SRC testimony
February 18, 2015
Re: Pending Charter Applications

In December, I testified to the District that, when reviewing new charter school applications, the factors the District should consider cut against approval of new charters in the current fiscal and educational climate. This is especially true given the dearth of evidence that the charter sector has achieved superior results. (See attached – also available at http://www.elc-pa.org/wp-content/uploads/2014/12/ELC_Testimony_Charters_LegislativeIntent_12_11_14.pdf).

There have been recent public comments that suggest a mistaken belief that the charter law "requires" the SRC to approve new applications *without considering the impact* on district students. To the contrary, since the District has been declared to be in "fiscal distress" and the state Constitution still requires that there be a "thorough and efficient *system* of public education," the impact of charter expansion on all students should be the most important consideration of all. But since questions have been raised, I wish to briefly clarify why such considerations are also *legally* valid.

The bottom line is that *there has never been a CAB or court holding* that a fiscally distressed school district is prevented from considering the educational impact on all students, including students in district schools and existing charter schools, when deciding whether to approve a new charter school application. In addition, no cases have addressed these issues since the charter reimbursement was eliminated. As you identify problems with the merits of a particular charter application, you should be sure to also include, in the alternative, evidence and findings that approving the charter would negatively impact the educational experience of all students, including district students.

The statutory text of the charter school law leaves the options for what districts can consider wide open and also specifically contemplates the impact on the "public school system."[1] The confusion, however, appears to stem from two court cases, that are factually and legally distinguishable from the current situation in the School District of Philadelphia and that were decided over 10 years ago, before the educational impact of charter expansion was so apparent.

In *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (2000), the CAB reversed the local school board's denial of a charter application and denied taxpayers *from a neighboring school district* the right to intervene in the appeal to the Commonwealth

[1] *See* 24 P.S. § 1717–A(e)(2) (Not limiting the criteria for consideration. Also requiring consideration of the legislative intent, 24 P.S. § 17-1702-A, to expand options "within the public school system").

Court. The neighboring taxpayers alleged that granting a charter in the West Chester School District would harm them if students from their district enrolled in the school, by "reducing public funds available to [their] districts and forcing the districts to raise taxes, reduce educational services, or both." *Id.* at 464. The court held that the Taxpayers' claimed harm was based solely on speculation and that their interests were too remote and indirect to establish their eligibility to intervene.

However, the court did not foreclose the possibility of financial and education impact ever being a valid consideration for a school district. Rather, in *West Chester* the court found that any harm to taxpayers from neighboring districts was too attenuated to establish that: 1) students in the district would choose to attend the charter school in the neighboring district; 2) the tuition payments would create fiscal pressures for the public schools in the district; and 3) the school boards would respond to these pressures by increasing taxes or reducing services. *Id.* at 466.

The School District of Philadelphia could much more readily provide evidence that all three factors have already occurred, by many multitudes, in Philadelphia from existing charter school expansion. In addition, the court in *West Chester* never held or even discussed whether an authorizing school district itself, was able consider these factors if evidence existed. Only that taxpayers had not established such harm themselves.

In *Keystone Central School Dist. v. Sugar Valley Concerned Citizens*, 799 A.2d 209, 218 n.14 (2002), the court said, in dicta located in a footnote, that "To deny the charter school because it may deplete school district revenues is inconsistent with the purpose of the CSL." There was no allegation and no factual finding that the district could not afford the charter school or that the lack of resources would have a negative *education impact* on students left behind in district schools. Quite simply, the case stands for the proposition that a mere loss of revenues, absent evidence that the loss is harming students, is not a valid consideration to deny a charter application. In contrast, the District has plenty of evidence (dozens of school closings, lack of librarians, counselors, nurses, art, music, large class sizes, and so much more!) that charter expansion is causing harm to students remaining in district schools.

These cases show that the issue of whether a fiscally distressed district, such as School District of Philadelphia, can consider the *educational* impact, on *all students*, when evaluating charter applications, has never been decided. It would be a matter of first impression before the CAB and the courts:

- There is no case involving districts that have been declared in fiscal distress.
- There is no case involving districts that have had to cut educational resources.
- There is no case involving districts that have had to shut down neighborhood schools (literally decreasing options and choices for families in direct conflict with the intent of the charter law to "expand choices…within the public school system.")
- There is no case involving districts that have inadequate librarians, counselors, nurses, art, and music teachers.
- There is no case decided since the charter reimbursement was eliminated.

It is my advice that you should include in the record of each applicant, the fact that the district has been declared fiscally distressed, the fact that the elimination of the charter reimbursement line item has forced district schools to bear the burden of stranded charter costs, and evidence of how charter expansion has caused a reduction in district-provided services. There is no risk to including these additional claims. If you never raise them, they will be waived and the CAB and the courts could be prevented from considering them, even if they are inclined to do so on their own. On the other hand, if you raise them and lose on those issues, then you are in the same position as if you never raised them to begin with.

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