

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	)	
	)	Chapter 11
	)	
Wordsworth Academy, <i>et al.</i> , <sup>1</sup>	)	Case No. 17- 14463 (AMC)
	)	
Debtors.	)	Jointly Administered
	)	

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**MOTION FOR (A) COURT DETERMINATION THAT NONE OF THE DEBTORS IS A HEALTH CARE BUSINESS, AND, ALTERNATIVELY, (B) COURT DETERMINATION THAT AN OMBUDSMAN IS UNNECESSARY IF THE COURT DETERMINES THAT ANY OF THE DEBTORS IS A HEALTH CARE BUSINESS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move for a determination that none of the Debtors is a health care business and, therefore, that the requirement to appoint a patient care ombudsman under Section 333 of the Bankruptcy Code is not implicated. Alternatively, to the extent that this Court determines that any of the Debtors is a health care business, the Debtors seek a determination that a patient care ombudsman is unnecessary. In support hereof, the Debtors respectfully represent as follows:

**Jurisdiction**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334.
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).
3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The bases for the relief requested herein is Section 333 of title 11 of the United

States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

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<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

### **Background**

5. On June 30, 2017 (the "Petition Date"), the Debtors each filed a voluntary petition for relief with the Court under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Debtors are operating their business and managing their property as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

6. A creditors' committee was appointed in these Chapter 11 Cases by the United States Trustee on July 14, 2017.

7. No trustee or examiner has been appointed in these Chapter 11 Cases.

8. The Debtors manage and operate a school facility as well as various behavioral health and child welfare programs through which education, behavioral health, and child welfare services are provided by teachers, case managers, counselors, nurses, psychologists, and psychiatrists to certain children in the Philadelphia area. In addition, the Debtors also facilitate and oversee the placement of certain children with safe, caring foster families.

9. As of the Petition Date, the Debtors' business employed and/or contracted with approximately six hundred and sixteen (616) employees and various subcontractor and staffing agencies who individually and/or collectively provide a variety of services, including: education, special education, foster care placement and support, case management, family therapy/support, individual therapy, one-on-one behavioral support, behavioral consultation, and after-school and summer programming. Of the Debtors' employees, twelve (12) individuals are licensed physicians (psychiatrists), nurses, psychologists, and therapists (~1.95% of employees). Specifically, the Debtors employ five (5) psychologists, two (2) psychiatrists, one (1) nurse, and four (4) multi-systemic treatment therapists. The Debtors maintain malpractice insurance coverage, though the psychiatrists, nurses, therapists, and psychologists are independently

licensed by third parties.

10. The Debtors' operations service approximately 5,000 children and families annually.

### **Relief Requested**

11. Despite employing the services of a handful of medical professionals, the Debtors submit that they are not a health care business as defined by the Bankruptcy Code and, therefore, the appointment of a patient care ombudsman is not required.

12. Additionally, while the Debtors do not believe that they constitute a health care business, even if one or more of the Debtors is a health care business, the appointment of a patient care ombudsman is not necessary under the facts and circumstances of these Chapter 11 Cases and, pursuant to Section 333 of the Bankruptcy Code, the Debtors request an order determining that a patient care ombudsman shall not be appointed.

### **Basis for Relief**

#### **A. The Debtors are Not Healthcare Businesses as Defined by the Bankruptcy Code.**

13. Section 333 of the Bankruptcy Code provides that if a Chapter 11 debtor is a "health care business," then, within thirty (30) days of the petition date, the court shall appoint an ombudsman to represent the interests of patients and monitor the quality of patient care *unless* the court finds that "the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case." 11 U.S.C. § 333(a)(1).

14. Stated differently, Section 333 of the Bankruptcy Code requires the appointment of an ombudsman if: (1) the debtor is a "health care business" within the meaning of the Bankruptcy Code, and (2) the ombudsman is necessary for the protection of patients under the specific facts of the case.

15. Pursuant to Section 101(27A) of the Bankruptcy Code, a “health care business” is “any public or private entity . . . that is *primarily* engaged in offering to the *general public* facilities and services for . . . (i) the diagnosis or treatment of injury, deformity, or disease; and (ii) surgical, drug treatment, psychiatric, or obstetric care[.]” 11 U.S.C. § 101(27A)(A)(i), (ii) (emphasis added).

16. The language of Section 101(27A) is written in the conjunctive, such that only businesses primarily engaged in offering services to the public for the purposes of “diagnosis or treatment of injury, deformity, or disease” (§ 101(27A)(A)(i)), *and* “surgical, drug treatment, psychiatric, or obstetric care” (§ 101(27A)(A)(ii)) are considered health care businesses under the Bankruptcy Code.

17. Section 101(27A)(A) is further limited by Section 101(27A)(B), which provides that a health care business includes (i) any hospital, ancillary ambulatory, emergency, or surgical treatment facility, hospice, home health agency, and/or other similar health care institutions, as well as (ii) any long-term care facility such as skilled nursing facilities, intermediate care facilities, assisted living facilities, homes for the aged, domiciliary care facilities, and health care institutions related to a long-term care facility *if* that institution is *primarily* engaged in offering room, board, laundry, or personal assistance with daily living activities. 11 U.S.C. § 101(27A)(B).

18. Courts read subsection (B) of Section 101(27A) conjunctively in connection with subsection (A)—*i.e.*, in order to be a health care business, a debtor’s operations must primarily provide the specific health care services described in subsection (A) in a manner akin to the businesses described in subsection (B) (*e.g.*, a hospital or nursing facility primarily engaged in providing shelter and assistance with daily living). See, e.g., In re 7-Hills Radiology, LLC, 350

B.R. 902, 905 (Bankr. D. Nev. 2006); In re Banes, 355 B.R. 532, 534-35 (Bankr. M.D.N.C. 2006) (“Because every section of this statute is connected by the conjunctive, a health care business must meet the requirements of every subsection to require the appointment of an ombudsman.” (citing § 101(27A)).<sup>2</sup>

19. Consequently, Section 333 of the Bankruptcy Code applies to a specific and limited subset of health care related businesses and, even in those cases, requires the appointment of an ombudsman only when necessary to protect patients.

20. Here, Section 333 is inapposite because the Debtors’ individual and/or collective business operations do not meet the definition of a health care business under Section 101(27A).

21. First, neither the Debtors nor the medical personnel employed by the Debtors offer services to the “general public” as required by Section 101(27A)(A). Rather, the Debtors provide services only to a select group—the children that are referred to the Debtors for services by the Philadelphia Department of Human Services, certain school districts with which the Debtors have contracts (*e.g.*, the School District of Philadelphia), and Community Behavioral Health (non-profit corporation operating pursuant to contract with City of Philadelphia to provide mental health and substance abuse services under Medicaid). See e.g. 7-Hills Radiology, LLC, 350 B.R. at 904 (“[Debtor] does not offer anything to the general public. Instead, it offers its services and facilities to referring physicians only. This limitation of its business to referring physicians takes it out of the definition of health care business.”).

22. Second, the Debtors do not “primarily” offer services for the purpose of “diagnosis or treatment of injury, deformity, or disease[.]” *See* § 101(27A)(A)(i). Instead, the

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<sup>2</sup> Research did not reveal any published decisions from courts within the Third Circuit with respect to the application of Section 333 of the Bankruptcy Code or the meaning of “health care business” under Section 101(27A). As a result, it is possible that this matter is an issue of first impression in the Third Circuit.

Debtors primarily provide education and behavioral support to the children referred to them by the government agencies or contractors with whom they have contracts. While the Debtors' medical personnel, particularly the school nurse, psychologists, and psychiatrists, may, when necessary, diagnose injury or disease among the children referred to them, these services are secondary and not the primary focus of the Debtors' business operations.

23. Third, and finally, the Debtors do not provide the kind of intensive, round-the-clock shelter and sustenance that is emblematic of the health care businesses identified in Section 101(27A)(B). Indeed, the Debtors no longer provide residential treatment to children, and discontinued their acute partial care program prior to the Petition Date. The types of businesses listed in subsection (B) of Section 101(27A) (*e.g.*, nursing homes, hospice, assisted living) are all similar in that they provide housing, sustenance, and round-the-clock healthcare or living assistance—facilities and services markedly different from the educational facility and community based behavioral health services provided by the Debtors. See, e.g., 7-Hills Radiology, LLC, 350 B.R. at 905 (holding that the debtor was not a health care business under Section 101(27A) because its radiological services business did not have “direct and ongoing contact with patients to the point of providing them shelter and sustenance in addition to medical treatment.”); Banes, 355 B.R. at 535 (finding that the debtor’s dental business did not fall within the definition of “health care business” because the debtor did not provide housing and treatment for its patients and was not currently engaged in the ongoing care of patients).

24. Therefore, because the Debtors' business does not primarily provide the forms of services described in subsection (A) of Section 101(27A), and/or does not primarily provide inpatient treatment and sustenance as required by subsection (B) of Section 101(27A), the Debtors' simply do not fit within the categories of businesses that are considered to be a “health

care business” for purposes of the Bankruptcy Code.

25. Accordingly, as the Debtors are not a health care business under Section 101(27A), Section 333 is not implicated and the appointment of a patient care ombudsman is not required.

**B. If any of the Debtors is a Healthcare Business, the Facts and Circumstances of this Case do not Warrant an Ombudsman.**

26. Even if this Court determines that any of the Debtors is a healthcare business under the Bankruptcy Code, the Court should not impose an ombudsman upon the Debtors because it is unnecessary for the protection of patients pursuant to Section 333(a)(1) of the Bankruptcy Code.

27. The purpose of the appointment of an ombudsman is to ensure that patients are not neglected during the bankruptcy case.

28. In this case, the Debtors operate a school and various community based programs through which their employees and contractors provide education, counseling, and similar services to children with behavioral health issues. The Debtors’ primary mission and focus is counseling and educational services. The Debtors ceased providing residential treatment and acute partial care to children prior to the Petition Date.

29. During the Debtors’ bankruptcy cases, students will continued to receive services from the same counselors, therapists, teachers and others as they did prior to the initiation of these cases, uninterrupted.

30. The services provided to the children do not involve long-term care, in-patient treatment, or other regular ongoing health care services for which the oversight of a patient care ombudsman may be desirable. In any event, the services provided through the Debtors’ school facility and programs are already subject to the oversight of several authorities, including the

Philadelphia Department of Human Services,<sup>3</sup> the Pennsylvania Department of Education,<sup>4</sup> Community Behavioral Health,<sup>5</sup> and the various school districts that have contracted with the Debtors to fulfill their own legal obligations to provide education and behavioral health services. Each of these agencies and school districts are potentially liable themselves if the Debtors' services are substandard; therefore, they are highly incentivized to ensure that the Debtors' services meet the needs of the children they serve.

31. The Debtors' operations are fully licensed and insured to protect the children served by the Debtors.

32. The Debtors' bankruptcy cases were filed as a result of certain unfortunate events that do not implicate the Debtors' current programs or involve any of the medical professionals employed by the Debtors. These events led to a breach of public trust and the potential for a loss of government based revenues, which caused the Debtors' secured creditor to discontinue the Debtors' line of credit, threatening the Debtors' ability to continue operations.

33. The Debtors' bankruptcy cases were not the result of any deficiencies with regard to any health care treatment being provided by the Debtors. The Debtors have not been cited for any health care violations, any violation of any licensing or insurance requirement, or any issues with privacy.

34. The Debtors further submit that the additional costs associated with the appointment of a patient care ombudsman while the Debtors seeks to reorganize through an

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<sup>3</sup> The Philadelphia Department of Human Services oversees the operations of Wordsworth CUA 5, LLC and Wordsworth CUA 10, LLC.

<sup>4</sup> The Pennsylvania Department of Education oversees the Approved Private School SPIRIT Program.

<sup>5</sup> The Community Behavioral Health organization oversees family based services, behavioral health rehabilitation services, school therapeutic services, and multi systemic treatment (problem sexual behavior services).

affiliation with Public Health Management Corporation (“PHMC”) (PHMC is presently overseeing the Debtors’ operations and the services provided by the Debtors to the children referred to the Debtors) would place such reorganization in jeopardy and reduce the amount of assets available to fund a Chapter 11 plan and make distributions to creditors. Simply put, appointment of an ombudsman at this stage of these cases will squander the Debtors’ financial resources to the detriment of the estates.

35. Accordingly, while the Debtors maintain that they are not a “health care business” as defined in Section 101(27A), if this Court finds that any Debtor is such a business, the Debtors submit that the facts and circumstances of these Chapter 11 Cases do not warrant the appointment of a patient care ombudsman.

#### **Prior Requests**

36. No prior request for the relief requested herein has been made by the Debtors.

#### **Notice**

37. The Debtors have provided notice of this Motion to: the United States Trustee for the Eastern District of Pennsylvania, the Unsecured Creditors’ Committee, through its counsel; M&T Bank; Learn and Play t/a Play and Learn; and all parties who have requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no further notice is necessary under the circumstances.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order determining that none of the Debtors is a health care business, as defined by the Bankruptcy Code, and even if a Debtor is a health care business, the appointment of an ombudsman is not necessary under the facts and circumstances of these cases, and grant such other and further relief as is just and proper.

Dated: August 7, 2017  
Philadelphia, Pennsylvania

*/s/ Lawrence G. McMichael*

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