



January 28, 2016

Mr. David C. Hespe, Commissioner  
New Jersey Department of Education  
100 River View Plaza  
P.O. Box 500  
Trenton, NJ 08625-0500

Re: Newark Charter Schools' Requests for Enrollment Expansion and New Schools

Dear Commissioner Hespe:

Education Law Center (ELC) advocates for the legal rights of New Jersey's public school children to high quality education under state and federal laws, particularly our state's at-risk students, students with disabilities, and students of color. ELC also serves as counsel to the class of urban school children in the landmark Abbott v. Burke litigation and, on behalf of those children, advocates for effective and timely implementation of the Abbot remedial mandates as required by the New Jersey Constitution.

We have learned that several charter schools in Newark included requests for significant expansion of enrollment over the next five years in their charter renewal applications submitted to the Department of Education (DOE) in mid-October 2015. For example, TEAM Charter Schools requested an increase from its current maximum enrollment of 4,120 students to 9,560 students by 2020-21. TEAM also proposes to house this expanded enrollment in at least 6 new charter schools. North Star Academy Charter School of Newark is projecting to expand enrollment from its current maximum of 4,106 students to 6,216 students by 2020-21 by opening several new charter schools. Robert Treat Academy Charter School requested an increase in its maximum enrollment from 695 students to 860 students over the same period.

For the reasons set forth below, and on behalf of public school children in the State-operated Newark Public Schools (NPS) – i.e., the Abbott plaintiffs -- we request that you deny these requests at this time. Further, we request that, until the NPS budget can be remedied to ensure delivery of adequate resources for thorough and efficient education to students in NPS schools, these and other requests by existing charter schools to expand enrollment be denied.

As an initial matter, the charter schools' requests for enrollment expansions and new schools must be denied as beyond the scope of an amendment to an existing charter under the Act and implementing regulations. The Act and current regulations do not permit the unrestricted amendment of existing charters. Instead, the governing law only authorizes amendments to expand an existing school's enrollment or, if the school is in a "former Abbott district," to open a "new satellite campus," which is defined as "a school facility" that "is in

addition to the facility identified in the charter school application or charter, if subsequently amended.” N.J.A.C. 6A:11-1.2 and 2.6(a). With respect to the request of TEAM, for example, the charter school is seeking substantial increases in enrollment over the next five years, to be accommodated in numerous new facilities in unidentified locations in the district. TEAM did not apply for an amendment to open a “satellite campus.” It is clear that this request to enroll thousands more students in numerous new facilities is not permissible under the Act and regulations governing amendments to an existing charter.

Further, as documented in detail by the enclosed November 2015 report – entitled *Newark Public Schools: Budget Impacts of Underfunding and Rapid Charter Growth* – the financial stress of successive years of underfunding of the School Funding Reform Act (SFRA), coupled with the DOE’s approval of a rapid expansion of charter school enrollments, have had a significant negative impact on resources available in the Newark Public Schools (NPS). We are gravely concerned that any further expansion of charter enrollments will worsen NPS’s financial crisis and severely impede NPS from providing students with the teachers and other resources needed to ensure a constitutionally required thorough and efficient education.

We are also deeply concerned that continued expansion will exacerbate the already glaring disparities in the demographics of students served in Newark charters compared to NPS-run schools and will further concentrate the most at-risk students in district schools. As documented in the enclosed report from Rutgers University researchers Mark Weber and Julia Sass Rubin, Newark’s charter schools serve far fewer English Language Learners (ELL) and special education students than district schools. In NPS 9% of students are classified as ELL compared to only 1% in Newark’s charters; 18% of NPS students are classified as special education compared to only 9% in Newark’s charters. The special education population in Newark’s charters is also more likely to have less severe and less costly classifications, such as specific learning disabilities, and less likely to have high cost classifications, like autism or emotional disturbance. *See also New Jersey’s Intensely Segregated Urban Schools*, Rutgers University Institute for Education Law and Policy, October 2013 (documenting severe racial isolation of students in both Newark district and charter schools).

Further, as documented in our analysis of the NPS budget crisis, despite the rapid shift of students to charters, NPS is still educating the same number, and thus a higher concentration, of ELL and special education students. Because of budget constraints, spending on resources for these at-risk students has dropped dramatically: spending per ELL student has declined by 20% and spending per special education student has declined by almost 30%.<sup>1</sup>

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<sup>1</sup> ELC also serves as counsel to the plaintiff students in *M.A. v. Newark Public Schools*, Civil Action No. 01-3389, in which a class action settlement was entered in January 2012, after a decade of litigation, to address the timely delivery of special education and related services to eligible NPS students with disabilities. Now in its fourth year of implementation, compliance with the settlement remains poor. A significant factor in NPS’s inability to comply with the

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We request that you include both the ELC report on the NPS budget and the Rubin & Weber report on Newark charter student demographics in the administrative record of the pending charter renewal applications which request enrollment expansion, including those of TEAM, North Star, and Robert Treat. We also ask that you carefully review both of these reports in connection with your review of the Newark charter schools' renewal applications and their requests for enrollment expansions and new charter schools.

New Jersey's Charter School Act (the Act) requires you to "conduct a comprehensive review prior to granting a renewal" of a charter school's charter. N.J.S.A. 18A:36A-16. Neither the Act nor the DOE's regulations provide specific guidance on how to assess a renewal application, but well established court precedent requires, upon a demonstration "with some specificity that the constitutional requirements of a thorough and efficient education would be jeopardized by [the district's] loss" of funds to be allocated to a charter school, "the Commissioner is obligated to evaluate carefully the impact that loss of funds would have on the ability of the district of residence to deliver a thorough and efficient education." In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp, 216 N.J. 370, 377-78 (2013); see N.J. Const. art. VIII, § 4, ¶ 1 (mandating the Legislature provide "for the maintenance and support of a thorough and efficient system of free public schools"). The detailed data and research in the attached reports demonstrate, not just with "some," but with overwhelming "specificity" that the substantial loss of funding that will occur if these requests for charter enrollment expansion are approved will: 1) clearly result in a continuation of the substantial cuts in teachers, programs and other resources essential for NPS to provide a thorough and efficient education to students in district-run schools; and 2) increasingly be required to serve high concentrations of at-risk, ELL and students with disabilities who require additional resources and interventions.

Where, as here, the local school district is an urban district subject to the remedial mandates of the Abbott v. Burke rulings, we believe that you have an even greater obligation to evaluate the impact that the loss of funds will have on the local school district's ability to deliver a thorough and efficient education to its students. See Englewood on the Palisades Charter School, 164 N.J. 316, 334 (2000) ("We note, however, that application of this standard in the context of an Abbott district is not part of this case. We leave that question for another day"). Abbott v. Burke, 206 N.J. 332, 340 (2011) ("Abbott XXI") (Abbott plaintiff schoolchildren, which include Newark children, "have been denominated victims of a violation of constitutional magnitude for more than twenty years. Because of the severity of their constitutional deprivation, that class of pupils was determined to be deserving of special treatment from the State").

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settlement agreement, noted by the court-appointed State monitor, in her report of September 2014, is that "[p]lacements and services are severely constrained at all levels due to sparse resources at all levels...."

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The data set forth in the two reports we have enclosed for your review plainly illustrates why the charter schools' requests for enrollment expansions and new charter schools must be denied. At the very least, we request that you hold a hearing prior to taking action on the charter schools' applications so that we can present testimony on the impact that the requested increases would have on segregation and the NPS's budget and the charter schools can present rebuttal evidence if they so choose. Although you are not generally obligated to hold a hearing prior to making a decision on a charter school's renewal application, case law makes clear that a hearing must be conducted where issues raised in the renewal process warrant further exploration. See In re Red Bank Charter School, 367 N.J. Super. 462, 476 (App. Div. 2004). We believe that the data presented in the two reports demonstrates a compelling need for the development of an evidentiary record on these issues.

Thank you for your careful consideration of this matter.

Very truly yours,



David G. Sciarra, Esquire  
Executive Director

cc: Evo Popoff, DOE Charter School Program  
Christopher Cerf, State Superintendent  
Honorable Ras Baraka, Mayor  
Newark Advisory Board  
TEAM, North Star and Robert Treat Charter Schools