

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
OPTIONS PUBLIC CHARTER SCHOOL,)	
et al.,)	
)	
Defendants.)	
)	

**TEMPORARY RESTRAINING ORDER
WITH APPOINTMENT OF RECEIVER AND ASSET FREEZE**

This matter is before the Court on the District of Columbia’s Motion for Temporary Relief, Including Appointment of Receiver. Having considered that Motion, along with its attached memorandum, declarations, and exhibits, and having held a hearing on the Motion on October ____, 2013, at which counsel for Defendants _____

appeared, the Court makes the following findings:

1. That this Court has jurisdiction over the subject matter of this case pursuant to D.C. Code section 29-410.20, and that there is good cause to believe this Court has jurisdiction over the (i) Defendant Options Public Charter School, 1375 E Street, N.E., Washington, D.C. 20005 (“Options PSC”), (ii) Defendant Exceptional Education Management Corporation (“EEMC”), 601 13th Street, N.W., Washington, D.C. 20005, and (iii) Defendant Exceptional Educational Services at Options Public Charter School, Inc. (“EES”), 601 13th Street, N.W., Washington, D.C. 20005; and

2. That there is good cause to believe (i) that the nonprofit Defendant Options PCS, as a result of a pattern of self-dealing by certain individual Defendants, has improperly diverted a substantial portion of its funds to the for-profit Defendants EEMC and EES, to the detriment of Options PCS's students; (ii) that Defendant Options PSC therefore has acted contrary to its nonprofit purpose, and has exceeded and abused, and continues to exceed and abuse, the authority conferred upon it by law; and (iii) that the District therefore is likely to prevail on the merits of this action; and

3. That there is good cause to believe that immediate and irreparable harm will occur both to (i) the students currently served by Defendant Options PCS and (ii) the public interest in Defendant Options PCS being operated for its nonprofit purposes, unless the Court grants the District of Columbia's requested temporary relief, including the appointment of a receiver to administer and operate Defendant Options PCS for its nonprofit purposes and within its lawful authority, and the imposition of an asset freeze to prevent loss or dissipation of diverted funds; and

4. That, weighing the equities, including the public interest and the potential harm to Defendants Options PCS, EEMC, and EES, it appears that a temporary restraining order, appointing a receiver over Defendant Options PCS and imposing an asset freeze over Defendants EEMC and EMC, is both appropriate and necessary; and

5. That, pursuant to SCR-Civil R. 65(c), no security is required of the District of Columbia for issuance of this restraining order.

I.

IT IS THEREFORE ORDERED that Defendant Options PCS, and its officers, directors, agents, servants, employees, and attorneys, are hereby restrained and enjoined from

making any further payments on behalf of Options PCS to Defendants EEMC or EES, or to any other persons or entities affiliated with Defendants EEMC or EES, without prior approval of this Court.

II.

IT IS FURTHER ORDERED that Defendants Options PCS, EEMC and EES, and their officers, directors, agents, servants, employees, and attorneys, are hereby restrained and enjoined from:

1. Failing to make and keep such books, records, accounts, bank statements, current accountants' reports, general ledgers and source documents, documents indicating title to real or personal property, and any other documents as may be required to reflect, in reasonable detail, accurately and fairly, each defendant's business and financial transactions;
2. Destroying, throwing away, mutilating, changing, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, electronically stored data (including emails), bank records, invoices, telephone records, ledgers, payroll records, or other business or financial documents of any kind, including information stored in computer-maintained form, in the possession, custody, or control of any defendant; and
3. Failing to make and keep books, cash disbursements and receipts, ledgers, accountants' reports, and bank and other financial records which, in reasonable detail, accurately and fairly reflect the assets, liabilities, owners' equity, sources

of revenue, expenses, and disposition of assets of all business entities owned, managed, or controlled by any defendant.

III.

IT IS FURTHER ORDERED that Defendants EEMC and EES, and their officers, directors, agents, servants, employees, and attorneys, are hereby restrained and enjoined from:

1. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, property, coins, shares of stock, or other assets, wherever located, that are owned or controlled by those defendants, their affiliates, or their subsidiaries, in whole or in part, or that are in the possession or control of those defendants, their affiliates, or their subsidiaries;
2. Opening, or causing to be opened any safe deposit boxes titled in the name of any of those defendants, their affiliates, or subsidiaries, or subject to access by any of those defendants; and
3. Incurring charges on any credit card issued in any name, singly or jointly, of any of those defendants.

The assets affected by this Section III shall include both existing assets and assets acquired after the effective date of this Order, including without limitation all monies and other assets acquired by loan or gift. Each defendant subject to this Section III shall hold all assets, including without limitation payments, loans and gifts, received after service of this Order, or in the alternative, may deposit payments received into not more than one domestic account at a financial institution in the District of Columbia that is titled in the name of that defendant receiving the payment and is designated by prior written notice to the Attorney General for the District of Columbia.

IV.

IT IS FURTHER ORDERED that Defendants Options PCS, EEMC, and EES shall each, within three business days of the date of service of this Order, prepare and deliver to the Attorney General for the District of Columbia:

1. A complete schedule, verified under oath, identifying the nature, location, source, and dollar value, estimated if necessary, of all of each defendant's tangible and intangible assets and property, regardless of location, status or form, including, but not limited to, cash, safe deposit box holdings, coins, bank accounts, partnership interest, promissory notes, real estate interests, securities or bonds; and
2. A schedule, verified under oath, of all payments, transfers, or assignment of funds, assets, or property worth more than \$20,000 or more since January 1, 2012. Such schedule shall include (a) the amount transferred or assigned; (b) the name of each transferee or assignee, (c) the date of the assignment or transfer, and (d) the type and amount of consideration paid to the defendant.

Each schedule shall specify the name and address of each financial institution and brokerage firm, both foreign and domestic, at which the defendant has accounts or safe deposit boxes, and the account number or other identification of each such account or safe deposit box.

V.

IT IS FURTHER ORDERED that, pursuant to D.C. Code § 29-412.20, Joshua M. Kern is hereby appointed receiver for Defendant Options PCS, and of all funds, properties, premises, and other assets of Defendant Options PCS, with directions and authority to accomplish the following, in accordance with the terms of this Order and subject to the

supervision of this Court:

1. To hold, preserve, administer, and operate the business and activities of Defendant Options PCS, consistent with its lawful authority and nonprofit purposes, until further Order of this Court, with full authority to perform all acts necessary or incidental thereto, including the power to hire and terminate employees;
2. To continue to operate Defendant Options PCS's school in such manner, to such extent, and for such duration, as the receiver may in good faith determine to be in the best interests of the school's students and in the public interest, until further Order of this Court;
3. To immediately collect, marshal, take custody, control and possession of, conserve, hold and manage all the funds, accounts, property, premises, mail, and other assets of, or in the possession or under the control of, Defendant Options PCS, wherever situated, with the full power to collect, receive and take possession of all goods, rights, credits, moneys, leases, books, work papers, and records of accounts, contracts, financial records, monies on hand in banks and other papers and documents of Defendant Options PCS;
4. To employ such managers, agents, employees, servants, contractors, and accountants including, without limitation, members and employees of Mr. Kern's firm, as may in his judgment be advisable or necessary in the management, conduct, control or custody of the affairs of Defendant Options PCS and of its assets, **provided, however**, that Options PCS shall not employ Defendants EEMC or EES, or any other persons or entities affiliated with Defendants EEMC

or EES, without prior approval of this Court;

5. To make such payments and disbursements as may be necessary and advisable for the preservation of the business and property of Defendant Options PCS and as may be necessary and advisable in discharging his duties as receiver, **provided, however,** Options PCS shall not make payments to Defendants EEMC or EES, or to any other persons or entities affiliated with Defendants EEMC or EES, without prior approval of this Court;
6. To retain and employ investigators, attorneys or accountants of his choice, including without limitation members and employees of Mr. Kern's firm, to assist, advise and represent him in his duties as receiver of Defendant Options PCS;
7. To receive and collect any and all sums of money due to or owing to Defendant Options PCS in any manner whatsoever, whether now due or hereafter due and payable, and to do such things and enter into such agreements in connection with the administration, care, preservation and maintenance of the business and assets of Defendant Options PCS as he may deem advisable;
8. To institute, prosecute and defend, compromise, adjust, intervene in or become party to, or assist the Attorney General for the District of Columbia in the prosecution of such actions or proceedings as may be necessary or proper for the collection, marshaling, protection, maintenance, and preservation of the assets of Defendant Options PCS, as well as to appear in and conduct the defense of any suit in any court by or against Defendant Options PCS, where such prosecution, defense or other disposition of such actions or proceedings will in the judgment

of the receiver be advisable and proper for the protection of business and assets of Defendant Options PCS;

9. To obtain, by presentation of this Order, information within the custody or control of any person, firm or entity needed to identify the accounts, employees, properties, or other assets or obligations of Defendant Options PCS; and
10. To pay himself a reasonable compensation, including reimbursement for actual out-of-pocket expenses incurred, for fulfilling his duties of receiver for Defendant Options PCS, subject to approval by this Court. The receiver may apply by noticed motion for payment of his reasonable compensation from the assets of Defendant Options PCS.

VI.

IT IS FURTHER ORDERED that Defendants Options PCS, EEMC, and EES, and their officers, directors, agents, servants, employees, and attorneys, are directed and ordered to:

1. Within three business days of being served with this Order, or within such further time as permitted by the receiver, deliver over to the receiver possession and custody of (a) all funds, assets, and property of Defendant Options PCS, (b) all books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records, and other papers of Defendant Options PCS, and (c) all keys, combination to locks required to gain access to, any and all property and monies in any bank deposited to the credit of Defendant Options PCS, wherever situated; and
2. Refrain from doing any act or thing whatsoever to interfere with the receiver taking control, possession, or management of Defendant Options PCS, or to in

any way harass or interfere with the duties of the receiver, or to interfere in any way with the exclusive jurisdiction of this Court over the property and assets of Defendant Options PCS.

VII.

IT IS FURTHER ORDERED that the receiver shall allow the District of Columbia Public Charter School Board and the Attorney General for the District of Columbia, and their representatives, access to the premises, records, accounts and books of Defendant Options PCS.

VIII.

IT IS FURTHER ORDERED that the Attorney General for the District of Columbia is granted leave to take depositions at any time after service of this Order for purposes of (a) discovering the nature, location, status, and extent of any assets of Defendants Options PCS, EEMC, and EES, including without limitation any assets in the possession of others that are subject to these Defendants' control; (b) discovering and identifying documents reflecting the business transactions of Defendants Options PCS, EEMC, and EES; or (c) monitoring compliance with this Order. Forty-eight hours notice shall be deemed sufficient for any such depositions.

IX.

IT IS FURTHER ORDERED that, pursuant to SCR-Civil R. 65, this Temporary Restraining Order shall expire on the _____ day of _____, 2013, at 11:59 p.m., unless within such time the Order, for good cause shown, is extended, or unless, as to any effected defendant, such defendant consents that it should be extended for a longer period of time.

X.

IT IS FURTHER ORDERED that Defendants Options PCS, EEMC and EES shall appear before this Court on the _____ day of _____, 2013, at _____ o'clock ____m., in Courtroom _____, at _____, before a Superior Court Judge, The Honorable _____, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against said defendants, continuing the relief provided herein, and imposing such additional relief as may be necessary and appropriate.

XI.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED this _____ day of _____, 2013, at _____ o'clock ____m.

Superior Court Judge