 what your job title is?

24 A I'm the principal of the Pocono Mountain West
25 High School.

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Herman - Direct 1998

1 Q Were you principal of that high school back in
2 the summer of 2009?

3 A That's correct, yes.

4 Q How long have you been principal?

5 A Eight years.

6 Q Are you familiar with the employees who work
7 within your building?

8 A Yes.

9 Q Have you had an opportunity to review
10 Mrs. Robertson's testimony in this proceeding?

11 A Yes, I did.

12 Q Did you read her description of trying to --

13 strike that.

14 Did you read her testimony regarding trying to
15 deliver educational records and a gentleman with very white
16 hair, very white complexion refusing to take those
17 documents?

18 A Yes.

19 Q Does anyone to your knowledge meet that
20 description?

21 A No. There was very limited staff in the
22 building. On the 18th and 19th of August guidance
23 counselors had not yet returned. Administrators were in the
24 building and secretaries were in the building, but to my
25 knowledge and my investigation there was no one in the

Herman - Cross

1999

1 building that was an employee of the Pocono Mountain School
2 District matching that description.

3 MS. SCHURDAK: Thank you. Nothing further.

4 (Ms. Meg Dilger entered the hearing room.)

5 - - -

6 CROSS EXAMINATION BY MR. FENNICK:

7 Q Mr. Herman, I guess you were -- acknowledge
8 that you were not in the building on August 18th, '09.

9 A Yes, I was.

10 Q You were.

11 A My records indicate that I was in the building
12 on both the 18th and 19th.

13 Q All day?

14 A I might have been out of the building over
15 midday for lunch.

16 Q Okay. And are there two secretaries who work
17 in the main Office of that building?

18 A Okay. I guess I need some clarification on

19 which office you're referring to, sir.

20 Q Well, you read her testimony.

21 A Yes.

22 Q And I think she said that when she walked into
23 the main office there were two stations and there was a
24 woman at each station. I don't know what their roles were.

25 A If I can provide some clarification --

Herman - Cross

2000

1 Q Sure.

2 A -- of why I'm hesitant here. There are
3 actually two guidance offices. One guidance office houses
4 two counselors and a secretary, the other guidance office
5 houses four counselors and two secretaries. The one
6 guidance office was closed and the secretary was out for
7 training. That's the smaller of the two offices. The other
8 guidance office was open.

9 Then there's an administrative office in the
10 hall and then there is a main office in the hall. The main
11 office houses secretaries and assistant principals.

12 Q So, do you agree that in the main office there
13 would be two -- at least two stations for personnel?

14 A There are actually three stations. There
15 should have been -- on that particular day there were two
16 secretaries. At the three -- again, three stations. Two
17 secretaries were present that day, but their work locations
18 do not match up with what was the previous testimony that
19 was provided.

20 Q Are those two secretaries still employed by the
21 district?

22 A They are, yes.

23 MR. FENNICK: No more questions.

24 MS. SCHURDAK: I have nothing further.

25 MR. LITTS: Any questions from the board for
Aul - Direct 2001

1 this witness? Thank you, Mr. Herman. Can he be excused?

2 MS. SCHURDAK: I would like that.

3 MR. LITTS: Okay.

4 MR. HERMAN: Thank you.

5 MS. SCHURDAK: Thank you, Mr. Herman.

6 MR. LITTS: You may be excused. Any other
7 rebuttal?

8 MS. SCHURDAK: Yes. Mr. Aul.

9 - - -

10 KEVIN E. AUL, having been duly sworn according
11 to law, testified as follows:

12 DIRECT EXAMINATION BY MS. SCHURDAK:

13 Q Good morning, Mr. Aul. Can you tell me what
14 your job title is with the district?

15 A Director of Transportation for Pocono Mountain
16 School District.

17 Q And how long have you been Director of
18 Transportation?

19 A Six years.

20 Q Have you had an opportunity to review
21 Mrs. Thorne's testimony in this case?

22 A Yes.

23 Q Do you recall having a conversation with
24 Mrs. Thorne over the phone regarding the transmission of
25 some sort of documents?

Aul - Direct 2002

1 A Yes.

2 Q Can you tell me what your recollection is?

3 A We were -- we talked about the moving or
Page 15

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4 transmittal of student misconduct forms. A Student
 5 Misconduct Form is whenever our driver writes a form
 6 whenever a student misbehaves and we were -- we discussed
 7 the lack of response from the charter school in getting the
 8 paperwork after they complete it -- after they investigate
 9 and complete it and back to us to inform the driver what the
 10 repercussions were.

11 Q What was the problem that was happening?

12 MR. FENNICK: Objection. This already is
 13 turning into an accusation of a new problem by the charter
 14 school. The offer was he was going to talk about the
 15 transmission of the records regarding one student and,
 16 more specifically, he was going to say they never had a
 17 conversation where they agree that records would be
 18 transferred through the bus driver. Now we're starting to
 19 go into "Oh. Here's another problem about the charter
 20 school." It's beyond the offer.

21 MR. LITTS: Mr. Fennick, I understand both
 22 sides are zealous advocates for their respective clients.

23 MR. FENNICK: This is --

24 MR. LITTS: I'll let the witness answer the
 25 question. The board is not going to take Mr. Aul's rebuttal

Aul - Direct 2003

1 testimony as a new ground to consider revocation.

2 MR. FENNICK: Then why do we have to hear it?

3 MR. LITTS: Because I just want to make sure --
 4 I think I know what he's going to say, but I'd like to hear
 5 it. And, again, there's been a lot of testimony that both
 6 sides have placed great significance on and, quite frankly,
 7 as someone who's had to sit through it and -- the board may
 8 not feel the same way. So, let's just get the answer on and

9 we can move on.

10 So, Miss Schurdak, reask the question.

11 Q What was the issue that you were trying to
12 resolve?

13 A There was a delay in getting the reports, the
14 completed reports, back to our department. So, I asked
15 Mrs. Thorne to -- when the forms were completed to give
16 those forms to one of the drivers that transport to or from
17 the school so we could get them back in a more timely
18 fashion.

19 Q Did you ever have a discussion with Mrs. Thorne
20 regarding transmission of educational records?

21 A No.

22 Q Did you ever have a conversation with
23 Mrs. Thorne regarding the transmission of psychological
24 reports?

25 A No.

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Alt - Cross

2004

1 MS. SCHURDAK: I have nothing else. Thank you.

2 MR. LITTS: Mr. Fennick?

3 - - -

4 CROSS EXAMINATION BY MR. FENNICK:

5 Q Mr. Aul, did you ever receive any reports from
6 the bus drivers that had been given to the drivers by the
7 charter school?

8 A Yes.

9 Q And how often did that happen?

10 A It was sporadic depending on the

11 Q Okay. And did you call her and -- or call
12 anyone at the charter school and say, "This wasn't our
13 agreement. You really shouldn't be doing this," anything
14 like that?

15 A No. We have -- I have a very good working
16 relati onshi p wi th Mrs. Thorne.

17 Q That's what we heard.

18 MR. FENNICK: Okay, no other questions.

19 MR. LITTS: Anything else?

20 MS. SCHURDAK: No.

21 MR. LITTS: Board members? Counsel?

22 MR. FENNICK: No.

23 MR. LITTS: Okay. Mr. Aul, you're excused.

24 Thanks for coming in. Any other rebuttal?

25 MS. SCHURDAK: We have a stipulation that I

2005

1 believe counsel has reviewed and agreed that there's a
2 stipulation between counsel that if Attorney Kevin Reid were
3 called he would testify as follows:

4 "Attorney Reid attended the May 17, 2006,
5 meeting regarding the charter school's request for the
6 renewal of its charter.

7 Attorney Reid believes that School District
8 Exhibit 43 accurately reflects the persons in attendance at
9 said meeting.

10 Attorney Reid, during the course of the
11 meeting, never made any recommendation as it relates to the
12 church reimbursing the school for any and all utilities
13 shared between the parties. In fact, he recalls his role as
14 being conciliatory in nature. What conditions in the
15 charter both parties accept in order to review the charter."

16 Did I read that accurately, Mr. Fennick?

17 MR. FENNICK: I don't know because I don't know
18 what you're reading, but it is an accurate statement of our
19 stipulation.

20 MR. LITTS: All right. I believe there's a
21 June 7th letter that was sent electronically. Do you have
22 any objection to that stipulation, Mr. Fennick?

23 MR. FENNICK: No.

24 MR. LITTS: Okay, the stipulation is in the
25 record. Any other rebuttal witnesses?

2006

1 MS. SCHURDAK: No rebuttal witnesses. However,
2 I have rebuttal documents and I had asked counsel to respond
3 if counsel were going to require testimony regarding
4 authenticity. The documents are being offered to rebut
5 Mrs. Dezonie's testimony that materials were voluntarily
6 produced to the school district.

7 They are as follows -- and I'll have them
8 marked after I give the litany so that this can move more
9 slowly.

10 The Right To Know complaint filed by the Pocono
11 Mountain School District in December of 2008.

12 Pocono Mountain School District's Motion to
13 Compel Discovery filed on January 26th, 2009.

14 Pocono Mountain School District's Motion for
15 Contempt filed on or about June 16th, 2009.

16 July 9th, 2009, court order scheduling a
17 contempt hearing for August 4th, 2009.

18 August 6th, 2009, e-mail exchanged between
19 counsel.

20 Judge Cheslock's order of October 6th, 2008.

21 And, Attorney Freund's letter of July 16th,
22 2007.

23 MR. LITTS: Mr. Fennick?

24 MR. FENNICK: I object to all of those
25 documents. As we heard earlier today, we are looking at

1 whether a party had a full opportunity to present evidence
2 that they wanted to present. Miss Dezonie not only
3 testified about that exhibit in this proceeding, but she
4 testified under oath subject to cross examination by Miss
5 Schurdak with the exact same exhibit in the Monroe County
6 Court of Common Pleas in either August '08 or '09, I can't
7 even remember. There is no reason why this testimony should
8 not have been anticipated by the district and made part of
9 its case in chief and they can't decide to retry their case
10 at this point.

11 Plus, it is such a collateral issue.

12 It's also an attempt, once again, to retry the
13 discovery issues and it's not necessary in my view. If the
14 district's counsel wants to retry all the discovery issues
15 by putting in all these documents then we have our own list
16 including the district's failure to comply with your order
17 about documentation to be given that we want to put in.
18 This needs to end.

19 MS. SCHURDAK: I believe they opened the door
20 to this. When I tried to cross Mrs. Dezonie about the court
21 process she said -- and I'm paraphrasing -- "I'm not that
22 familiar with what was going on in the Court of Common
23 Pleas." This is being offered to rebut. She testified to
24 this chart that she created.

25 MR. LITTS: Well, thank you, Counsel. As the

1 hearing officer I'm well aware of the collateral litigation
2 that has been occurring outside of these proceedings, both
3 in the Monroe County Court of Common Pleas and, I guess, the
4 recently filed federal court litigation and I've previously

5 told counsel I am not interested in serving as an arbiter of
6 any discovery disputes that are occurring under the auspices
7 of both the Monroe County Court of Common Pleas or,
8 similarly, any discovery under the auspices of the federal
9 court.

10 Ms. Dezonie's testimony, as I recall it, she
11 testified to various documents to the best of her
12 recollection that were provided either directly to the
13 charter school -- excuse me, provided directly by the
14 charter school to the school district or to the charter
15 school's attorneys to transmit them to the school district's
16 attorneys.

17 I also recall her -- there was some dispute,
18 I'll call it that, as to what was provided and when and that
19 was explored on cross examination. I don't think we need
20 this. We just don't need -- we're aware of the litigation.
21 I will be happy to do the same exact thing that I just did
22 to Mr. Fennick. So, I'm going to sustain his objection.
23 I'll be happy to put in those documents and issue an order
24 as to that. We can attach it and then you guys have it
25 preserved if this goes anywhere. So, you both have your

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1 records on that, but I'm going to sustain Mr. Fennick's
2 objection and we're not going to hear that.

3 Are there any other rebuttal witnesses?

4 MS. SCHURDAK: No, there are not.

5 MR. LITTS: Based on the rebuttal, anything
6 else from the charter school?

7 MR. FENNICK: No. We're presuming you'll set
8 forth a schedule for presentation of -- summaries of the
9 evidence.

10 MR. LITTS: And what -- and I did speak to
Page 21

11 counsel and the board president about logistics. My
12 understanding, based on both counsel, and, counsel, please
13 confirm this for me, we are done presenting the evidentiary
14 testimony, exhibits from both sides. Is that correct,
15 Counsel?

16 MS. SCHURDAK: Yes.

17 MR. FENNICK: Yes.

18 MR. LITTS: All right. So, today we are going
19 to conclude the evidentiary hearing. Under Section 1729-A,
20 Subparagraph (c), the school board is required to provide,
21 and I quote, 30 days to provide comments -- strike that.
22 That prior to taking any formal action to revoke or renew
23 the charter being taken by a local board of school directors
24 at a public meeting pursuant to the Sunshine Law the public
25 has 30 days to provide comments to the board. So, we have

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1 to do that.

2 Based upon my discussions with counsel I think
3 we've reached an agreement, and I want them to consent to
4 that on the record, that counsel would prefer that any
5 public comment during this 30-day period be directed to my
6 office directly via First Class U.S. Mail, that after I
7 received all comments within that 30-day period I will then
8 transmit a true and complete set of any comments to both
9 counsel and that will be made part of the official record.
10 Is that the understanding and agreement of counsel?

11 MR. FENNICK: Yes.

12 MS. SCHURDAK: Yes, it is.

13 MR. LITTS: And you're both okay with that?

14 MS. SCHURDAK: Yes.

15 MR. LITTS: I don't want to have any argument

16 at a later date that the board violated the law.

17 So, with that understanding effective tomorrow,
18 the 11th, we'll have 30 days from that date and if that
19 falls on a Saturday or Sunday we'll make it a Monday for
20 that. I will be issuing an order that will identify my name
21 and my firm and mailing address and I will be providing it
22 to both and directing the school district administration to
23 post that in its administration building and its website.
24 Mr. Fennick, you're free to share that information with your
25 client to further notify folks during this 30-day period.

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1 Additionally, I also spoke with counsel about
2 the submission of proposed Findings of Fact, Conclusions of
3 Law, and any other type of argument or brief in support of
4 their respective positions. We will designate August 1st as
5 the due date for those briefs. I'm going to have them both
6 submitted at the same time. I did confer with some of the
7 attorneys that have done this and they've done a similar
8 type of thing. I think both sides are well aware of the
9 issues and I would rather get those briefs in and give you
10 sufficient time to be able to review the records. So, you
11 both have an August 1 deadline for those submissions.

12 I would ask counsel that with any proposed
13 Findings of Fact that they cite to the record -- the page of
14 the transcript or the specific exhibit that they are relying
15 upon in support of that proposed finding and failure to do
16 so they're doing at their own peril.

17 Similarly, with any type of legal arguments I
18 would strongly encourage counsel that they cite to the
19 authority, the statute, the regulation, the administrative
20 decision, the court case in support of that legal
21 proposition for my benefit.

22 If you wish to make closing statements, so to
23 speak, feel free to do that because I will circulate all
24 that stuff to the board and that will be as of August 1st.

25 Are there any other housekeeping items from
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1 either counsel that you think I'm overlooking here?

2 MR. FENNICK: I would just like an opportunity
3 to -- off the record after we have concluded to go through
4 the exhibit books, compare them with ours just to make sure
5 that they're identical. If there's a problem we'll raise
6 it, but hopefully there won't be.

7 MR. LITTS: And what I'll do, Mr. Fennick, as
8 I've periodically done with both counsel is once I get back
9 to my office today I'll update the exhibit books with the
10 orders and stuff and I will send you my new tabbing system
11 so you have a list of what I have. But, I don't have any
12 problem sitting and talking with folks about what's in the
13 binders. I have them there.

14 But, other than that is there anything else
15 from counsel?

16 MS. SCHURDAK: Just one thing. I don't know if
17 it's been noted for the record, but Mrs. Dilger did arrive.
18 I want it noted.

19 MR. LITTS: Thank you. She arrived during the
20 first witness's testimony.

21 Anything else from counsel? If not, we will
22 officially close the evidentiary record and, like I said
23 previously, we'll have the 30-day period starting tomorrow
24 for public comment. Based on that order, Counsel will have
25 until August 1 to submit briefs. Thereafter, the board will

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1 consider all this.

2 As I stated previously, based on my
3 understanding of the allegations made by the school district
4 administration and I think conceded by counsel for the
5 administration the grounds for proposed revocation would not
6 rise to a legally sufficient level to support immediate
7 revocation if the board reaches that decision.

8 So, therefore, I want to be clear before we
9 close the record that the charter school can continue to
10 operate during consideration. If the board were to reach a
11 decision to revoke they would still have the right to
12 consider to operate if they do pursue an appeal. So, this
13 has nothing to do with an immediate closing. We would
14 follow the law on that.

15 But with that, we'll close the record on 10:55
16 and that's it. Thank you.

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18 (Whereupon, the above hearing concluded at
19 10:55 o'clock a.m. on Thursday, June 10, 2010.)

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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, 2010, and that this transcript is a true and
correct transcript of the same, fully transcribed under my

7 direction, to the best of my ability and skill.

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

13

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

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