

NEW JERSEY SCHOOL BOARDS ASSOCIATION

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ANNUAL DELEGATE ASSEMBLY  
May 20, 2017

**The following resolution was received from the  
Edison Board of Education (Middlesex):**

WHEREAS, The Charter School program Act of 1995 (the ‘Act’) authorizes the creation of charter schools to service students whose respective communities have identified a desire for alternatives to traditional public schools; and

WHEREAS, The Act requires that individuals interested in creating a new charter school include parents and/or other stakeholders of the community in which the proposed charter school will be located; and

WHEREAS, The Act further requires that all charter schools have an approved district or region of residence made up of public school districts, which district/region of residence represents the community that the charter school was created to serve; and

WHEREAS, There are currently five charter schools in Middlesex and Somerset Counties, with a sixth having been approved in October 2016 with tentative opening of September 2018, which schools serve the following communities pursuant to their approved district/region of residence:

- a. Hatikvah international Academy Charter School (‘Hatikvah’): East Brunswick;
- b. Thomas Edison EnergySmart Charter School (“TEECS”): Franklin, North Brunswick and South Brunswick;
- c. Central Jersey College Prep Charter School (‘CJCP”): Franklin, North Brunswick, and New Brunswick;
- d. Greater Brunswick Charter School: New Brunswick, Edison, and highland park;
- e. Academy for Urban Leadership Charter School: Perth Amboy; and

WHEREAS, A number of these charter schools have applied to the NJDOE seeking to expand their current programs, enrollment and locations; and

- WHEREAS, A sixth charter school, Ailanthus Charter School, was approved by the new Jersey Department of Education (“NJDOE”) in October 2016 to serve students in Franklin and New Brunswick beginning in September 2018; and
- WHEREAS, The current number of seats across existing charter schools in Middlesex and Somerset counties for the 2016-2017 school year, according to available public records, is 2,316; and
- WHEREAS, The number of charter school seats throughout Middlesex and Somerset counties, according to available public records, will increase by 128% to 5,283 if all of the outstanding expansion applications are granted and Ailanthus is granted a final charter by the NJDOE; and
- WHEREAS, The Act requires that the districts of residence pay the charter schools for each student from their respective communities enrolled in those schools, thereby draining funds and diminishing money available to serve students in the traditional public schools; and
- WHEREAS, The NJDOE has interpreted the Act to require all public school districts statewide to pay charter schools for students enrolled in those schools regardless as to whether the charter serves that district’s community as part of the charter’s approved district or region of residence; and
- WHEREAS, Any increase in charter seats will have a negative impact on public school district funding, with the proposed 128% increase in such seats in Middlesex and Somerset counties likely to lead to drastic and debilitating cuts throughout the public school districts in those counties; and
- WHEREAS, Unlike charter schools, public school districts are consistently underfunded by the State despite the requirements of the School Funding Reform Act and are also subject to a mandatory 2% cap on increases to its local tax levy, which prevents public school districts from raising funds to cover the damage caused by increased charter school seats; and
- WHEREAS, The existing charter schools located in Middlesex and Somerset counties are already lacking in demand in their own designated communities and the expansion of these schools will only exacerbate this issue; and
- WHEREAS, In direct contradiction to the letter and spirit of the Act, many charter schools are seeking to expand in order to enroll additional students from districts outside of the charter schools’ approved districts or regions of residence due to a lack of interest from students who live in the very communities for which the charters were created to serve; and
- WHEREAS, TEECS, CJCP and Hatikvah have all filed applications seeking to expand their enrollment despite the fact, according to data available for the 2016-2017 school

year, that only 96% of the students enrolled in TEECS reside in that school's region of residence, only 87% of the students enrolled in CJCP reside in that school's region of residence, and only 48% of the students enrolled in Hatikvah reside in that school's district of residence, and

WHEREAS, TEECS and Hatikvah enroll a significantly more segregated student body than any of the resident or non-resident sending districts with respect to race, socioeconomic status, and need for special education; and

WHEREAS, The Department of Education and the Courts have repeatedly determined that the practice of segregating students must be ended, not perpetuated under the guise of parental choice of "free-market" competition; and

WHEREAS, It is unclear as to whether the NJDOE gives due consideration to the increased segregation of students caused by expanding charter schools; and

WHEREAS, It is also unclear as to whether the NJDOE gives due weight to the financial burden on districts of residence and other public school districts impacted by increasing charter school enrollment when considering applications for new or expanded charter schools; and

WHEREAS, There is a lack of publicly available studies and/or statistical analyses conducted by the NJDOE with respect to the segregative and financial impact of charter school expansions on the vast majority of students remaining in the traditional public setting; and

WHEREAS, The Edison Township Board of Education hereby implores the New Jersey Department of Education to conduct a full, open and thorough analysis of the potential impact that the expansion and addition of charter schools in Middlesex and Somerset counties will have on each public school district throughout the State; and

WHEREAS, A moratorium be imposed on the approval of any application to expand or create any charter school in Middlesex and/or Somerset Counties until such time as the NJDOE analysis can be properly completed and the results of which can be shared and discussed with the public; and

WHEREAS, The Edison Township Board of Education hereby requests the assistance of its local and State representatives in ensuring that the NJDOE conducts the necessary charter school impact analysis and that the public school districts of Middlesex and Somerset Counties receive their fair share of funds so that they can continue to provide a thorough and efficient public education to all students; and

WHEREAS, The Delegate Assembly is the official policymaking body of the New Jersey School Boards Association; and

WHEREAS, Education –related policies resulting from prior Delegate Assembly and Board of Directors actions are codified in the NJSBA *Manual of Positions and Policies on Education*; now, therefore, be it

1 RESOLVED, That the Edison Board of Education proposes the following new policy language  
2 for adoption by the Delegate Assembly and inclusion in NJSBA’s *Manual of*  
3 *Positions and Policies on Education*;

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5 **The NJSBA believes** that New Jersey Charter Schools, in high quality  
6 suburban school districts, erode the operations of public education by  
7 draining badly needed financial resources; and, be it further

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9 RESOLVED, That this resolution be placed on the agenda for consideration at the May 20, 2017  
10 Delegate Assembly.

Adopted at a regular meeting  
Of the Edison Board of Education  
On February 27, 2017.

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Daniel P. Michaud  
Business Administrator/Board Secretary

## RESOLUTION NO. 1

### SYNOPSIS

Resolution No. 1 from the Edison Township Board of Education (Middlesex County) proposes the following **new** policy language to the New Jersey School Boards Association's Delegate Assembly for consideration and adoption at the May 2017 Delegate Assembly:

**The NJSBA believes** that New Jersey charter schools, in high quality suburban school districts, erode the operations of public education by draining badly needed financial resources.

### BACKGROUND

The resolution submitted by Edison indicates that five charter schools are currently operating near the district while the Commissioner of Education has approved a sixth charter school to commence operations in September of 2018, also in a nearby district. The resolution indicates that the existing charter schools seek to expand operations and concludes that the opening of a new charter school, along with the proposed expansions of the existing charter schools, would result in an increase in available charter school seats by 128%; the district anticipates that a substantial number of those seats would be filled by Edison students. The resolution asserts that the current obligation of a resident school district to transfer funds to charter schools on behalf of students transfer to those schools diminishes the funding available to support students who remain in the traditional setting.

While the Delegate Assembly is the official policy arm of the Association, it must also act in compliance with state and federal statutes and code provisions or use appropriate means to effect a change in same. In considering the proposed resolution, it is therefore appropriate to refer to applicable laws and regulations as well as current policy.

Turning to the primary applicable law, *N.J.S.A. 18A:36A-1 et seq.*, the Charter School Program Act of 1995, ("Act") sets forth the legislative priorities pertaining to charter schools within New Jersey. The Act states in pertinent part:

The Legislature finds and declares that the establishment of charter schools as part of this State's program of public education can assist in promoting comprehensive educational reform by providing a mechanism for the implementation of a variety of educational approaches which may not be available in the traditional public school classroom.... The Legislature further finds that the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.

In other words, the New Jersey Legislature has determined that charter schools are an important alternative to traditional public schools and necessary in order to implement methodology that is not available in traditional public schools. Moreover, the Legislature has found that the establishment of a charter school program is in the best interests of students within New Jersey.

Given these legislative beliefs, it is difficult for the Association to take a formal position in opposition to the stated legislative findings absent objective credible evidence to the contrary.

Existing state regulations are in accord with the above statute. Therefore, the Resolutions Subcommittee must next examine existing NJSBA policy for additional guidance.

### **RELEVANT NJSBA POLICY**

File Code: 5117 - School Choice

- A. **The NJSBA believes** in local determination of school choice within the public schools. Options could include choice among schools in the district (intradistrict choice), including charter or magnet schools, or could extend to schools in other districts (interdistrict choice) when the school board has established a mutually agreeable contract with other school districts.

### Funding of Charter Schools

- A. **The NJSBA believes** that, upon a roll call majority vote of its full membership, the board of education of a public school district should have the authority to establish and operate charter schools.
- B. **The NJSBA believes** that an entity other than a local board of education should be able to establish and/or operate charter schools only if there is no requirement placed on public school districts to provide financial or other support to the charter schools or their students, and no funds for charter schools or their students shall come from or be funneled through a public school district's budget. [*Authority: DA 5/98-3, 4 and 5, DA 5/02-SR, DA 5/07-SR*].
- C. **The NJSBA believes** that public funds should not be used to fund non-public schools, and opposes the use of public funds for vouchers or tuition tax credits for attendance at private or religious schools.
- D. **The NJSBA believes** that school districts that elect to offer intradistrict or interdistrict school choice programs should suffer no loss in monies and in the rate and method of calculation in governmental educational aid, as a result of their decision to offer choice programs. [*Authority: DA 5/02-1, DA 5/02-SR, DA 5/07-SR*].
- E. **The NJSBA believes** that for purposes of calculating a district's spending on a per-pupil (adequacy) basis the students for whom the sending district provides a transfer payment to a charter school shall be counted as part of the district's enrollment for adequacy spending calculations. NJSBA believes that this will assure that the sending district's per pupil adequacy amount reflects the true budget of the sending district. [*Authority: DA 5/12-CR (Charter Schools)*].

- F. **The NJSBA believes** that a financial impact report should be part of the charter school application process, projecting the economic impact and tax consequences to the district and community over a five-year period. This report should take into consideration the cumulative impact of any charter schools already operating within the district. *[Authority: DA 5/12-CR (Charter Schools)]*.
- G. **The NJSBA believes** that charter school applications should be prioritized so that districts with failing schools are given first preference. Ultimately, statewide criteria should be devised establishing districts' performance as the primary consideration for charter school(s) approval. *[Authority: DA 5/12-CR (Charter Schools)]*.
- H. **The NJSBA believes** that the charter school approval process should be consistent with the local district's budget process. An approved charter school should be required to notify the local school board and should document a committed student count to the district no later than January 1 of the year it is scheduled to open. *[Authority: DA 5/12-CR (Charter Schools)]*.
- I. **The NJSBA believes** that any changes to charter school funding made by the State should be fully funded by the State directly to the charter. *[Authority: DA 11/15-1]*

## **DISCUSSION**

The Edison Board of Education has proposed **new** policy language for adoption by the Delegate Assembly indicating that charter schools established in high quality suburban school districts erode the operations of public education by draining badly needed financial resources, presumably from those high quality suburban districts.

The difficulty raised by the resolution is the fact that charter schools are public schools to the same extent as traditional, county regional, county special services and county vocational school districts. In essence, the Charter School Act represents a legislative determination to offer an alternative public educational setting to parents. Therefore, absent objective evidence to the contrary, the NJSBA cannot logically assert that charter schools erode the operation of public education in New Jersey.

In addition, the resolution is contradictory to established NJSBA policy. As noted above, Policy and Position File Code 5117 evidences the NJSBA's belief that school choice that lies within the discretion of the local district and that such choice includes the parental option to select charter schools. It would be contradictory to support the parental selection of a charter school while at the same time publicly indicating that the mere existence of charter schools erodes public education in New Jersey.

The unstated inference to be drawn from the resolution involves the resident district's obligation to transfer 90% of the district's per-pupil state aid to the charter school when parents send students to those charter schools. While this re-distribution of state aid is of significant concern to traditional districts, it would be at best, inaccurate for the Association to adopt a belief statement indicating that charter schools harm public education in our state. The statutorily

required re-direction of state aid represents exercise of the Legislature's funding discretion in support of public charter schools, which as noted above, are an alternative form of public education. As such, despite the required transfer of funds, funding continues to be directed to public education, albeit via charter schools instead of traditional school districts. Therefore, the resolution is inaccurate in characterizing charter schools as a drain on public education.

In addition, the resolution evidences a potentially biased impact because it only applies to "suburban districts." Assuming arguendo that the approval of charter schools drains funds from public education, such a drain would apply to all traditional school districts, regardless of whether those districts are located in urban, suburban, or rural districts. Therefore, adoption of the proposed policy language could leave the NJSBA in the untenable position of advocating in opposition to charter schools in suburban districts, without regard to whether such advocacy may have a negative impact on rural or urban districts.

The potential bias noted above could be readily eliminated by removing the clause limiting its application to suburban districts. However, the remaining language would then consist of a belief statement indicating that charter schools erode the operation of public education in New Jersey. As noted above, such a belief is contrary to legislative findings and existing policy.

The Resolutions Subcommittee is respectfully directed to the Ad Hoc Committee's 2012 report on Charter Schools. That committee was charged by the Delegate Assembly to review NJSBA policies regarding public charter schools and to report necessary policy recommendations. That committee proposed revisions to the then existing policy resulting in the current policy. Unfortunately, the proposed resolution offers no intervening facts that should cause the Delegate Assembly to reconsider File Code 5117, other than the subjective rationale of erosion of public education.

File Code 5117, in recognition of the funding tension between traditional and charter schools advocates for a distinct and direct funding structure for charter schools. In executing its charge, the Ad Hoc Committee conducted a thorough inquiry into existing charter school operations and arrived at a balanced funding approach, carefully crafted to address the all concerns. Importantly, the current belief statement calls for approval of charter schools by the local board or in the alternative, a separate funding mechanism for charter schools. In contrast, the proposed resolution does not support that balance and in fact, is countervailing.

The proposed resolution, by labelling charter schools as a drain on public education, constitutes not just a renunciation, but also a reversal of an existing NJSBA position without providing an objective basis for such a reversal.

In addition, the resolution is ambiguous in that it applies only to "high quality suburban school districts." Because the term "high quality" has not been defined as applied to school districts, nor does the term have a commonly understood application in the field of education, adoption of the proposed resolution would inject a level of ambiguity into the policy manual. It should be noted that this ambiguity could be resolved by substituting the term "high performing" for the term "high quality" because the term "high performing" has been defined in code as a district that has achieved 80% or more during the most recent round of state monitoring. However, such a



substitution would place the NJSBA in the position of supporting parent choice on a district-by-district basis instead of a statewide basis. It could also place the NJSBA in the position of advocating against parental choice when a district's monitoring scores are high, but in favor of parental choice in that same district if scores should fall. This potential position is contrary to existing policy. That policy supports parent choice in all districts, as noted above.

### **STATEMENT OF REASONS**

1. Current NJSBA policy recognizes the impact of the charter school funding and authorization process on *all* local school districts.
2. Existing policy echoes the concerns of the Edison Board of Education by enabling NJSBA to support the following:
  - Giving priority to charter applications in districts where students have the greatest academic need.
  - Replacing the current charter school funding process with one that would provide full state financing and, therefore, would not have a direct impact on a local school district's budget;
  - Requiring local board of education approval of a charter school that would serve students within its jurisdiction;
  - Requiring that the charter school application process include a financial impact report on the economic and tax consequences of the charter school on the district and community over a five-year period.
3. Based on these provisions, NJSBA has addressed the impact of charter school funding on all local school districts through testimony and other advocacy efforts involving proposed legislation and code.
4. In the future, these policies will enable NJSBA to continue to take positions that address the needs of all school districts as they relate to the charter school funding and authorization processes.
5. The proposed resolution may limit the application of NJSBA policy on charter schools to advocacy on behalf of one set of school districts, rather than for all local boards of education in the state.

### 1 **RECOMMENDATION**

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3 The Resolution Subcommittee recommends that this resolution be opposed.