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## Oversight, Charter Schools, and a Thorough and Efficient System of Public Education

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**OVERSIGHT, CHARTER SCHOOLS, AND A THOROUGH AND EFFICIENT  
SYSTEM OF PUBLIC EDUCATION**

Susan L. DeJarnatt\*

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The School District of Philadelphia is trying to drastically overstep both the spirit and letter of existing charter school law in Pennsylvania. When will Philadelphia embrace that these students in charter schools, children living in the City of Philadelphia, the Commonwealth of Pennsylvania, want to attend these charter schools and are getting a quality education that is preparing them for the future. Charter schools are publicly funded schools established by teachers, parents, or community groups to offer a public school choice.

– Mike Turzai<sup>1</sup>

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1. Letter to the School Reform Commission (“SRC”) from State Rep. and Speaker of the House Mike Turzai, upset that the SRC was too thorough in its oversight of the eighty plus charter schools in Philadelphia

## I. INTRODUCTION

What does accountability mean in the context of public education? Charter school advocates often argue that charters are superior to traditional public schools because they are more accountable.<sup>2</sup> How are they accountable? And to whom? This Article vigorously investigates the meaning of “accountability” in the conversation about charter schools, particularly in the context of Philadelphia, where over one-third of the public school population is enrolled in charters and charter funding occupies approximately thirty percent of the Philadelphia School District budget.<sup>3</sup>

The meaning of accountability takes on heightened importance in the context of the assault on public education by those who would eliminate “government schools” entirely in favor of a totally market-based system of privatized education.<sup>4</sup> In this vision, promoted by current Secretary of

2. *E.g.*, David Osborne, *These Three Fast-Improving School Districts Have Lessons for Philly*, PHILA. INQUIRER (Sept. 6, 2017, 7:16 AM), <http://www2.philly.com/philly/opinion/commentary/philly-schools-charters-denver-washington-new-orleans-20170906.html>.

3. SCH. REFORM COMM’N, THE SCHOOL DISTRICT OF PHILADELPHIA, P.A. FY2017–18 CONSOLIDATED BUDGET 18–19 (2017) [hereinafter CONSOLIDATED BUDGET]; DAVID LAPP ET AL., RESEARCH FOR ACTION, THE FISCAL IMPACT OF CHARTER SCHOOL EXPANSION: CALCULATIONS IN SIX PENNSYLVANIA SCHOOL DISTRICTS 12 (2017) [hereinafter LAPP, FISCAL IMPACT].

4. As Joseph Bast said:  
[e]lementary and secondary schooling in the U.S. is the country’s last remaining socialist enterprise. . . .

The way to privatize schooling is to give parents tax-financed scholarships, or vouchers, with which to pay tuition at the K-12 schools of their choice, whether government or private. Government would continue to finance schooling, while private businesses and not-for-profit organizations would compete for tuition in a competitive education industry.

. . . .  
School Choice can help resolve the debate over national standards, which has created a deep rift between business groups and many people with conservative religious views. Voucher schools can administer their choice of pre-approved student examinations and be required to report the results to parents and their communities. Participation in the voucher program would not be contingent on the outcomes of such tests.

Pilot voucher programs for the urban poor will lead the way to statewide universal voucher plans. Soon, most government schools will be converted into private schools or simply close their doors. Eventually, middle- and upper-income families will no longer expect or need tax-financed assistance to pay for the education of their children, leading to further steps toward complete privatization. Vouchers could remain to help the truly needy.

Joseph Bast, *February 2002: The Year of School Vouchers*, HEARTLAND INST. (Feb. 1, 2002), <https://www.heartland.org/publications-resources/publications/february-2002-the-year-of->

Education Betsy DeVos, the government's role should be limited to providing funding to parents who would then choose to spend it wherever they wish.<sup>5</sup> The only accountability in this vision is that of parents who can choose, at least in theory, to switch from one school to another.<sup>6</sup> Under this scheme, schools would have no other obligation to account for their use of public funds.<sup>7</sup> This constitutes a complete abandonment of the community "public good" view of public education.<sup>8</sup> It would also eliminate any collective responsibility for all of the children in a community and for ending segregation on the basis of race, ethnicity, or disability.<sup>9</sup>

This push to a market-based system with no accountability other than market discipline contrasts with the test-based accountability structure currently imposed on traditional public schools. But the latter perversely supports the former.<sup>10</sup> The charter school playbook is as follows: first, subject the existing schools to harsh scrutiny through a narrow frame of high-stakes testing.<sup>11</sup> Second, create inescapable failure—which No Child Left Behind did in its original requirement that every student in every school achieve "proficiency."<sup>12</sup> Third, justify dramatic change by pointing to that failure. Voilà, turn to vouchers and an end to "government" schools, and

school-vouchers?source=policybot.

5. See generally Emma Brown, *Trump Picks Billionaire Betsy DeVos, School Voucher Advocate, as Education Secretary*, WASH. POST (Nov. 23, 2016), <https://www.washingtonpost.com/local/education/trump-picks-billionaire-betsy-devos-school-voucher-advocate-as-education-secretary/2016/11/23/c3d66b94-af96-11e6-840f-e3ebab6bcdd3story.html?utmterm=.cd163266e401>.

6. Privatization through vouchers has a long and disturbing history, grounded first in the segregationist backlash to *Brown v. Board of Education*, which then morphed into an economic argument against government "monopoly." NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT'S STEALTH PLAN FOR AMERICA* 66–68 (2017).

7. *Id.* at 66.

8. See generally David F. Labaree, *Public Goods, Private Goods: The American Struggle over Educational Goals*, 34 AM. EDUC. RES. J. 39, 51 (1997).

9. See Susan L. DeJarnatt, *The Philadelphia Story: The Rhetoric of School Reform*, 72 UMKC L. REV. 949, 994 (2004).

10. See MICHAEL W. APPLE, *EDUCATING THE "RIGHT" WAY: MARKETS, STANDARDS, GOD, AND INEQUALITY* 17–33, 59–60 (2001). See DeJarnatt, *supra* note 9, at 985–91, for an examination of how this effect played out in the context of the state takeover of Philadelphia schools in 2001.

11. For detailed critiques of over-reliance on high stakes tests, see JACK SCHNEIDER, *BEYOND TEST SCORES* 14–51 (2017); DIANE RAVITCH, *THE DEATH AND LIFE OF THE GREAT AMERICAN SCHOOL SYSTEM: HOW TESTING AND CHOICE ARE UNDERMINING EDUCATION* 96–111, 150–67 (2010).

12. 20 U.S.C. §§ 6311(b)(2) (amended 2015), 6316(b), *repealed* by Every Student Succeeds Act, Pub. L. No. 114-95, § 1000(1), 129 Stat. 1802 (2015).

concomitantly, accountability becomes irrelevant. Only the market is needed to determine which schools survive.

Public schools have been subjected to intense scrutiny in recent decades, with their students forced to endure stringent high-stakes testing<sup>13</sup> and their schools and teachers deemed worthy based solely or almost exclusively on those test scores. But that form of accountability is apparently irrelevant for the privatized market.<sup>14</sup> Charters live in a sort of limbo; they are privately run but publicly funded.<sup>15</sup> They are, as of now, subject to a testing regime, but many of their proponents are quite willing to give charters second—or third or more—chances, despite poor test scores because they represent “choice”—and that somehow entitles them to escape that particular form of accountability.<sup>16</sup> The contradictory role charters play in this debate is becoming more unsupportable. Are charters truly part of the public system or are they intended to be the wedge that destroys it? Are those who operate charter schools accountable for their use of public funds?

13. High-stakes tests are those that determine outcomes for students, schools, and teachers—like the NCLB requirements that all students achieve proficiency by 2014—and which have made teachers’ jobs and schools’ existences dependent on the test scores of their students. See SCHNEIDER, *supra* note 11, at 35–44, 52–62.

14. See, e.g., JOHN E. CHUBB & TERRY M. MOE, POLITICS, MARKETS, AND AMERICA’S SCHOOLS 217 (1990) (“[C]hoice is a panacea . . . It has the capacity *all by itself* to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways.”).

15. Emma Brown, *National Labor Relations Board Decides Charter Schools Are Private Corporations, Not Public Schools*, WASH. POST (Aug. 30, 2016), [https://www.washingtonpost.com/news/education/wp/2016/08/30/national-labor-relations-board-decides-charter-schools-are-private-corporations-not-public-schools/?utm\\_term=.a7555d3b0992](https://www.washingtonpost.com/news/education/wp/2016/08/30/national-labor-relations-board-decides-charter-schools-are-private-corporations-not-public-schools/?utm_term=.a7555d3b0992).

16. In Philadelphia, for example, the SRC declined to vote on the CSO’s 2016 recommendation of non-renewal for the charters for ASPIRA’s Olney High School and Stetson for nearly two years. Diane Payne, *Ears on the SRC*, ALL. FOR PHILA. PUB. SCH. (May 23, 2016), <https://appsphilly.net/ears-on-the-src-may-19-2016>; Martha Woodall & Kristen Graham, *SRC Votes to Shut a Troubled Philly Charter, Starts Process for 2 More*, PHILA. INQUIRER (Dec. 14, 2017, 9:08 PM), <http://www2.philly.com/philly/education/src-votes-to-shut-a-troubled-philly-charter-starts-process-for-2-more-20171214.html>. That refusal to vote effectively allowed continued operation of these schools for years beyond the end of the charter term. The SRC finally voted to accept the non-renewal recommendation for the ASPIRA school in December 2017, although the lengthy appeals process could keep the schools open for the foreseeable future. *Id.* The Charter School Law allows a one-year renewal where merited but has no provision for these kinds of extensions. See 24 PA. CONS. STAT. §§ 17-1720-A(b)(3), 17-1729-A (2008). Supporters of the schools argued that they should be allowed to stay open as charters based on choice, even if the schools had not met the obligations laid out in the charters. See *infra* Section II.b.

In recent years, the Pennsylvania legislature has required Philadelphia to accept applications for new charter schools<sup>17</sup> as the price of allowing the city to tax cigarette sales to increase funding for schools.<sup>18</sup> What does accountability mean for charter schools in Philadelphia? The Philadelphia School District's Charter Schools Office (CSO) has developed best practices for oversight that have increased the information available to the public about the education, finances, governance, and regulatory compliance of the charters it oversees.<sup>19</sup> It carefully and extensively evaluates applications for new charters and requests for renewal. But the reaction to this transparency effort has been hostility from those who appear to think that oversight equals attack rather than careful stewardship of public funds.<sup>20</sup> True accountability

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17. Martha Woodall, *City Schools to Accept New Charter Applications*, PHILA. INQUIRER (Oct. 1, 2014, 5:37 PM), [http://www.philly.com/philly/education/20141002\\_City\\_schools\\_looking\\_for\\_new\\_charters\\_courtesy\\_of\\_cigarette\\_tax.html](http://www.philly.com/philly/education/20141002_City_schools_looking_for_new_charters_courtesy_of_cigarette_tax.html). This requirement was imposed even though the same legislature had opposed increased funding for public education in Philadelphia and elsewhere in Pennsylvania, had accepted Governor Corbett's decision to eliminate the reimbursement for charter growth, and Philadelphia had added twenty charters through the Renaissance process of turning existing schools over to charter management. *Id.*; *Renaissance Schools*, SCH. DIST. OF PHILA.: CHARTER SCH. OFF., <https://www.philasd.org/charterschools/portal/renaissance> (last modified July 6, 2018).

18. State approval of the city's decision to tax cigarettes was contingent on charter expansion, both in the requirement that the SRC accept new charter applications and in allowing rejected applicants the right to appeal to the state Charter Appeal Board. Kevin McCorry, *Pa. House's 'Clean' Cigarette-Tax Bill Retains Controversial Charter Element*, WHYY (Sept. 16, 2014), <https://whyy.org/articles/pa-houses-clean-cigarette-tax-bill-retains-controversial-charter-element>. Under the Sterling Act, Philadelphia, as the only first-class city in the Commonwealth, cannot tax items that are taxed by the state; thus, the legislature had to approve of the city's cigarette tax. 53 PA. CONTS. STAT. § 15971 (1932). In 2015, the SRC had to consider 39 new applications and approved 5. Holly Otterbein, *SRC Approves 5 of 39 New Charter Applications*, PHILA. MAG. (Feb. 18, 2015, 8:51 PM), <https://www.phillymag.com/news/2015/02/18/src-approves-5-new-charter-schools-philadelphia-update>. Rep. Turzai who pressured the SRC to approve more and was upset by the outcome, questioning the careful review of the District's Charter School Office and the SRC's ultimate decisions on those applications. Kristen A. Graham, *Pressure Builds on the SRC to Approve New Charter Schools*, PHILA. INQUIRER (Feb. 17, 2015, 1:08 AM), [http://www.philly.com/philly/news/local/20150217\\_Pressure\\_builds\\_on\\_SRC\\_to\\_approve\\_new\\_charters.html](http://www.philly.com/philly/news/local/20150217_Pressure_builds_on_SRC_to_approve_new_charters.html); Solomon Leach, *SRC Blasted on Both Sides on Charter Vote*, PHILA. INQUIRER (Feb. 20, 2015, 3:01 AM), [http://www.philly.com/philly/hp/news\\_update/20150220\\_SRC\\_blasted\\_from\\_both\\_sides\\_on\\_charter\\_vote.html](http://www.philly.com/philly/hp/news_update/20150220_SRC_blasted_from_both_sides_on_charter_vote.html). In 2017, he directed his wrath at the CSO for its work on renewal applications for existing charters. Kristen A. Graham, *Despite Pleas, SRC Turns Down Renewal for Lab Charter School*, PHILA. INQUIRER (May 1, 2017, 1:26 PM), <http://www2.philly.com/philly/education/Ahead-of-controversial-charter-vote-Pa-House-Speaker-weighs-in.html> [hereinafter *SRC Turns Down Renewal*].

19. *See Evaluation*, SCH. DIST. PHILA.: CHARTER SCHOOLS OFF., <https://www.philasd.org/charterschools/evaluation> (last modified July 25, 2018) (describing the Authorizing Quality Initiative).

20. *See SRC Turns Down Renewal*, *supra* note 18.

should involve careful oversight and not blind approval of anything a charter school operator chooses to do with the public money entrusted to it.

Accountability is also essential if the Commonwealth is to fulfill what Professor Derek Black has called the “first-order” constitutional obligation of the states, which provides that “states cannot systematically advantage choice programs in relation to public education.”<sup>21</sup> Pennsylvania has a primary constitutional obligation to provide public education.<sup>22</sup> To the extent those in government decide to include charters as one means by which education is provided, they must ensure oversight of the funds provided for charters in order to avoid the use of public funds that are spent to the detriment—not the benefit—of Pennsylvanians. Professor Black emphasizes the need for a granular examination of the facts about the impact of a state’s use of choice.<sup>23</sup> This Article provides such a granular examination of the charter application process in Philadelphia. I provide extensive details on each application because, as I talk with different individuals about this issue, I realize again and again that few actually know what sorts of schools are proposed as charters. The devil is in the details, and the details matter.

Part II of this Article provides a short history of charters in Philadelphia and of the Pennsylvania Charter Law.<sup>24</sup> Part III provides a detailed analysis of the applications for new charters that the SRC received from 2016–2017, the CSO analysis of those applications and its reports and recommendations on renewals of existing charters, the SRC decisions on them, and the pushback by those who argue that the review was too careful.<sup>25</sup> Finally, I propose that oversight be expanded, not constrained, in order to provide real accountability for these expenditures of public funds, and to ensure that Pennsylvania meets its constitutional obligation to provide a thorough and efficient system of public schools in the Commonwealth.<sup>26</sup>

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21. Derek W. Black, *Preferencing Educational Choice: The Constitutional Limits*, 103 CORNELL L. REV. 1359, 1364 (2017).

22. PA. CONST. art. III, § 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”).

23. Professor Black emphasizes that the impact of privatization efforts, including charter expansion, must be viewed on a district level in order to accurately determine the effects of these reforms on the state’s constitutional obligations. Black, *supra* note 21, at 1364, 1425–26.

24. *See infra* Part II.

25. *See infra* Part III.

26. *See infra* Part IV.

## II. BACKGROUND

Philadelphia received its first four charter schools in 1997,<sup>27</sup> the year the Charter School Law was enacted.<sup>28</sup> As of the 2017–2018 school year, it had eighty-seven charters enrolling over 70,000 students.<sup>29</sup> Sixty-five were schools run under a charter granted by the SRC or the School District.<sup>30</sup> Twenty-one were Renaissance charters that were former district schools turned over to charter operators.<sup>31</sup>

The Pennsylvania charter school law provides for authorization of new charters by school districts—in Philadelphia, since 2002, that has meant the SRC.<sup>32</sup> The authorizers are supposed to consider the following: whether an applicant has demonstrated public support from teachers, parents, students, and other community members; whether an applicant has the capability to provide comprehensive learning experiences; the extent to which the proposed school may serve as a model for other public schools; and whether the applicant meets the legislative intent that charter schools, among other things, encourage the use of new and innovative teaching methods.<sup>33</sup>

Some claim that the authorizer cannot consider the financial impact on the district as a whole in authorizing new charters.<sup>34</sup> The Charter School Law

27. Dan Simmons-Ritchie, *What are Charter Schools and Why are They Controversial? Q&A*, PENN LIVE (Jan. 29, 2015), [https://www.pennlive.com/midstate/index.ssf/2015/01/charter\\_school\\_takeover\\_what\\_i.html](https://www.pennlive.com/midstate/index.ssf/2015/01/charter_school_takeover_what_i.html).

28. 24 PA. CONS. STAT. § 17-1701-A.

29. *Directory of Charter Schools*, SCH. DIST. OF PHILA.: CHARTER SCHS. OFF., <https://www.philasd.org/charterschools/directory/> (last modified Sept. 29, 2018).

30. *Id.*

31. See *History of Charter Schools*, SCH. DIST. PHILA.: CHARTER SCHS. OFF., <https://www.philasd.org/charterschools/history> (last modified Nov. 21, 2017).

32. 24 PA. CONS. STAT. § 17-1717-A(c). The SRC was imposed on Philadelphia in 2001 and went into operation in early 2002. For a detailed history, see DeJarnatt, *supra* note 9. On Nov. 16, 2017, it voted to dissolve itself. That vote was approved by the Pennsylvania Secretary of Education and resulted in the return of a mayoral-appointed school board in Philadelphia in June 2018. Dale Mezzacappa & Avi Wolfman-Arent, *SRC Makes Philly Education History, Votes to Dissolve*, WHYY (Nov. 16, 2017), <https://whyy.org/articles/src-makes-philly-education-history-votes-dissolve>; Dale Mezzacappa, *State Gives Formal Approval to SRC Dissolution*, NOTEBOOK (Dec. 27, 2017, 3:16 PM) <https://thenotebook.org/articles/2017/12/27/state-gives-formal-approval-to-src-dissolution>.

33. 24 PA. CONS. STAT. §§ 17-1702-A, 17-1717-A.

34. *Contra* Shannon Nolan, *Live Blog: SRC Approves Five Charters, All with Conditions, out of 39 Applicants*, NOTEBOOK (Feb. 18, 2015, 5:20 PM), <https://thenotebook.org/articles/2015/02/18/live-blog-src-approves-five-charters-all-with-conditions-out-of-39-applicants>. This view relies primarily on a footnote in dicta in a case that at most supported the idea that loss of revenue to the District alone did not justify denial of new charters. *Keystone Cent. Sch. Dist. v. Sugar Valley Concerned Citizens*, 799 A.2d 209, 218 n.14 (Pa. Commw. Ct. 2002).



itself presumes that charters will be adding expanded opportunities to an existing system of public education; it does not contemplate the destruction of that system.<sup>35</sup> The SRC adhered to the position that it could not take financial impact into consideration<sup>36</sup> even though that impact is substantial.<sup>37</sup> The bottom line—as of today—is that charters are now educating about one-third of Philadelphia’s public school students and receive \$894 million through the district’s budget.<sup>38</sup>

Oversight of charter operations is diffuse.<sup>39</sup> Each has a board of directors that is responsible at the school level for making decisions—or approving the decisions of administrators—about spending.<sup>40</sup> Board members and the charters are subject to the Sunshine law.<sup>41</sup> In theory, the Pennsylvania Attorney General has oversight of charters as part of the AG’s oversight of non-profits under Pennsylvania law.<sup>42</sup> The state Department of Education also has oversight, especially of academics.<sup>43</sup> The Auditor General has the power

35. DAVID LAPP, TESTIMONY ON CHARTER APPLICATIONS AND FISCAL STABILITY, Feb. 18, 2015 [hereinafter LAPP, TESTIMONY].

36. Laura Benschhoff, *Philly SRC Approves Five New Charter Schools, Rejects 34, Protesters Arrested*, WHYY (Feb. 18, 2015), <https://whyy.org/articles/philly-src-approves-five-new-charter-schools-rejects-34-protesters-arrested-photos>.

37. Research for Action’s study concludes that charter expansion costs Philadelphia over \$8,000 per charter pupil in the first year and declines to an on-going cost of approximately \$4,000 per charter pupil by year five. LAPP, FISCAL IMPACT, *supra* note 3, at iii. There is also no dispute that the impact is worsened by the failure to fund the charter reimbursement costs allowed by statute at the state level, a loss to Philadelphia of over \$109 million annually that has never been restored. *Id.* at 2–3.

38. CONSOLIDATED BUDGET, *supra* note 3, at 19. Some charters, especially those run by chain operators such as KIPP and Mastery, also receive significant grants and donations in addition to the tuition paid by the District. For example, the Form 990 2015 tax return for the KIPP Philadelphia Charter School lists receipts of \$1,969,783 in contributions and grants in addition to the program service revenue (tuition payments) of \$8,489,586. Kipp Philadelphia Charter School, 2015 Tax Return (Form 990) (May 12, 2017), <https://www.guidestar.org/FinDocuments/2016/050/546/2016-050546103-0e108a52-9.pdf>. The return also states that in the prior year, the school had \$4,441,050 in contributions and grants. *Id.* Mastery Charter School-Gratz Campus’s 2016 Form 990 listed \$3,510,309 in contributions and grants compared to \$19,448,559 in program service revenue. Mastery Charter School-Gratz Campus, 2016 Tax Return (Form 990) (March, 5, 2018), <https://www.guidestar.org/FinDocuments/2017/452/107/2017-452107493-0ef67aaa-9.pdf>.

39. See Susan L. DeJarnatt, *Follow the Money: Charter Schools and Financial Accountability*, 44 URB. LAW. 37, 53 (2012).

40. 24 PA. CONTS. STAT. § 17-1716-A(a).

41. 65 PA. CONTS. STAT. § 701.

42. *Charitable Giving*, PA. OFF. ATT’Y GEN., <https://www.attorneygeneral.gov/protect-yourself/charitable-giving> (last visited Oct. 28, 2018).

43. *Charter Schools*, PA. DEP’T EDUC., <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/default.aspx> (last visited Oct. 28, 2018).

to audit financial records.<sup>44</sup> But day-to-day oversight devolves primarily to the district authorizers, and in the case of Philadelphia, the Charter Schools Office.

The Charter Schools Office exists to support the SRC, soon to be the School Board, as an authorizer of charter schools within the district.<sup>45</sup> In 2012, the CSO started implementing the Authorizing Quality Initiative, adopted by the SRC.<sup>46</sup> The CSO developed a performance framework to guide its annual evaluations and renewal reports.<sup>47</sup> It is guided by three principles: high accountability for charter schools, autonomy for the schools, and protection of student rights and the public interest.<sup>48</sup> As a result of this work, parents and interested community members have access to detailed information about each charter school's academic achievements, as well as the financial operations and health of each school.<sup>49</sup> The annual reports evaluate each school's academic success, its organizational compliance and viability, and its financial health and sustainability.<sup>50</sup>

This information matters for two primary reasons. First, parent accountability depends on information. If parents have no access to information, they are totally dependent on word of mouth reputation.<sup>51</sup> And the CSO reports do more than simply rely on disclosure—they provide evaluation of the disclosures provided by the schools, which is essential to

44. The Auditor General may “[e]xamine the records of school districts, intermediate units, charter and cyber schools and area vocational technical schools. Auditors assess whether the public school entities received the correct state subsidies and reimbursements and complied with applicable laws and regulations. They also evaluate the efficiency and effectiveness of certain operational areas and determine whether teachers and administrators are properly certified for their positions.” *About the Department: School Districts, Including Charter Schools and Cyber Charter Schools*, PA. DEP’T AUDITOR GEN., <http://www.paauditor.gov/about-the-department> (last visited Oct. 28, 2018). Auditor General DePasquale has called for extensive revision of the Charter School Law. News Release, Pa. Dep’t of the Auditor Gen., Auditor General DePasquale Releases Charter School Report, Recommends Creation of Independent Oversight Board (May 12, 2014), <http://www.paauditor.gov/press-releases/auditor-general-depasquale-releases-charter-school-report-recommends-creation-of-independent-oversight-board>.

45. *About the Charter Schools Office*, SCH. DIST. PHILA.: CHARTER SCHS. OFF., <https://www.philasd.org/charterschools/about> (last modified Oct. 25, 2018).

46. *Evaluation*, *supra* note 19.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. See Courtney A. Bell, All Choices Created Equal? How Good Parents Select “Failing” Schools (Oct. 2005) (unpublished manuscript) (on file with National Center for the Study of Privatization in Education, Teachers College, Columbia University), <http://ncspe.tc.columbia.edu/working-papers/OP106.pdf>.

empowering parents to make informed decisions.<sup>52</sup> Second, stewardship of public money matters. There have been notable fraud and fiscal mismanagement problems in the charter sector in Pennsylvania and in Philadelphia in particular, including numerous criminal prosecutions.<sup>53</sup>

The CSO's efforts to upgrade oversight has helped solve both of these problems, and it should be encouraged, not condemned. A major context for oversight is in the review and analysis of new applications and in the ongoing review of existing schools, especially as they come up for renewal.

### III. ACCOUNTABILITY IN ACTION

#### A. *Review of Applications for New Charters in 2016–2017*

The process for new applicants in 2016–2017 required submission of the application by November 15, 2016.<sup>54</sup> Five applications were filed.<sup>55</sup> One was withdrawn fairly early in the process, but I include it here to give a full picture of the process for the year.<sup>56</sup> It is also important to understand that anyone can

52. Too often, oversight of non-profits in general and of charters in particular has been limited to disclosure alone, which is rarely effective in curbing many of the issues of self-dealing and conflicts that the non-profit sector is vulnerable to. See Dana Brakman Reiser, *There Ought to Be a Law: The Disclosure Focus of Recent Legislative Proposals for Nonprofit Reform*, 80 CHI.-KENT L. REV. 559, 602 (2005); DeJarnatt, *supra* note 39, at 42–46.

53. DeJarnatt, *supra* note 39, at 49–51 (detailing the array of criminal investigations up to 2012). Nick Trombetta, founder and long-time CEO of the PA Cyber Charter School pled guilty in 2016 to stealing \$8 million from the school. Natasha Lindstrom, *Tax Fraud Sentencing Delayed for Cyber School Founder*, TRIBLIVE (June 13, 2017, 5:54 PM), <http://triblive.com/news/education/12402763-74/tax-fraud-sentencing-delayed-for-cyber-school-founder>. Dorothy June Brown, founder of three Philadelphia charter schools and a cyber charter, was charged with defrauding the schools of \$6.3 million, but, after the jury deadlocked in her first trial, retrial was not pursued because Brown had become unable to participate in the trial due to dementia. Martha Woodall, *Charter Founder Brown has Dementia, Charges Dismissed*, PHILA. INQUIRER (Nov. 23, 2015, 7:14 PM), [http://www.philly.com/philly/education/20151124\\_Charter\\_school\\_founder\\_too\\_demented\\_for\\_retrial.html](http://www.philly.com/philly/education/20151124_Charter_school_founder_too_demented_for_retrial.html).

54. The application process is described at the beginning of each of the CSO Reports. See, e.g., NEW CHARTER SCHOOL APPLICATION EVALUATION REPORT: KIPP PARKSIDE CHARTER SCHOOL, SCH. REFORM COMM'N, SCH. DIST. OF PHILA. 2 (2017) [hereinafter KIPP REPORT], <https://sites.temple.edu/sdejarnatt/files/2018/02/Eval-Report-KPSCS-FINAL-FOR-POSTING.pdf> (on file with author).

55. Avi Wolfman-Arent, *Philly Approves One New Charter School and Rejects Two*, NOTEBOOK (Feb. 9, 2017, 8:15 AM), <https://thenotebook.org/articles/2017/02/09/philly-approves-one-new-charter-school-rejects-another-two>.

56. Payne, *supra* note 16.

request to open a new charter school. The applications range from thorough to, frankly, a little absurd.<sup>57</sup>

There is a serious transparency issue with the process—only the narrative section is made available on the CSO website.<sup>58</sup> The only reason I was able to review the supporting charter school application documents was due to the efforts of City Council Member Helen Gym, who filed a Right to Know Request with the District, after which she received the bulk of the documents supporting each application. Her office shared those documents with me.<sup>59</sup>

The CSO solicited the assistance of external reviewers to assist with the review of the applications.<sup>60</sup> The CSO held two rounds of public hearings on the applications before the final SRC vote on February 8, 2017.<sup>61</sup> The final reports list the members of the reviewing committees. The CSO does not make recommendations to the SRC on whether it should grant a charter. The review process is designed to inform the SRC's decision. The evaluation criteria used by the CSO were:

- The extent to which the application considers the information requested in Section 1719-A of the Charter School Law and conforms to the legislative intent;

57. In 2014–2015, the CSO had to evaluate forty applications for new schools, including, for example, an application for what had originally been planned as a religious school that forgot to take out the religious iconography from its applications. *See, e.g.*, Kevin McCorry & Paul Socolar, *Hearings Start Dec. 8 for 40 New Charter School Applicants*, NOTEBOOK (Nov. 26, 2014, 7:55 PM), <http://thenotebook.org/articles/2014/11/26/hearings-start-dec-8-for-40-new-charter-school-applicants>. Only five of these proposals were accepted, but careful review of all of them was essential to that outcome. Benshoff, *supra* note 36.

58. And even the narratives for the 2016–2017 cycle are no longer accessible on the website. I have archived them, and they are available at: <https://sites.temple.edu/sdejarnatt>.

59. I have archived the documents and they are available through <https://sites.temple.edu/sdejarnatt/>. The narratives were available on the CSO website, but for ease, I have included them in the archive. The application documents are cited by name of applicant: Deep Roots Charter School (Deep Roots), Friendship Whittier Charter School (Friendship), KIPP Parkside Charter School (KIPP), Wilbur Wright Aviation Academy Charter School (Wright), and Metropolitan Philadelphia Classical Charter School (Metropolitan). The narrative is cited as Application. The supporting documents are identified by Attachment number.

60. *E.g.*, NEW CHARTER SCHOOL APPLICATION EVALUATION REPORT: FRIENDSHIP WHITTIER CHARTER SCHOOL, SCH. REFORM COMM'N, SCH. DIST. OF PHILA. 2 (2017) [hereinafter FRIENDSHIP REPORT], <https://sites.temple.edu/sdejarnatt/files/2018/02/Eval-Report-Friendship-Whittier-FINAL-FOR-POSTING.pdf> (on file with author) (“Each of these applications has been reviewed by a team of evaluators, led by the CSO, comprised of internal District employees and external reviewers with local and national expertise on the operation of successful charter schools.”).

61. Greg Windle, *SRC Hearings on New Charter Applications Continue on Monday*, NOTEBOOK (Jan. 3, 2017, 4:29 PM), <http://thenotebook.org/articles/2017/01/03/src-to-hold-public-hearings-on-new-charter-applications>.

- The capabilities of the applicant, in terms of support and planning, to provide comprehensive learning experiences to students;
- The demonstrated, sustainable support for the charter school plan by parents, community members and students; and
- The extent to which the charter school may serve as a model for other public schools.<sup>62</sup>

There were two rounds of public testimony. The SRC voted on each application on February 8, 2017, following a final presentation by the CSO and additional testimony by witnesses.<sup>63</sup> One rejected application, from the Deep Roots Charter School, was revised, resubmitted, and subsequently reevaluated by the CSO.<sup>64</sup> Upon reconsideration, the SRC voted to grant the charter to Deep Roots.<sup>65</sup> For each application below, I include the process specific to that application and the history of decision making relevant to the application.

### 1. *Deep Roots Charter School*

The evaluation team for the original Deep Roots application comprised four district employees, a special education teacher, and representatives from the New York City and New Jersey Departments of Education.<sup>66</sup>

62. FRIENDSHIP REPORT, *supra* note 60, at 2.

63. Ryanne Persinger, *SRC to Vote on New Charter Applications in February*, PHILA. TRIBUNE (Jan. 14, 2017), [http://www.phillytrib.com/news/src-to-vote-on-new-charter-applications-in-february/article\\_b5c58cdf-e2a8-56f9-8fdd-b5a2442297e4.html#3](http://www.phillytrib.com/news/src-to-vote-on-new-charter-applications-in-february/article_b5c58cdf-e2a8-56f9-8fdd-b5a2442297e4.html#3).

64. Darryl C. Murphy, *In Surprise, SRC Approves Deep Roots Charter, with Conditions*, NOTEBOOK (May 25, 2017, 11:13 PM), <http://thenotebook.org/articles/2017/05/25/in-surprise-src-approves-deep-roots-charter-with-conditions>.

65. *Id.*

66. Megan Reamer, Team Leader, CSO; Alia Dickerson, Office of Teaching and Learning, SPD; Diana Liefer, Special Education Teacher; Francheska Howard, NYC Department of Education; Caitlyn Hearn, Office of Teaching and Learning, SDP; Diane Messer, Office of Teaching and Learning, SDP, and James Palmer, NJ Department of Education. NEW CHARTER SCHOOL APPLICATION EVALUATION REPORT: DEEP ROOTS CHARTER SCHOOL, SCH. REFORM COMM'N, SCH. DIST. OF PA. 1 (2017) [hereinafter DEEP ROOTS REPORT], <https://sites.temple.edu/sdejarnatt/files/2018/02/Eval-Report-Deep-Roots-FINAL-FOR-POSTING.pdf> (on file with author). The reevaluation team consisted of Ms. Reamer, and Jody Greenblatt, Office of School Climate and Safety, SDP, and Bettyann Creighton, Office of Comprehensive Arts, SDP. REVISED NEW CHARTER SCHOOL APPLICATION EVALUATION REPORT: DEEP ROOTS CHARTER SCHOOL, SCH. REFORM COMM'N, SCH. DIST. OF PA. 1 (2017) [hereinafter DEEP ROOTS REVISED REPORT], [https://sites.temple.edu/sdejarnatt/files/2018/07/Eval-Report\\_Deep-Roots-REVISED.pdf](https://sites.temple.edu/sdejarnatt/files/2018/07/Eval-Report_Deep-Roots-REVISED.pdf) (on file with author).

The process for this application was significantly more troubling than the others. Despite the CSO's careful analysis and serious questions about this application, the SRC, after initially denying it, reversed itself and approved the new school.<sup>67</sup> The school's proponents submitted a revised application, but it failed to address many of the concerns the CSO noted in the first application.<sup>68</sup> Despite these failings, the SRC approved the reapplication.<sup>69</sup> Commissioner Estelle Richman stated that she voted "yes" in anticipation that the school would win on appeal before the charter-friendly Charter Appeal Board.<sup>70</sup> Commissioner Richman thought fighting the anticipated appeal would waste too much money.<sup>71</sup>

This application proposed a K–8 school serving 540 students at scale. The Executive Summary listed the goal of Deep Roots as follows: "We will work tirelessly to ensure that all of our students are prepared to reach, attend, and graduate from highly selective colleges and universities."<sup>72</sup> However, the application proposed a K–8 school, not a high school.<sup>73</sup> To be sure, preparation is important throughout the school years. However, this goal is both somewhat narrow and cannot easily be measured, thus thwarting any accountability on the part of the school. Deep Roots' application showed no commitment to students who may have other goals for their lives. The Executive Summary was directive even about what its students should do after they obtain degrees from highly selective colleges and universities. Deep Roots envisions the students returning to "the most distressed parts of their

67. Murphy, *supra* note 64.

68. "Reviewers also continued to note a possible misalignment between the stated restorative justice philosophy and proposed academic and organizational programs of the school." DEEP ROOTS REVISED REPORT, *supra* note 66, at 3. "[C]oncerns regarding the capacity of the proposed facility . . . were partially addressed in the revised application." *Id.* at 3–4. "Reviewers' concerns persist" about schools the applicant uses as models. *Id.* at 6. "The revised application did not address this concern" about the frequency of progress assessment that would be administered up to 30 times per year. *Id.* "Deep Roots presents itself as a STEM school, but the weak science curriculum does not support this aspect of the planned academic program. . . . This plan for science instruction remained unchanged in the revised application submission and therefore the concerns noted in the original evaluation remain." *Id.* at 8.

69. Chris Doyle, *Penn Grad Launches Philadelphia Charter School with Unorthodox Teaching Methods*, DAILY PENNSYLVANIAN (Sept. 13, 2018, 1:58 AM), <https://www.thedp.com/article/2018/09/west-philly-alumni-charter-school-philadelphia-penn-upenn-opening>.

70. Murphy, *supra* note 64.

71. *Id.*

72. Deep Roots Charter School Application 1 (2017) [hereinafter Deep Roots Application], [https://sites.temple.edu/sdejarnatt/files/2018/02/DRCS\\_Narrative.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/DRCS_Narrative.pdf) (on file with author).

73. *Id.*

home city, bringing with them a world-class college education.”<sup>74</sup> Why should these students have to return to Kensington as opposed to living wherever they want to, enabled by their world-class educations? I personally would admire anyone who decides to devote their life to such service, but it is inappropriate for Deep Roots to impose that vision on its students. Again, this goal shows how unaccountable the school will be—how would such a goal be measured or enforced?

The application stated that they will recruit students with IEP needs and students from the neighborhood.<sup>75</sup> But it was clear that Deep Roots is not willing to envision a range of good outcomes and futures for all of their potential students.

The application was striking in the heavy burdens it placed on teachers and students; it is doubtful whether its goals are even realistic. The application placed intense emphasis on teacher coaching and on unrelenting student focus. It claimed to be modeled after schools such as Achievement First, Uncommon Schools, MATCH, and Success Academy—but it planned to be even more intense.<sup>76</sup> “Teachers will be coached more than 10 times as frequently as at even the highest performing schools around the country.”<sup>77</sup> There was no discussion of the widely available critiques of this approach, particularly at Success Academy.<sup>78</sup> But, the main questions raised by this approach are whether this model is financially feasible and whether it provides the kind of innovation that new charter schools should offer to the District. It is difficult to see how this approach could be scaled up to district schools. Although the application states that the model “has also proven effective within the

74. *Id.*

75. *Id.* at 73.

76. *Id.*

77. *Id.* at 2.

78. See generally Rebecca Mead, *Success Academy's Radical Educational Experiment*, *NEW YORKER* (Dec. 11, 2017), <https://www.newyorker.com/magazine/2017/12/11/success-academys-radical-educational-experiment> (discussing critics' views that “Success Academy essentially weeds out students, by maintaining unreasonably high expectations of behavior and academic achievement”); Kate Taylor, *At a Success Academy Charter School, Singling Out Pupils Who Have ‘Got to Go,’* *N.Y. TIMES* (Oct. 29, 2015), <https://www.nytimes.com/2015/10/30/nyregion/at-a-success-academy-charter-school-singling-out-pupils-who-have-got-to-go.html> (discussing critics' view that Success Academy's high performance record is due to their strict methods of teaching and punishing difficult children, therefore “pushing children out by making their parents' lives so difficult that they withdraw”); Kate Taylor, *At Success Academy School, a Stumble in Math and a Teacher's Anger on Video*, *N.Y. TIMES* (Feb. 12, 2016), <https://www.nytimes.com/2016/02/13/nyregion/success-academy-teacher-rips-up-student-paper.html> (discussing an incident where a disapproving teaching assistant resigned after recording a teacher ripping up a student's paper and belittling the student).

Philadelphia School District at Vare-Washington Elementary, helping Vare-Washington to become the 9th best elementary school in Philadelphia,” the citation for that assertion is to a broken link.<sup>79</sup> According to the most recent School Progress Reports on the district’s website, Vare-Washington is in the overall “Watch” category, ranked 51 out of 140 K–8 schools.<sup>80</sup> I have no informed opinion about whether Vare-Washington is doing well because I believe that the SPRs are too limited in the data used to evaluate schools.<sup>81</sup> But the assertion in the application does not hold up on its face.

The application also relied heavily on the Relay Graduate School of Education and on Douglas Lemov’s *Teach Like a Champion*,<sup>82</sup> both of which emphasize very controlled classrooms and constant control of the teacher and student.<sup>83</sup> This model is already widely used in Philadelphia in the Mastery

79. Deep Roots Application, *supra* note 72, at 73.

80. SCH. DIST. OF PHILA., 2014–2015 SCHOOL PROGRESS REPORT: VARE-WASHINGTON SCHOOL, [https://webapps1.philasd.org/downloads/school\\_profile/spr\\_reports/SY1415/2720\\_K8\\_SPR\\_SY1415.pdf](https://webapps1.philasd.org/downloads/school_profile/spr_reports/SY1415/2720_K8_SPR_SY1415.pdf). School Progress Reports are the District’s evaluation tool for all schools, traditional and charter. Each school is ranked for Achievement, Growth, Climate, and a provided Overall score. The Achievement and Growth scores are reliant on scores on the high-stakes tests required in Pennsylvania.

81. See SCHNEIDER, *supra* note 11, at 100.

82. See DOUG LEMOV & NORMAN ATKINS, *TEACH LIKE A CHAMPION 2.0: 62 TECHNIQUES THAT PUT STUDENTS ON THE PATH TO COLLEGE* (2015). Atkins is a founder of the Relay Graduate School of Education which relies heavily on the book. *Relay Leadership*, RELAY/GSE, <https://relay.edu/about-us/relay-leadership> (last visited Oct. 28, 2018). See generally KEN ZEICHNER, NAT’L EDUC. POLICY CTR., SCH. OF EDUC., UNIV. OF COLO. BOULDER, *APOCRYPHAL CLAIMS, ILLUSORY EVIDENCE 4* (2016), <https://nepc.colorado.edu/publication/teacher-education> (questioning Relay’s claims of success because “the analysis here demonstrates that such claims are not substantiated by independent, vetted research and program evaluations. This analysis indicates that the promotion and expansion of independent teacher preparation programs rests not on evidence, but largely on ideology. The lack of credible evidence supporting claims of success is particularly problematic given the current emphasis on evidence-based policy and practice in federal policy and professional standards”); A. CHRIS TORRES & JOANNE W. GOLANN, NAT’L EDUC. POLICY CTR., SCH. OF EDUC., UNIV. OF COLO. BOULDER, *NEPC REVIEW: CHARTER SCHOOLS AND THE ACHIEVEMENT GAP* (2018), <https://nepc.colorado.edu/thinktank/review-no-excuses> (critiquing the highly-controlled environment and practices promoted by Relay and Lemov as insufficiently attentive to racism and poverty, leading to narrowing curriculum to tested subjects, and offering limited focus on critical and independent thinking); Kerry Kretchmar & Ken Zeichner, *Teacher Prep 3.0: A Vision for Teacher Education to Impact Social Transformation*, 42 J. EDUC. FOR TEACHING 417 (2016) (discussing non-university based teacher education programs, such as Relay, and arguing that many of those programs are “inadequate for meeting the nation’s needs to provide high quality, effective teachers for all children in USA public schools”).

83. E.g., Joan F. Goodman, *How Joy Became the New Grit*, HAVE YOU HEARD BLOG (Oct. 19, 2016), <https://haveyouheardblog.com/joy-is-the-new-grit>.



and KIPP charters, among others,<sup>84</sup> making it doubtful that the application really offered anything innovative that is not already available to families who prefer this type of academic environment.

One of the recurring themes of these charter applications is the proposed reuse of district schools that were closed for under enrollment.<sup>85</sup> Deep Roots planned to rent the former Sheridan West building.<sup>86</sup> The application did not explain the need for another school where there was insufficient population to sustain Sheridan West before 2013. Nor did it address whether the opening of Deep Roots will siphon off students from other area schools, leaving them vulnerable to closure. Many of the communities of schools closed in 2013 and earlier vehemently opposed closure.<sup>87</sup> The opening of this charter is likely to place more such communities at risk.

The application proposes a very rigid environment for the students who will be expected to be on task at all times. For example: “Students deliberately practice handing in papers, retrieving needed materials, ‘tracking the speaker’ to demonstrate attentiveness, [and] staying focused . . . .”<sup>88</sup> “We expect that all students are engaged in thinking tasks at all times during class, we push for the same to be true even during non-class times like transitions and lunch, and we relentlessly train our teachers to make this ambitious goal a reality.”<sup>89</sup> Free play and recess are important components of learning for young children, as demonstrated by the superior educational results in Finland.<sup>90</sup> The application does not reveal when, if ever, its students have access to those outlets. Deep Roots plans to make use of public shaming of students through

84. Joan F. Goodman, *Charter Management Organizations and the Regulated Environment: Is It Worth the Price?*, 42 EDUC. RESEARCHER 89, 90 (2013).

85. The District closed thirty traditional neighborhood schools in 2012 and 2013, based in large part on asserted under-enrollment, though building condition and academics were also factors. See Susan L. DeJarnatt, *Community Losses: The Costs of Education Reform*, 45 U. TOL. L. REV. 579, 584–88 (2014).

86. Deep Roots Application, *supra* note 72, at 69.

87. DeJarnatt, *supra* note 85, at 586; ELAINE SIMON ET AL., *With Our Powers Combined: Grassroots Activism in Philadelphia*, in THE FIGHT FOR AMERICA’S SCHOOLS: GRASSROOTS ORGANIZING IN EDUCATION 55–73 (Barbara Ferman ed., 2017).

88. Deep Roots Application, *supra* note 72, at 21. Students should be engaged in observable on-task thinking at all times, including lunch and transitions. *Id.* at 45.

89. *Id.* at 45.

90. See PASI SAHLBERG, FINNISH LESSONS: WHAT CAN THE WORLD LEARN FROM EDUCATIONAL CHANGE IN FINLAND? (2011); Timothy D. Walker, *The Joyful, Illiterate Kindergartners of Finland*, ATLANTIC (Oct. 1, 2015), <https://www.theatlantic.com/education/archive/2015/10/the-joyful-illiterate-kindergartners-of-finland/408325>.

color charts and publicity of achievement and standing on data walls.<sup>91</sup> This kind of public shaming can have a damaging impact on many children.<sup>92</sup>

Jounce Partners<sup>93</sup> is committed to providing in-kind support of three years for the school.<sup>94</sup> But the application did not explain Jounce Partner's involvement at the end of those three years or what the costs will be going forward. The Conflicts of Interest policy was not available for review. The SRC should have examined the interconnections between Jounce Partners, the proposed CEO, and the proposed landlord, GM Holdings,<sup>95</sup> to make sure there were no concerns. These connections must be monitored going forward to avoid the problems that have arisen with other charters with overlapping boards and landlords.<sup>96</sup> Deep Roots also included a draft contract for outsourcing various financial, benefits, and other administrative services to Ed Tec, Inc. for a fee of 4.5% of the school's government revenue.<sup>97</sup>

This school—as proposed—will have high numbers of administrators because of all of the coaching. The teachers will have to work incredibly hard, yet they can be fired with three-week's notice.<sup>98</sup> It is unclear how all of this coaching will be done within the budget constraints, but perhaps Deep Roots is expecting significant amounts of outside support. If so, it is not clear how it is possible for this model to be scaled up and be a model for replication within the district. There is no clear plan for teacher retention given the demands on teachers and the lack of job security.

The schools that are listed as models for Deep Roots do not typically back fill during the school year or even after the summer.<sup>99</sup> Many “no excuses” model charter schools have high rates of attrition and end up with large disparities compared to traditional public schools in the demographics of the

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91. Deep Roots Application, *supra* note 72, at 21, 78.

92. Goodman, *supra* note 84, at 93–95; Joanne W. Golann, *The Paradox of Success at a No-Excuses School*, 88 SOC. EDUC. 103, 109 (2015).

93. See generally JOUNCE PARTNERS, <https://www.jouncepartners.org> (last visited Oct. 1, 2018).

94. Deep Roots Application, *supra* note 72, at 61.

95. Attachment #33, Exclusive Outline of Terms to Deep Roots Charter School Application (2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/DRCS\\_Attach33\\_FacilityIntent.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/DRCS_Attach33_FacilityIntent.pdf).

96. See DeJarnatt, *supra* note 39, at 48, 73–77.

97. Attachment #24.1, Draft Statement of Work #1 to Deep Roots Charter School Application (Oct. 25, 2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/Attachment24.1\\_EdTecServiceAgreement.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/Attachment24.1_EdTecServiceAgreement.pdf).

98. See Deep Roots Application, *supra* note 72, at 43–44.

99. Taylor, *supra* note 78.

schools.<sup>100</sup> The application used language about a restorative model of discipline but then noted that “[s]tudents with special needs will be held to the same high standards for behavior as all other students . . . . They will be supported . . . in successfully meeting those behavioral expectations.”<sup>101</sup> The proposed Disciplinary Code was not available for review, but it should be examined to see if the actual rules are consistent with the restorative language. On page fifty-six, the application states that students will not be excluded from school for more than fifteen days without a hearing,<sup>102</sup> but, under Pennsylvania law, any suspension that exceeds ten days is an expulsion which requires a formal hearing.<sup>103</sup>

The original Report and the Report on the revised application recognized these limitations. Specifically, the revised application noted that community engagement and support “were weak components of the application.”<sup>104</sup> The Reevaluation Report noted that, although the applicant had listed connections with numerous potential community partners, “the degree of involvement with each of these entities was unclear.”<sup>105</sup> The survey of families showed a clear desire for safety and excellent teachers but no clearly expressed desire for the core mission of Deep Roots: “preparation for highly selective college admissions.”<sup>106</sup> Although the school will be located in a largely Latino community, the original application included only three Spanish language interest forms and only one additional such form with the revised application.<sup>107</sup> Despite these limitations, the SRC voted to approve the revised application, with conditions.<sup>108</sup>

## 2. *Friendship Whittier Charter School*

The Friendship Whittier Evaluation Team comprised two District employees, three representatives of the CSO, and an evaluator from Teach for America NJ.<sup>109</sup> The applicant proposed a new pre-kindergarten through fifth-

100. See, e.g., Bruce Baker, *Beneath the Veil of Newark Charter Productivity*, SCH. FIN. 101 (Dec. 13, 2017), <https://schoolfinance101.wordpress.com/2017/12/13/beneath-the-veil-of-newark-charter-productivity>.

101. Deep Roots Application, *supra* note 72, at 55.

102. *Id.* at 56.

103. 22 PA. CODE § 12.6(b)(2) (2005).

104. DEEP ROOTS REVISED REPORT, *supra* note 66, at 4.

105. *Id.* at 20.

106. *Id.*

107. *Id.* at 21.

108. Murphy, *supra* note 64. The conditions imposed by the SRC on this and other charters are not publicly available.

109. FRIENDSHIP REPORT, *supra* note 60, at 2.

grade school to open in the 2017–2018 academic year.<sup>110</sup> It proposed to begin with 350 students in kindergarten through second grade, adding a grade each year until it reached an enrollment of 695 by year five.<sup>111</sup>

The Report notes several important deficiencies in the application, starting with the apparent unfamiliarity of the applicant with Pennsylvania’s legal requirements.<sup>112</sup> The application was based on the programs used by the applicant in its schools in Washington, D.C., but that it “was unclear . . . what, if any, modifications were made to the educational program . . . to meet Pennsylvania” School Code and Core standards.<sup>113</sup> The application provided for a pre-kindergarten class that is not envisioned by the Pennsylvania Charter Law.<sup>114</sup> The Report also raised concerns about the proposal regarding student health services, transportation, and lottery admission, which were not consistent with Pennsylvania requirements.<sup>115</sup> The Report further questioned the budget and the proposed location, which had not been secured at the time of the application, even though the school was proposed to open in the fall of 2017.<sup>116</sup> Finally, the Report noted limited evidence of community support.<sup>117</sup> The CSO presented its Report to the SRC on February 8, 2017, and the SRC voted 3 to 1 to deny the application.<sup>118</sup>

A careful review of the application and of the CSO report shows the CSO’s concerns were justified. As the Report noted, the application, for a pre-kindergarten through fifth-grade school, stated that it will offer college-level coursework—a peculiar option for such young children.<sup>119</sup> “Reviewers noted a misalignment between the grade levels the school proposes to serve . . . (Pre-kindergarten through Grade 5) and the stated mission of a college preparatory program . . . .”<sup>120</sup> Other aspects of the academic plan also raised concerns. Despite claims of alignment to the Pennsylvania standards in the application, the Report noted numerous inconsistencies and gaps, including the application’s assertion that “the curriculum has exceptional alignment to the PA requirements” was contradicted by its acknowledgement

110. *Id.* at 3.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 3–4.

116. *Id.* at 4.

117. *Id.*

118. See Wolfman-Arent, *supra* note 55.

119. Friendship Whittier Charter School Application 3 (2016) [hereinafter Friendship Application], <https://sites.temple.edu/sdejarnatt/files/2018/02/PHL-Whittier-Narrative-2016.docx> (on file with author); FRIENDSHIP REPORT, *supra* note 60, at 5.

120. FRIENDSHIP REPORT, *supra* note 60, at 5.

that the science curriculum was not yet so aligned.<sup>121</sup> The application did not appear to provide for appropriate staffing of special education teachers and had inconsistent estimates for special education enrollment—15% and 17%, neither of which was itself consistent with the neighborhood average.<sup>122</sup> The application estimated English language learner (ELL) enrollment at only 2% despite the neighborhood’s population, which was 6%.<sup>123</sup>

The Report also noted that, although the applicant emphasized recruitment of students experiencing homelessness, it did not include a provision for staff who would be responsible for the specific needs of those students.<sup>124</sup> The Report further noted the application’s unclear references to staffing to address the social-emotional needs of all of the students as the application proposed just one such staff member in contradiction to the recommendation of the School Social Worker Association, which the application referenced calls for one counselor for every 250 students and one social worker for every 400 students.<sup>125</sup> The Report also noted the applicant’s use of the term “community school,” which appeared inconsistent with the lack of wrap-around services that are typically provided under that model.<sup>126</sup>

Furthermore, the Report noted concerns about organizational compliance, including conflict of interest concerns arising from the confusing references to the Friendship Education Foundation (FEF), the Friendship Whittier Charter School (FWCS), and the Friendship Philadelphia as the school and the applicant without clarifying the governance relationships among these entities.<sup>127</sup> Those concerns were well founded. The application presented serious concerns about the finances and governance of the proposed school. The application proposed to use a Washington, D.C.-based Charter Management Organization (FEF) as the CMO, and an outside manager—4th Sector Solutions—for “back office” work.<sup>128</sup> The proposed CMO was the

121. *Id.* at 6.

122. *Id.* at 7, 16.

123. FRIENDSHIP REPORT, *supra* note 60, at 8.

124. *Id.* at 7.

125. *Id.* at 9. The Application included two organizational charts that were not identical. Attachment #8, Organization Chart to Friendship Whittier Charter School Application (2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach8\\_OrgChart.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach8_OrgChart.pdf); Attachment #14, School Operations Chart to Friendship Whittier Charter School Application (2017) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach14\\_OpsOrgChart.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach14_OpsOrgChart.pdf).

126. FRIENDSHIP REPORT, *supra* note 60, at 9.

127. *Id.* at 9–10.

128. Friendship Application, *supra* note 119, at 51–52. Attachment 24 included services agreements between FEF and Friendship Philadelphia, Inc. Hense signed the FEF services agreement on behalf of the school as Chair of the Board of Trustees of Friendship Philadelphia, Inc. The compensation provisions for the 4th Sector services agreement are blank. Attachment

parent Friendship organization in D.C., and the application stated that Friendship founder Donald Hense was running it.<sup>129</sup> According to an article in Washington Post from December 15, 2015, Mr. Hense retired from the Friendship organization in the summer of 2016.<sup>130</sup>

The costs for hiring the CMO and for outsourcing management to 4th Sector were not included in the public documents, although the Report notes that the CMO fee is 12% of revenue.<sup>131</sup> However, the application failed to clarify what services were included and that the fee was not reflected as a line item in the proposed budget.<sup>132</sup> 4th Sector is a national organization with no current Philadelphia connections.<sup>133</sup> The application also proposed to outsource the hiring of the principal.<sup>134</sup>

The Report noted that the bylaws included with the application were for Friendship Philadelphia, not for FWCS, and they included references to a different set of grades and to the school being open to “residents of East Baton Rouge Parish,” not to residents of the Allegheny West neighborhood of Philadelphia.<sup>135</sup> These documents appeared to be prepared for a different charter application and not updated for this one. There were additional inconsistencies in how the administratively-heavy school leadership team would be employed—by FEF or by FCWS—and who would oversee these administrators.<sup>136</sup> The organizational chart listed five administrators, but the budget and narrative listed only three.<sup>137</sup> There were inconsistencies in non-personnel expenses as well as with the narrative and budget listing conflicting amounts for professional development, special education consultants, and supplies.<sup>138</sup>

The Report noted deficiencies in the application’s punitive approach to truancy and in its faulty expectation that it could rely on the district for health

#24, Services Agreements to Friendship Whittier Charter School Application 20, 28 (Oct. 14, 2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach24\\_Agreements.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach24_Agreements.pdf).

129. Friendship Application, *supra* note 119, at 27, 29.

130. See Michael Alison Chandler, *Friendship Charter Schools Founder Donald Hense to Retire*, WASH. POST (Dec. 15, 2015), [https://www.washingtonpost.com/local/education/friendship-charter-schools-founder-donald-hense-to-retire/2015/12/15/d710d280-a281-11e5-9c4e-be37f66848bb\\_story.html?utm\\_term=.b96890e44355](https://www.washingtonpost.com/local/education/friendship-charter-schools-founder-donald-hense-to-retire/2015/12/15/d710d280-a281-11e5-9c4e-be37f66848bb_story.html?utm_term=.b96890e44355).

131. FRIENDSHIP REPORT, *supra* note 60, at 12, 16.

132. See *id.* at 16–17.

133. See *Our Leadership Team*, 4TH SECTOR SOLS., <https://4thsectorsolutions.com/team/> (last visited Oct. 29, 2018).

134. FRIENDSHIP REPORT, *supra* note 60, at 12.

135. *Id.* at 10–11; see Attachment #24, *supra* note 128, at 5.

136. FRIENDSHIP REPORT, *supra* note 60, at 11.

137. *Id.* at 15.

138. *Id.* at 17.

services.<sup>139</sup> The provisions for suspension and expulsion set out in the Disciplinary Code did not comply with Pennsylvania law.<sup>140</sup> The provisions stated that expulsions over fifteen days long required a formal hearing, but Pennsylvania deems any suspension for more than ten days to be an expulsion, and it requires a hearing for suspensions that exceed three days.<sup>141</sup>

The applicant, like Deep Roots, proposed to use a building that formerly housed a traditional public school, Whittier, that was closed in 2013 for under-enrollment.<sup>142</sup> The application cited the support of a group of parents at T.M. Pierce School who are concerned that their school will be closed despite their efforts at improvement.<sup>143</sup> There was no explanation for how the opening of another charter school would decrease the risk of closure for Pierce. The Report also noted that the applicant had not “provided evidence that the facility would be available to the school should a charter be granted,” other than a copy of an e-mail about the steps needed to make an offer on the building.<sup>144</sup>

Parent involvement was not emphasized in any realistic detail within the application. There was no proposal to include a parent on the Board of Directors—just a statement that a parent could be on the Board if she qualifies.<sup>145</sup> The application included an expectation that parents would volunteer and “will help support after school clubs, chaperoning field trips, and supporting teachers as paraprofessionals.”<sup>146</sup> The Report noted that:

using parents as after school workers or unpaid volunteers is not a sufficient parent engagement strategy, especially as the applicant plans to operate in a neighborhood with an unemployment rate twice that of Philadelphia on average, which would necessitate full-time employment for these families as opposed to part-time or unpaid work.<sup>147</sup>

Although the parents from Pierce were mentioned in the application, there was no provision for enrollment preferences for parents who were actively

139. *Id.* at 12.

140. Attachment #17, Discipline Policy to Friendship Whittier Charter School Application 6 (2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach17\\_CodeConduct.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach17_CodeConduct.pdf).

141. 22 PA. CODE § 12.6 (2018).

142. Friendship Application, *supra* note 119, at 67.

143. *Id.* at 43.

144. FRIENDSHIP REPORT, *supra* note 60, at 17.

145. Friendship Application, *supra* note 119, at 51.

146. *Id.* at 46.

147. FRIENDSHIP REPORT, *supra* note 60, at 19.

involved in the founding, and the founding coalition did not include any parents.<sup>148</sup>

No parent, parent group, or group from the Allegheny West community was included in the list of “community stakeholders,” which comprised only a consulting group headquartered in Chicago, The Citizens Group, and the proposed back office management firm, 4th Sector Solutions, which is not located in Philadelphia.<sup>149</sup> Neither of these organizations should be deemed a “community stakeholder” given their total lack of connection to the Allegheny West community and their limited—at best—connection to Philadelphia. 4th Sector was going to be compensated for its involvement with the proposed charter.<sup>150</sup>

Although the application stated that “[t]he Friendship Philadelphia board members will be representative of the community in which the school is located,” none of the proposed board members appeared to have such connections.<sup>151</sup>

The relationship between the Board of Directors for the school, the CMO, and 4th Sector was not clear. The application stated that Mr. Hense will serve on the Board as a non-voting representative of the CMO.<sup>152</sup> But it also provided that the Board was going to contract with and manage the work of the CMO.<sup>153</sup> Although the CMO would receive a fee,<sup>154</sup> this fact was not disclosed in the publicly available documents. 4th Sector would be responsible for “operational oversight and training, a finance team, human resources support, high level accounting including accounts payable, and other operational services as needed.”<sup>155</sup> Many charters in Philadelphia have experienced serious governance problems due to complex and questionable relationships between the school and a parent organization or CMO.<sup>156</sup> There have been local, state, and federal investigations, both civil and criminal, based on these issues.<sup>157</sup> The concerns raised by the application showed that it provided no clear accountability measures.

The application noted that the Philadelphia School Partnership was providing it a \$400,000 start-up grant which would pay for the school

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148. Friendship Application, *supra* note 119, at 46.

149. *Id.* at 29.

150. *See id.*

151. *Id.* at 26–27, 50.

152. *Id.* at 29.

153. *Id.* at 39. As noted above, Hense signed the management agreement on behalf of Friendship Philadelphia, not FEF. Attachment #24, *supra* note 128, at 20.

154. *See* Friendship Application, *supra* note 119, at 52.

155. *Id.* at 40.

156. *See* DeJarnatt, *supra* note 39, at 40.

157. *Id.*



leader.<sup>158</sup> It was unclear how many years the grant covered, though it was described as being available for eighteen months. There was no explanation as to how the school would pay for the ongoing costs once the grant was exhausted.<sup>159</sup>

The application proposed very limited job security for teachers. “In the event that the school finds it necessary or desirable to terminate an employee’s employment before the end of the school year, the school will attempt to give the employee written notice at least 10 calendar days before termination, unless the principal” finds a threat.<sup>160</sup>

### 3. *KIPP Parkside Charter School*

The KIPP Parkside Charter School Evaluation Team comprised three District employees, two representatives of the CSO, a member of the D.C. Public Charter School Board, and a representative of the Cullen Foundation.<sup>161</sup> The applicant proposed a new kindergarten through eighth-grade school to open in the 2018–2019 academic year.<sup>162</sup> It proposed to begin with 200 students in kindergarten and first grade, adding two grades per year until it grows to an enrollment of 860 students by year five.<sup>163</sup> This will be the sixth KIPP charter in Philadelphia.<sup>164</sup> The Report was presented to the SRC on February 8, 2017, and the SRC voted to grant the charter.<sup>165</sup>

The Report was generally positive but noted that the application provided insufficient detail as to how the school would reach its mission, especially given the recent performance of the other KIPP schools.<sup>166</sup> The evaluators also expressed concerns about KIPP Philadelphia’s capacity to open more schools, especially given the instability of several of the facilities of current

158. Friendship Application, *supra* note 119, at 65.

159. In addition, the commitment letter from PSP only confirmed two grants each in the amount of \$25,000. Attachment #27—Commitment Letter to Friendship Whittler Charter School Application (2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach27\\_CommitLetter\\_PSPGrant.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach27_CommitLetter_PSPGrant.pdf).

160. Friendship Application, *supra* note 119, at 31; Attachment #7, FWCS Attach 7 Hiring and Pers. Policies, at II, (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS\\_Attach7\\_Personnel.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/FWCS_Attach7_Personnel.pdf).

161. KIPP REPORT, *supra* note 54, at 2.

162. *Id.* at 3.

163. *Id.*

164. *Id.*

165. Wolfman-Arent, *supra* note 55.

166. KIPP REPORT, *supra* note 54, at 3. The Report notes that, despite the mission of preparing every student for college, only 4% of KIPP Philadelphia high school students obtained a “college ready” score on the ACT test in 2014–2015. *Id.* at 6.

KIPP schools in Philadelphia.<sup>167</sup> The Report also noted that the application proposed a 90% retention rate but also proposed that the middle school will have only 90 students per grade, a reduction from the 100 students per grade in the elementary school.<sup>168</sup> Given the commitment KIPP made to backfilling, it is unclear what will happen to the leftover rising 5th graders.<sup>169</sup>

The Report questioned the imposition of \$100 per student fees for trips and uniforms for a school population that will comprise 80–100% students living in poverty.<sup>170</sup>

KIPP is a well-known entity within Philadelphia and nationally. Neither the Report nor the SRC sufficiently considered how expansion of the KIPP program will impact the total Philadelphia community. The multiplication of school systems within Philadelphia (e.g., Mastery, KIPP, ASPIRA, Universal) means a significant amount of educational funding is going to duplicate administrative costs.<sup>171</sup> The application stated that the KIPP CMO (KIPP Administrative Services Corp.) will receive 12% of revenues for operating the school.<sup>172</sup> KIPP says it is planning on growing to ten schools by 2019.<sup>173</sup> Existing schools would have to be closed to accommodate KIPP's expansion plans and those closures would constrict the options available to Philadelphia families.<sup>174</sup> Although many charter supporters are convinced that every family in Philadelphia desires more charters, that view is not supported by the community reaction to the 2013 closures or to the experiences in the last few years at Wister, Cooke, Munoz-Marin, and Steel.<sup>175</sup> Charter expansion leads

167. *Id.* at 11.

168. *Id.* at 9.

169. *Id.*

170. *Id.* at 10.

171. The schools considered by the SRC all planned to pay management fees though Deep Roots' fee will be covered by a grant, at least initially. DEEP ROOTS REPORT, *supra* note 66, at 15–16. KIPP proposed a 12% fee for KIPP Administrative Services Corp. as its CMO. Attachment #24, ACAD. AND BUS. SERV. AGREEMENT By and Between KIPP ADMIN. SERVS. CORP. and KIPP PARKSIDE CHARTER SCH. to KIPP Parkside Charter Sch. Application 11–12 (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/KPSCS\\_Attach24\\_Agreement.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/KPSCS_Attach24_Agreement.pdf). Friendship proposed a fee of 12% of revenue to its CMO and an additional fee to 4th Sector for administrative support. Attachment 24, *supra* note 128, at art. 8.4–8.5.

172. KIPP Parkside Charter Sch. Application 61 [hereinafter KIPP Application], [https://sites.temple.edu/sdejarnatt/files/2018/07/KPSCS\\_Narrative\\_FINAL.pdf](https://sites.temple.edu/sdejarnatt/files/2018/07/KPSCS_Narrative_FINAL.pdf) (on file with author).

173. Attachment #14, KPSCS Operations Organizational Chart to KIPP Parkside Charter Sch. Application 3 (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/KPSCS\\_Attach14\\_OpsOrgChart.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/KPSCS_Attach14_OpsOrgChart.pdf).

174. *See* DeJarnatt, *supra* note 85, at 588–91.

175. *Id.* at 586–88.

to closures of traditional neighborhood schools. Such a result is a real cost and limitation of unfettered charter expansion.<sup>176</sup>

The application stressed over and over that KIPP has a large waiting list, though it specified inconsistent numbers: 3,700<sup>177</sup> and 3,400.<sup>178</sup> It is not clear whether those 3,700 or 3,400 are unique students who applied to KIPP schools in the last round of admissions, whether the lists are zeroed out every year, or whether the lists are cumulative—and, if so, for how many years. It is also unclear whether the numbers double count students who apply to all KIPP schools for which they qualify and whether names are removed once students are admitted off of the waiting list for one KIPP school or for another charter. For Fall 2016, a parent could have applied to KIPP Philadelphia or KIPP West Philadelphia for kindergarten; for Grades 5–8, the parent could have applied to KIPP Philadelphia or KIPP West Prep. The application asserted that there were 308 families from zip code 19139 and 170 from 19131 on the wait list.<sup>179</sup> A chart shows the wait lists from these two zip codes substantially increasing from 96 to 478 from 2012 to 2016.<sup>180</sup> KIPP states it starts over each year. If the waiting list is the key evidence of desire for the school,<sup>181</sup> then it should be audited to determine whether there is double counting and what the true number on the wait list actually is.

This application, like several others, made the claim that this new charter will offer an option superior to existing neighborhood schools, but it based this claim on the designations of the School Progress Reports.<sup>182</sup> Test scores are a flawed metric,<sup>183</sup> but the application even applied a double standard to

176. One very moving example of the community reaction to the closure of a “failing” school is the reForm exhibit of artist Pepón Osorio in collaboration with students and teachers of the Fairhill School. REFORM, <http://reform-project.org> (last visited Oct. 1, 2018). The exhibit allowed the students to show as well as say what the school meant to them and how closing it damaged their sense of community. Jazmyn Burton, *‘reForm’ Exhibit at Tyler Keeps Local Students Connected*, TEMP. NOW (Mar. 23, 2016), <https://news.temple.edu/news/2016-03-22/reform-exhibit-tyler-keeps-local-students-connected>.

177. KIPP Application, *supra* note 172, at 6, 52, 75, 78.

178. *Id.* at 4, 51.

179. *Id.* at 6.

180. *Id.* at 72.

181. *Id.* at 76.

182. School Progress Reports are the District’s metrics for measuring schools. Each school, traditional and charter, is examined using multiple metrics that include standardized test scores, growth on such tests, and school climate factors including attendance and suspension rates. SCH. DIST. OF PHILA.: DIST. PERFORMANCE OFF., SCHOOL DISTRICT OF PHILADELPHIA SY2016–2017 DISTRICT SCORECARD (2016–2017), [https://cdn.philasd.org/offices/performance/Open\\_Data/School\\_Performance/District\\_Scorecard/DPR\\_SY1617\\_District\\_Scorecard\\_20180503.pdf](https://cdn.philasd.org/offices/performance/Open_Data/School_Performance/District_Scorecard/DPR_SY1617_District_Scorecard_20180503.pdf). High schools are also measured on graduation rates and college and career readiness. *Id.*

183. See SCHNEIDER, *supra* note 11.

this flawed metric. KIPP justified the application by noting that eleven of the fifteen district and charter schools in the 19131 and 19139 zip codes fell into the Intervene performance tier in the most recent SPRs.<sup>184</sup> It did not acknowledge that much the same is true for the KIPP schools. The 2014–2015 SPRs showed that all three existing KIPP schools were also in the Intervene tier for Achievement, though two of them climbed up to the Watch tier overall as a result of better climate scores.<sup>185</sup>

It is a little disingenuous for KIPP to critique other schools for their weak performance when their own isn't so great. If one removed the Climate numbers, KIPP would look even worse. It is admirable that the KIPP schools have good climate ratings, though one wonders at what cost.<sup>186</sup> But this application cannot be justified on the basis that KIPP is out-achieving all other schools—when such a conclusion is not accurate according to the metric the application itself is using. The KIPP numbers are even less impressive when one considers the significantly greater resources available to the KIPP schools, which receive 9% of their revenues from outside providers, on top of the tuition funds from the District.<sup>187</sup> KIPP also mentions repeatedly that students come to it achieving below their grade level.<sup>188</sup> That assertion, if true, may be relevant to the middle school and high school, but it cannot be relevant to schools like the newest one that starts in kindergarten.

KIPP stressed repeatedly that its goal is to have every student attend and graduate from college.<sup>189</sup> That's an admirable goal, but it excludes kids who sincerely do not aspire to attend college because they want technical or

184. KIPP Application, *supra* note 172, at 6.

185. The SPRs are available on the District Website. *2014–2015 School Progress Report, KIPP Philadelphia Charter School*, SCH. DIST. OF PHILA., [https://webapps1.philasd.org/downloads/school\\_profile/spr\\_reports/SY1415/3370\\_K8\\_SPR\\_SY1415.pdf](https://webapps1.philasd.org/downloads/school_profile/spr_reports/SY1415/3370_K8_SPR_SY1415.pdf) (last visited Sept. 30, 2018);

KIPP Philadelphia:	Overall: INTERVENE 22%
	Achievement INTERVENE 10%
	Progress INTERVENE 0%
	Climate REINFORCE 59%

*2014–2015 School Progress Report, KIPP West Philadelphia Preparatory Charter School*, SCH. DIST. OF PHILA., [https://webapps1.philasd.org/downloads/school\\_profile/spr\\_reports/SY1415/3396\\_MS\\_SPR\\_SY1415.pdf](https://webapps1.philasd.org/downloads/school_profile/spr_reports/SY1415/3396_MS_SPR_SY1415.pdf) (last visited Sept. 30, 2018);

KIPP West Prep:	Overall: WATCH 47%
	Achievement INTERVENE 15%
	Progress REINFORCE 54%
	Climate REINFORCE 70%

186. KIPP follows a strict approach to discipline, with total discretion to school administrators. *See* Kerrin Wolf et al., *Charting School Discipline*, 48 URB. LAW. 1, 35 (2016).

187. KIPP Application, *supra* note 172, at 64, 66.

188. *Id.* at 32.

189. *Id.* at 4–5.

military careers. Every child is entitled to have an education that prepares her for the future she wants, and every child should be encouraged to think of college. But Philadelphia has lost schools that also provide other solid futures, for example Bok High School.<sup>190</sup> KIPP's proposed exit standards for 4th and 8th grade require a child to "articulate why they want to go to college and how college will help them be anything they want to be in life."<sup>191</sup> Are KIPP students allowed to contemplate any other futures? Does KIPP push out students whose aspirations do not match KIPP's goals? How can the CSO hold KIPP accountable for this goal?

It is difficult to see how this model meets the innovation criteria or how it could serve as a model for traditional public schools. The KIPP no excuses approach is widely available among Philadelphia charter schools.<sup>192</sup> And KIPP is dependent on significant outside resources that are not available to traditional public schools.<sup>193</sup>

This application included significant amounts of information about data and ways with which to evaluate a school.<sup>194</sup> Presumably, KIPP uses these methods now for their schools, but the application said nothing about how it is implementing these methods or how the existing schools are doing under these standards. The application did not reveal whether they are retaining students or whether their alumni are "climbing the mountain to and through college" in accordance with KIPP's mission.<sup>195</sup> It would be very helpful in evaluating applications for additional charter schools to find out whether the approach is working as intended in the existing schools and to find out what changes a charter such as KIPP has made in its existing schools in response to all of the assessments and data it collects. Accountability requires no less, and such information would be very useful for the Evaluation Team.

There are two positive points in the application that should be noted. KIPP stated that it will not bill the District or the Commonwealth for students enrolled in excess of the agreed upon enrollment cap.<sup>196</sup> The application also stated that KIPP believes "backfilling is an important practice for all charter

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190. Bok was closed in 2013 after providing technical education to generations of Philadelphia students. See *Edward W. Bok Technical High School*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Edward\\_W.\\_Bok\\_Technical\\_High\\_School](https://en.wikipedia.org/wiki/Edward_W._Bok_Technical_High_School) (last visited Sept. 28, 2018); Katrina Ohstrom, *Great Depression to Great Recession: The Life and Death of Bok High*, HIDDEN CITY PHILA. (Apr. 17, 2013), <https://hiddencityphila.org/2013/04/great-depression-to-great-recession-the-life-and-death-of-bok-high>.

191. KIPP Application, *supra* note 172, at 23.

192. See Wolf, *supra* note 186, at 35.

193. See KIPP Application, *supra* note 172, at 64.

194. *Id.* at 29–33.

195. *Id.* at 4.

196. *Id.* at 51.

operators.”<sup>197</sup> The application refers to accessing the waiting list as the year progresses, but it was less clear as to whether KIPP also replaces students who do not return after the summer.

#### 4. *Withdrawn Applications*

Two of the applications were withdrawn before completion of the CSO evaluation.<sup>198</sup> I include them because they illustrate several important points. First, anyone can apply for a charter. Second, such applications cause the CSO to expend resources on processing them even if the application does not proceed to completion. Careful review of all applications is essential to ensure that public money is not wasted.

##### i. *Wilbur Wright Aerospace and Aviation Academy*

This application proposed a new charter high school with an aviation theme to be located in the Strawberry Mansion neighborhood of Philadelphia.<sup>199</sup> The mission was described as: “Wilbur Wright Aerospace and Aviation Academy will inspire and prepare all students for college, career and citizenship through a rigorous course of study facilitated in the context of aerospace and aviation.”<sup>200</sup> There is no CSO Report because the application was withdrawn. However, it still occupied the time and energy of the CSO office before withdrawal, and it is useful to examine what kinds of proposals the CSO must review.

This application is most noteworthy for being full of inconsistencies about what school it was proposing. The application appeared to be cut and pasted from documents relating to either an existing or a proposed school in the city of Chicago.<sup>201</sup> The application was stamped DRAFT and contained quite a few editing comments from a reviewer.<sup>202</sup> It was full of references to

197. *Id.* at 54. Backfilling means that the school fills vacancies that occur during the school year or after the students return in the fall. The obligation of charters to backfill has been a point of contention. Success Academy in NYC, for example, refuses to add new students after fourth grade. Mead, *supra* note 78.

198. Sch. Dist. of Phila., Charter School Application 2016–17 Cycle: Presentation to the School Reform Commission Charter Schools Office (Fed. 8, 2017) (presentation available at Charter School Office page on the School District of Philadelphia website).

199. *Id.*

200. Wilbur Wright Aviation Aerospace Academy Application (2016) [hereinafter Wright Application], <https://sites.temple.edu/sdejarnatt/files/2018/02/Wilbur-Wright-Aviation-Aero-space-Academy-Application.pdf> (on file with author).

201. *See infra* note 206.

202. *See* Wright Aviation, *supra* note 200, at 9, 10, 17, 22, 27.

Chicago.<sup>203</sup> The application also made references to an existing school and to topics such as “retention of staff,” implying that the school already existed.<sup>204</sup> At one point, it directed applicants to “[b]e an active parent by: accompanying your child to the school bus stop and meeting the bus in the afternoon.”<sup>205</sup> This requirement would be troublesome, even for an elementary school in a city like Philadelphia, where most parents work—but it veers towards the bizarre for this application, which is for a high school.

The application contains overblown rhetoric and some unrealistic goals, though that is not uncommon in new charter applications. The application identified as one of the “5 Pillars of School Climate: Best School in the Universe.”<sup>206</sup> The goals chart stated that it will suspend 30% of the students in the first year but expects to reduce that rate down to 5% by year five.<sup>207</sup>

The CSO did not complete a report on this proposal because it was withdrawn on November 22, 2016.<sup>208</sup>

### ii. *Metropolitan Philadelphia Classical Charter School*

This application was withdrawn on January 18, 2017, after the CSO had completed substantial work on the evaluation, even though no formal report was issued.<sup>209</sup> It had reviewed the application, including multiple attachments, and held a public hearing on January 5, 2017.<sup>210</sup> This application raised

203. *See id.* at 5 (referring to the CPS Office of Access and Enrollment); *id.* at 6 (referring to the Office of Language and Cultural Education, which is not a Philadelphia office); *id.* at 9 (referring to the 100 Black Men of Chicago College Fair); *id.* at 12–13 (referring to IHSA athletic rules); *id.* at 23 (referring to “Traditional Local School Council (LSC) structure,” which is not a term used in Philadelphia); *id.* at 27 (where the list of aviation sources listed are all located in Chicago or elsewhere in Illinois). The application does reference Philadelphia entities as possible internship placements. *Id.* at 10.

204. *Id.* at 2 (identifying May 2017 as a hard deadline for deciding which staff will be retained); *id.* at 27 (noting that “The Wilbur Wright Aerospace and Aviation Academy will have a change in its academic focus for the 2017–2018 year” and that “students who currently are in the web design and business entrepreneurial pathway will be given priority to enroll in Manufacturing Technology . . .”); *id.* at 28 (referring to various deadlines occurring in 2015); *id.* at 9 (directing the college coach to make sure students complete the 2015 FAFSA).

205. *Id.* at 9.

206. *Id.* at 8–9.

207. The editing note here points out that this is a very high goal which “can set you up to fail.” *Id.* at 17.

208. Sch. Dist. of Phila., *supra* note 198, at 4.

209. *Id.*

210. Greg Windle, *Curriculum and Budget Questions are Raised at Hearing About Free-Market Charter Application*, NOTEBOOK (Jan. 12, 2017, 4:35 PM), <http://thenotebook.org/articles/2017/01/12/hearing-about-application-for-metropolitan-philadelphia-classical-charter-raises-questions-about-curriculum-finances>.

several serious concerns, including its founders' lack of any connection to Philadelphia and its quasi-religious approach to education.<sup>211</sup>

The applicants for this charter had no apparent connection to Philadelphia. The application noted that it was part of the Hillsdale College Barney Charter School Initiative, funded by the Barney Family Foundation of Chicago.<sup>212</sup> Hillsdale is a small, religious, and very conservative college in Michigan.<sup>213</sup> It proudly rejects any federal money, even in the form of student grants or loans, so that it is not bound by Titles VI and IX or other federal regulations.<sup>214</sup> The proposed President of the Board was a Newtown Square lawyer named John P. McKelligott, who was formerly on the William Penn District School Board.<sup>215</sup>

The school planned to offer “classical” education based on the principles of “moral character and civic virtue.”<sup>216</sup> The concepts of moral character and

211. The Application was also very thinly developed. For example, the Organizational Chart was hand-written, Attachment 8 Organizational Chart to Metropolitan Philadelphia Classical Charter School Application (2016) (on file with author), [https://sites.temple.edu/sdejarnatt/files/2018/02/John-McKelligott-MPCCS\\_Attach8\\_OrgChart.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/John-McKelligott-MPCCS_Attach8_OrgChart.pdf), the professional development plans consisted of one page, Attachment 10 Professional Development to Metropolitan Classical Charter School Application (2016) (on file with author), <https://sites.temple.edu/sdejarnatt/oversight-charter-schools-and-a-thorough-and-efficient-system-of-public-education-documents/metro-philly-classical-1617-rtkl-0128-public>, and the Financial Policy was also only one page which essentially said the policy would be developed later, Attachment 28 Financial Policies to Metropolitan Classical Charter School Application (2016) (on file with author), <https://sites.temple.edu/sdejarnatt/oversight-charter-schools-and-a-thorough-and-efficient-system-of-public-education-documents/metro-philly-classical-1617-rtkl-0128-public>. See *infra* note 216 (demonstrating founders' lack of any connection to Philadelphia); *infra* note 224 (quasi-religious approach to education).

212. The Barney Charter School Initiative website lists 21 affiliated charter schools, none in Pennsylvania. *Affiliate Classical Charter Schools*, HILLSDALE C., <https://www.hillsdale.edu/educational-outreach/barney-charter-school-initiative/classical-charter-schools> (last visited Nov. 24, 2018).

213. See generally HILLSDALE C., <https://www.hillsdale.edu/> (last visited Nov. 24, 2018).

214. See *Scholarships and Financial Aid*, HILLSDALE C., <https://www.hillsdale.edu/admissions-aid/financial-aid> (last visited Nov. 24, 2018).

215. It is unclear whether McKelligott's role was limited to chairing the Board or whether he would also serve as interim School Leader. The form to identify the School Leader mostly consisted of his resume but did not specifically identify that he would fill this role. Attachment 6 Interim School Leader until a Permanent Replacement is Hired to Metropolitan Classical Charter School Application (2016) (on file with author), <https://sites.temple.edu/sdejarnatt/oversight-charter-schools-and-a-thorough-and-efficient-system-of-public-education-documents/metro-philly-classical-1617-rtkl-0128-public>.

216. Metropolitan Philadelphia Classical Charter School Application (2016) [hereinafter Metro. Phila. Application], <https://sites.temple.edu/sdejarnatt/oversight-charter-schools-and-a-thorough-and-efficient-system-of-public-education-documents/metro-philly-classical-1617-rtkl-0128-public> (on file with author).



virtue were not well defined, but the vision was centered in what sounded like a private preparatory school circa 1850.

The application proposed that the school would use the former home of the defunct New Media Tech Charter School and stated, “it is manifest that a charter school use [sic] coexisted successfully in that neighborhood for many years.”<sup>217</sup> This comment showed the applicant’s lack of familiarity with the troubled history of the New Media Tech Charter school, which was closed due to poor academic performance and financial problems, related at least in part to the federal fraud convictions of the founding Board president and CEO.<sup>218</sup> Such a history does not demonstrate successful coexistence.

The school, planned as a K–12 school, took a very Euro-centric approach to its curriculum and appeared to limit that curriculum to free market economics, the literature of Western Europe and ancient Greece, and the philosophy, art, and music of prior centuries, also in Western Europe and ancient Greece.<sup>219</sup> There was no mention of other cultures or histories from any other part of the world, including the cultures and histories of many Philadelphia students. All students need familiarity with the world at large. The curriculum was to be chosen with the guidance of Hillsdale College,<sup>220</sup> with a heavy emphasis on morals and virtue. Pennsylvania charter law requires charter schools to be nonsectarian.<sup>221</sup> This application appeared to be near to a religious school in classical clothing.

The Euro-centric curriculum appeared dismissive of the history and culture of many of the students who comprise the Philadelphia school population. For example, it did not mention coverage of slavery in the United States or other countries. There did not appear to be any plan for study of any part of the world other than the United States and Western Europe. The proposed curriculum did not explicitly include any women authors or authors of color, despite listing the works of numerous white men.<sup>222</sup>

217. *Id.* at 3.

218. Martha Woodall, *New Media Technology Charter to Close in June*, PHILA. INQUIRER (Mar. 30, 2016, 12:57 PM), [http://www.philly.com/philly/education/20160330\\_New\\_Media\\_Technology\\_Charter\\_to\\_close\\_in\\_June.html](http://www.philly.com/philly/education/20160330_New_Media_Technology_Charter_to_close_in_June.html).

219. Metro. Phila. Application, *supra* note 216, at 5–6, 8–11.

220. *Id.* at 2.

221. 24 PA. CONS. STAT. § 17-1717-A (2018).

222. Books in the literature curriculum are to be chosen with the guidance of Hillsdale College. Metro. Phila. Application, *supra* note 216, at 6. The fifth-grade curriculum included *Little Women* and *The Secret Garden*, both authored by women, and a title identified as Frederick Douglass, but no author is identified, so it is unclear if this is Douglass’s autobiography, *Narrative of the Life of Frederick Douglass, an American Slave*, or some other book relating to Douglass. Attachment 1 Fifth Grade Curriculum Map to Metropolitan Classical Charter School Application (2016), [https://sites.temple.edu/sdejarnatt/files/2018/02/John-McKelligott-MPCCS\\_Attach1\\_Curriculum6.pdf](https://sites.temple.edu/sdejarnatt/files/2018/02/John-McKelligott-MPCCS_Attach1_Curriculum6.pdf) (on file with author).

The quasi-religious approach was hinted at in comments such as the description of the music and art curriculum: “What does the Sistine Chapel Ceiling tell us not only about Michelangelo’s . . . technique but also about the nature of man?”<sup>223</sup> The Sistine Chapel is a spectacular work of art, to be sure, but it is fundamentally a religious painting. What it says about the nature of man is grounded in the Roman Catholic Church’s view in the early 16th century. The application made no indication that the school planned to have students critically examine that view and contrast it with other interpretations of the nature of man. It specifically stated that “[a] great deal of attention will be given to the Western and American political, *religious*, intellectual, cultural, and economic traditions.”<sup>224</sup> In a list of questions to focus on within this framework was “[w]hat peoples have achieved the most and why?”<sup>225</sup> Given the overall context, it seems clear that the answer will be limited to white Christian Europeans and Americans, which is not a thorough or accurate picture students should be learning. The application explicitly referred to the Golden Rule as the basis for the school climate and culture, though it noted that it will avoid religious connotations by teaching a Victorian era children’s story called *Water Babies*.<sup>226</sup> The Wikipedia description of this story is, to put it mildly, disturbing.<sup>227</sup> The story includes derogatory narrative references to Jews, the Irish, and black people. Such a resource is not appropriate, even if the racism was a product of the times in which it was written.

The curriculum took a somewhat ideological approach to economics as well: “The economics class will explore the basic principles of free markets . . . . The fundamental ideas behind the class are that man is an economic being: he is disposed to invent, build, and sell things in order to better his environment and improve his lot in life . . . unlike coercive transactions, sometimes government ordered, in which one party wins and the other loses . . . .”<sup>228</sup> “The relations between the market and the government will be explored, taking up the important question of which human efforts and enterprises should be performed by government, and which should be performed by the free market.”<sup>229</sup>

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223. Metro. Phila. Application, *supra* note 216, at 9.

224. *Id.* at 7 (emphasis added).

225. *Id.*

226. *Id.* at 22.

227. *The Water-Babies, A Fairy Tale for a Land Baby*, WIKIPEDIA, [https://en.wikipedia.org/wiki/The\\_Water-Babies,\\_A\\_Fairy\\_Tale\\_for\\_a\\_Land\\_Baby](https://en.wikipedia.org/wiki/The_Water-Babies,_A_Fairy_Tale_for_a_Land_Baby) (last visited Sept. 30, 2018).

228. Metro. Phila. Application, *supra* note 216, at 9.

229. *Id.*

The application made very little mention of concern or preparation for the education of students with special needs. There was no detailed discussion of the “child find” process for identifying students with special needs,<sup>230</sup> or of curriculum needs or staff for special education. In the provision for “Meeting Student Needs,” the application provided the school responsibility only for character education.<sup>231</sup> “Should the need arise outside of the character education, the Head of School and/or assistant headmaster will assist the parents or legal guardians in seeking appropriate services for troubled students.”<sup>232</sup> The school planned to have staff to “assist in identifying student needs” but noted this is “separate from the special education staff, although obviously support services and special education services may overlap . . . .”<sup>233</sup> The school took an apparent no tolerance approach to discipline, but the Code provided in the application did not define specific standards of behavior. It had consequences based on levels, but the Code did not identify what behaviors would lead to which level of response. The language on students with disabilities stated that the school will comply with IDEA, but it also asserted that “[s]tudents with disabilities are neither immune from the Metro Philadelphia disciplinary process nor entitled to participate in programs when their behavior impairs the education of other students.”<sup>234</sup>

There were significant hints, including the name of the school, that the school planned to recruit outside of Philadelphia for students. The application justified the need for the school by referring to the metropolitan area, not just the city: “in a large metropolitan area like Philadelphia, with perhaps a population of 2.5 million or more . . . .”<sup>235</sup> It also noted a plan to advertise the school through billboards on I-95 and the Roosevelt Boulevard.<sup>236</sup> Pennsylvania has a provision for regional charter schools, but the process is

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230. The Child Find process is a regulatory requirement that school districts engage in outreach to locate and identify children eligible for special education services. 22 PA. CODE §14.121 (2018).

231. Metro. Phila. Application, *supra* note 216, at 24.

232. *Id.*

233. *Id.*

234. *Id.* at 40; *see also* Attachment 17 Code Conduct to Metropolitan Classical Charter School Application (2016), <https://sites.temple.edu/sdejarnatt/oversight-charter-schools-and-a-thorough-and-efficient-system-of-public-education-documents/metro-philly-classical-1617-rtkl-0128-public> (on file with author). This Attachment is inexplicably captioned “Social Security Administration.”

235. Metro. Phila. Application, *supra* note 216, at 37.

236. *Id.*

different than the one to obtain a charter from the SRC.<sup>237</sup> The application did not comply with those requirements.<sup>238</sup>

These applications raised several recurring themes. Several—Metropolitan, Friendship, and Wilbur Wright—were from outsiders with few, if any, ties to Philadelphia or to the communities with which they proposed to work. Several—Friendship and Deep Roots—proposed to use buildings that formerly housed district schools, and they justified their applications by claiming a need for more school options, ignoring that the former schools were closed for under-enrollment. Metropolitan’s twist on this theme was its claim that the former occupant of its building, New Media Charter School, showed that the neighborhood can support a “high quality” charter school.<sup>239</sup> High quality is not an apt description of New Media’s founders, who pled guilty to federal fraud charges—and to the academic struggles of the school—which was closed in June 2016.<sup>240</sup> The applicants presumed that their schools would be “high quality” and succeed where District schools have allegedly failed. KIPP made this pitch explicit but ignored its own academic struggles. Although the KIPP application repeated the common charter assertion that its students’ struggles are really the district’s fault because they arrive at KIPP already behind, that explanation loses force for the KIPP schools that begin in kindergarten. It also is puzzling that KIPP did not analyze what it needs to do to modify its approach in light of the recent test score drops its schools have experienced.

These applications demonstrate the critical importance of oversight and the need for careful evaluation of applications to open charter schools in order to ensure accountability for appropriate use of public funds. That accountability must continue throughout the charter term.

### *B. Renewal Process*

One key way charter operators are held accountable is that charters are granted for a specific time period, and renewal is subject to the charter meeting the standards set by Pennsylvania law and by the charter document itself.<sup>241</sup> In its review of renewal requests, the CSO evaluates each charter school on three domains: academic performance, organizational compliance, and

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237. 24 PA. CONS. STAT. § 17-1718-A (2018).

238. *Compare* Metro. Phila. Application, *supra* note 216, with 24 PA. CONS. STAT. § 17-1715-A (listing requirements for Pennsylvania charter schools), and 24 PA. CONS. STAT. § 17-1717-A (establishing a Pennsylvania charter school).

239. Metro. Phila. Application, *supra* note 216, at 3.

240. Woodall, *supra* note 218.

241. 24 PA. CONS. STAT. § 17-1729-A (2018).

financial health.<sup>242</sup> Academic performance focuses primarily on the school's test results and its rankings on the School Progress Report, in comparison to all schools, other charter schools, and a peer group of charter and district schools with similar demographics.<sup>243</sup> The CSO evaluation of organizational compliance looks to whether the charter executes its stated mission, meets its legal and regulatory obligations to students with special needs and English Language Learners while ensuring equity of program delivery and outcomes, has equitable and compliant enrollment policies and disciplinary policies, complies with personnel requirements as to certifications and clearances, complies with food, health, and safety requirements, submits required documents on time, and has a board that operates in compliance with the Sunshine Act, the Ethics Act, and the charter's bylaws.<sup>244</sup> Finally, the CSO evaluates whether the school is in sound financial health and adheres to "generally accepted standards of fiscal management."<sup>245</sup> For each of the three domains, the CSO designates the charter as meeting the standard, approaching the standard, or not meeting the standard.

The CSO review is rigorous and time consuming, and it should be. These are no mere theoretical concerns. Numerous charter operators in Philadelphia have been investigated, and in many cases, prosecuted and convicted for criminal misuse of funds.<sup>246</sup> Board compliance and conflicts of interest have plagued many Philadelphia charters.<sup>247</sup> For many years, there was widespread abuse of the lottery process in Philadelphia, which was stopped when the CSO

242. *Renewal Process*, SCH. DIST. OF PHILA.: CHARTER SCHS. OFF., <https://www.philasd.org/charterschools/renewal> (last modified July 6, 2018).

243. The standards are laid out in detail in each renewal report. *See, e.g.*, SCH. REFORM COMM'N, 2016–2017 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, LABORATORY CHARTER SCHOOL OF COMMUNICATION AND LANGUAGES 1–3 (2017) [hereinafter LABORATORY REPORT].

244. *Id.* at 2.

245. *Id.*

246. *See* DeJarnatt, *supra* note 39, at 49–51. More recently, two charter officials pled guilty to fraud involving the charter schools founded by Dorothy June Brown, though Brown's trial ended in a hung jury and charges were then dropped due to Brown's health. Martha Woodall, *Cooperative Charter School Official Gets Probation*, PHILA. INQUIRER (Feb. 11, 2016, 11:35 AM), [http://www.philly.com/philly/education/20160212\\_Cooperative\\_charter\\_school\\_official\\_gets\\_probation.html](http://www.philly.com/philly/education/20160212_Cooperative_charter_school_official_gets_probation.html). Masai Skief pled guilty to wire fraud, arising from misuse of funds as the CEO of the Harambee Institute Charter School. Press Release, U.S. Attorney for the E. Dist. of Pa. (Aug. 13, 2013), <https://archives.fbi.gov/archives/philadelphia/press-releases/2013/head-of-charter-school-pleads-guilty-to-fraud-charges>. Mr. Skief continued to steal from the school even after his guilty plea. Holly Otterbein, *Philly Charter School CEO Gets Three Years for Embezzlement*, WHYY (Feb. 10, 2014), <https://whyy.org/articles/philly-charter-school-ceo-gets-three-years-for-embezzlement>.

247. *See* DeJarnatt, *supra* note 39, at 49–51; Otterbein, *supra* note 246; Woodall, *supra* note 246; Press Release, *supra* note 246.

started investigating the admissions process of the schools.<sup>248</sup> Schools have closed abruptly or failed to complete the school year due to financial distress.<sup>249</sup> The CSO's role is crucial to making charters accountable to their students, their families, and the broader community.

In the 2016–2017 cycle, twenty-six schools were up for renewal.<sup>250</sup> The CSO, after careful and extensive review, recommended one school for a five-year renewal without conditions.<sup>251</sup> It recommended renewal with conditions for twenty-two schools.<sup>252</sup> The review, while rigorous, was also generous to

248. See Benjamin Herold, *Questionable Application Processes at Green Woods, Other Charter Schools*, NOTEBOOK (Sept. 14, 2012, 5:22 PM), <http://thenotebook.org/articles/2012/09/14/questionable-application-processes-at-green-woods-other-charter-schools>.

249. See Laura Benshoff, *Philly Wakisha Charter School Shutting for Good Earlier than Planned*, WHY Y (Dec. 17, 2014), <https://why.org/articles/philly-wakisha-charter-school-shutting-for-good-earlier-than-planned>. Two weeks later, the Walter Palmer Leadership Learning Partners surprised parents with its announcement that it would not reopen after the winter break. The school had been fighting the SRC's decision to revoke the charter. Kevin McCorry, *Walter Palmer Charter Closes Leaving Hundreds of Philly Students in the Lurch*, WHY Y (Dec. 29, 2014), <https://why.org/articles/walter-palmer-closes>.

250. *Annual Charter Evaluations Released*, SCH. DIST. OF PHILA.: OFF. COMM'N, <https://www.philasd.org/communications/2017/03/22/annual-charter-evaluations-released> (last modified July 13, 2017).

251. Alliance for Progress was recommended even though it met the standard on only two out of three domains with approaching standard on financial health. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, ALLIANCE FOR PROGRESS CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlWjJGNkV3SEnutvE/view](https://drive.google.com/file/d/0B9x1ev_U2NtlWjJGNkV3SEnutvE/view).

252. Belmont Charter School did not meet standards for academics or organization and only approached the standard for financial health. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, BELMONT ELEMENTARY CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlQXUzcFlN8zd00/view](https://drive.google.com/file/d/0B9x1ev_U2NtlQXUzcFlN8zd00/view). Boys Latin Charter School did not meet the academic standard, approached standard on the other two domains. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, BOYS' LATIN OF PHILADELPHIA CHARTER SCHOOL 7–9 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlZDB4eU9ya182UW8/view](https://drive.google.com/file/d/0B9x1ev_U2NtlZDB4eU9ya182UW8/view). First Philadelphia Preparatory Charter School did not meet academics for its high school, approached the academic standard for the middle school and the organization standard, and met the financial standard. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, FIRST PHILADELPHIA PREPARATORY CHARTER SCHOOL 7–9 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlV254MU5EcTBZS1k/view](https://drive.google.com/file/d/0B9x1ev_U2NtlV254MU5EcTBZS1k/view). Franklin Towne Elementary Charter School approached standard on all three domains. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, FRANKLIN TOWNE CHARTER ELEMENTARY SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2Ntlckl0aER4VW5KZmM/view](https://drive.google.com/file/d/0B9x1ev_U2Ntlckl0aER4VW5KZmM/view). General David B. Birney Charter School approached the organization and financial standards and was not rated on academics because of a recent switch from Mosaica to American Paradigm as the operator. SCH. REFORM COMM'N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, GENERAL DAVID B. BIRNEY

CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIRURKM3dnaWpRLUk/view](https://drive.google.com/file/d/0B9x1ev_U2NtIRURKM3dnaWpRLUk/view). Green Woods Charter School met the academics standard and approached the standards for organization and finances. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, GREEN WOODS CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIT1ZvbFhIYmJ3RUU/view](https://drive.google.com/file/d/0B9x1ev_U2NtIT1ZvbFhIYmJ3RUU/view). Inquiry Charter School approached the academics and organization standards but did not meet the financial standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, INQUIRY CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIXzdtRIZWR1E3WjQ/view](https://drive.google.com/file/d/0B9x1ev_U2NtIXzdtRIZWR1E3WjQ/view). Keystone Academy Charter School approached the academics standard and met the other standards. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, KEYSTONE ACADEMY CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIRDJLcWp0QUVSdFU/view](https://drive.google.com/file/d/0B9x1ev_U2NtIRDJLcWp0QUVSdFU/view). KIPP West Philadelphia Preparatory Charter School approached all three standards. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, KIPP WEST PHILADELPHIA CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2Ntlc0x3Ukc1SIVYRjg/view](https://drive.google.com/file/d/0B9x1ev_U2Ntlc0x3Ukc1SIVYRjg/view). Mastery Cleveland approached the academics and organizational standards and met the financial standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, MASTERY CHARTER SCHOOL CLEVELAND ELEMENTARY 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIQTFnOEEExNzUtr1U/view](https://drive.google.com/file/d/0B9x1ev_U2NtIQTFnOEEExNzUtr1U/view). Mastery Charter School at Pickett did not meet the academic standard for its middle school, approached that standard for high school, approached the organization standard, and met the financial standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, MASTERY CHARTER SCHOOL: PICKETT CAMPUS 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIS21rZVpDVHdUbGM/view](https://drive.google.com/file/d/0B9x1ev_U2NtIS21rZVpDVHdUbGM/view). Memphis Street Academy Charter School did not meet the academics standard but approached the organization and financial standards. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, MEMPHIS STREET ACADEMY CHARTER SCHOOL AT J.P. JONES 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtdG1ZWfNWQUYwVzA/view](https://drive.google.com/file/d/0B9x1ev_U2NtdG1ZWfNWQUYwVzA/view). Multicultural Academy Charter School met the academics and financial standards and approached the organization standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, MULTICULTURAL ACADEMY CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlcU16aDVhaS15RDg/view](https://drive.google.com/file/d/0B9x1ev_U2NtlcU16aDVhaS15RDg/view). The Philadelphia Charter School for the Arts and Sciences at H.R. Edmunds approached the academics and organization standards and met the financial standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, THE PHILADELPHIA CHARTER SCHOOL FOR THE ARTS AND SCIENCES AT H.R. EDMUNDS 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtdHFJZ2JxQXlZnJQ/view](https://drive.google.com/file/d/0B9x1ev_U2NtdHFJZ2JxQXlZnJQ/view). Philadelphia Electrical and Technology Charter School approached the standard on all three domains. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, PHILADELPHIA ELECTRICAL AND TECHNOLOGY CHARTER SCHOOL 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIRtdGSmw3VXIWN2c/view](https://drive.google.com/file/d/0B9x1ev_U2NtIRtdGSmw3VXIWN2c/view). Preparatory Charter School of Mathematics, Science, Technology, and Careers met the academics standard, approached the organization standard, and did not meet the financial standard. SCH. REFORM COMM'N, 2016-17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, PREPARATORY CHARTER SCHOOL OF MATHEMATICS, SCIENCE, TECHNOLOGY, AND CAREERS 7-8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtIMktiTnRZeUpOSGs/view](https://drive.google.com/file/d/0B9x1ev_U2NtIMktiTnRZeUpOSGs/view). Sankofa Freedom Academy Charter School did not meet the academics standard for its elementary school but approached the standard for high school and approached the organization and financial

the charters as twenty-two schools were recommended for renewal with conditions even though they failed to meet standards in all three domains.<sup>253</sup>

Three schools were not recommended for renewal: Eastern University Academy Charter School, Laboratory Charter School of Communications and Languages, and Richard Allen Preparatory Charter School.<sup>254</sup> Richard Allen Preparatory Charter School was actually part of the 2014–2015 renewal cohort, but it was given a one-year extension by default when the SRC failed to take any action on the CSO recommendation for a one-year renewal with conditions.<sup>255</sup> After a supplemental evaluation of data for the succeeding academic years, the CSO recommended revocation of the charter.<sup>256</sup> It found “continued declines in academic success and financial health and sustainability performance and sustained non-compliance for organizational

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standards. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, SANOFKA FREEDOM ACADEMY CHARTER SCHOOL 7–9 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlbVZFT050MjdSTTg/view](https://drive.google.com/file/d/0B9x1ev_U2NtlbVZFT050MjdSTTg/view). The Southwest Leadership Academy Charter School approached all three standards. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, SOUTHWEST LEADERSHIP ACADEMY CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlWjdEa1ZnUWxhejA/view](https://drive.google.com/file/d/0B9x1ev_U2NtlWjdEa1ZnUWxhejA/view). Tacony Academy Charter School met the academics standard for its elementary school and the financial standard but only approached the organization standard and did not meet the academics standard for its high school. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, TACONY ACADEMY CHARTER SCHOOL 7–9 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlbjVBZjc1QjkzWlk/view](https://drive.google.com/file/d/0B9x1ev_U2NtlbjVBZjc1QjkzWlk/view). Universal Creighton Charter School approached the academics and organization standards and did not meet the financial standard. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, UNIVERSAL CREIGHTON CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlcTRFSEYzRGNwV28/view](https://drive.google.com/file/d/0B9x1ev_U2NtlcTRFSEYzRGNwV28/view). West Oak Lane Charter School approached all three standards. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, WEST OAK LANCE CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlVm81MWtkazk0bnM/view](https://drive.google.com/file/d/0B9x1ev_U2NtlVm81MWtkazk0bnM/view). Wissahickon Charter School met the academics standard and approached the organization and financial standards. SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, WISSAHICKON CHARTER SCHOOL 7–8 (2017), [https://drive.google.com/file/d/0B9x1ev\\_U2NtlOXN6a1VTMDRsV0U/view](https://drive.google.com/file/d/0B9x1ev_U2NtlOXN6a1VTMDRsV0U/view).

253. *See supra* note 252.

254. LABORATORY REPORT, *supra* note 243; SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, EASTERN UNIVERSITY ACADEMY CHARTER SCHOOL (2017) [hereinafter EASTERN REPORT], [https://drive.google.com/file/d/0B9x1ev\\_U2Ntld2FKc2wyNEw0Y00/view](https://drive.google.com/file/d/0B9x1ev_U2Ntld2FKc2wyNEw0Y00/view); SCH. REFORM COMM’N, 2016–17 CHARTER SCHOOL RENEWAL RECOMMENDATION REPORT, RICHARD ALLEN PREPARATORY CHARTER SCHOOL (2017) [hereinafter RICHARD ALLEN REPORT], [https://drive.google.com/file/d/0B9x1ev\\_U2NtlN29hQ3Z4cVNraFk/view](https://drive.google.com/file/d/0B9x1ev_U2NtlN29hQ3Z4cVNraFk/view).

255. RICHARD ALLEN REPORT, *supra* note 254, at 7.

256. *Id.*



requirements.”<sup>257</sup> The CSO determined that the school did not meet the academic domain or organizational compliance standards and only approached the standard for financial health, which was a decline from the 2014–2015 report when it met this standard.<sup>258</sup> On October 19, 2017, the SRC voted 3 to 1 not to renew the charter.<sup>259</sup>

The CSO recommendation for non-renewal of the Laboratory Charter School of Communication and Languages was based on the school’s failure to meet the standards for organizational compliance and financial health, despite meeting the academic domain standard.<sup>260</sup> The school’s academic performance was noteworthy, as it substantially outperformed all district, charter, and peer schools in both math and ELA.<sup>261</sup> But the CSO noted serious compliance issues in the other two domains, including concerns about the enrollment process,<sup>262</sup> the disciplinary code,<sup>263</sup> non-compliant board procedures,<sup>264</sup> missing certifications and clearances for employees,<sup>265</sup> and failure to submit timely annual reports and audits.<sup>266</sup> The SRC voted unanimously to accept the recommendation not to renew the Lab Charter in May 2017.<sup>267</sup>

Eastern University Academy Charter School did not meet the academic domain standard for its middle school or its high school.<sup>268</sup> It also failed to meet the standard for organizational compliance, including deficiencies in its

257. *Id.*

258. *Id.* at 8.

259. Dale Mezzacappa, *Was Thursday the Beginning of the End for the SRC?*, NOTEBOOK (Oct. 19, 2017, 5:34 PM), <http://thenotebook.org/articles/2017/10/19/src-hears-legal-framework-for-starting-its-own-dissolution>.

260. LABORATORY REPORT, *supra* note 243, at 7–8.

261. *Id.* at 10.

262. *Id.* at 17.

263. *Id.* at 19.

264. *Id.* at 20.

265. *Id.* at 21.

266. *Id.* at 24, 28. At the SRC meeting, the CSO noted that the school had failed to meet most of the twenty-four conditions placed on it in the 2012 renewal. The Lab School’s founder, Dorothy Brown, was charged with defrauding the Lab Charter and two other schools of millions of dollars, though the charges were dropped when she was found unfit to stand trial again. Dale Mezzacappa, *SRC Approves Nonrenewal of Lab Charter, Tables Decision on Memphis Street*, NOTEBOOK (May 1, 2017, 10:04 PM), <http://thenotebook.org/articles/2017/05/01/src-approves-nonrenewal-of-lab-charter-tables-decision-on-memphis-street>.

267. Mezzacappa, *supra* note 259. On May 24, 2018, however, the SRC undid this decision and granted a five-year renewal, reversing the 2017 decision. Maddie Hanna & Kristen A. Graham, *SRC Adopts \$3.2B Philly School Budget—with Question Marks*, PHILA. INQUIRER (May 24, 2018), <http://www.philly.com/philly/education/src-adopts-3-2b-philly-school-budget-with-question-marks-20180524.html>.

268. EASTERN REPORT, *supra* note 254, at 7.

special education and English Language Learner policies, its enrollment policies, and in Board compliance.<sup>269</sup> The CSO recommended non-renewal even though the school approached the standard for financial health.<sup>270</sup> The SRC voted unanimously to accept the non-renewal recommendation on June 15, 2017.<sup>271</sup>

These reports detail significant concerns that affect the fair and stable operation of each school. The process of non-renewal did not end with the SRC votes, however. Each school was entitled to a formal hearing, followed by a second SRC vote, and an appeal to the Charter Review Board.<sup>272</sup> Further appeals to the courts can keep a school open for years if stays are granted.<sup>273</sup> This lengthy process hardly exemplifies an unfair attack on charters. In contrast, traditional district schools have no recourse to SRC decisions to close them or turn them over to private operators.

In addition to the schools up for renewal, the CSO also recommended revocation for one school that was in the middle of its charter, Khepera Charter School.<sup>274</sup> The CSO recommendation followed several years of intervention and monitoring of the school, including Notices of Deficiency issued in October 2015, January 2017, and May 2017.<sup>275</sup> The Notices detailed a wide array of problems, including reports that board members were hired for paid positions outside of the normal hiring process and that school staff provided home improvements to board members, that the school did not file timely audits, that the school lacked a proper internal controls policy, that the school failed to make more than \$1,000,000 in payments to the Pennsylvania

269. *Id.* at 8.

270. *Id.* at 7–8.

271. *Renewal Process*, *supra* note 242.

272. *Id.*

273. *See, e.g., Pocono Mountain Charter Sch., Inc. v. Pocono Mountain Sch. Dist.*, 88 A.3d 275 (Pa. Commw. Ct. 2014) (detailing multi-year process of appeals that kept charter schools open for years after the initial revocation decision). Pocono Mountain Charter finally closed in June 2014; the school's original CEO was convicted of stealing more than \$1.5 million from the school. Amanda Kelley, *Pocono Mountain Charter Closing*, WNEP (June 17, 2014, 4:36 PM), <http://wnep.com/2014/06/17/pocono-mountain-charter-school-closing>. Indeed, all three of the Philadelphia schools at issue here remained in operation through the 2017–2018 school year. *See Renewal Process*, *supra* note 242.

274. Dale Mezzacappa, Bill Hangle Jr. & Avi Wolfman-Arent, *School District Recommends Revoking Khepera's Charter*, NOTEBOOK (June 8, 2017, 1:33 PM), <https://thenotebook.org/articles/2017/06/08/school-district-recommends-revoking-khepera-s-charter-citing-persistent-financial-and-organizational-issues>.

275. The Renaissance program allows the SRC to turn existing public schools over to charter management. ASPIRA took over management of Olney High School and Stetson in 2011 with five-year charters. *See Dale Mezzacappa, District Recommends Non-renewal of Four Renaissance Charters*, NOTEBOOK (Apr. 14, 2016, 4:49 PM), <http://thenotebook.org/latest0/2016/04/14/district-recommends-non-renewal-of-four-charters>.

Public Employees Retirement System, that the school failed to maintain health insurance for its staff, that the school's landlord was seeking eviction due to non-payment of rent, and that the school's academic performance was the weakest of any Philadelphia charter school in 2015–2016.<sup>276</sup> The SRC voted in favor of revocation on June 15, 2017.<sup>277</sup> The school lost its appeal to the Charter Appeal Board and announced that it will finally be closing in June 2019.<sup>278</sup>

Several charters have remained open for months and even years beyond their charter terms because the SRC has neglected to vote on the CSO's recommendation of non-renewal. In April 2016, the CSO recommended non-renewal for Olney High School and Stetson Middle School, operated as charters by ASPIRA under the Renaissance program.<sup>279</sup> The CSO also recommended non-renewal of Audenreid High School and Vare, operated by Universal Companies, also under the Renaissance program.<sup>280</sup> The SRC repeatedly tabled the non-renewal resolutions, giving the charter operators more time.<sup>281</sup> The SRC finally voted to accept the CSO recommendations on the ASPIRA charters nearly two years later, though those votes are only the first step of a lengthy process, including hearings, and a second vote and possible appeals.<sup>282</sup> The operators effectively received extensions years beyond the one year allowed by the Charter School Law.<sup>283</sup> The SRC has

276. Mezzacappa, *supra* note 274; Martha Woodall, *Hopes and Problems for Philly's Khepera Charter School*, PHILA. INQUIRER (Aug. 7, 2017), <http://www2.philly.com/philly/education/more-problems-for-phillys-khepera-charter-school-20170807.html>.

277. *Renewal Process*, *supra* note 242.

278. Maddie Hanna, *Philly's Khepera Charter School Loses Appeal, Plans to Close Next Year*, PHILA. INQUIRER (Nov. 9, 2018, 1:32 PM), <http://www2.philly.com/philly/education/khepera-charter-school-philadelphia-closing-20181109.html>.

279. Dale Mezzacappa, *supra* note 275. The Renaissance program allows the SRC to turn existing public schools over to charter management. *Renaissance Schools*, SCH. DIST. OF PHILA.: CHARTER SCHS. OFF., <https://www.philasd.org/charterschools/portap/renaissance> (last modified July 6, 2018). ASPIRA took over management of Olney High School and Stetson in 2011 with five-year charters. Connie Langland, *Takeover at Olney High*, METROPOLIS (Nov. 11, 2011, 11:49 AM), <http://www.phlmetropolis.com/2011/11/takeover-at-olney-high.php>.

280. Mezzacappa, *supra* note 275; *Renaissance Schools*, *supra* note 279; Langland, *supra* note 279.

281. Mensah M. Dean, *SRC Approves Budget, Fails Again to Vote on Charters*, PHILA. INQUIRER (May 26, 2016, 9:48 PM), [http://www.philly.com/philly/education/20160527\\_SRC\\_oks\\_budget\\_fails\\_again\\_to\\_vote\\_on\\_charters.html](http://www.philly.com/philly/education/20160527_SRC_oks_budget_fails_again_to_vote_on_charters.html).

282. Dale Mezzacappa & Avi Wolfman-Arent, *SRC Votes Not to Renew Olney and Stetson Charters*, NOTEBOOK (Dec. 14, 2017, 9:21 PM), <http://thenotebook.org/articles/2017/12/14/src-votes-not-to-renew-olney-stetson-charters>.

283. The Charter School Law explicitly states that a governing board of a city of the first class, i.e. Philadelphia, does not have authority to renew a charter for successive one-year terms. 24 PA. CONTS. STAT. § 17-1720-A(3).

engaged in a similar, though not quite as dramatic, delay in a vote on the CSO recommendation of non-renewal for Memphis Street Academy, another Renaissance charter operated by American Paradigm, tabling the recommendation in May 2017.<sup>284</sup>

Complaints about too much oversight undercut the role of accountability in the charter school experiment. It is difficult to imagine that the critics would be happy to ignore any evaluation of traditional public schools. Indeed the fundamental purpose of No Child Left Behind was to increase transparency of school performance—though the metric it relied on was flawed and limited.<sup>285</sup> For years, Philadelphia’s strongest charter supporters have insisted that charter expansion is a must because the test scores of traditional schools prove that they are “failing.”<sup>286</sup> It is inconsistent to avoid accountability for charters under the same standards. Charter proponents’ arguments tend to boil down to claims that waiting lists show parental demand and that fact alone is enough to justify charter school expansion—regardless of data or financial and management issues associated with such schools.<sup>287</sup>

The efforts of the CSO to provide effective oversight should be supported and expanded. Disclosure of the key facts regarding the operation of charter schools is a crucial first step, but disclosure alone is insufficient unless

284. Mezzacappa, *supra* note 266. In January 2018, the SRC directed the District to negotiate with the operators of Universal Vare and Memphis Street Academy, though at least one Commissioner “made it clear that the votes were not renewals.” Darryl C. Murphy, *SRC Gives Reprieves to Universal Vare, Memphis Street Charters*, NOTEBOOK (Jan. 18, 2018, 11:20 PM), <http://thenotebook.org/articles/2018/01/18/src-gives-reprieves-to-universal-vare-memphis-street-charters>. As of this writing, no vote has been scheduled on the Audenried charter. *Charter Schools Office, Universal Charter School at Audenried*, SCH. DISTRICT OF PHILA.: CHARTER SCHOOLS OFF., <https://www.philasd.org/charterschools/direcdire/universal-charter-school-at-audenried> (last modified Oct. 1, 2018).

285. Brian Resnick, *The Mess of No Child Left Behind*, ATLANTIC (Dec. 16, 2011), <https://www.theatlantic.com/national/archive/2011/12/the-mess-of-no-child-left-behind/250076>.

286. *See, e.g.*, Susan DeJarnatt, *The Double Standard that Charter Supporters Apply when Judging School Quality*, NOTEBOOK (Dec. 2, 2014, 3:41 PM), <http://thenotebook.org/articles/2014/12/02/the-double-standard-that-charter-supporters-apply-when-judging-school-quality>; David Hardy, *On Charters, the Issue is Not Stranded Costs, but Stranded Students*, PHILA. INQUIRER (Sept. 20, 2017, 5:00 AM), <http://www.philly.com/philly/opinion/commentary/charter-schools-philadelphia-research-for-action-study-20170920.html> (arguing that single digit scores on School Progress Reports of district schools justified charter expansion despite costs, but not mentioning the single digit achievement scores of the charter he founded).

287. *See, e.g.*, Tashia Fauntroy & Kelly Jones, *Pass the Charter School Bill*, PHILA. INQUIRER (July 2, 2017, 8:00 PM), <http://www2.philly.com/philly/opinion/commentary/pass-the-charter-school-bill-20170701.html>; Dan Hardy, *How Many Students on Charter School Waiting Lists? Hint: It's Not 40K*, NOTEBOOK (Feb. 4, 2015, 5:50 PM), <https://thenotebook.org/articles/2015/02/04/how-many-students-on-charter-school-waiting-lists-hint-it-s-not-40k>.

someone with the power to require action reviews the disclosed information and responds accordingly. As scholars of non-profit accountability in general have stressed, non-profits benefit from clear standards and active oversight.<sup>288</sup> The Charter School Law should be amended to provide clear standards to guide financial operations, to delineate the roles of charter management organizations and the schools they operate, and to provide for dedicated funding from the state to pay for oversight. Pennsylvania's Auditor General recommended the following key changes which, if enacted, would be a good start towards more fully protecting Pennsylvania's investment in charters:

- Create a funded and staffed independent statewide charter school oversight board;
- Empower authorizers to intervene as problems develop and reward high performing charter schools;
- Require charter schools to present annual reports at public meetings;
- Allow the Department of Education's Special Education Division to serve as the intermediary between charter schools and school districts when a student classification is in dispute;
- Eliminate cyber school payments from school districts and replace funding with direct payment from the state;
- Modify rules on admissions and enrollment, transparency, professional staff requirements, and management and operations.<sup>289</sup>

Each new charter seat costs the District over \$8,000 in stranded costs, a cost that subsidizes but does not disappear completely over time.<sup>290</sup> The seats proposed in the charter applications filed in 2016–2017 would have cost the district \$26,543,505 for the new seats and \$12,470,037 on an on-going basis.<sup>291</sup> That cost would further burden a school district that has struggled for decades with underfunding. At a bare minimum, the SRC had an obligation to

288. See, e.g., Melanie B. Leslie, *The Wisdom of Crowds? Groupthink and Nonprofit Governance*, 62 FLA. L. REV. 1179, 1183–84 (2010); Brakman Reiser, *supra* note 52, at 595.

289. PA. DEP'T AUDITOR GEN., PENNSYLVANIA CHARTER SCHOOL ACCOUNTABILITY AND TRANSPARENCY: TIME FOR A TUNE UP (2014), [http://www.paauditor.gov/media/default/reports/RPT\\_Charter\\_School\\_%20Report%20051214\\_final.pdf](http://www.paauditor.gov/media/default/reports/RPT_Charter_School_%20Report%20051214_final.pdf).

290. LAPP, FISCAL IMPACT, *supra* note 3, at 17–18.

291. *Id.*; Kristen A. Graham, *Five New Charter Schools Apply to Open in Philly*, PHILA. INQUIRER (Nov. 17, 2016, 3:01 AM), [http://www.philly.com/philly/news/20161117\\_5\\_new\\_charter\\_schools\\_apply\\_to\\_open\\_in\\_Philly.html](http://www.philly.com/philly/news/20161117_5_new_charter_schools_apply_to_open_in_Philly.html).

carefully evaluate the applications to see if such costs were justified.<sup>292</sup> As Professor Derek Black stresses, the impact of charters and other school choice mechanisms have to be evaluated on a district-level to truly understand whether such mechanisms undercut the state's constitutional obligation to provide public education.<sup>293</sup> The CSO's oversight is an essential element of that evaluation.

#### IV. CONCLUSION

The CSO's role in providing oversight of the charter application and renewal process is crucial and should be supported and strengthened, not undermined. Too much of the criticism of the CSO's work is not directed at the substance of the oversight but at the fact it exists at all. Government functions need oversight even when the government contracts them out to private entities. No one argues that it is "overreach" to have oversight of a contract to build a bridge or road. Police and fire departments comply with regulations and are subject to review. Public education should be no different. Just as roads are not merely for the benefit of the people who use them today, schools benefit entire communities and future members of those communities. Stewardship of our collective resources is critical.

Unless critics really want to completely dismantle public education and substitute the backpacks of cash market for education, they should applaud this work. If their desire is to end public education, then they should be honest about that goal.

The SRC has a fundamental fiduciary duty to the entire Philadelphia community to help ensure that Philadelphians benefit from the Commonwealth's constitutional obligation to provide a thorough and efficient system of public education for all students. Charter schools, in various ways noted above, have the potential to undercut that system. They need to be carefully scrutinized and their charters should be granted or renewed only if it is clear that further charter expansion will not negatively impact the existing Philadelphia public school system.

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292. *See generally* Black, *supra* note 21, at 1364, 1425–26 (arguing that charter schools that pull funding from public schools may have the effect of undermining the state's constitutional obligation to provide public education).

293. *See id.* at 1363, 1395–1403.

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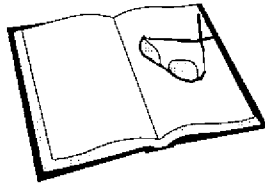
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