

May 13, 2019

Dear Honorable Members of the House Education Committee,

Over the past four days you have received a multitude of emails and letters from the traditional education establishment groups – PA School Boards Association (PSBA), PA School Business Officials (PASBO) and PA State Education Association (PSEA) – to express their opposition to the two of the four charter reform bills being considered this morning by the House Education Committee. The Pennsylvania Coalition of Public Charter Schools (PCPCS) appreciates that each of these organizations have expressed their support for HB 355 (Rep. Reese) and HB 358 (Rep. Marshall), and we hope that they will join us in working with the sponsors to get these bills to Governor Wolf's desk.

Unfortunately, all three organizations are opposing HB 356 (Dowling) and HB 357 (Topper), and we feel it necessary to respond to/correct some of the statements made by these groups. The following are excerpts from the letters you received from PSBA, PASBO and PSEA, and our responses to these statements are highlighted in yellow.

General opposition based on the basis of funding

PSBA – *The package of charter school bills makes strides toward achieving some of those goals. However, the package fails to address a critical issue – funding. Specifically, the overpayment to charter schools for special education students, calculation of cyber charter tuition rates, the tuition reconciliation process, and other important funding issues. PSBA believes that any meaningful charter reform must include measures which address charter school funding. Otherwise, it will continue to be a significant issue until addressed by the General Assembly.*

PASBO – *PASBO opposes the other two bills in this package [HB 356 and HB 357], as both have the capacity to exacerbate the financial impact of charter school costs on school districts. While we have been neutral on some charter school reform proposals that have included some of the concepts in these bills in the past, without the corresponding meaningful funding relief for school districts that accompanied those components in prior sessions, we must oppose these bills.*

PSEA – *While appearing innocuous, this language would have a significant impact on the authorizing school district's, and neighboring school districts', ability to plan for charter school tuition costs... This language would allow charter schools to subvert authorizer approval and could cause significant upheaval in the finances of school districts throughout Pennsylvania.*

PCPCS recognizes that funding is an issue for each of these organizations and we agree that funding equity needs to be addressed – currently, charters receive 25 percent less funding per student compared to what districts receive. PCPCS would support a fair funding commission to study the issues affecting school districts and charter schools but we believe this should be a separate conversation to avoid adding any extra controversy to these commonsense bills. We

would be happy to sit down with the House and Senate Education Committee members/staff and PSBA officials to collaborate on a bill to establish this type of commission.

House Bill 356, sponsored by Representative Dowling – Opposed by PSBA, PASBO and PSEA

PSBA – PSBA's opposition of this bill is based on two issues:

1. *Any decision to sell or lease a school building should originate with the school board and while this may have been the intent of the bill, it is unclear as drafted. We look forward to working with the General Assembly to ensure this is clearly reflected in the bill's language.*
PCPCS is not proposing that the selling or leasing of school district property should be usurped from the local school board. HB356 would require that a school district, seeking to sell or lease unwanted buildings, allow their local charter school to purchase the facility prior to putting it on the market for the general public. School district buildings (which rightfully belongs to the taxpayers of that district) are uniquely designed to serve students and they deserve environments that are conducive to their educational needs. Why wouldn't a school district want to sell their unwanted property to another entity with the same mission to educate PA students?
2. *Allowing charter schools to expand to multiple locations without any oversight or approval from authorizing school district(s) raises several noteworthy concerns:*
 - a. *Resulting enrollment expansions that occur would have a substantial budgetary impact on sending school districts.*
The only reason that a charter school would need to expand is because there is demand from parents who are not satisfied with the education their children are receiving from their local school district. Instead of fighting against a family's right to choose the best educational option for their children, school districts should be looking internally at what they can do to provide a better education to their students and the demand for charter schools would decrease. Furthermore, it is well established law, both statutory and precedential that a school district cannot make decisions about a charter school (approval, renewal or amendment) based on the financial impact on the district. The reasons for this are intuitive – school districts carry an inherent conflict of interest in decision making if the financial impact on their own district is permitted in their consideration which only serves to stifle choice.
 - b. *Further, this expansion would occur regardless of the quality of the educational program provided by the charter school. Granting underperforming charter schools unfettered expansion would be a disservice to students and taxpayers.*
Again, if a charter school is willing to spend the money and resources to expand, it is because there is significant demand from families for additional seats in their school. The [Philadelphia Inquirer reported](#) in February that "nearly 30,000" students applied for admission to a charter school for the 2019-20 school year. At MaST Community Charter School in Philadelphia they received more than 2,100 applications for 14 seats in their 9th grade class. The quality of the educational program argument also fails since districts are permitted an unfettered ability to build new buildings, expand current buildings and lease supplemental space, and many continue to fail their current students. A school building provides a safe haven and sanctuary to students and charter schools should too be able to provide such a right to students.
 - c. *An essential function of the authorizing school district(s) during the application process is to evaluate whether the charter school can adequately finance its*

facilities, verify that the proposed charter school facility is suitable for the proposed program, complies with building codes and accessibility requirements, contains adequate space anticipated enrollment, and that the charter school is able to adequately staff and maintain its facilities. None of these steps would occur under the bill.

It is also well-settled law that a school district cannot substitute its own judgment over the jurisdiction of those entities responsible for the assessment of building code compliance and accessibility requirements, space requirements – as those functions are the purview of local municipal entities and not school districts. For example, in Philadelphia it is the Department of Licenses and Inspections that is responsible for such considerations. Additionally, charter schools – while exempt from certain laws under the Public School Code are NOT exempt from laws related to building codes in each municipality. Finally, while districts have this function in the application process, once the charter is awarded, a charter school's board of trustees, much like the board of school directors in any school district during expansion of their own facilities and programs, has the exclusive authority over whether the charter school can adequately finance any expansion, that the expansion is appropriate for its educational program and for the ultimate decisions in staffing.

- d. *Allowing a charter school to expand to multiple locations will have direct impacts on sending school district transportation programs. Those districts would be required to add new bus routes, revise existing routes, or reassign students to other busses/routes in order to transport students to the new charter school location.*

School districts must readjust their busing routes and schedules every year as they welcome a new class of students, and not just to its own students as districts are responsible for the transportation of private school student as well. To say that it would be overly burdensome for the district to factor in a new charter school building into their transportation reconfiguration is a red herring argument and only serves to highlight the lack of flexibility which has caused charter schools to become such a popular option in Pennsylvania. Additionally, in both Pittsburgh and Philadelphia, the district provides only transpasses/tokens for student beginning as early as third grade.

PSEA – *PSEA does not object to the ability of charter school entities to change facilities in the case of an emergency. But moving or adding new facilities outside of the authorizer process without any recognition of what such a move could mean to school district budgeting or the larger community of schools within a school district, including other charter schools, is not prudent policy.*

As stated previously, districts have the function in the application process of approving the location of a charter school but once the charter is awarded, a charter school's board of trustees, much like the board of school directors in any school district during expansion of their own facilities and programs, has the exclusive authority over whether the charter school can adequately finance any expansion, that the expansion is appropriate for its educational program and for the ultimate decisions in staffing.

House Bill 357, sponsored by Representative Topper – Opposed by PSBA, PASBO and PSEA

PSBA – *PSBA's opposition of this bill is based on four primary issues:*

1. *The bill would require the creation of a standard charter school application for new and renewal charter school applications. The standard form would include information on 22 items and an authorizing school district would be prohibited from developing its own application or requesting any information that is not included in the standard application. Once issued, the standard application could only be changed by an act of the General Assembly.*

a. *The legislative process may not permit timely changes to the application should they be necessary. Granting the State Board of Education the authority to make changes to the application would be a fitting compromise to ensure changes are timely and thoroughly vetted.*

The timing issue is the problem, with authorizers having the ability to change forms, processes and criteria with little notification/notice. Stability and consistency in the process is what is being sought in the legislation. Looking to maintain the ability to have quick changes makes no sense. Being before the State Board of Education would at least give charter schools the ability to make public comment on any proposed changes.

b. *The 22 items to be included in the application lack a requirement to submit data by which charter school performance in governance, finances and student achievement could be evaluated. The lack of such a requirement will allow poor performers to continue operating and crowding out higher performing charter operators.*

There is established precedent that school districts cannot develop their own accountability frameworks for a very important reason: The Commonwealth of Pennsylvania already has one. Additionally, there is an abundance of information that districts can review – and review at will, including: academic progress information, including PSSA/Keystone results, Future Ready Index data, Pennsylvania Information Management System data; attendance and enrollment data; Safe School data; board minutes; bylaws; organizational charts; annual audits by CPAs; 1099 returns; SOFI forms; publicly accepted contracts; etc.

2. *School districts would only be given 90 days to evaluate and act upon an application for charter renewal, which is an insufficient amount of time in most cases because:*

a. *Authorizers will need time to obtain necessary information not already provided, arrange and perform site visits, review records and information (such as audits), and then evaluate the entirety of the charter school's operations for the preceding years. Giving school districts 120 days for renewal applications would coincide with the timelines for initial charter application review and for the proposed amendment process.*

Currently, there are well-spelled out timelines for charter applications in the Charter School Law that are not being followed. School districts must respond to charter school applications, renewals and amendments. Delays in decisions/process result in an inability of the charter school and the families being served to plan. In addition, these delays are costing charter schools additional money and resources, and have an adverse impact especially on smaller schools that are usually more community-based. If charter schools have to abide by strict deadlines, school districts should as well. If PSBA feels that 90 days is too short of a time period, we would be happy to discuss this timeline. However, this timeline was proposed in HB 97 which was considered last session and during that time PSBA did not attempt to contact us collaborate on a timeline that would work for both charters and districts.

3. *The charter amendment process in the bill is problematic for several reasons:*

- a. *The Charter Appeal Board (CAB) would now have jurisdiction over charter amendments. Granting the CAB jurisdiction over every proposed change to a charter agreement would add another layer of bureaucracy, undermine the authority of charter authorizers, and lead to costly litigation. Significant changes to a written charter may still be sought through the charter renewal process, which is appealable to the CAB. It is PSBA's belief that charter amendments should not be subject to CAB review.*

HB 357 would still require that a charter school apply for an amendment to their authorizing school district. CAB would only be involved if the authorizing district fails to act in the timeline proposed by this bill, thus the added bureaucracy would only occur if a local school district fails to do the job their constituents elected them perform.

- b. *The bill does not limit what areas can be addressed through an amendment or when an amendment may be sought. That would seem to indicate that any aspect of the charter could be changed through an amendment at any time. Additionally, this allows charter schools to seek significant changes to their charter through the amendment process immediately after being granted a charter which would defeat the purpose of the initial application and waste school district time and resources to evaluate such requests. It is PSBA's belief that the amendment process should have common sense parameters regarding content and timing.*

The creation of charter schools in PA was an effort of the General Assembly to allow for an innovative alternative to traditional district schools and they exempted charters from certain mandates to allow for this innovation to occur. If, in the process of serving their students, a charter school finds a better and more efficient way to deliver an education they should not be hamstrung by an arbitrary set of content or timing constraints. Perhaps, if school districts were more flexible and innovative in their educational models their students would be happy to stay in their schools and not flee to charter or private schools.

- c. *Charter schools would be able to immediately and unilaterally make temporary "emergency" changes to their charter in the event the charter school is unable "to acquire services or products outlined in a charter or facility damage". Authorizing school districts should be flexible in working with charter schools that suffer facility damage that prevents the charter school from operating. The inability to acquire services or products, on the other hand, does not rise to the same level of emergency as facility damage and without clarification could be an area of conflict between charter schools and authorizing school districts. Denials of temporary amendments could lead to disruptions to not only charter school operations, but also to student learning. As such, emergencies for services and products should be removed from the bill.*

If a service provider goes out of business or chooses to no longer transact with a charter school, the charter school needs to have the flexibility to be able to replace them in order to continue to service their students to the best of their ability. It should be patently obvious to the PSBA that the only need to amend charter on an emergency basis would be to address the very concern that it has raised: disruption to student learning and educational programming. Charter Agreements do not contain detailed recitations of what goods and services a charter school can acquire, which as pointed out previously, belongs within the exclusive function of the charter school's board of trustees. However, should a charter school require to engage an entity, for example, to assist in the management of operations or purchase services

to ensure timely delivery of curriculum, the charter school does not have the luxury of waiting for authorizing district personnel to engage in delay tactics which most decidedly does impact student learning.

4. *Charter schools without enrollment limits would be able to change the charter school's location without going through the charter amendment process. The charter school would only have to provide the school district with a notification of its intent to change location. This provision amounts to expansion without oversight and, as stated above regarding HB 356, any change in a charter school's location would trigger numerous concerns which are better suited for an amendment or renewal process. For these reasons, PSBA believes this provision be removed from the bill.*

It is unclear how a charter school changing their physical location is considered to be "expansion without oversight" by PSBA. There are a multitude of reasons why a charter school may need or want to move (rent hikes if they lease their facilities forcing them to find a more cost-effective location, damage to a facility rendering it unsafe for students or an opportunity to move into a building that is more conducive to student learning). As long as a charter school adheres to the laws governing school buildings (accessibility, safety, etc.), they should be afforded the ability to determine the best location for their students.

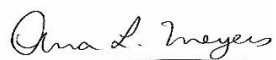
Furthermore, a district can look at a charter school's facility and estimate its capacity for students currently and in the future.

PSEA – *HB 357 would allow a charter school to appeal authorizer decisions on amendments to the Charter Appeal Board (CAB). PSEA does not object to the ability of charter school entities to seek amendments. We acknowledge that situations could occur during a charter entity's term that could necessitate amendatory action. However, the amendment process should not be used as an avenue to litigate issues previously determined by the authorizer. Rather, the amendment process should be used for issues that cannot wait until a charter's renewal process to resolve. Providing work-around maneuvers like the ability to appeal amendment decisions to the CAB would merely create new loopholes in what policymakers, stakeholders and interest groups already agree is a weak charter school law.*

PCPCS agrees that PA's Charter School Law needs updating and strengthening (which is why we are supportive of this package of charter reform bills) to avoid loopholes that can be abused by both charter authorizers and charter schools. That being said, allowing charter schools to appeal amendment decisions to CAB is consistent with the current provisions in the law that allow for appeals on charter approvals/denials and renewals. It is no secret that there are charter authorizers who deny any and all charter applications, renewals and amendments that they receive based on philosophical or political oppositions to school choice. For charter operators in these districts CAB is the only fair evaluation of their applications they can receive.

If is our hope that we have addressed any concerns about HBs 356 and 357 that may have arisen after reviewing the opposition letters from PSBA, PASBO and PSEA. If you have any questions, please feel free to contact me at (267)884-6335 or via email at a.meyers@pacharters.org. We hope that vote in favor of all four of the charter reform bills that come before the committee this morning.

Sincerely,



Ana Meyers

Executive Director