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Newark Board of Education

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Where Passion Meets Progress

July 31, 2019

VIA OVERNIGHT DELIVERY

Heather Joy Baker, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625-0970

Re: In Re Renewal Application of Team Academy Charter School

In Re Renewal Application of Robert Treat Academy Charter School

In Re Renewal Application of North Star Academy Charter School of Newark

In Re Amendment Request to Increase Enrollment of Maria L. Varisco-Rogers Charter School

In Re Amendment Request to Increase Enrollment of University Heights Charter School

In Re Amendment Request to Increase Enrollment of Great Oaks Legacy Charter School

In Re Amendment Request to Increase Enrollment of New Horizons Community Charter School

Docket No.083014

Dear Ms. Baker:

Please accept this proposed letter memorandum in lieu of a more formal brief on behalf of the Board of Education of the City of Newark, in the County of Essex (the "Board") in support of its

motion granting the Education Law Center's ("ELC") Petition for Certification in the above-captioned matter.

PRELIMINARY STATEMENT

In upholding the decision of the Commissioner of Education ("Commissioner") in 2016 to allow seven (7) Newark charter schools to expand by 8500 students, the Appellate Division relied heavily on the absence of any objection from the Board, App34-35, despite recognizing that the Board at the time was under state operation, App17, n.5. In 2018, however, the State withdrew from directly operating the Newark Public Schools ("NPS"), ceding full control over NPS to the Board. App4. The Board now comes before this Court as the locally-controlled board of a district whose students are protected by this Court's remedial measures established in the Abbott v. Burke rulings to support ELC's Petition for Certification. The Board has serious concerns regarding the detrimental impact of the Appellate Division's decision to uphold the Commissioner failure to evaluate the fiscal and segregative impacts on NPS of the charter schools' expansion which rendered the Commissioner's review of those applications constitutionally deficient. The Board is further concerned that the Appellate Division's ruling, if not addressed, will restrict both the standards and rigor of the Commissioner's review of future

applications to expand existing charter schools or open new charter schools in Newark, given that charter schools now comprise almost 25% of total district enrollment.

The Board adopts the arguments made by ELC in its Petition for Certification regarding the Appellate Division's misapplication of the correct legal standard and the deficient and incomplete review by the Commissioner, seemingly "excused" in part because the evidence was produced by a third party rather than the Board. If this Court reverses and remands the applications for review under proper constitutional and statutory standards, the Board intends to participate actively before the Commissioner. The Board submits that such a comprehensive review is necessary under this Court's well-established precedents to ensure charter schools do not undermine the fundamental rights of the Board's students to a thorough and efficient education, as further protected by the Abbott v. Burke rulings.

PROCEDURAL AND FACTUAL BACKGROUND

On February 18, 2016 and February 29, 2016, the Commissioner issued final decisions approving an increase of 8500 students requiring numerous new physical buildings for seven Newark charter schools. ELC filed detailed evidence and objections before the Commissioner and then filed a timely appeal of those decisions on

behalf of Abbott school children. The Board did not object to the applications and did not join in that appeal.

At the time, NPS was under state operation, run by a State District Superintendent who was under an employment contract with the Department of Education ("DOE"). Thereafter, the district returned to local control on February 1, 2018, when the Board regained full responsibility over all elements of NPS, including school governance, operations, budget and personnel. The Board then appointed a Superintendent on May 22, 2019 to serve effective July 1, 2018. The Superintendent, Roger León, is under contract with the Board, not the DOE.

On May 7, 2019, the Appellate Division issued an opinion affirming the Commissioner's renewal and expansion of the seven charter schools. ELC filed a Petition for Certification of that decision on May 23, 2019. The Board, now under local control and an amicus curiae participant, joins in the ELC's Petition.

LEGAL ARGUMENT

THIS COURT SHOULD GRANT THE PETITION FOR CERTIFICATION.

With the return to local control and the restored ability to advocate independently of the Commissioner and DOE, the Board also adopts the legal arguments made by ELC in its Petition for Certification regarding the Appellate Division's clear

misapplication of the well-established constitutional standards for review of charter school applications, as well as the deficient and incomplete review of the expansion applications by the Commissioner. These arguments are comprehensively presented in the ELC's Petition, at pages 4-14. Again, as set forth above, in the event this matter is remanded, the Board will be an active participant and present evidence demonstrating the manner that the charter expansion runs afoul of constitutional mandates and has a detrimental impact on the rights of vulnerable students.

As a threshold matter, the Board takes issue with the Appellate Division failure to institute heightened constitutional scrutiny required under well-established Abbott jurisprudence. The Appellate Division appears to have used an incorrect legal standard to leave undisturbed the Commissioner's inadequate and virtually nonexistent review of the charter schools' applications for expansion and growth. As noted by ELC, the Commissioner's determinations to renew and expand the charters were arbitrary and capricious in numerous, fundamental ways.

In addition to ignoring the segregative effect of the expansion on Limited English Proficient students and students with disabilities requiring special education programs and services, the Commissioner failed to evaluate the enormous and significant fiscal impact that adding thousands of students to charter school

enrollments would have on the funding and teachers, support staff and other essential resources required for the Board to deliver a thorough and efficient education to its students. Besides the obvious fact that the Commissioner did not adequately assess this impact, the Appellate Division simply excuses the Commissioner because the evidence was submitted "by another entity, and not the District itself." App38. As set forth above and by ELC in its Petition, there is no legal basis for that conclusion. If the applications are remanded, the Board will be an active participant before the Commissioner. The Board submits that a comprehensive review on remand from this Court under the appropriate mandated constitutional standards is essential to protect the fundamental rights of vulnerable Abbott children.

CONCLUSION

For the reasons stated above, the Board respectfully requests that this Court issue an Order granting the Board's motion in support of ELC's Petition for Certification.

Respectfully submitted,



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