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***Democracy in Education***

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May 4, 2017

Representative Mike Turzai  
Speaker of the House  
Room 139 Main Capitol Building  
P.O. Box 202028  
Harrisburg, PA 17120-2028

125 Hillview Lane  
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Pittsburg, PA 15237

Re: Response to Your Letter to SRC Chairwoman Joyce S. Wilkerson  
Dated May 1, 2017

Dear Mr. Turzai:

I write today in response to your letter which you have sent to School Reform Commission Chairwoman Joyce S. Wilkerson and the SRC members. Your letter raises several issues of public importance and public concern.

I address those issues herein. But first may I introduce myself.

I am a retired teacher and administrator who has dedicated over 40 years of my life to the School District of Philadelphia, our schoolchildren, and public education. Since my retirement, I have worked as an attorney and advocate representing children, parents and teachers throughout southeastern Pennsylvania in both public schools and charter schools.

I regularly advocate before the SRC for the best practices in school governance, leadership and pedagogy. I have been doing so since well before my retirement in 2009. There is no education issue before us today which I have not spoken about and written about.

I am also a member of the Alliance for Philadelphia Public Schools (APPS), a group of active and retired teachers, parents and community members of Philadelphia who regularly advocate before the SRC for democratic practices and transparency in the governance and leadership of our schools. The renewal or nonrenewal of charter schools is a major issue of public concern. So are the issues which I address today.

I also participate in many of the Pennsylvania School Boards Association's meetings. So I am well aware of the issues of charter schools statewide.

Ever since the beginning of the charter school movement and the state takeover of Philadelphia's public schools, I have been studying, researching and participating in the evolution of charter schools and other forms of school governance. In 1993, before our Charter School Law was enacted, I started the first "charter" in Philadelphia and Pennsylvania, the Law Charter at University City H.S. In those days a charter school was a school-within-a-school which operated separately and independently from the main school.

In 2007, I published a book entitled *Whose School Is It? the Democratic Imperative for Our Schools*, a scholarly work citing both the legal decisions and academic research pertaining to the best practices in school governance and leadership. The CSL and related case law were discussed in depth. Democracy is the *sine qua non* for greatness in our public schools.

Moreover, Democracy is the single-most factor which makes schools public schools at all. When Democracy is taken out of the governance of our public schools – they cease to be public schools. As you should know, being a lawyer yourself, from the many decisions of the NLRB, federal courts of appeals, and other state Supreme Courts – charter schools are not public entities. They are private business corporations.

I am sure you know that under the Charter School Law the relationship of local school boards and the Commonwealth to charter schools is "regulatory." The School Reform Commission is the school board for Philadelphia. As such the SRC has an "affirmative legal duty" to regulate the charter schools in Philadelphia.

That is exactly what the SRC members are doing is engaging in their public responsibility to the people of Philadelphia to regulate Philadelphia's charter schools. There has been much public outcry about the lack of oversight of the charter schools by the SRC.

In response to that outcry, the SRC and Dr. Hite have fortified our Charter Schools Office which is led by DawnLynne Kacer. DawnLynne is one of the most astute and knowledgeable people in Pennsylvania about how the CSL works.

The recommendations for conditions are not only prudent but necessary for the well functioning of those charter schools. Negotiated enrollment caps and the conditions for renewal are legal and appropriate to "regulate" those charter schools in the best interests of all of Philadelphia's schoolchildren and our school community.

Moreover, without those conditions, it would be the affirmative responsibility of the SRC to close those schools. They have some of the worst performance indicators of any of our schools. The flaws in their financial matters, governance issues, and services to children, etc. would be more than enough grounds to close those schools.

What the SRC and the Charter Schools Office are doing is "neither overreach nor inappropriate." In fact what Philadelphians want is more oversight of charter schools and

a return to local control. Philadelphians voted for a return to local control in an open referendum through our electoral process. What is most necessary is a return to Democracy in Philadelphia.

What is lost to our legislature is the fact that in the birthplace of American Democracy, we have the least democratically governed school district in America. Why is that?

As you know, Auditor General DePasquale has uncovered many illegal and unethical practices of charter schools. He has said, and I have to agree that, “We have the worst charter school law in the nation.”

It allows circular leases, circular management arrangements, and many webs of businesses and profit taking schemes which divert public money into very private pockets. Commingling of boards of trustees members between charter schools and the entities to which they do business with is a serious legal issue and a serious matter of public concern and importance.

We do have many fine charter schools who do operate consistent with the Charter School Law and the legislative intent of the CSL. As you know, the original intent of charter schools was to enable teachers, parents, and the community to be in control of the education program at their schools. The purpose of charter schools was to “enhance our public school system” not supplant it.

However, that is not what is happening in many of our charter schools. And contrary to what you said in your letter to the SRC, many of our charter schools are not providing a quality education for our children.

Additionally, let me be clear, very few of our charter schools have been “established by” teachers, parents, or community groups. The vast majority of our charter schools have been founded by corporate types who seek to profit from our schools at taxpayer expense.

Moreover, as you know, there has been much corruption found in charter schools. Corruption which would have gone undiscovered without adequate oversight.

Those of us who believe in Democracy and that “our public schools” should be fully governed by locally elected school boards, also believe that our local school boards should not be circumvented or short circuited in any way. Without adherence to the “due process” of public decision-making – we cease to have public schools.

We have a *Sunshine Act* in Pennsylvania. The *Sunshine Act* protects “the public’s” right to “notice and opportunity to comment meaningfully” on all proposed actions of the SRC and other school boards in Pennsylvania. The *Sunshine Act* codifies constitutional principles of public governance.

Our right to “notice and opportunity to comment” pertains to any action of the SRC pertaining to charter schools. It is an inalienable right of the citizens of Philadelphia and Pennsylvania.

May I just restate for you here -- *Democracy is the purification process for the ills that plague our schools – the Constitution cannot be allowed to stop at the schoolhouse door.*

Further, your House Bill 97 does not reform those unethical practices of many charter schools, but it will exacerbate those unethical practices. It weakens the “regulatory authority” of locally elected school boards or duly appointed school boards such as the SRC. That is not “in the best interests” of the citizens of Pennsylvania or any schoolchild.

Moreover, we have Act 46 imposed upon Philadelphia and its citizens, which is unequivocally -- the worst education law ever. A law which has done nothing but create turmoil for Philadelphia’s schoolchildren and caused millions of dollars to be wasted on legal fees. Act 46 is a law which effectively takes away the right of all Philadelphians to “participate meaningfully in the governance of our public schools” through the processes of Democracy.

Respectfully, in your letter to the SRC you make several assertions which are a bit inaccurate, and others which I find to be offensive. Perhaps you are being misinformed by whoever it is who came to you for assistance. May I point to some points of public concern.

(1) The most sought after schools in Philadelphia are our public schools, not charter schools. A very large percentage of students who are in charter schools in Philadelphia were “forced into charter schools” and not as a matter of choice. Many students have no public schools in their area.

(2) There are no charter schools who have higher test scores than any other similarly situated schools with similar demographics and poverty levels in Philadelphia or any part of our state. The charter schools in question have some of the worst test scores in Philadelphia and the state.

The conditions which the Charter Schools Office and the SRC propose are more than reasonable in light of the poor academic performance of those schools and the other issues which the CSO raises.

(3) Neither the SRC, nor the CSO, overreaches when asking for such conditions. The SRC members are the last people in Philadelphia who can be accused of intending “to ensure the charter schools cannot continue or at the very least purposefully make it difficult for them to operate.” In fact, the opposite is true – the SRC bends over backwards to accommodate the charter operators. In fact, some SRC members are often

accused of “representing private interests over public interests” in their support of certain politically connected charter companies.

(4) I find it to be a bit of “dramatic irony” when you say to the SRC: “It is time for the District and the School Reform Commission (SRC) to focus on the ‘kids’ and not their ‘turf.’ Stop the games.” Wow. The “games” that are being played are the “political games” being played in Harrisburg by our state legislators. They are the games which need to stop.

You and our General Assembly are the ones who are “imposing more charter seats” upon Philadelphia. Our students and their parents are not asking for more charter schools. It is only the charter operators who are asking for more charter seats. They do so for self interest not the public interest. The real issue in Philadelphia is that some charter operators, like Mastery who you have represented in the past, seek to undermine public schools so that they can “take them over.”

The real issue in Philadelphia is that some of our public schools are being converted into charter schools without any “due process rights for the students, their parents or the local community.” I find it quite problematic that when a charter school is proposed to be closed, that “the operators” have the right to appeal and have numerous hearings.

While on the other hand, for the real public schools, their students, their parents, their community members and their teachers – the CSL provides no right to appeal to challenge the conversion of public schools to charter schools. Being a former prosecutor, you should be very sensitive to the issue of “due process” rights.

Why is it that only the “charter operators” have such “due process rights” when their schools are closed? But the public school stakeholders, the students, parents, teachers, principals and community members of real public schools, have no such “due process rights” to appeal the decisions to turnover their public school to charter operators or to close their public schools.

What happened to our public rights?

(5) That brings us to the issue of the amount of money that we waste on “lawyers and bureaucrats” because of both the CSL as it now exists and Act 46, which should be repealed. The taxpayers, mind you, pay for both sides of that litigation. I find it also a bit ironic that you would say, “The constant fighting is costing the city schools valuable resources which could be invested in the schools instead of lawyers and bureaucrats.” I could not agree with you more!!!

But exactly who created the present system which creates the necessity of protracted litigation? Not the SRC. Not the people of Philadelphia. The politicians in Harrisburg created the present untenable system.

The School District of Philadelphia never wasted millions and millions of dollars on needless litigation like it does now. That phenomenon only occurred after enactment of the CSL and Act 46. Why so? And even more importantly, What can you and I do to change that reality?

(6) In your letter, you ask, “If the District succeeds in shutting down these schools, what is the District’s plan to educate sixty thousand plus students that would be returning to the traditional public schools?” That is a bit of an exaggeration. It would not be that many students if the charters for these schools were not renewed.

But that question is easy – The District would do the exact same thing as what is done in all of Pennsylvania’s public schools. A charter revocation only means that the SRC becomes the school’s board and Dr. Hite becomes its superintendent. All qualified teachers and principals at each charter school may be retained and hired by the District.

You did not seem concerned about the stress of the students, parents and teachers of our public schools when the SRC closed their public schools or turned their schools over to charter management companies. They did not ask to be taken over. They didn’t ask to be “charterized.” That was imposed upon them. Those students protested the loss of their teachers. Those students implored the SRC not to close their schools. Why not any concern then?

The fact of the matter Mr. Turzai is that because of the policies of the legislature, the flaws in the CSL and Act 46, the children of Philadelphia, their parents and our school communities have been subjected to constant turmoil. They neither asked for that, nor do they deserve that.

#### **Final Points of Public Concern:**

And that brings us to your second to last paragraph in your letter. The one that many of us find quite offensive. The one where you say, “As the state budget talks begin, it is tough to justify increases in expenditures to the School District of Philadelphia if the additional money is going to pay for lawyers to draft contracts which go beyond the scope of the law.” That is a “not so veiled of a threat” to all schoolchildren of Philadelphia that if the SRC does not now do as you say that you will see that our schools are not funded fairly and equally.

That is an affront to all of us in Pennsylvania, not just Philadelphians. Do you not know of the fair funding lawsuit in Pennsylvania? The one where the attorney for your legislature argued to the Pennsylvania Supreme Court that, “The legislature intended such educational funding disparity between school districts when it enacted the Education Clause in the Pennsylvania Constitution.” I was present in the courtroom when the General Assembly’s attorney said that during oral argument.

Our state Constitution requires a thorough and efficient system of “public education.” It does not require, nor does it contemplate, a system of privately owned and operated charter schools paid for at public expense.

Moral responsibility requires equality in education. It also requires Democracy in Public Education.

If you were so concerned about the Philadelphia’s schoolchildren and the stress which they undergo every day, you would be more concerned that our schoolchildren have gone without school nurses, school counselors, certified reading specialists, school libraries, certified school librarians, mental health services, ELL services, adequate special education services, etc., etc., etc.

We have raised the issue time and time again that the inordinate amount of money we pay to charter schools and the resulting stranded costs (litigation being one of many) drains much needed resources from our public schools. All of our schools should be fairly and properly funded.

How and when can we do that?

If you were so concerned about our schoolchildren you would do something to remedy the fact that many of our teachers have to pay for and provide basic supplies necessary to teach. You would be more concerned that many of our finest and most highly qualified teachers are leaving our district because of poor working conditions, constant turmoil, lack of a fair contract which enables them to support their families, and a stress factor in our schools which worsens year to year.

That includes many of our teachers in charter schools.

Do you not know that we have a teacher retention crisis in our District and that thousands of our students do without qualified teachers?

And yes Mr. Turzai many of those children who do without qualified teachers attend charter schools. Do you have any idea if our charter schools are providing those crucial services to children which I mention above? No you do not – do you?

These are all issues which are “in controversy” in Philadelphia’s schools. They are all issues which require “public processes” to resolve.

They are all issues which the SRC and the District’s CSO have the moral and legal responsibility to resolve. They have the responsibility to do it in a very public and very transparent manner.

That responsibility cannot and should not be compromised by you or our General Assembly.

Nor should we allow the circumvention of our local school boards. 98% of which are elected by our citizens.

Our local school boards are the guardians of Democracy in public education. They are the guardians of transparency and propriety, too.

The “overreach” here is not with the SRC. The overreach comes from your office. You are not an elected representative of the citizens of Philadelphia. You do not even know what is going on in our District or our charter schools.

Finally, like many others, I take offense that you are using your public office to actively represent the interests of certain charter operators over the common good of all Philadelphians and over the common good of true public education in Pennsylvania.

The issues of the privatization of the American schoolhouse are not going away any time soon. It is our “public schools” which are under attack in our cities.

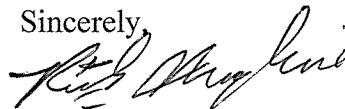
Let’s not pretend that we are naïve to the sources behind that constant attack on our public schools. Privatization means profitization. Public education is not a business.

Public education is a “public trust.”

With that said, I still say to you -- I look forward to working with you, our General Assembly, and our Governor to reform our CSL and our school governance laws to enable all local school boards to fulfill the promise of Democracy in Pennsylvania.

That is for which I stand.

Sincerely,



Rich Migliore

Cc: SRC Members  
Dr. William J. Hite, Jr., Superintendent  
Governor Tom Wolf  
Philadelphia’s Mayor Kenney  
Members of the PA House of Representatives  
Members of the PA Senate  
*The Philadelphia Public School Notebook*  
*The Philadelphia Inquirer and Daily News*