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Accountability, Effectiveness and Transparency of Charter Schools

Introduction of Advocate

I am Rich Migliore, a life long Philadelphia School District educator who has served for 20 years as a high school teacher of Reading, English and Law, and as both a principal and assistant principal in several of Philadelphia's public schools for 14 years. Over those years, I have been honored by my colleagues to have been elected by them or chosen for many leadership positions. Such positions include Governance Council Chairman, a local school council at University City High School, whereby we created in 1994 one of the first "charter schools" in the nation, the Law Charter, which was back then, simply a "school within a school."

I now work as an attorney and advocate for the best practices in school governance, leadership and pedagogy. I am also a member of the Alliance for Philadelphia Public Schools (APPS), a diverse group of parents, retired educators, and active educators. We advocate for true public education and the best interests of our schoolchildren and our community. We represent no special interests, nor are we paid by anyone to come here today.

I retired from the district in 2009, but have since served our school community as a participant in hundreds of community engagement meetings in Philadelphia and throughout southeastern Pennsylvania. I am a regular participant in School Reform Commission meetings and a strong advocate for Democracy in Education and the use of democratic principles in the governance of what are supposed to be our public schools.

I am the author of a scholarly treatise on the law of school governance, leadership, and the research on the best practices of school governance and leadership – *Whose School Is It? the Democratic Imperative for Our Schools*. I published the book in 2007 after careful study of the real effects of the state takeover of our school system and the creation of charter schools. I still continue to intensively study the Charter School Law, its flaws and the legal issues it creates, and I read every case and article I can on the issues both locally and nationally.

Introduction

Good morning Auditor General DePasquale and hearing Team. Thank you for allowing me to speak before you today on issues which are crucial to us all – the appropriate, effective, and ultimately – the democratic governance of Charter schools. Charter schools were originally intended to be public schools which complement regular public schools, not replace public schools. Like all schools which are supposedly “public schools” they should, and by law, must be governed for this “singular purpose” -- to serve the best interests of our schoolchildren, their families, our local communities, and ultimately – the common good.¹

¹ See *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000), affirmed by S.C. of Pa., 812 A2d 1172 (2002). I recommend reading the Commonwealth Court Opinion first as it explains in detail the nature of charter schools and the singular purpose of its legal duties to

It is the thesis of this address, and it is the thesis of much of my advocacy that if we are to create the Great American school for all of our children, we must govern and lead our schools on the very same principles and ideals which are embedded by our forefathers in our Constitution. That is the only way to “set the conditions” for great schools to emerge and ensure that our schools truly serve only the best interests of our schoolchildren and the ideals of public education.

I come today to ask you to think deeply about what public education means to our Democracy and what it means for a school to be a public school. It is a Pennsylvania constitutional mandate to have a “thorough and efficient system of *public education*.”

The corporate raid on public education to profitize it and marketize it, is squarely before us now.² Also squarely before us now are the efforts of profiteers and their front organizations, such as the Philadelphia School Partnership and PennCan, who seek to circumvent the required public processes of public school governance, and the divergence of public funds into private pockets.³

Private authorizers of charter schools is a step in the wrong direction of public accountability. It is in reality – no accountability at all.

Our collective moral and legal responsibilities in “all of this” are also squarely before us now.

students and the illegality of self-dealing. Also see, Ch. 2, Migliore, R. (2007) *Whose School Is It? the Democratic Imperative for Our Schools*, Hav. Pa.:Integrity Press.

² See Ravitch, D. (2013) *Reign of Error – The Hoax of the Privatization Movement and the Danger to America’s Public Schools*. NY: Alfred A. Knopf. Diane Ravitch is the most respected educational historian in America. She is an educational expert and presents thorough and credible research.

³ A prime example is Senate Bill 1085 which is the creation of those privatization organizations who want to circumvent local school boards and the processes of democracy itself. Such organizations include: The Philadelphia School Partnership; PennCan, Students First, ALEC; the Broad Foundation; the Gates Foundation; The Walton Foundation, and various hedge fund operators, etc.

RECOMMENDATIONS

I have viewed the issues from both inside the School District of Philadelphia, and now, from outside of the district for five years. What my intensive study of those issues has taught me is that we desperately need a **Charter School Accountability, Transparency, and Student, Parent and Community Rights Act.**

Such an Act must require that all charter schools be “actually operated” as public schools.⁴ Such an act must provide, define, and delineate the rights of students, parents and local citizens in charter schools. Charter schools, if they are to be allowed to hold themselves out as public schools, must be statutorily required to “actually act” as true public schools in every sense of the word “public.”

The fact of the matter is that all charter schools in Pennsylvania are not public entities under any legal test, and they are now being allowed to operate as private businesses for the profit of masked private interests at the expense of the “common good.” In my book I erroneously said that they are public schools, but have since changed my legal opinion – they have become little more than private businesses paid for with public tax dollars.

⁴ There are two legal tests which are used by federal forums to determine whether an entity is public or private. The “actual operations test” is sometimes used instead of the “Hawkins County test” which was set forth by the U.S. Supreme Court. For a full discussion of those legal tests see *Chicago Mathematics & Science Academy Charter School, Inc., Employer and Chicago Alliance Of Charter Teachers & Staff, IFT, AFT, AFL-CIO*, issued on December 14, 2012 by the NLRB. The Hawkins County test is that, for a school to be a public school, its board of directors must be elected by the general electorate or appointed by a public official who is elected by the general electorate. The actual operations test looks at whether the school is actually operated as a public school, and being, in reality, operated by the state through its administrative processes. None of our charter schools can pass either of those tests. See also *Caviness v. Horizon Community Learning Center*, the U.S. Court of Appeals for the Ninth Circuit, held that the charter school in question was a private non-profit corporation and was not a “state actor” under Section 1983 of the Civil Rights Act. Both of those cases are a “must read.”

Recent legal decisions hold that the answer to the question of whether charter schools are public or private, is simply, “To be a public school you have to actually be a public school.” That is known as the “actual operations test.”

To be public schools we must, by statute, require them to provide the same rights to students, parents, and the local citizens as our state and federal constitutions and statutes require for our nation’s regular public schools. If we do not, we are creating schools as businesses and turning citizens into customers instead of citizens, with few rights for our students.

Public education is a “public trust” and our students, their parents, and our communities are the “beneficiaries” of that trust. We do not want to be “customers” with no rights. Who, in good faith, would recommend that their children or our children should be forced into entities which give them less rights in schools?⁵

No longer can we allow charter schools to hide behind a “veil of being public entities” when they, behind closed doors, in fact, act as private businesses, and create a “*web of entities*” designed to filter public money into private pockets. In my book I first raised the issue of the lease scam. Today, that is only the tip of the iceberg. All charter schools must be required to put the charter school itself on the deed if they purchase a school, a building or build a new school. If that charter school closes, by law, that building should be required to be turned over to the local school district.

Another flaw of the Charter School Law is that it does not require the board of trustees to provide a detailed budget containing the names and entities of all recipients of charter school monies. Such detailed budget should by law, be required to be sent to

⁵ If charter schools are allowed to be private entities paid for by the taxpayers, all stakeholders especially students, have less rights in schools because their boards of trustees and administrators are no longer “state actors.” They lose their first Amendment rights and their due process rights. See *Caviness* cited above.

every parent of a child enrolled in the school. The budget should also be required to be posted on the school's website, and be required to be reported to the local school board. The more eyes on the cookie jar the better.

The budgets, and the charters of charter schools, along with every charter agreement, should by law, be librated where the public has free access to read every schools' budget and the charter agreements. So should yearly audits be made public to its fullest meaning.

Before we finally determine what should be included in such an Act as I propose, we have a collective duty to our children to do our homework. In that vein, I ask everyone to read the book, *Reign of Error – the Hoax of the Privatization Movement and the Danger to Our Public Schools*. Diane Ravitch is the leading authority and the most respected educational historian in America. You will be well schooled on all of the issues and research at play in “all of this.”

I also want you to know that the vast majority of stakeholders who I speak to are absolutely against Senate Bill 1085. It is a “blatant attempt” to circumvent the mandatory processes of democracy and bypass local citizens and local school boards in what are supposed to be public decision-making processes.⁶ Local school boards must be in control of those processes to adequately balance the interests of citizens and taxpayers. We can not have a system whereby local citizens are required to “foot the bill” and have no say in the governance of what are supposed to be its public schools.

A major issue in Philadelphia is that many charter schools act in opposition to the SRC's efforts to limit their enrollment so the SRC can properly regulate and efficiently

⁶ A major issue in Philadelphia is Act 46 itself. Many Philadelphians believe, and it can be well argued, that ACT 46 is unconstitutional on its face because it takes rights way form Philadelphia's citizens in violation of the equal protection clause and is directed against minority populations

manage student enrollment processes in its responsibility to “balance the equities” in relation to its limited funds. Any new statute must, in the interests of the common good, expressly give the SRC and local school boards the express legal authority to control charter school enrollment and their growth. The local school boards also must be given the legal authority and responsibility to eliminate the “barriers to entry” that just about every charter school creates. That is a festering legal issue dealing with equity issues and the rights of special education students.

The circumvention of the public processes of local school boards is an affront to Democracy which serves no public purpose. The public right to participate in the governance processes of what are our public schools is a due process right guaranteed by the Due Process Clause of the 14th Amendment.

Beware of front organizations who hold themselves out as philanthropic when their hidden interests are really to profitize and privatize our schools. They are profiteers hiding inside and behind their “Trojan horses” with the intent to turn our schools into “markets for profit.” We do not want the Walmartization of our schools.⁷

Please view this outstanding video entitled, Our Schools Are Not For Sale: <http://vimeo.com/75244147>. It was produced by APPS, along with the Media Mobilizing Project.

⁷ Again, the Philadelphia School Partnership is a prime example of an organization which was recently formulated and acts in total secrecy to drive the policy of the school district to close public schools and turn them over to private entities. They use their money provided by private investors to circumvent the mandatory process of the *Sunshine Act*. They are a registered lobbying group, whose CEO, Mark Gleason, sits on the Gates Compact Committee and acts in concert with Mastery and KIPP charter school networks to drive the privatization of Philadelphia’s schools. Their self-dealing, which is done behind closed doors, is a festering legal issue crying out to be litigated in the public interest and the ethics of its close relationship and undue influence on what happens to Philadelphia’s schools is constantly raised by advocates.

The “civil rights issue of our times” is not merely education itself as the privatizers refrain in their attempt to deceive the public. It is the dismantling of true public education in our cities and the stripping of the rights of minority and working class citizens to “participate meaningfully in the governance of their supposedly public schools.”

The right of the public and all of our stakeholders to participate meaningfully in and have a “true voice” in the governance of our public schools is a right which is not only statutorily required, but is a “constitutional guarantee.”

A major issue in Philadelphia is Act 46 itself. Many Philadelphians believe, and so do I believe, that Act 46 is unconstitutional on its face because it takes rights away from Philadelphia’s citizens in violation of the equal protection clause and is directed against minority populations in a discriminatory manner. Freedom of contract is a constitutionally protected right which is essential to the American way of life.

Local control is essential to well functioning schools which meet the needs of our students and citizens of our community. Since the inception of Act 46 our collective educational outcomes have not improved and our budget has doubled. How is that thorough and efficient? We are not a colony of Harrisburg and an army of corporate raiders. We are Philadelphia, the birthplace of American Democracy. Are we also going to be the death place of our Democracy?

We the People call for an elected school board, or at the very least, a mix of elected and appointed members of a local school board.

Democracy is the *sine qua non* for Greatness in our public schools.

Specific Provisions to be Included in a Charter School Accountability, Transparency, and Student, Parent and Community Rights Act

It is my well studied belief that these provisions should be included in a new charter school Act:

(1) A **Notice of Rights** provision whereby charter schools are required to send to the parents of every student enrolled in the charter school, a formal notification of their rights in charter schools. Such notice shall include their right to attend meetings of the board of trustees, and their right to speak to the board of trustees. Such notice should also notify parents of their rights to participate in the educational decision-making for their children, and the right to participate in the governance and decision-making processes of their charter school.

(2) A section entitled **Rights of Students, Parents and Local Citizens** delineating their rights and entitlements of charter school students, parents and the local community. Such rights should explicitly state that their rights include all of the rights granted to public school students by the constitutions and statutes of both the federal government and the Commonwealth of Pennsylvania.

(3) A provision explicitly stating the **Rights of Local School Boards** to transparently govern and regulate all charter schools within their School District, including the right to evaluate those schools and close them in a simple non burdensome manner which meets simplified due process requirements. Such right also must include the right to regulate the growth of charter schools, charter school enrollment, and charter school enrollment practices to prevent “barriers to entry.”

(4) A **Charter School Transparency** section which requires that all charter schools publish their charters and charter school agreements made with them by school boards be posted on the website for each charter school. Those documents must also be housed and librated both in the charter school itself with open access to parents of the charter school, and also housed and librated by the local school board where all citizens can openly research charter schools agreements.

Such required transparency reports should include salaries, including CEO salaries; disclosure of teacher and student turnover; discipline records (How many students are being suspended, how many returned to public school for discipline reasons, etc.) The bottom line is that everything that the public schools are required to be transparent about, the charter schools should be too.

(5) A **Transparency and Fiscal Responsibility** section which requires that all charter schools to publish a detailed budget which documents each year where every dollar is spent and who receives such money in exchange for services rendered. That document must be legally required to be sent to every parent whose child is enrolled in

the charter school, and that budget must be posted on the charter school’s website and publicly provided to the local school board.

(6) A **Right to Know** section which clearly states the rights of charter school parents, the local school boards and the citizenry to know and be openly apprised of everything and anything of interest to those stakeholders.

(7) A **Penalties and Right to Due Process** section which delineates the due process rights of students, parents, local school boards, and teachers, along with consequences to charter school operators for their failure to act in accordance with the rights of stakeholders as defined in the new ACT, federal and state statutes, and both our state and federal constitutions.

Conclusion

With the creation of Such an Act as recommended herein, or with the revision of the Charter School law to include such provisions and remedy its present flaws, we can “set the conditions” by which charter schools do actually operate efficiently, transparently, and in the ‘best interests of their students, parents and their local community. That is our collective ethical duty and our collective legal duty.

Democracy, in its entirety is essential to the well functioning of all public schools. Democracy is the *sine qua non* for effective school governance and Greatness in our public schools.

Respectfully submitted,

/S/ *Rich Migliore*