

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SCHOOL SPECIALTY, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No 13-10125 ( )

Joint Administration Requested

**MOTION FOR AN ORDER PURSUANT TO SECTION 366 OF THE BANKRUPTCY  
CODE (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING, OR  
DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES  
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, (III) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT,  
AND (IV) SETTING A FINAL HEARING RELATED THERETO**

School Specialty, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor” and, collectively, the “Debtors”), hereby move this Court for entry of an interim and a final order substantially in the forms of Exhibits A and B hereto (the “Interim Order” and the “Final Order” respectively, and together, the “Proposed Orders”) pursuant to section 366(b) of title 11 of the United States Code (the “Bankruptcy Code”), (a) prohibiting the Debtors’ utility service providers from altering, refusing, or discontinuing utility services on account of unpaid prepetition invoices, (b) deeming the Debtors’ utility service providers adequately assured of future performance, (c) establishing procedures for determining additional adequate assurance of future payment and authorizing the Debtors to provide adequate assurance of future payment to the Debtors’ utility service providers, and (d) setting a final hearing related thereto. In support of this motion (the “Motion”), the Debtors rely upon the Declaration of Gerald T. Hughes in

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.



Support of Chapter 11 Petitions and First Day Relief (the “First Day Declaration”)<sup>2</sup> and respectfully state as follows:

### **JURISDICTION**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. Venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

2. The statutory and legal predicates for the relief requested herein are sections 105(a) and 366(b) of the Bankruptcy Code.

### **BACKGROUND**

3. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing the instant cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors’ businesses, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is contained in the First Day Declaration.

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<sup>2</sup> The First Day Declaration is being filed contemporaneously with this Motion and is incorporated herein by reference. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the First Day Declaration.

## **THE UTILITY SERVICES AND UTILITY COMPANIES**

6. In the normal course of operation of their businesses, the Debtors obtain electricity, natural gas, water, telecommunications, waste disposal, and other similar services (collectively, the “Utility Services”) from various utility companies (the “Utility Companies”).<sup>3</sup> A list of Utility Companies that provide Utility Services to the Debtors as of the Petition Date is attached as Exhibit C (the “Utility Service List”).<sup>4</sup> While there is seasonal fluctuation, on average, the Debtors spend approximately \$660,000 per month on their Utility Services.

7. In general, the Debtors have established a good payment history with virtually all of the Utility Companies and have made payments on a regular and timely basis. To the best of the Debtors’ knowledge, there are no material defaults or arrearages of any significance with respect to the Debtors’ undisputed Utility Services invoices, other than payment interruptions that may be caused by the commencement of the Chapter 11 Cases.

## **RELIEF REQUESTED**

8. The Debtors request that the Court enter the Interim Order, in the form annexed hereto as Exhibit A, and the Final Order, in the form annexed hereto as Exhibit B, (a) prohibiting the Utility Companies from altering, refusing or discontinuing Utility Services on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms; (b) determining that the Debtors have provided each of the Utility Companies

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<sup>3</sup> Section 366 of the Bankruptcy Code applies to entities that provide services that are traditionally provided by “utilities,” including services that cannot be readily obtained or replaced elsewhere or which constitute a monopoly with respect to the service provided. See One Stop Realtour Place, Inc. v. Allegiance Telecom, Inc. (In re One Stop Realtour Place, Inc.), 268 B.R. 430 (Bankr. E.D. Pa. 2001) (mobile phone service provider was a utility); In re Good Time Charlie’s Ltd., 25 B.R. 226 (Bankr. E.D. Pa. 1982) (landlord was a utility because it was the sole source of electrical supply to debtor-tenant).

<sup>4</sup> The Debtors have endeavored to identify all of the Utility Companies and list them on Exhibit C hereto. However, inadvertent omissions may have occurred, and the omission from Exhibit C of any entity providing utility services to the Debtors shall not be construed as an admission, waiver, acknowledgement or consent that section 366 of the Bankruptcy Code does not apply to such entity. If the Debtors identify any entity that was inadvertently excluded from Exhibit C, they will promptly provide such entity with a copy of either (i) the Interim Order and the Motion, or (ii) if entered, the Final Order.

with “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code (“Adequate Assurance”), based, *inter alia*, on the Debtors’ establishment of a segregated account containing an amount equal to 50% of the Debtors’ estimated monthly cost of the Utility Services, which may be adjusted by the Debtors to account for the termination of certain Utility Services by the Debtors on account of any closed business locations or by agreement between the Debtors and the affected Utility Company; (c) upon entry of the Final Order, establishing procedures for determining additional Adequate Assurance, if any, and authorizing the Debtors to provide Adequate Assurance to the Utility Companies (the “Assurance Procedures”); and (d) setting a final hearing (the “Final Hearing”) on the proposed Adequate Assurance and Assurance Procedures.

9. As more fully set forth in the Motion, the Debtors propose to establish a segregated account containing an amount of \$330,000, equal to 50% of the Debtors’ estimated monthly cost of the Utility Services, to provide Adequate Assurance to the Utility Companies.

#### **BASIS FOR RELIEF**

10. The Utility Services are essential to the operation of the Debtors’ businesses and will continue to be necessary during the Chapter 11 Cases. The termination or cessation (even if only temporary) of Utility Services because of payment defaults related to prepetition Utility Services would result in a significant disruption to the Debtors’ business operations. Unanticipated delays in the Debtors’ ability to meet their customers’ production needs would result in substantial and irreparable harm to the Debtors and would impair the Debtors’ efforts to preserve and maximize the value of their estates during the Chapter 11 Cases. It is therefore critical that the Utility Services continue uninterrupted.

11. Section 366 of the Bankruptcy Code provides that, in a chapter 11 case, during the initial thirty days after the commencement of such case, utilities may not alter, refuse or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of its case or the existence of prepetition debts owed by the debtor. After the thirty-day period, however, under section 366(c) of the Bankruptcy Code, utilities may discontinue service to a debtor if the debtor does not provide “adequate assurance of future performance” of its postpetition obligations in a form that is satisfactory to the utility, subject to the Court’s ability to modify the amount of adequate assurance.

12. The Debtors intend to pay when due all undisputed postpetition charges for Utility Services. The Debtors expect their available cash and cash made available under the Debtors’ postpetition financing agreements will be more than sufficient to pay for the Debtors’ postpetition use. Nonetheless, the Debtors propose to deposit a sum of \$330,000, equal to 50% of the Debtors’ estimated monthly cost of the Utility Services into a newly created segregated bank account within twenty (20) days of the Petition Date (the “Utility Deposit”) as Adequate Assurance. The Utility Deposit will be either interest-bearing or non-interest-bearing, at the Debtors’ election.

13. While the form of Adequate Assurance may be limited to the types of security enumerated in subsection 366(c)(1)(A) of the Bankruptcy Code,<sup>5</sup> the determination of the amount of adequate assurance is within the discretion of the Court. It is well established that the requirement that a utility receive adequate assurance of payment does not require a guarantee of payment. Instead, the protection granted to a utility is intended to avoid exposing the utility to an unreasonable risk of nonpayment.

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<sup>5</sup> This section of the Bankruptcy Code provides that “assurance of payment” may be in the form of a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or another form of security that is mutually agreed upon by the utility and the debtor. 11 U.S.C. § 366(c)(1)(A).

14. The Debtors submit that the Utility Deposit constitutes sufficient Adequate Assurance to the Utility Companies. However, should any Utility Company disagree, the Debtors propose to establish the Assurance Procedures under which a Utility Company may request additional Adequate Assurance. If any Utility Company believes additional Adequate Assurance is required, it may request such additional assurance pursuant to the procedures set forth herein. The proposed Assurance Procedures are as follows:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must serve a written request (a "Request") upon counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York, 10019, Attention: Jeffrey D. Saferstein, Esq. (e-mail: [jsaferstein@paulweiss.com](mailto:jsaferstein@paulweiss.com); facsimile: (212) 757-3990 or Lauren Shumejda, Esq. (e-mail: [lshumejda@paulweiss.com](mailto:lshumejda@paulweiss.com); facsimile: (212) 757-3990) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19899-0391, Attention: Maris Kandestin, Esq. (e-mail: [mkandestin@ycst.com](mailto:mkandestin@ycst.com); facsimile: (302) 576-3318) (i) setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each account, (ii) providing a report on and certifying the Debtors' payment history on each account for the previous twelve months, (iii) disclosing any existing security deposit and (iv) providing an explanation of why the Utility Deposit is not Adequate Assurance of payment.
- (b) Without further order of the Court, the Debtors, in consultation with the DIP Agents, may enter into agreements granting additional Adequate Assurance to a Utility Company and/or extending the Debtors' time to file a Determination Motion (as defined below).
- (c) If the Debtors believe a Request is unreasonable, then they shall, within thirty (30) days after receipt of a Request (or such later date agreed to by the Debtors and the requesting Utility Company), file a motion (the "Determination Motion") pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered

by the Debtors, constitutes Adequate Assurance of payment. Pending notice and a hearing on the Determination Motion, the Utility Company that is the subject of the unresolved Request may not alter, refuse, or discontinue services to the Debtors.

- (d) The Utility Deposit shall be deemed Adequate Assurance of payment for any Utility Company that fails to make a Request.
- (e) Pending resolution of any such Determination Motion, the Utility Company filing such Request shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of the commencement of the Chapter 11 Cases, unpaid charges for prepetition services or on account of any objections to the Debtors' proposed Adequate Assurance.

15. The Debtors request a final hearing on this Motion to be held within twenty-five (25) days of the Petition Date to ensure that, if a Utility Company argues it can unilaterally refuse service to the Debtors on the 31st day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Assurance Procedures in time to avoid any potential termination of the Utility Services.

**THE UTILITY COMPANIES WILL NOT BE  
PREJUDICED BY THE REQUESTED RELIEF**

16. On a monthly basis, the Debtors receive numerous individual invoices for Utility Services from its Utility Companies, with whom the Debtors may have multiple utility accounts. To the best of the Debtors' knowledge, there are no material defaults or arrearages with respect to undisputed Utility Service invoices, other than payment interruptions that may be caused by commencement of these Chapter 11 Cases.

17. The Debtors' proposed method of furnishing adequate assurance of payment for postpetition Utility Service is not prejudicial to the rights of any Utility Company, and is in the best interest of the Debtors' estates. This Court has granted similar relief to that requested herein

following the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. See, e.g., In re THQ Inc., Case No. 12-13398 (MFW) (Bankr. D. Del. Dec. 21, 2012); In re A123 Systems, Inc., Case No. 12-12859 (KJC) (Bankr. D. Del. Oct. 18, 2012); In re Bicent Holdings LLC, Case No. 12-11304 (KG) (Bankr. D. Del. April 24, 2012); In re Buffets Holdings, Inc., Case No. 12-10237 (Bankr. D. Del. Jan. 19, 2012); In re Perkins & Marie Callender's Inc., Case No. 11-11795 (KG) (Bankr. D. Del. July 12, 2011); In re Jackson Hewitt Tax Services Inc., Case No. 11-11587 (MFW) (Bankr. D. Del. June, 30 2011); In re Allen Family Foods, Inc., Case No. 11-11764 (KJC) (Bankr. D. Del. June 24, 2011); In re Summit Business Media Holding Co., Case No. 11-10231 (PJW) (Bankr. D. Del. Mar. 1, 2011); In re Constar International Inc., Case No. 11-10109 (CSS) (Bankr. D. Del. Feb. 1, 2011); In re Atrium Corp., Case No. 10-10150 (BLS) (Bankr. D. Del. Feb. 25, 2010).

18. Because uninterrupted Utility Services are vital to the continued operation of the Debtors' businesses and, consequently, to the success of their Chapter 11 Cases, the relief requested herein is necessary and in the best interests of the Debtors' estates and their creditors. Such relief ensures that the Debtors' business operations will not be disrupted, as well as providing Utility Companies and the Debtors with an orderly, fair procedure for determining Adequate Assurance.

19. Accordingly, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

### **NOTICE**

20. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors' ABL Agreement; (iii) counsel to the agent under the Debtors' Term Loan Agreement; (iv) the indenture trustee for the Debtors' convertible debentures; (v) counsel



for the *ad hoc* group of convertible debenture holders; (vi) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; (viii) the Internal Revenue Service; and (viii) and the Utility Companies. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

***[Remainder of Page Intentionally Left Blank]***

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order, substantially in the form attached hereto as Exhibit A, and the Final Order, substantially in the form attached hereto as Exhibit B, granting the requested relief and such other and further relief as it deems just and proper.

Dated: January 28, 2013  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

Pauline K. Morgan (No. 3650)  
Maris J. Kandestin (No. 5294)  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19899-0391  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

- and -

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
Alan W. Kornberg  
Jeffrey D. Saferstein  
Lauren Shumejda  
Ann K. Young  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3990

*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

**EXHIBIT A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SCHOOL SPECIALTY, INC., *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 13-10125 ( )

Joint Administration Requested

Re: Docket No. \_\_\_\_\_

**INTERIM ORDER PURSUANT TO SECTION 366 OF THE BANKRUPTCY  
CODE (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,  
REFUSING, OR DISCONTINUING UTILITY SERVICES, (II) DEEMING  
UTILITY COMPANIES ADEQUATELY ASSURED OF FUTURE  
PERFORMANCE, AND (III) SETTING A FINAL HEARING RELATED THERETO**

Upon the Motion<sup>2</sup> of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and collectively, the “Debtors”), requesting entry of interim and final orders pursuant to section 366 of the Bankruptcy Code, (i) prohibiting Utility Companies from altering, refusing, or discontinuing Utility Services, (ii) deeming Utility Companies adequately assured of future performance, (iii) establishing procedures for determining adequate assurance of payment, and (iv) setting a final hearing related thereto, all as described more fully in the Motion; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that relevant and proper notice of the Motion has been given and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED on an INTERIM BASIS to the extent provided herein.
2. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Companies to the Debtors.
3. The Debtors shall, on or before twenty (20) days after the Petition Date, deposit a sum of \$330,000, equal to 50% of the Debtors' estimated monthly cost of the Utility Services (the "Utility Deposit") into a newly created segregated bank account (the "Utility Deposit Account"), with such Utility Deposit to be held in escrow, pending further order of the Court, which shall constitute adequate assurance of payment for each Utility Company for postpetition Utility Services provided to the Debtors. The Utility Deposit Account may be either interest-bearing or non-interest-bearing at the Debtors' election.
4. The Utility Deposit Account shall be maintained with a minimum balance of \$330,000, equal to 50% of the Debtors' estimated monthly cost of Utility Service, which may be adjusted by the Debtors (i) to account for the termination of Utility Services by the Debtors regardless of any Requests (as defined in the Motion) and/or agreements with Utility Companies,

and (ii) in accordance with the terms of any agreement between the Debtors and the affected Utility Company.

5. Pending entry of the Final Order, the Utility Companies are prohibited from altering, refusing or discontinuing Utility Services on the basis of the commencement of the Debtors' Chapter 11 Cases or on account of any unpaid invoice for Utility Services or on account of any objections to the Debtors' proposed adequate assurance provided before the Petition Date, and requiring the Debtors to furnish any additional deposit or other security to the Utility Companies for the continued provision of Utility Services.

6. If any Utility Company believes additional Adequate Assurance is required, it may request such additional assurance by serving a written request (a "Request") upon counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York, 10019, Attention: Jeffrey D. Saferstein, Esq. (e-mail: [jsaferstein@paulweiss.com](mailto:jsaferstein@paulweiss.com); facsimile: (212) 757-3990) or Lauren Shumejda, Esq. (e-mail: [lshumejda@paulweiss.com](mailto:lshumejda@paulweiss.com); facsimile: (212) 757-3990) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19899-0391, Attention: Maris Kandestin, Esq. (e-mail: [mkandestin@ycst.com](mailto:mkandestin@ycst.com); facsimile: (302) 576-3318) (i) setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each account, (ii) providing a report on and certifying the Debtors' payment history on each account for the previous twelve months, (iii) disclosing any existing security deposit and (iv) providing an explanation of why the Utility Deposit is not Adequate Assurance of payment.

7. Without further order of the Court, the Debtors, in consultation with the DIP Agents, may enter into agreements granting additional Adequate Assurance to a Utility Company and/or extending the Debtors time to file a Determination Motion (as defined below).

8. If the Debtors believe a Request is unreasonable, then they shall, within thirty (30) days after receipt of a Request (or such later date agreed to by the Debtors and the requesting party), file a motion (the "Determination Motion") pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered by the Debtors, constitutes Adequate Assurance of payment.

9. Pending notice and a hearing on the Determination Motion, the Utility Company that is the subject of the unresolved Request may not alter, refuse or discontinue services to the Debtors.

10. The Utility Deposit shall be deemed Adequate Assurance of payment for any Utility Company that fails to make a Request.

11. Pending resolution of any such Determination Motion, the Utility Company filing such Request shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of the commencement of the Chapter 11 Cases, unpaid charges for prepetition services or on account of any objections to the Debtors' proposed Adequate Assurance.

12. Nothing in this Interim Order or the Motion shall be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

13. The deadline by which objections to the Motion and the Final Order must be filed is \_\_\_\_\_, 2013 at 4:00 p.m. (ET). Objections must be served on (i) counsel to the Debtors; (ii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801,

Attention: Juliet Sarkessian, Esq. (E-Mail: [Juliet.m.sarkessian@usdoj.gov](mailto:Juliet.m.sarkessian@usdoj.gov)) and (iii) counsel to any statutory committee appointed in these cases. A final hearing, if required, on the Motion will be held on \_\_\_\_\_, 2013 at \_\_\_\_\_.m. (ET). If no objections are filed to the Motion, the Court may enter the Final Order without further notice or hearing.

14. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: January \_\_, 2013  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT B**

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SCHOOL SPECIALTY, INC. *et al.*,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 13-10125 ( )

Joint Administration Requested

Re: Docket Nos. \_\_\_\_

**FINAL ORDER PURSUANT TO SECTION 366 OF THE BANKRUPTCY  
CODE (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING,  
OR DISCONTINUING UTILITY SERVICES, (II) DEEMING UTILITY COMPANIES  
ADEQUATELY ASSURED OF FUTURE PERFORMANCE, AND (III) ESTABLISHING  
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the Motion<sup>2</sup> of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each a “Debtor” and, collectively, the “Debtors”), requesting entry of interim and final orders pursuant to section 366 of the Bankruptcy Code, (i) prohibiting Utility Companies from altering, refusing, or discontinuing Utility Services, (ii) deeming Utility Companies adequately assured of future performance, (iii) establishing procedures for determining Adequate Assurance of payment, and (iv) setting a final hearing related thereto, all as described more fully in the Motion; and the Interim Order having been entered; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that relevant and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is: hereby ORDERED that:

1. The Motion is GRANTED on a FINAL BASIS to the extent provided herein.

2. The Debtors are authorized, but not directed, to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Companies to the Debtors.

3. To the extent not already deposited, the Debtors shall, on or before the date which is twenty (20) days after the Petition Date, deposit a sum of \$330,000, equal to 50% of the Debtors' estimated monthly cost of the Utility Services (the "Utility Deposit") into a newly created segregated bank account, with such Utility Deposit to be held in escrow, pending further order of the Court, which shall constitute Adequate Assurance of payment for each Utility Company for postpetition Utility Services provided to the Debtors. The Utility Deposit may be either interest-bearing or non-interest-bearing at the Debtors' election.

4. The Utility Deposit Account shall be maintained with a minimum balance of \$330,000, equal to 50% of the Debtors' estimated monthly cost of Utility Service, which may be adjusted by the Debtors (i) to account for the termination of Utility Services by the Debtors regardless of any Requests (as defined in the Motion) and/or agreements with Utility Companies, and (ii) in accordance with the terms of any agreement between the Debtors and the affected

Utility Company. Upon the [effective date] the Debtors may close the Utility Deposit account, without further notice or hearing.

5. Absent further order of the Court, the Utility Companies are prohibited from altering, refusing or discontinuing Utility Services on the basis of the commencement of the Debtors' Chapter 11 Cases or on account of any unpaid invoice for Utility Services provided before the Petition Date, and requiring the Debtors to furnish any additional deposit or other security to the Utility Companies for the continued provision of Utility Services.

6. If any Utility Company believes additional Adequate Assurance is required, it may request such additional assurance by serving a written request (a "Request") upon counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, New York, 10019, Attention: Jeffrey D. Saferstein, Esq. (e-mail: [jsaferstein@paulweiss.com](mailto:jsaferstein@paulweiss.com); facsimile: (212) 757-3990) or Lauren Shumejda, Esq. (e-mail: [lshumejda@paulweiss.com](mailto:lshumejda@paulweiss.com); facsimile: (212) 757-3990) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19899-0391, Attention: Maris Kandestin, Esq. (e-mail: [mkandestin@yest.com](mailto:mkandestin@yest.com); facsimile: (302) 576-3318) (i) setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), and the outstanding balance for each account, (ii) providing a report on and certifying the Debtors' payment history on each account for the previous twelve months, (iii) disclosing any existing security deposit and (iv) providing an explanation of why the Utility Deposit is not Adequate Assurance of payment.

7. Without further order of the Court, the Debtors, in consultation with the DIP Agents, may enter into agreements granting additional Adequate Assurance to a Utility Company and/or extending the Debtors time to file a Determination Motion (as defined below).

8. If the Debtors believe a Request is unreasonable, then they shall, within thirty (30) days after receipt of a Request (or such later date agreed to by the Debtors and the requesting party), file a motion (the “Determination Motion”) pursuant to section 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered by the Debtors, constitutes Adequate Assurance of payment.

9. Pending notice and a hearing on the Determination Motion, the Utility Company that is the subject of the unresolved Request may not alter, refuse or discontinue services to the Debtors.

10. The Utility Deposit shall be deemed Adequate Assurance of payment for any Utility Company that fails to make a Request.

11. Pending resolution of any such Determination Motion, the Utility Company filing such Request shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of the commencement of the Chapter 11 Cases, unpaid charges for prepetition services or on account of any objections to the Debtors’ proposed Adequate Assurance.

12. Nothing in this Final Order or the Motion shall be deemed to constitute postpetition assumption or adoption of any agreement pursuant to section 365 of the Bankruptcy Code.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: January \_\_, 2013  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT C**

**List of Debtors' Utilities**

<u>VENDOR NAME</u>	<u>ACCOUNT NUMBER</u>	<u>UTILITY TYPE</u>
ALLIED WASTE SERVICES 095	3-0095-8154015	DISPOSAL
ALLIED WASTE SERVICES 917	3-0917-4146957	DISPOSAL
AMERIWASTE ENVIRONMENTAL SERVICES INC	NONE	DISPOSAL
AT & T	75160	TELEPHONE
AT & T	0591525281001	TELEPHONE
AT & T	248 134-7573 772 0	TELEPHONE
AT & T	262 785-8485 628 7	TELEPHONE
AT & T	360 733-1039 1439076	TELEPHONE
AT & T	512 873-8811 396 2	TELEPHONE
AT & T	512 873-8811 396 2	TELEPHONE
AT & T	559 442-5881 572 2	TELEPHONE
AT & T	619 293-7987 622 6	TELEPHONE
SAT & T	619 293-7992 466 1	TELEPHONE
AT & T	770 798-9775 449	TELEPHONE
AT & T	770 798-9797 001	TELEPHONE
AT & T	785 827-0451 609 9	TELEPHONE
AT & T	785 827-1062 309 5	TELEPHONE
AT & T	831-000-1784-726	TELEPHONE
AT & T	920 757-5380 863 6	TELEPHONE
AT & T	920 R09-5433 007 4	TELEPHONE
AT & T	920 Z02-0116 932 6	TELEPHONE
AT & T	BES02388441	TELEPHONE
AT & T	SCSP-SCSAT01	TELEPHONE
CITY OF BELLINGHAM	016240	WATER AND SEWER
CITY OF BELLINGHAM	016240	WATER AND SEWER
CITY OF BELLINGHAM	016253	WATER AND SEWER
CITY OF BELLINGHAM	016253	WATER AND SEWER
CITY OF BELLINGHAM	016257	WATER AND SEWER
CITY OF BELLINGHAM	016257	WATER AND SEWER
CASCADE NATURAL GAS CORP	649 350 0000 6	NATURAL GAS
CENTURYLINK	78056593	TELEPHONE
CENTURYLINK	302200888	TELEPHONE
CENTURYLINK	313204403	TELEPHONE
CENTURYLINK	313206774	TELEPHONE
CENTURYLINK	206-T62-1647 669B	TELEPHONE
CENTURYLINK	360-734-8774 081B	TELEPHONE
CENTURYLINK	360-756-2105 670B	TELEPHONE
CENTURYLINK	360-756-8224 690B	TELEPHONE
CENTURYLINK	402 721-1800 854	TELEPHONE
CENTURYLINK	402 753-6287 950	TELEPHONE
COLUMBIA GAS OF OHIO INC	00012194 000 000 7	NATURAL GAS
COMCAST	NONE	MISC UTILITIES
CONSTELLATION NEWENERGY INC	12794-70680-6	NATURAL GAS
CONSTELLATION NEWENERGY INC	1-339518255	ELECTRIC
COX COMMUNICATIONS PHOENIX	0028501201818501	TELEPHONE
DIRECT ENERGY SERVICES LLC	34284	NATURAL GAS

<u>VENDOR NAME</u>	<u>ACCOUNT NUMBER</u>	<u>UTILITY TYPE</u>
DIRECT ENERGY SERVICES LLC	81257436-357-6	NATURAL GAS
EARTHLINK BUSINESS	8096810	TELEPHONE
FAIRPOINT COMMUNICATIONS INC	603 883 3814 273	TELEPHONE
FAIRPOINT COMMUNICATIONS INC	603 883 3967 272	TELEPHONE
FAIRPOINT COMMUNICATIONS INC	603 889 8862 862	TELEPHONE
FAIRPOINT COMMUNICATIONS INC	603 889 8899 817	TELEPHONE
FERRELLGAS	51234323	PROPANE
FIBER CLOUD	101538	TELEPHONE
FIBER CLOUD	101539	TELEPHONE
FIBER CLOUD	0136073	TELEPHONE
FREMONT DEPARTMENT OF UTILITIES	18455-18138	NATURAL GAS AND ELECTRIC
FREMONT DEPARTMENT OF UTILITIES	18457-18140	NATURAL GAS AND ELECTRIC
FREMONT SANITATION	3054-29005679	DISPOSAL
FRONTIER COMMUNICATIONS	10539685	TELEPHONE
FRONTIER COMMUNICATIONS	12 3163 2704097756 07	TELEPHONE
FRONTIER COMMUNICATIONS	585-426-2320-120104-6	TELEPHONE
GEORGIA POWER CO	43038-59050	ELECTRIC
GLOBAL CROSSING TELECOMMUNICATIONS INC	203983080	TELEPHONE
GLOBAL CROSSING TELECOMMUNICATIONS INC	205131965	TELEPHONE
GREENVILLE SANITARY DISTRICT	1536	WATER AND SEWER
HESS CORP	568367/10333	ELECTRIC
HESS CORP	576131/576172	GAS
INTERCALL	146013	TELEPHONE CONFERENCING
KANSAS GAS SERVICE	510528900 1548059 27	GAS
LANCASTER AREA SEWER AUTHORITY	18281	WATER AND SEWER
CITY OF LANCASTER	406970	WATER AND SEWER
LANCASTER COUNTY SOLID WASTE MGMT AUTHORITY	21850	DISPOSAL
LEBANON FARMS DISPOSAL INC	1637322	HAULING CHGS
LIBERTY UTILITIES	57352-34360	GAS
MALAGA COUNTY WATER DISTRICT	011-5A	WATER AND SEWER
MANSFIELD CITY OF	12411010000-001	WATER AND SEWER
METROPOLITAN TELECOMMUNICATIONS	37	TELEPHONE
MILLIRON WASTE MGT INC	2388-001	DISPOSAL
MILLIRON WASTE MGT INC	2388-007	DISPOSAL
NASHUA WASTE WATER SYSTEM	2332201	WATER AND SEWER
NOSVA	7000055730-0000	TELEPHONE
OHIO EDISON	110 013 110 728	ELECTRIC
PAETEC COMMUNICATIONS INC	2045313	TELEPHONE
PENNICHUCK WATER WORKS INC	100023321-9081	WATER AND SEWER
PENNICHUCK WATER WORKS INC	100023322-9081	WATER AND SEWER



<u>VENDOR NAME</u>	<u>ACCOUNT NUMBER</u>	<u>UTILITY TYPE</u>
PG & E	9939239241-3	ELECTRIC
PPL ELECTRIC UTILITIES	16379-93000	ELECTRIC
PPL ELECTRIC UTILITIES	81340-95004	ELECTRIC
PUBLIC SERVICE OF NEW HAMPSHIRE	8001624-04-3-6	ELECTRIC
PUBLIC SERVICE OF NEW HAMPSHIRE	8001624-05-1-9	ELECTRIC
PUGET SOUND ENERGY	000-092-100-7	ELECTRIC
PUGET SOUND ENERGY	001-976-000-8	ELECTRIC
PUGET SOUND ENERGY	890-976-000-4	ELECTRIC
REPUBLIC SERVICES 800	1212	DISPOSAL
REPUBLIC SERVICES 800	3-0800-0028221	DISPOSAL
CITY OF SALINA	131-01-0-30-01-003	FIRE PROTECTION
CITY OF SALINA	53343-37884	WATER AND SEWER
SANITARY SERVICE CO INC	4100902	DISPOSAL
SANITARY SERVICE CO INC	4586940	DISPOSAL
SANITARY SERVICE CO INC	4905392	DISPOSAL
SPRINT COMMUNICATIONS CO LP	925494368	TELEPHONE
TDS METROCOM	920 882 7382	TELEPHONE
TEL/COM INC	42756	PAGERS
TELEPACIFIC COMMUNICATIONS	3933	TELEPHONE
TIME WARNER CABLE	0151244-03	INTERNET
TIME WARNER CABLE	10404 604441201 5001	INTERNET
TIME WARNER CABLE	10404 607302201 6001	INTERNET
TIME WARNER CABLE	10404 706742301 2001	INTERNET
TIME WARNER CABLE	202-134293903-001	INTERNET
UGI UTILITIES INC	307091074015	NATURAL GAS
UGI UTILITIES INC	318505041006	NATURAL GAS
VERIZON	717 397-5686 683 33Y	TELEPHONE
VERIZON NEW ENGLAND INC	617 497 1030 069 0019	TELEPHONE
VERIZON WIRELESS	585590990-00001	TELEPHONE
WASTE MANAGEMENT OF WI MN	101-0071532-1796-8	DISPOSAL
WASTE MANAGEMENT OF WI MN	101-0071563-1796-3	DISPOSAL
WE ENERGIES	7294-035-356	ELECTRIC
WESTAR ENERGY	1117658975	ELECTRIC
WESTAR ENERGY	3353389566	ELECTRIC
XO COMMUNICATIONS	2745723	TELEPHONE