

**AN UNFULFILLED PROMISE: THE NEED FOR CHARTER
SCHOOL REFORM IN NEW JERSEY**

*Franklin Barbosa, Jr.**

I.	INTRODUCTION	360
II.	THE CURRENT STATE OF NEW JERSEY’S CHARTER SCHOOL LAWS: THE BASICS	363
	A. The Charter Contract	363
	B. Financing a Charter School	364
	C. Charter School Admissions and Enrollment Policy	365
III.	SENATE BILL 2319	367
	A. Context	367
	B. The Text of Senate Bill 2319.....	368
	i. Charter School Authorization Board	369
	ii. Public Input in the Charter School Application Review Process	370
	iii. Mandatory Certified Public Lottery.....	371
IV.	CRITICISMS OF SENATE BILL 2319	371
	A. Local Binding Control Over Charter Schools	372
	B. Requiring that Charter School Demographics Mirror the Sending District	374
V.	LEGISLATIVE SUGGESTIONS	375
	A. No Binding Local Control	376
	B. No “Mirroring” Requirement	381
	C. Funding Parity is Necessary for Charter Success	384
VI.	CONCLUSION	386

* Special thanks to Senator M. Teresa Ruiz and Professor Julia Sass Rubin for taking time out of their busy schedules to provide interviews and help us better understand the intricacies surrounding the charter school reform debate.

“The philosophy of the school room in one generation will be the philosophy of government in the next.”¹

-Abraham Lincoln

I. INTRODUCTION

On January 11, 1996, New Jersey Governor Christine Todd Whitman, acting before a joint session of the State Legislature, signed the Charter School Program Act of 1995 (“the Act”) into law.² The symbolic nature of this event was evident from the surrounding circumstances, as it was the only State of the State Address in New Jersey history dedicated solely to one topic: education reform.³ Prior to Governor Whitman signing the bill into law, no charter schools existed in New Jersey. The Act, which made New Jersey the twentieth state to authorize the creation of charter schools, was largely a response to the universal outrage accompanying the publication of *A Nation at Risk*, a 1983 report from President Ronald Reagan’s National Commission on Excellence in Education.⁴ The Commission’s report highlighted the “rising tide of mediocrity” in American education and ultimately, sparked state efforts to revitalize American public schools.⁵

“Alternatives to traditional public schooling based on choice and autonomy became critical to the revitalization efforts.”⁶ New Jersey’s

¹ Education Quotes, BRAINYQUOTE, http://www.brainyquote.com/quotes/quotes/a/abrahamlin133687.html?src=t_education (last visited Feb. 3, 2015).

² Robert J. Martin, Article, *Rigid Rules for Charter Schools: New Jersey as a Case Study*, 236 RUTGERS L.J. 439, 445 (2005).

³ *Id.* at 525 (citing Joseph V. Doria Jr., *The Function of Political Capital in the New Jersey Legislature’s Traditional Role in the Formulation of Educational Policy: A Participation Observation Illustrated by the Charter School Act of 1995* (2000) (unpublished dissertation, Columbia University) (on file with author)).

⁴ Jason M. Barr, Alan R. Sadnovnik, & Louisa Visconti, *Charter Schools and Urban Education Improvement: A Comparison of Newark’s District and Charter Schools*, 38 URB. REV. 291, 291 (2006); *see also* NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983), *available at* <http://www2.ed.gov/pubs/NatAtRisk/index.html>.

⁵ NAT’L COMM’N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983), *available at* <http://www2.ed.gov/pubs/NatAtRisk/index.html>; *see also* Barr et. al, *supra* note 4, at 291.

⁶ *See* Barr et. al, *supra* note 4, at 292; *see also* ARNOLD SHOBER, *THE DEMOCRATIC DILEMMA OF AMERICAN EDUCATION: OUT OF MANY, ONE?* 196 (2012) (stating that the charter school concept was a “middle-of-the-road response” to the insufficiencies of traditional public schools and the “constitutional threats” of a voucher program).

Charter School Program Act mirrors the aforementioned efforts. For example, a brief glimpse at the introductory sections of the Act indicates that the legislature intended to “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,” and increase the “educational choices available” for students and parents.⁷ In other words, the Legislature designed charter schools to be public school alternatives, to provide school choice to students and parents, and encouraged charter schools to experiment with new forms and philosophies of education.

While the public greeted the Act’s passage with some optimism, the Act’s initial results were anything but promising. Within the first six years of the Act’s enactment, the New Jersey Department of Education (“NJDOE”) listed sixteen charter schools as “closures,” including several charter schools that were approved, but never opened.⁸ Nevertheless, by the end of the 2004–2005 academic year, over fifty charter schools were in operation.⁹

According to the NJDOE, as of the 2012–2013 academic year, approximately eighty-seven charter schools operate in the State.¹⁰ Arguably, these statistics demonstrate success in the growth and proliferation of charter schools in New Jersey. Not all academics have viewed this propagation positively, however. Some education scholars view this growth as undesirable and harmful to the interests of students and society as a whole. Scholars like Bruce Baker, Julia Sass Rubin, and Mark Weber have pointed to numerous structural and accountability issues within the New Jersey charter laws and the charter school

⁷ N.J. STAT. ANN. § 18A:36A-2 (West 2014) (“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. Specifically, charter schools offer the potential to improve pupil learning; increase for students and parents the educational choices available when selecting the learning environment which they feel may be the most appropriate; encourage the use of different and innovative learning methods; establish a new form of accountability for schools; require the measurement of learning outcomes; make the school the unit for educational improvement; and establish new professional opportunities for teachers.”).

⁸ See Barr et. al, *supra* note 4, at 293.

⁹ *Id.*

¹⁰ N.J. Dep’t of Educ., *New Jersey Public Schools Fact Sheet*, <http://www.state.nj.us/education/data/fact.htm> (last visited Feb. 2, 2014) (reporting facts for the 2012-13 academic year).

movement as a whole.¹¹

These scholars, through their concerns, have identified one troubling aspect of the current state of the New Jersey charter laws; there has not been a major, substantive amendment to the Act since its creation.¹² “[T]he body of law pertaining to charter schools in New Jersey has evolved in several stages since 1996, but at no point has there been a systemic revision.”¹³ During the twenty-year period since the passage of the Act, there have been numerous attempts to pass sweeping charter reform legislation without success. Most recently, State Senator M. Teresa Ruiz (D-Newark) introduced Senate Bill 2319, a charter reform bill viewed by at least one commentator as the “best-chance version of a new charter-school law.”¹⁴ Nevertheless, in both the Senator’s interviews and public comments to media outlets, Senator Ruiz has asserted that this bill is the “starting point” towards the ultimate goal of meaningful charter reform.¹⁵

In order to inform the conversation surrounding Senate Bill 2319, this Note will describe the bill, compare its provisions to another recently proposed bill that failed to garner enough support in the New Jersey Assembly, and posit a scheme that will promote meaningful charter reform that serves the best interest of students while adhering to the Act’s

¹¹ See Telephone Interview with Julia Sass Rubin, Assoc. Professor, Rutgers Univ., Edward J. Bloustein Sch. of Planning & Pub. Policy (Sept. 26, 2014) (Professor Rubin lamented the lack of local control over charter school creation/expansion, the lack of a requirement that charter school demographics mirror those of the sending districts, weak language banning for-profit charter schools, and insufficient accountability and transparency); Mark Weber, *Opinion: Was It Something We Said About Garden State’s Charter Schools*, NJ SPOTLIGHT (Nov. 14, 2014), <http://www.njspotlight.com/stories/14/11/13/opinion-was-it-something-we-said-about-nj-s-charter-schools/> (citing to a recent study that he authored along with Julia Sass Rubin, which points to racial and ethnic disparities between charter school populations and their district counterparts).

¹² Adrienne Lu, *New Jersey Should Update Charter School Law, Committee Told*, PHILLY.COM (Jan. 25, 2011), http://articles.philly.com/2011-01-25/news/27047567_1_charter-schools-public-school-schools-greater-flexibility (“New Jersey’s 15-year-old charter school law should be updated to improve accountability and transparency”).

¹³ Martin, *supra* note 2, at 451.

¹⁴ John Mooney, *Long-Discussed Charter-School Reform Bill Finally Gets Legislative Hearing*, NJ SPOTLIGHT (Oct. 17, 2014), <http://www.njspotlight.com/stories/14/10/16/long-discussed-charter-reform-bill-finally-gets-hearing/>.

¹⁵ Telephone Interview with Senator Teresa Ruiz (D-Newark), N.J. State Senator (Dec. 1, 2014); Mooney, *Long-Discussed Charter-School Reform Bill Finally Gets Legislative Hearing*, *supra* note 14 (Senator Ruiz referred to Senate Bill 2319 as the “start of the conversation”).

goal of promoting school choice. Part II of this Note provides a basic description of charter schools and how they operate, and analyzes the current state of the charter school laws in New Jersey. Part III describes, in detail, Senate Bill 2319's provisions and how they materially alter the current charter school laws. Part IV examines the most prominent criticisms of Senate Bill 2319 as articulated by Professor Julia Sass Rubin of Rutgers University and determines whether those criticisms are harmonious with the purpose of the Act. Finally, Part V suggests three legislative suggestions to be considered in relation to Senate Bill 2319, and the general effort to provide for a more efficient charter school assessment and approval process while upholding the original purpose of the Act; namely, school choice.

These legislative suggestions are: prohibit local school boards and populations from providing binding input, require an in-depth analysis of charter school demographics as compared to their local neighborhoods, feeders, and applicant pools prior to any discussions of lottery-system reform, and enact a provision that charter schools receive funding equivalent to their district counterparts.

II. THE CURRENT STATE OF NEW JERSEY'S CHARTER SCHOOL

LAWS: THE BASICS

A. *The Charter Contract*

"A charter school is an independently run public school granted greater flexibility in its operations, in return for greater accountability for performance."¹⁶ A "charter" is a contract governing the performance of a charter school, and the Commissioner of Education ("Commissioner") is the individual who grants the charter.¹⁷ A charter describes the school's "mission, program, goals, students served, methods of assessment, and ways to measure success."¹⁸ In other words, the Commissioner and an individual charter school enter into a performance-based contractual relationship. Initially the contract is for a four-year period and may be renewed for a five-year period.¹⁹ Should a charter school fail to meet the objectives and obligations laid out in the charter, the Commissioner has

¹⁶ *Frequently Asked Questions About Public, Charter Schools*, UNCOMMON SCHOOLS, <http://www.uncommonschools.org/faq-what-is-charter-school> (last visited Feb. 4, 2015).

¹⁷ N.J. Dep't of Educ., *What is a Charter School?*, <http://www.nj.gov/education/chartsch/about.htm> (last visited Feb. 4, 2015); *see also* Barr et. al, *supra* note 4, at 292.

¹⁸ Barr et. al, *supra* note 4, at 292.

¹⁹ N.J. STAT. ANN. § 18A:36A-17 (West 2014).

discretion to place a charter under a probationary status or revoke the charter and shut down the school.²⁰

In order to assess a charter's school compliance with the charter contract, the Act requires the Commissioner to "annually assess whether each charter school is meeting the goals of its charter."²¹ To expedite the Commissioner's annual assessment, charter schools are required to submit an annual report to the Commissioner, the local school board, and the county superintendent.²² The annual report must contain data assessing the achievement of school goals, the efficiency of internal governance, performance on state tests and assessments, the level of parental involvement, as well as a financial plan.²³ In essence, charter schools are required to submit a deluge of information to the Commissioner for assessment purposes.

Typically, when it is evident to the Commissioner that a charter school is not in compliance with its charter contract, the Commissioner will place the school on a probationary status in order to allow for the implementation of a remedial plan.²⁴ Based on the success of the probationary remedial plan, the Commissioner will decide whether to revoke the charter and shut down the school, extend the probationary period, or remove the charter school from probation and allow it to continue operations.²⁵

B. Financing a Charter School

Charter schools are publically funded and are not allowed to charge tuition.²⁶ Instead, the burden of financing charter school operations falls directly on the local school district. Specifically, the Act requires the local school district to pay a charter school "90% of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax

²⁰ *Id.* ("The commissioner may revoke a school's charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter. The commissioner may place a school on probationary status to allow the implementation of a remedial plan after which, if the plan is unsuccessful, the charter may be summarily revoked.")

²¹ *Id.* § 18A:36A-16(a).

²² *Id.*; N.J. STAT. ANN. § 18A:36A-16(b).

²³ N.J. ADMIN. CODE § 6A:11-2.2(a)(1)–(b)(3) (West 2015).

²⁴ *Id.*; N.J. ADMIN. CODE § 6A:11-2.4(a) (2015).

²⁵ N.J. ADMIN. CODE § 6A:11-2.4(a)(4)–(6).

²⁶ N.J. STAT. ANN. § 18A:36A-8(a) ("A charter school shall not charge tuition to students who reside in the district.")

levy per pupil inflated by the CPI rate most recent to the calculation.”²⁷ Additionally, “the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district’s special education categorical aid equal to the percentage of the district’s special education students enrolled in the charter school and, if applicable, 100% of preschool education aid.”²⁸ In simpler terms, charter schools are supposed to receive about 90 percent of the per pupil funding that a district school would receive for a student. Other than the antecedent provisions, all charter schools must adhere to New Jersey Annotated Code section 6A:23A, which consists of regulations governing the budgeting procedures and financial accountability standards of all public schools.²⁹

On a related note, charter schools, when contracting with private parties, must comply with the New Jersey Public School Contract Law.³⁰ Like most other public contract laws, the New Jersey Public School Contract Law requires a school to award most contracts for goods, services, and capital improvements to the “lowest responsible bidder.”³¹

C. Charter School Admissions and Enrollment Policy

In terms of student enrollment, the Act requires that charter schools be “open to all students on a space available basis.”³² Enrollment preference is given to students residing in the public school district where the charter is situated or in the charter school’s region of residence if so designated.³³ Should the number of applications for admission to a charter school exceed the number of seats available, the charter school must select students using a “random selection process,” usually in the form of a public lottery.³⁴ Furthermore, a charter school’s admission policy, “to the maximum extent possible,” must pursue the enrollment of a “cross-section” of the local community’s school-age population, “including

²⁷ N.J. STAT. ANN. § 18A:36A-12.

²⁸ *Id.*

²⁹ N.J. ADMIN. CODE § 6A:11-4.13.

³⁰ N.J. STAT. ANN. § 18A:18A-1; N.J. ADMIN. CODE § 6A:11-3.1(c).

³¹ N.J. STAT. ANN. § 18A:18A-1.

³² *Id.* § 18A:36A-7.

³³ *Id.* § 18A:36A-8(a); N.J. ADMIN CODE § 6A:11-1.2 (“District of residence” means the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school’s district of residence).

³⁴ N.J. STAT. ANN. § 18A:36A-8(a); N.J. ADMIN CODE § 6A:11-1.2

racial and academic factors.”³⁵ Adhering to federal law, the statute does not impose quota requirements. Instead, the statute places the burden on the individual charter school to obtain diversity.³⁶ Regulations pertaining to the Act require the Commissioner to annually appraise the “segregative effect that the loss of the students may have on its district of residence.”³⁷

Furthermore, charter schools cannot discriminate against applicants based on their intellectual ability, athletic ability, mental or physical handicap, proficiency of the English language, or any other discriminatory measure that would be considered illegal if employed by a public district school.³⁸ For students with limited English language proficiency, a charter school must provide “all required courses and support services to meet the Core Curriculum Content Standards.”³⁹ In relation to students with educational disabilities, New Jersey regulations require that charter schools offer free education to students with learning disabilities in compliance with the federal Individuals with Disabilities Education Act (“IDEA”).⁴⁰ Nevertheless, a charter school may limit their admissions policies to specific grade levels or concentrations, such as math or the arts.⁴¹

Finally, it is important to note that a charter school may expel students.⁴² A charter school may expel a student based on criteria contained within the school charter that is consistent with state law dictating how public schools may expel students, and the Commissioner must ultimately approve it.⁴³

³⁵ N.J. STAT. ANN. § 18A:36A-8(e).

³⁶ See *Grutter v. Bollinger*, 539 U.S. 306 (2003) (collectively prohibiting the use of quotas in admissions policies); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); see also *Martin*, *supra* note 2, at 470–71.

³⁷ N.J. ADMIN. CODE § 6A:11-2.1(j); *Martin*, *supra* note 2, at 471.

³⁸ N.J. STAT. ANN. § 18A:36A-7.

³⁹ N.J. ADMIN. CODE § 6A:11-4.7.

⁴⁰ *Id.* § 6A:11-4.8.

⁴¹ N.J. STAT. ANN. § 18A:36A-7.

⁴² *Id.* § 18A:36A-9.

⁴³ *Id.*

2015]

AN UNFULFILLED PROMISE

367

III. SENATE BILL 2319

A. Context

As mentioned in the introductory section of this Note, numerous charter reform bills have been introduced in the New Jersey State Assembly, but have ultimately failed.⁴⁴ Most notably, in May of 2014, Assemblyman Troy Singleton (D-Burlington) introduced a charter reform bill that aimed to satisfy proponents and critics of charter school expansion.⁴⁵ Assemblyman Singleton referred to his bill as a “compromise.”⁴⁶ For example, the bill provided that thirty percent of the criteria for state approval of a new charter school would be the local school board’s vote.⁴⁷ Additionally, Assemblyman Singleton’s bill would have provided state funding for facilities and given charter schools first rights on vacated district school buildings.⁴⁸ Finally, the bill would have created a nine-person charter school authorization board that would have made recommendations to the Commissioner, who would retain final say over charter school openings.⁴⁹

Despite the accommodating nature of Assemblyman Singleton’s bill, it inspired neither charter proponents nor critics. On the one hand, the New Jersey Charter Schools Association (“NJCSA”), a non-profit member organization devoted to representing the charter school community, supported the effort Assemblyman Singleton expended, but ultimately, questioned the wisdom of local input and the retention of final charter school approvals with the Commissioner rather than with the proposed nine-member authorization board.⁵⁰ On the other hand, Save Our Schools NJ, which has advocated for a local approval requirement to be added to the current charter law, did not support the bill because it lacked “binding” local input in the charter school approval process.⁵¹

⁴⁴ John Mooney, *Fine Print: Charter-School Bill Chock Full of Details -- Some New, Some Familiar*, NJ SPOTLIGHT (Oct. 20, 2014), <http://www.njspotlight.com/stories/14/10/20/fine-print-charter-school-bill-chock-full-of-details-some-new-some-familiar/>.

⁴⁵ John Mooney, *Reform Bill Could Reshape Landscape for Charter-School Approvals*, NJ SPOTLIGHT (May 23, 2014), <http://www.njspotlight.com/stories/14/05/22/reform-bill-could-reshape-landscape-for-charter-school-approvals/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Mooney, *Reform Bill Could Reshape Landscape for Charter-School Approvals*, *supra* note 45.

Ultimately, Assemblyman Singleton's bill failed to muster enough support in the Assembly and has been stuck in committee since January 2014.⁵²

It was in the aftermath of Assemblyman Singleton's failed charter reform attempt that State Senator M. Teresa Ruiz (D-Newark) proposed her own charter reform bill, Senate Bill 2319, a bill that she had been working on even prior to the introduction of Assemblyman Singleton's proposed bill.⁵³ At least one commentator views Senate Bill 2319 as the "best-chance version of a new charter-school law."⁵⁴ Senator Ruiz was adamant in clarifying that the bill is a "work in progress" and not in its final form.⁵⁵ In Senator Ruiz's opinion, the lack of any meaningful, substantive reform of New Jersey's charter laws is indicative of legislative inattention to the Act.⁵⁶ Senator Ruiz believes that student needs have evolved since the passage of the Act, and will continue to change over time; therefore, it is important to revisit the provisions laid out in the Act, to ensure that student needs are addressed.⁵⁷ Thus, Senator Ruiz introduced Senate Bill 2319 in order to take a significant step towards satisfying the needs of current and future students.⁵⁸

B. *The Text of Senate Bill 2319*

Senator Ruiz's proposed bill contains some provisions found in earlier charter reform bills proposed in the Assembly, and it contains some new provisions as well.⁵⁹ Also, it makes a number of substantive changes to the Act. Namely, the bill creates a charter school authorization board that shares charter authorization powers with the Commissioner; requires that a school district selling or leasing a school facility must grant

⁵² NJ STATE LEGISLATURE, BILLS 2014-2015, <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=A436>.

⁵³ John Mooney, *Assemblyman Unveils Much-Anticipated Final Draft of Charter Legislation*, NJ SPOTLIGHT (Jan. 22, 2014), <http://www.njspotlight.com/stories/14/01/21/assemblyman-unveils-much-anticipated-charter-bill/>.

⁵⁴ Mooney, *Long-Discussed Charter-School Reform Bill Finally Gets Legislative Hearing*, *supra* note 14.

⁵⁵ Telephone Interview with Senator Teresa Ruiz, *supra* note 15.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ John Mooney, *Fine Print: Charter-School Bill Chock Full of Details -- Some New, Some Familiar*, *supra* note 44 (referring to the new authorization board and "request for proposal process," while simultaneously pointing out familiar provisions requiring charters to meet charter performance goals and provide access to students with disabilities.).

2015]

AN UNFULFILLED PROMISE

369

right of first refusal to a charter school; requires the use of a certified public lottery where the number of applicants exceeds the number of available spaces at a charter school; and, as part of the application review process, provides for two public meetings in any district where a proposed charter will be located.⁶⁰

i. Charter School Authorization Board

The most fundamental, structural change to the Act relates to the State's ability to enter into a charter contract with a charter school. Senate Bill 2319 proposes the creation of a charter school authorization board that will share charter authorization and review powers with the Commissioner. Specifically, the language of Senate Bill 2319 states, "[t]he bill establishes the charter school authorizing board that will, in addition to the Commissioner of Education, serve as a charter school authorizer."⁶¹

The proposed board would be comprised of nine members.⁶² The Governor would appoint three members, various other government leaders would appoint four members, and the President of the State Board of Education and the Executive Director of the New Jersey School Boards Association would serve as ex officio members.⁶³ To avoid any sort of political maneuvering, the bill mandates that no more than four members of the board shall come from the same political party.⁶⁴ Additionally, to ensure that the charter school board would exercise expertise in the charter school approval process, the bill requires that authorizers have experience in "public and nonprofit governance, management, finance, public school leadership, assessment, curriculum, instruction, and public school law."⁶⁵

Under Senate Bill 2319, while the authorization board would exercise great power, the State Board of Education would still provide "oversight of the charter school authorizing board, and would have the authority to suspend the charter school authorizing board's activities . . . if the State board determines that the charter school authorizing board is

⁶⁰ S.B. 2319, 216th Leg., Reg. Sess. (N.J. 2014).

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

deficient in performing its duties.”⁶⁶ To make sure that the authorization board can adequately operate, the bill requires the appropriation of \$250,000 to fund it.⁶⁷

ii. Public Input in the Charter School Application Review Process

Senate Bill 2319 adds a new section directly impacting a charter authorizer’s review of a charter school application. First, pursuant to the Administrative Procedure Act, the bill provides for the promulgation of regulations, which enumerate nationally followed practices and criteria for charter school authorizations.⁶⁸ Under Senate Bill 2319, a charter school authorizer would be bound to follow those regulations when assessing a charter school application.⁶⁹

Moreover, Senate Bill 2319 provides for two additional steps in the application process: an interview and public meetings.⁷⁰ First, the bill mandates an “in-person interview with each charter school applicant.”⁷¹ The bill provides no guidance as to which individuals an authorizer would be meeting, but presumably, a charter school applicant would send a designated representative or their board of trustees.⁷² Second, and most notably, Senate Bill 2319 provides for “two public meetings” where “the residents of the school district that would be served by the charter school would have an opportunity to provide input on the application.”⁷³ Under the original Act, there was no provision granting any sort of public input in the charter school approval process. Much like Assemblyman Singleton’s proposed legislation, the imposition of two public meetings in Senate Bill 2319 is likely an attempt to appease those commentators calling for local input in the charter school approval process.

⁶⁶ S.B. 2319, 216th Leg., Rg. Sess. (N.J. 2014).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² S.B. 2319, 216th Leg., Reg. Sess. (N.J. 2014).

⁷³ *Id.*; N.J. ADMIN CODE § 6A:11-1.2 (West 2015) (“District of residence” means the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school’s district of residence).

iii. Mandatory Certified Public Lottery

The Act provides that a charter school must employ a “random selection process,” whenever the number of applicants seeking admission to a charter school exceeds the number of space available.⁷⁴ At first glance, the phrase “random selection process” seems like a nebulous term that provides charter schools with great latitude in choosing a random selection process. Senator Ruiz’s bill eliminates that amorphous characteristic. Instead, Senate Bill 2319 mandates the use of a “certified public lottery” where the number of applicants exceeds the space available, essentially codifying a common practice in the charter school industry.⁷⁵ Additionally, in the spirit of transparency and oversight, Senate Bill 2319 requires a charter school to include lottery procedures in their charter school application.⁷⁶ Charter school authorizers are then responsible for developing procedures for publicizing and certifying a public lottery conducted by a charter school.⁷⁷

IV. CRITICISMS OF SENATE BILL 2319

On September 26, 2014, Julia Sass Rubin, an Associate Professor at the Edward J. Bloustein School of Planning and Public Policy at Rutgers University and co-founder and volunteer member of Save our Schools NJ, a grassroots, volunteer education advocacy organization, provided an interview. Rubin has critiqued the current charter school law as needing greater local control components, more transparency, and a means to address an apparent demographic mismatch between charter and district schools.

Rubin’s concerns and criticisms of the current charter laws and Senate Bill 2319 fall under four umbrella categories: (1) the lack of binding local control over charter school “establishment, expansion, or closure;” (2) the lack of a requirement that charter school demographics “mirror those of the sending districts;” (3) the lack of stronger language prohibiting “for-profit charter schools;” and (4) insufficient charter school accountability and transparency.⁷⁸ This Note will address the local control and demographics concerns in detail, while reserving the “for-profit” charter school issue and the accountability and transparency issues

⁷⁴ N.J. STAT. ANN. § 18A:36A-8(a) (West 2014).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Telephone Interview with Julia Sass Rubin, *supra* note 11.

for another article.

A. Local Binding Control Over Charter Schools

Rubin believes that Senate Bill 2319's creation of a charter school authorization board "diminishes" local control over charter school creation, expansion, and closure.⁷⁹ Rubin points out that the creation of a charter school authorization board is the product of model legislation put forth by interest groups like the National Alliance of Charter School Authorizers (NACSA), an advocacy organization dedicated to crafting and publishing charter school evaluation and authorization standards, and the American Legislative Exchange Council (ALEC), a politically conservative lobbying organization with which NACSA contracted to pass the model legislation.⁸⁰ In essence, Rubin argues that Senate Bill 2319 allows pro-charter interest groups to dictate charter school policy rather than allowing local communities or the State Board of Education to do so.⁸¹

Furthermore, Rubin takes issue with the "political" nature of the proposed charter school authorization board.⁸² As mentioned previously, Senate Bill 2319 provides for a nine-person authorization board with its members appointed by various governmental actors, such as the Governor, President of the Senate, and Assembly Speaker among others.⁸³ Additionally, the Commissioner and the NJDOE oversee this board. Rubin argues that the NJDOE does not have the resources or capacity to oversee this new entity and that it is a board consisting of political appointees lacking accountability to the local community.⁸⁴ In other words, Rubin believes that this "political but diffused" board removes responsibility for charter approvals from the Governor and Commissioner and places it in a board that is much harder to hold accountable.⁸⁵

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* (citing James Osborne, *In New Jersey, Nonprofit at Center of Education Conflict*, PHILADELPHIA INQUIRER (Jan. 17, 2012), <http://mobile.philly.com/news/?wss=%2Fphilly%2Fnews%2Fhomepage%2F&id=137456663&deliver=iphone&c=y&viewAll=y#more>).

⁸² *Id.*

⁸³ S.B. 2319, 216th Leg., Rg. Sess. (N.J. 2014).

⁸⁴ Telephone Interview with Julia Sass Rubin, *supra* note 11.

⁸⁵ *Id.*

2015]

AN UNFULFILLED PROMISE

373

As such, Rubin believes that Ruiz's proposed bill does not reflect the needs and desires of local communities and does not provide for any form of local control over charter schools. Rubin does not feel that the requirement of two public community meetings proposed in Senate Bill 2319 constituted community control, as the bills did not include any requirement that charter authorizers adhere to the community wishes expressed at those meetings.⁸⁶ She argued that Senate Bill 2319 "gives local communities no ability to influence a charter school's creation, expansion or closure."⁸⁷ Rubin also pointed out that NACSA has openly stated that the intent of the authorizing board is to override local control.⁸⁸

Instead, Rubin recommends that a local vote be conducted for every charter school approval, expansion, or closure.⁸⁹ Rubin is not alone in her call for a local vote requirement. In an April 2011 opinion piece, Assemblyman Patrick Diegnan (D-Middlesex), Chair of the Assembly Education Committee, opined that charter schools should have to "prove their worth to the public" before they can open and spend taxpayer money.⁹⁰ To justify this opinion, Assemblyman Diegnan argued that "[o]ur democracy relies on giving the community a voice," and local control is the "right thing to do."⁹¹ Rubin has cited similar democratic principles in support of the call for a local vote.⁹²

If a direct vote was not possible, Rubin felt that a vote by a popularly-elected school board would be an acceptable alternative.⁹³ Rubin emphasized that an appointed school board in a state-controlled district, such as exists in Camden, is not accountable to the local community and would not be an acceptable alternative to a direct popular

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* (citing *NACSA Policy Brief – Creating Independent Chartering Boards*, NAT'L ASS'N OF CHARTER SCHOOL AUTHORIZERS, <http://www.qualitycharters.org/assets/files/Documents/Policy/Creating%20Independent%20Chartering%20Boards.pdf> ("In states where only school districts serve as authorizers, some communities are likely to be overseen by districts that are hostile to all charter applications, which effectively stops all chartering.")).

⁸⁹ *Id.*

⁹⁰ Patrick J. Diegnan, Jr., *Let New Jersey Voters Make Decision on Charter Schools*, NEWJERSEYNEWSROOM.COM (Apr. 14, 2011), <http://www.newjerseynewsroom.com/commentary/let-voters-make-decision-on-charter-schools>.

⁹¹ *Id.*

⁹² Telephone Interview with Julia Sass Rubin, *supra* note 11.

⁹³ *Id.*

vote or vote by a popularly-elected, locally-controlled school board.⁹⁴

B. Requiring that Charter School Demographics Mirror the Sending District

Rubin also argues that Senate Bill 2319 does not sufficiently address the apparent demographic disparity between charter schools and school districts, as documented by Rutgers Professor Bruce Baker and others.⁹⁵ A month after the interview, Rubin, and Rutgers doctoral student, Mark Weber, published a research report that compared the demographic composition of New Jersey charter and district schools.⁹⁶

Weber and Rubin's study looked at charter and district school demographics across the state of New Jersey, paying particular attention to seven urban communities.⁹⁷ The method of the study compared the overall charter school demographics in each community to those of the sending districts. Weber and Rubin concluded that charter schools "serve a population that is very different demographically than that of their host districts."⁹⁸ Namely, Weber and Rubin found that charter schools educated "a significantly smaller percentage of economically disadvantaged students" than did their host districts; charter schools only educate "one-sixth the percentage of Limited English Proficient (LEP) students;" and a smaller percentage of special needs students.⁹⁹ Furthermore, the study asserts that special needs students at charter schools have less expensive classifications than the students at district schools. The study also found that charter schools educate fewer males, a smaller percentage of Hispanic students, and a higher percentage of Black students than do their host districts.¹⁰⁰

To remedy the ills noted in the study, Weber and Rubin make a number of policy recommendations. First, they recommend that the NJDOE conduct a universal lottery process for all charter schools,

⁹⁴ *Id.*

⁹⁵ Telephone Interview with Julia Sass Rubin, *supra* note 11.

⁹⁶ MARK WEBER & JULIA SASS RUBIN, NEW JERSEY CHARTER SCHOOLS: A DATA-DRIVEN VIEW, PART I (2014), available at http://www.saveourschoolsnj.org/save/corefiles/wp-content/uploads/2014/10/NJ-Charter-School-Report_10.29.2014.pdf.

⁹⁷ *Id.* (The seven urban communities analyzed by the study were Camden, Hoboken, Jersey City, Newark, Paterson, Plainfield, and Trenton).

⁹⁸ *Id.* at 4.

⁹⁹ *Id.* (Rubin and Weber used Free Lunch and Free or Reduced Price Lunch students as a marker of economic disadvantage).

¹⁰⁰ *Id.* (reporting 62% v. 40%).

2015]

AN UNFULFILLED PROMISE

375

consisting of a single application deadline in order to promote transparency and make it “easier for economically disadvantaged and Limited English Proficient Families to apply.”¹⁰¹ Moreover, Weber and Rubin promote the use of a “weighted lottery” in order to increase the admission of higher percentages of economically disadvantaged or LEP students.¹⁰² Finally, Weber and Rubin propose tying “demographic parity” to a charter school’s funding.¹⁰³ Under the proposed parity scheme, for example, a charter school that fails to match 90 percent of their host district’s demographic would receive a “lower reimbursement rate per student.”¹⁰⁴ Pursuant to the results and suggestions included in the study, Rubin criticizes Senate Bill 2319 for its failure to ensure charter school populations reflect the district of origin population.¹⁰⁵

V. LEGISLATIVE SUGGESTIONS

The purpose of this Note is to assess the charter reform topic by interviewing prominent individuals in the field of education reform and policy. The interview with Senator Ruiz was meant to reveal the thought-process and motivations behind the crafting of Senate Bill 2319 from the perspective of a policy-maker. The purpose of interviewing Julia Sass Rubin was to understand the perspective of an education scholar who possesses reservations about the current state of the charter school law and Senate Bill 2319. Based on the information gleaned from both Senator Ruiz and Professor Rubin, this Note endeavored to research the strengths and weaknesses of the current charter school laws, Senate Bill 2319, and the concerns put forth by Rubin.

The research has resulted in the following legislative suggestions to be considered in further negotiations surrounding Senate Bill 2319: (1) do not provide for binding local control over the creation, expansion, or closure of charter schools; (2) do not create any legislation requiring a weighted lottery or other mechanism forcing charter schools to mirror the demographics of the local district; and (3) enact a provision that charter schools receive funding equivalent to their district counterparts.

¹⁰¹ *Id.* at 5.

¹⁰² WEBER & RUBIN, *supra* note 96 (explaining a weighted lottery would involve creating more lottery entries for targeted communities).

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.*

¹⁰⁵ Telephone interview with Julia Sass Rubin, *supra* note 11.

A. No Binding Local Control

Despite the importance of voting in a democratic society, any imposition of local binding control over charter schools would further empower entrenched political groups to dictate charter school policy rather than allowing a local population's voice to be heard. Additionally, education reform, in general, is a complex topic requiring expertise in order to come to an informed opinion, and local populations, regardless of educational attainment or socio-economic status, do not possess expertise in relation to education policy. Therefore, control over charter school creation, expansion, and closure should remain with the NJDOE, the Commissioner, and the charter school authorization board proposed by Senate Bill 2319 because they possess education policy expertise and are sufficiently isolated from political pressures.

The NJDOE is an administrative agency possessing expertise in the field of education. Since the passage of the Act, the NJDOE, specifically the Commissioner, has been vested with ultimate discretion over the creation of charter schools.¹⁰⁶ The reason for vesting this discretion in the NJDOE and the Commissioner is because administrative agencies and their agents are valued for their "expertise, efficiency and bureaucratic neutrality."¹⁰⁷ Agencies are staffed with individuals possessing experience in the areas regulated by the agency, and "agencies and their staff develop experience over time that allows them to make more informed policy decisions."¹⁰⁸ In terms of efficiency, agencies can "act more quickly using streamlined procedures."¹⁰⁹ Finally, in relation to bureaucratic neutrality, one fundamental assumption about administrative agencies is that "sound policy judgments are best made through the neutral application of scientific knowledge."¹¹⁰ Administrative agencies are "somewhat removed from political pressure."¹¹¹

While these virtues are present in administrative agencies, they are not present in the local population or school board. No method exists to ensure that local voters have expertise when it comes to education policy issues. Moreover, the New Jersey Supreme Court has explicitly

¹⁰⁶ N.J. STAT. ANN. § 18A:36A-17 (West 2014).

¹⁰⁷ ROBERT L. GLICKSMAN & RICHARD E. LEVY, ADMINISTRATIVE LAW: AGENCY ACTION IN LEGAL CONTEXT 6 (2d ed. 2014).

¹⁰⁸ *Id.* at 6.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 7.

¹¹¹ *Id.*

2015]

AN UNFULFILLED PROMISE

377

recognized the value of administrative expertise in the sphere of education. For example, in *In re Proposed Quest Academy Charter School of Montclair Founders Group*, the New Jersey Supreme Court found that the Commissioner did not act in an “arbitrary, capricious, or unreasonable” manner in relying upon local community input and her own expertise in rejecting a proposed charter school in Montclair.¹¹² Specifically, Justice LaVecchia noted that courts have “recognized the value that administrative expertise can play in the rendering of a sound administrative decision.”¹¹³

Additionally, local popular votes are not necessarily efficient. Elections cost money and take time. They must be scheduled in advance to provide the local citizenry with proper notice of the election. On the other hand, agencies can respond to issues more quickly and effectively due to their streamlined procedures.¹¹⁴ Finally, a local electorate is not neutral. By their very nature, people will sometimes vote based on their political beliefs rather than based on what benefits them.

Nevertheless, individuals who support local binding control over charter school-related issues will claim that local schools boards are more accountable to the voters and better reflect the will of the people as opposed to a politically appointed commissioner. However, there is a multitude of information that demonstrates that local school boards are not politically neutral, and thus their accountability to local populations can be called into question. The best way to understand the lack of local school board neutrality is to look at the monopolization of power over local school boards by teachers unions. Historically, teachers’ unions, despite public statements of support, tend to view charters as “threats to public schools and teacher jobs” and have even fought their creation and expansion.¹¹⁵ Nevertheless, for the purpose of this Note, union sentiments are secondary to teacher union mobilization and power over local election processes.

A number of factors impact the influence of teachers’ unions over local school boards: low voter turnout, high turnout among teachers, and massive amounts of campaign contributions to local school board candidates. First of all, local school board elections have “relatively low

¹¹² 216 N.J. 370 (2013).

¹¹³ *Id.* at 389.

¹¹⁴ *Id.*

¹¹⁵ T.M. MOE, SPECIAL INTEREST: TEACHERS UNIONS AND AMERICA’S PUBLIC SCHOOLS 103 (2011).

visibility” and low voter turnout, and this renders the elections particularly susceptible to vested interests.¹¹⁶ For example, when local school board elections are held on the same day as a national or statewide election, voter turnout averages about 44 percent; whereas when a local school board election is held as a special election, turnout only averages about 26 percent.¹¹⁷ Furthermore, nearly 96 percent of school board seats are elected through these low-turnout elections.¹¹⁸

Additionally, as voters, teachers tend to turnout in large numbers in local school board elections, especially as compared to nonteacher turnout. In 2006, T.M. Moe orchestrated a study in Southern California and found that teachers were two to seven times more likely to vote in school board elections than were their nonteacher peers.¹¹⁹ Therefore, high teacher turnout combined with low non-teacher turnout gives teachers’ unions inordinate amounts of influence over elections.

Furthermore, teachers’ unions tend to spend money to influence local elections. T.M. Moe, in a 2003 survey, found that unions were an important source of campaign contributions in local school board elections and that influence increased based on the size of the district.¹²⁰ For example, in districts containing less than 5,000 students, unions contributed to candidates in 22 percent of districts.¹²¹ However, in districts with more than 25,000 students, teachers’ unions contributed to candidates in 94 percent of districts.¹²² Some may doubt the ability of teachers’ unions to raise enough money to make substantial financial contributions. However, a report by New Jersey’s Election Finance Committee found that the New Jersey Education Association (“NJEA”), the largest teachers’ union in the state, has spent over \$57 million on lobbying in the past 15 years.¹²³ This demonstrates that teachers’ unions

¹¹⁶ T.M. MOE, TEACHERS’ UNIONS AND SCHOOL BOARD POLITICS, IN BESIEGED: SCHOOL BOARDS AND THE FUTURE OF EDUCATION POLITICS (William G. Howell, ed., 2005); Heather Rose & Jon Sonstelie, *School Board Politics, School District Size, and the Bargaining Power of Teachers’ Unions*, 67 J. URB. ECON. 438, 439 (2010).

¹¹⁷ Rose & Sonstelie, *supra* note 116, at 439.

¹¹⁸ *Id.*

¹¹⁹ T.M. MOE, UNION POWER AND THE EDUCATION OF CHILDREN, IN COLLECTIVE BARGAINING IN EDUCATION: NEGOTIATING CHANGE IN TODAY’S SCHOOLS (Jane Hannaway & Andrew J. Rotherham eds., 2006).

¹²⁰ Rose & Sonstelie, *supra* note 116, at 439 (citing T.M. MOE, TEACHERS’ UNIONS AND SCHOOL BOARD ELECTIONS (2003)).

¹²¹ *Id.*

¹²² *Id.*

¹²³ John Mooney, *NJEA Spent Nearly \$60M on Campaigns and Lobbying in Past 15*

possess the financial wherewithal to influence local and state elections.

All of these factors have made control over local school boards the primary source of a teachers' union's political power.¹²⁴ However, this power has come at the expense of underprivileged communities in large school districts.

The political disadvantage for homeowners is particularly acute in large districts because the effort required to influence an election in a large district is rather cumbersome. Teachers' unions are able to execute the effort required to sway elections in large districts because 'union membership grows with district size and the funds that a union can raise from its members increase with its membership.'¹²⁵

Thus, teachers' unions will be most powerful in larger districts, where the voices of minorities and underprivileged communities are largely situated.

However, it is important to note that teachers' unions are not the only organizations that lobby local school boards and exercise influence over local elections. A study by T.T. Holyoke that surveyed charter schools operating in Arizona, Michigan, and Pennsylvania found that a majority of charter school organizations admitted to lobbying in at least one governmental venue.¹²⁶ Most notably, K12, Inc., a charter school operator focusing on online learning and operating in New Jersey, spent over \$600,000 on lobbying efforts between 2007 and 2011.¹²⁷ Education Reform Now, a non-profit education reform think tank and advocacy organization, outspent the New York teachers' unions for lobbying expenses in 2010.¹²⁸ As a result, requiring that charter schools be approved through local popular elections or local school board elections will result in outcomes reflecting the desires of powerful interest groups and the disenfranchisement of minorities and underprivileged

years, NJ SPOTLIGHT (Sept. 11, 2014), <http://www.njspotlight.com/stories/14/09/10/njea-spent-nearly-60m-on-campaigns-and-lobbying-in-past-15-years/>.

¹²⁴ Katherine O. Strunk & Jason A. Grissom, *Do Strong Unions Shape District Policies?: Collective Bargaining, Teacher Contract Restrictiveness, and the Political Power of Teachers' Unions*, 32 EDUC. EVALUATION & POL'Y ANALYSIS 389, 391 (2010) (citing T.M. Moe, *Political Control and the Power of the Agent*, 22 J. LAW & ECON. 1 (2006)).

¹²⁵ Rose & Sonstelie, *supra* note 116, at 439.

¹²⁶ JEFFREY R. HENIG, *THE END OF EXCEPTIONALISM IN AMERICAN EDUCATION: THE CHANGING POLITICS OF SCHOOL REFORM* 138 (2013) (citing T.T. Holyoke, *Choosing Battlegrounds: Interest Group Lobbying Across Multiple Venues*, 56 POL. RES. Q. 325, 325–36 (2003)).

¹²⁷ *Id.* (citing Stephanie Saul, *Profits and Questions at Online Charter Schools*, N.Y. TIMES (DEC. 12, 2011), http://www.nytimes.com/2011/12/13/education/online-schools-score-better-on-wall-street-than-in-classrooms.html?_r=2&pagewanted&).

¹²⁸ *Id.*

populations.

Additionally, it is important to address Rubin's assertion that NACSA has openly stated that the intent of the authorizing board is to override local control.¹²⁹ A plain reading of the language found in the document does not lend itself to the conclusion that NACSA intentionally wants to nullify local control. Instead, NACSA seems to merely express a fear that some school boards acting as charter school authorizers may have "conflicts of interest" that prevent them from fairly discharging their duties as authorizers.¹³⁰ Logically, as explained in the preceding paragraphs, if a school board is effectively under the influence of powerful interest groups that oppose the creation of charter schools, this will end chartering.

Finally, it is important to note that these suggestions are not meant to paint teachers' unions or charter organizations as boogeymen. Instead, these arguments demonstrate that local popular votes and local school board votes are susceptible to influence and have arguably been monopolized by teachers' unions. Thus, these elections do not necessarily result in the outcome local populations and disenfranchised communities desire. Instead, these types of elections require local populations to put faith in the magnanimity of interest groups like teachers' unions, which is not always the best option for a local community.¹³¹

Because a local vote requirement may serve to only promote the interests of powerful interests groups, ultimately, student and parent school choice would be hindered. On the other hand, Senate Bill 2319's provisions for local input are sufficient to allow a charter school authorizer to glean the local community's sentiments while also preventing powerful interest groups from holding too much influence over charter school approvals, expansions or closures. Thus, Senate Bill's lack of a binding local vote requirement, and preservation of some local input limits the influence of powerful interests groups and thus secures the choice available to students and parents. This result advances the original purpose of the Act.

¹²⁹ Telephone Interview with Julia Sass Rubin, *supra* note 11.

¹³⁰ NAT'L ASS'N OF CHARTER SCHOOL AUTHORIZERS, *supra* note 88, at 2

¹³¹ Rose & Sonstie, *supra* note 116, at 441 (finding that in the context of collective bargaining agreements, unions would be "more willing than voters to sacrifice nonteacher expenditures or the number of teachers to secure an increase in salaries"); Strunk & Grissom, *supra* note 124 (finding that contracts in districts with strong unions "allow school district administrators less flexibility than do contracts in districts with weaker, less active unions.").

B. No “Mirroring” Requirement

As mentioned earlier, Mark Weber and Julia Sass Rubin published a study examining the demographics of charter schools as compared to the sending districts.¹³² Based on this methodology, Weber and Rubin concluded that charter schools were not educating the same populations as compared to the populations the local district schools were educating.¹³³ Mark Weber has referred to this method of comparison as the “simplest and most illuminating way” to assess charter school populations.

Weber is correct in stating that the methodology he employed is “simplest,” but incorrect in stating that it is the “most illuminating.” Essentially, Weber and Rubin’s study fails to consider the diversity of neighborhoods located within large school districts and to fully appreciate the landscape of public schools in a district. Weber and Rubin’s study assessed charter school demographics across the state, paying particular attention to seven urban communities: Camden, Hoboken, Jersey City, Newark, Paterson, Plainfield, and Trenton.¹³⁴ These communities can be further divided into various neighborhoods or wards. Some of these neighborhoods and wards are economically diverse as compared to other wards in the same communities and from the district as a whole.

Newark provides the best example of ward-to-ward economic diversity. The city of Newark is divided into five wards: North, South, Central, East and West.¹³⁵ A 2013 study conducted by the Rutgers University Cornwall Center for Metropolitan Studies, in collaboration with the Bloustein School of Planning and Public Policy, highlights the economic diversity existing among the wards.¹³⁶ The study found that the rate of poverty in Newark varies by ward.¹³⁷ For example, nearly one-third of South and Central ward residents are in poverty, whereas the East ward’s rate of poverty is only 18 percent.¹³⁸ As a result, it is likely that

¹³² WEBER & RUBIN, *supra* note 96 (finding discrepancies in charter school education of Free or Reduced Price Lunch students, LEP students, and special education students).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Newark City Ward Boundaries (2000)*, RUTGERS UNIV., http://policy.rutgers.edu/cupr/rcopc/data_atlas/6.pdf (last visited Feb. 9, 2015).

¹³⁶ LIZ MAHN ET. AL, BARRIERS TO UPWARD MOBILITY: A SPATIAL ANALYSIS OF NEWARK AND THE CHALLENGES TO HUMAN DEVELOPMENT 13 (Rutgers Univ. 2013), *available at* <http://policy.rutgers.edu/academics/projects/practicums/BarrierstoUpwardMobility.pdf>.

¹³⁷ *Id.* at 19.

¹³⁸ *Id.*

charter schools that cannot provide busing will not be able to bus poor students from other wards, and charters facing a mirroring requirement may be forced to ignore poverty-stricken students in their own neighborhoods. Additionally, as pointed out by Carlos Perez in his testimony before the Assembly Education Committee in 2013, a mirroring requirement is unworkable because at the time of the lottery process, charter schools only know whether an applicant is “age appropriate and resides in the district,” and are not aware of the students’ socio-economic status.¹³⁹ Therefore, a poverty-driven mirroring requirement would not be feasible, especially in large-urban communities

The use of district averages also fails to appreciate different kinds of public schools that already exist in some districts. In a recent op-ed, Rick Pressler, interim president of the New Jersey Charter Schools Association, highlighted that there are “at least six different types of public school options” currently available in New Jersey.¹⁴⁰ Included among those six options are: charter schools, open-enrollment district schools, selective public magnet schools, Renaissance schools (Urban Hope Act), choice school districts, and selective county technical vocational schools.¹⁴¹ Despite the fact that selective magnet schools and vocational technical schools are allowed to cherry-pick top students, and despite the fact that traditional public schools may not mirror a district’s demographics, Weber and Rubin prefer imposing a mirroring requirement solely on charter schools. These realities affect a charter school’s applicant pool and the types of students they are capable of admitting.

Additionally, it is important to note that Rubin and Weber’s study bifurcates those students categorized as Free Lunch and Reduced Price lunch in order to gain a deeper understanding of the population of students educated by charter schools.¹⁴² Weber and Rubin suggest that charter schools do not educate as many Free Lunch students, and thus economically disadvantaged students, as their district counterparts, and

¹³⁹ N.J. Charter Schs. Ass’n, *Testimony by Carlos Perez Before the Assembly Education Committee on A4177*, http://njcharters.org/index.php/start-a-charter-school/the-application/doc_details/169-1330evaluationofsba?tmpl=component (last visited Feb. 15, 2014).

¹⁴⁰ Rick Pressler, *Op-Ed: Charter Schools are Best Way to Bring Equity to Education in New Jersey*, NJ SPOTLIGHT (Dec. 17, 2014), <http://www.njspotlight.com/stories/14/12/16/op-ed-charter-schools-are-the-best-way-to-bring-equity-to-education-in-nj/>.

¹⁴¹ *Id.*

¹⁴² WEBER & RUBIN, *supra* note 96 at 27–32

this affects the positivity of charter school test and performance results.¹⁴³ The authors of the study argue that schools that educate more Reduced Price Lunch students than their counterparts have an “edge in producing desirable academic outcomes.”¹⁴⁴ However, there is one major flaw in the authors’ arguments; the questionable assessment utility of free and reduced price lunch monikers. For example, “the need for alternatives and supplements is becoming more urgent, as recent federal rule changes broaden eligibility for the program,” thus calling into question the usefulness of the above mentioned monikers.¹⁴⁵ Additionally, a 2010 study in *Educational Researcher* found that at least 20 percent of students are “misidentified by school meals programs.”¹⁴⁶ Statisticians at the National Forum for Education Statistics, have become so concerned that they have identified three alternative “interconnected aspects of poverty” that may be used to create more representative poverty indexes: “community-, neighborhood- and school-level socioeconomic status.”¹⁴⁷ Therefore, the accuracy of free and reduced price labels is dubious, may exaggerate any perceived demographical disparities within charter school population, and may not accurately quantify the poverty faced by New Jersey’s students. As such, Weber and Rubin’s conclusions must be taken with a grain of salt.

In sum, a charter school should not be required to mirror a district’s population. Charter schools are located in different neighborhoods and sometimes face different applicant pools and feeder schools.¹⁴⁸ Also, the statistics and labels used to quantify poverty are questionable. Imposing a mirroring requirement on one sort of public school and not on others is inherently unfair. If a mirroring requirement were to be imposed, should not all public schools in a district be required to adhere to that mirroring

¹⁴³ *Id.* at 30.

¹⁴⁴ *Id.*

¹⁴⁵ Sarah D. Sparks, *Popular Child-Poverty Measure Gets Another Look: Free-lunch Measure Seen As Less Accurate*, EDUCATION WEEK (Aug. 20, 2014), <http://www.edweek.org/ew/articles/2014/08/20/01povertymeasures.h34.html>.

¹⁴⁶ *Id.* (citing Michael Harwell & Brandon LeBeau, *Student Eligibility for a Free Lunch as an SES Measure in Education Research*, 39 EDUC. RES. 120, 120–131 (2010)).

¹⁴⁷ *Id.* (citing NAT’L CNTR. FOR EDUC. STATISTICS, IMPROVING THE MEASURE OF SOCIOECONOMIC STATUS FOR THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS: A THEORETICAL FOUNDATION (Nov. 2012), *available at* http://nces.ed.gov/nationsreportcard/pdf/researchcenter/Socioeconomic_Factors.pdf).

¹⁴⁸ For a study focusing on charter school demographics as compared to feeder schools see CNTR. FOR RES. ON EDUC. OUTCOMES, CHARTER SCHOOL PERFORMANCE IN NEW JERSEY (Stanford Univ. 2012), *available at* http://credo.stanford.edu/pdfs/nj_state_report_2012_FINAL11272012.pdf.

requirement? Furthermore, mirroring requirements limit a parent or student's ability to choose which school they would like to attend. This result is at odds with the original purpose of the Act.

Instead of focusing on a mirroring requirement, scholars who believe that charter schools are not adequately serving certain populations should come up with legislative solutions that provide for better advertising of charter school applications processes and lotteries. Additionally, charter schools should only be accused of skimming or intentionally cherry-picking skilled students if there is a discrepancy between a charter school's demographics as compared to those of its local community and applicant pool. Thus far, there is no data suggesting that is the case.

C. Funding Parity is Necessary for Charter Success

Notably absent from Senate Bill 2319 is any mention of charter school funding parity. Essentially, Senate Bill 2319 would preserve the current scheme posited under the Act, namely that charter schools receive 90 percent of the per pupil funding received by public district schools.¹⁴⁹ The problem with the current scheme is that charter schools do not always receive 90 percent of the per pupil funding that their public district counterparts obtain.

In 2014, JerseyCAN, a non-profit education reform advocacy organization, published *The 90 Percent Myth*, a brief analysis of funding inequities between charter schools and their district counterparts.¹⁵⁰ In their analysis, JerseyCAN explains that charter schools are excluded from certain types of aid, namely "adjustment, educational adequacy, school choice and transportation aid."¹⁵¹ As a result, there often exists a "funding equity gap between district and charters that ranges from 20 percent to 29.9 percent."¹⁵² JerseyCAN further postulates that if charter schools actually received 90 percent of the per pupil funding that their district counterparts received, charters would be entitled to approximately \$43

¹⁴⁹ N.J. STAT. ANN. § 18A:36A-12(b) (West 2014).

¹⁵⁰ JerseyCAN, *The 90 Percent Myth: Fixing Funding Inequities for New Jersey Charter Schools*, <http://jerseycan.org/sites/jerseycan.org/files/90%25%20myth.pdf> (last visited Feb. 9, 2015).

¹⁵¹ *Id.*

¹⁵² *Id.* (citing *Measuring up to the Model: New Jersey*, NAT'L ALLIANCE FOR PUB. CHARTER SCHS., <http://www.publiccharters.org/get-the-facts/law-database/states/NJ/> (last visited Feb. 7, 2015)).

million more in funding.¹⁵³ According to Gloria-Bonilla Santiago, the founder and board chair of Camden's LEAP Academy University Charter School, adjustment aid represents one of the primary sources of funding inequity facing charter schools.¹⁵⁴ As a result of the funding disparity adjustment aid causes, the Camden city school district receives an extra \$17.6 million dollars in funding for students that have enrolled in charter schools and no longer attend district-run schools.¹⁵⁵

Santiago also refers to facilities funding as one of the primary sources of funding inequity faced by charter schools.¹⁵⁶ In general, New Jersey law does not provide charter schools with public facilities or facilities funding.¹⁵⁷ Therefore, charter schools must use their operational funding for the procurement of school facilities, sometimes spending \$1,418 per student on facilities expenditures.¹⁵⁸ As a result of these funding disparities, charter schools that want to expand their enrollment cannot create adequate space for such an increase.¹⁵⁹ This is especially concerning considering that over 20,000 students are on various wait-lists to enroll in charter schools.¹⁶⁰

Senate Bill 2319 should be amended to include a provision making charter schools eligible for adjustment, educational adequacy, school choice, transportation, and facilities funding aid. In other words, if charters are paying for their own facilities, providing transportation, or afford services similar to those that districts schools are responsible for, those charters should be compensated. The problem with the funding disparity between charters and district schools is the apparently inherent assumption that charters are "lesser" entities. There seems to be a popular sentiment that charter schools take money away from public schools, and

¹⁵³ *Id.* at 2.

¹⁵⁴ Gloria-Bonilla Santiago, *Op-Ed: Dollars Don't Make Sense -- Time to Improve Charter School Funding*, NJ SPOTLIGHT (Feb. 13, 2015), <http://www.njspotlight.com/stories/15/02/12/op-ed-dollars-don-t-make-sense-time-to-improve-charter-school-funding/>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* (citing *An Analysis of the Charter School Facility Landscape in New Jersey*, CHARTER SCH. FACILITIES INITIATIVE, http://njcharters.org/docs/report_facilitiesanalysis_201301.pdf (last visited Feb. 13, 2015)).

¹⁵⁹ *The 90 Percent Myth: Fixing Funding Inequities for New Jersey Charter Schools*, *supra* note 150.

¹⁶⁰ N.J. Charter Sch.s. Ass'n, *Charter Schools Continue to Grow Throughout New Jersey*, <http://njcharters.org/index.php/9-news/117-charter-schools-continue-to-grow-throughout-new-jersey> (last visited Feb. 9, 2015).

many charter schools and charter school associations have gone to great lengths to dispel that myth.¹⁶¹

The logic supporting that popular misconception fails to recall that public schools and charter schools are public schools. Students who choose to attend charter schools, and therefore divert their per-pupil funding to attend charter schools, are simply reallocating public funds to another public institution.

VI. CONCLUSION

Charter school creation and growth has been a controversial topic since the inception of the Charter School Program Act of 1995. Senator Teresa Ruiz is one of the state's most prominent policymakers and Julia Sass Rubin is one of the state's most recognizable scholars, and they were kind enough to share their time to advance this discussion. It is evident that both of them share one thing in common; they want what is best for students and communities. For that reason, their hard work should be respected immensely. Nevertheless, this respect should never prevent an author from exhibiting utter honesty and forthrightness.

First, a local binding vote would only serve the interests of powerful interests groups, forgo valuable administrative expertise, and further disenfranchise underprivileged, minority communities. Local populations simply do not possess the expertise and political neutrality necessary to deal with complex issues like charter school management and educational methodology. Furthermore, due to low-voter turnout,

¹⁶¹ California Charter Sch.s. Ass'n, *Dispelling Myths About Charter Schools*, <http://www.calcharters.org/understanding/faqs/myths.html> (last visited Mar. 28, 2015) ("In California, public school funding follows the student, with the funding going to the public school the parents choose, whether a charter school or a traditional district school. When charter public schools are funded, there is no overall loss of public school money because charter schools are public schools."); *Charter School Misconceptions*, CHARTER SCHOOL FOR APPLIED TECHNOLOGIES, <http://www.csat-k12.org/Page/21> (last visited Mar. 21, 2015) (In New York State, school districts only contribute about 66% of each charter school students' expenses, meaning that when a student leaves, the remaining 33% of his/her funding stays with the home school district. The charter school gets 66% of the money and 100% of the student!"); National Conference of State Legislatures, *Charter School Finance* (Feb. 2011), available at <http://www.ncsl.org/documents/educ/charterschoolfinance.pdf> ("Defenders of traditional public schools are concerned that charter schools are taking money away from those schools. Simply having one less student does not proportionally decrease the burden on a district. It likely still needs the same number of teachers, other staff, the same facilities and the same instructional materials. However, losing students to a charter school or another traditional school have the same effects and traditional schools have always had to adjust to enrollment changes.").

2015]

AN UNFULFILLED PROMISE

387

teachers' unions exercise an inordinate amount of influence over local school board elections and members. This influence only becomes more powerful in larger districts, where underprivileged, minority communities are located. Therefore, placing control over charter schools in the hands of a board inveigled by powerful interests would further disenfranchise underprivileged populations.

Second, requiring that charter school demographics mirror those of the sending district ignores the racial, ethnic, and economic diversity that exists in the neighborhoods and wards of larger cities. In a study prepared by Rutgers University, it is evident that racial and ethnic diversity is pronounced across Newark's wards, thus making it impracticable for charter schools to meet any mirroring requirement. Moreover, a mirroring requirement almost certainly would require local charter schools to forsake needy populations within their local neighborhoods in order to meet artificially imposed mirroring requirements. Instead, scholars should propose ideas that foster better advertising and awareness of charter school applications and lotteries.

Finally, Senate Bill 2319 must address funding disparities between charters and their district counterparts. Charter schools would be able to accommodate more students on their ever-growing wait-lists if they could receive transportation, adjustment, educational adequacy, and school choice aid. Unfortunately, the funding parity issue is a vestige of an inherent assumption that charter schools are inferior or unequal. Funding parity is a step towards removing the inherent assumption of inferiority. Only with these provisions can New Jersey adhere to the promises it made under the Charter School Program Act of 1995.

