



HOBOKEN BOARD OF EDUCATION

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Dear Members of the City Council:

We, the members of the Hoboken Public School District Board of Education, write to you on behalf of the more than 3,400 students and employees who make the Hoboken Public School District what it is today. Our aim is to obtain your continued support in helping the Board to meet its educational mission, while giving full respect to current state law and policy around school district and charter school funding.

In 2017, to incentivize local development, the City of Hoboken entered into an agreement whereby it would abate the taxes slated for local taxing authorities and accept "payments in lieu of [those] taxes," or PILOT payments, from the developer. These payments were purposed to offset the increased municipal service costs created by the businesses and residents of the new development. See N.J.S.A. 40A:20-2; N.J.S.A. 40A:21-2. However, recent public discussion on the PILOT has obscured this core purpose and principle: To compensate the taxing authorities that would lose tax revenue due to the PILOT agreement, but still must provide an increased level of local services to the development. For this reason, any legitimate claim to PILOT payments must come from an entity that is a taxing authority required to provide an increased level of services due to the development.

The Hoboken Public School District Board of Education is one such taxing authority. Like the County and City, per statute, the Public Board can assess taxes. See N.J.A.C. 6A:23, et seq.; N.J.S.A. 18A:7F-5.d(9); N.J.A.C. 6A:26-3. Charter schools cannot. They are not taxing authorities. In fact, charter schools are specifically excluded from statutory designation as a taxing authority. See N.J.S.A. 18A:7G-3. Thus, there is no basis in the law for charter schools to share in the payments that taxing authorities receive in replacement of their lost ratables.

By statute, charter schools receive the entirety of their operating budget through tuition payments from the local school district. N.J.S.A. 18A:36-12. This holds true regardless of the Public Board's own available funds and its own operating costs.

In addition, unlike the Public Board, which must enroll all children residing in Hoboken, charter schools have fixed enrollments. They cannot enroll additional students beyond the number established in their charters. For this reason, it cannot be argued that charter schools are being required to provide additional services due to the development.

Beyond the fact that the law does not contemplate charter schools, as non-taxing authorities, to receive replacement tax monies, there are other important reasons why charter schools' direct receipt of PILOT payments would be improper:

- **Overpayment.** If charter schools were to receive PILOT payments, in contravention of PILOT program purposes and school funding statutes, they would receive greater funding than that provided for in statute, having attained PILOT payments in addition to the tuition payments the Public Board must continue to furnish by statute. Surely, PILOT payments were not intended to

serve as overpayments to non-taxing entities, as would occur here. (Note: When the Public Board adopts its budget annually, it already accounts for the City's entire public school population, including the children attending charter schools. PILOT payments, thus, would represent a windfall.)

- **Growth Absorption.** Charter schools accept students from within and outside the City of Hoboken, up to the limits established by their charters. See N.J.S.A. 18A:36A-8; N.J.A.C. 6A:11-4-11. The Hoboken Public Board, however, has no maximum enrollment and must enroll every student who arrives in Hoboken. Ordinarily, the Public Board would draw directly on the tax base to pay for these additional students. However, due to the PILOT agreement, which removes these taxes, the Board will not see the ratables it would typically draw on; meanwhile, it cannot cap its enrollments. While the charter schools have nearly reached capacity already (and will likely enroll few, if any, students from the development), new students must be addressed by the Public Board. The charter schools cannot claim to be impacted by the "loss" of PILOT payments, when they were never entitled to such payments and could admit the same number of students before and after the development's arrival. It is clear that the PILOT funds were intended to address the Hoboken Public Board of Education's predicament of unlimited enrollment.

It is further worth noting that the assertion that any increases in PILOT payments will necessarily mean less per pupil payments/allocations to the charter schools, is illusory. The truth is that the District, in having to cover all of the enrollment increases that the District must absorb as a result of increased development, together with all the previous PILOT agreements the City has entered into and the simultaneous and significant State aid cuts, will mean less money for more students. Thus, lower per pupil allocations are going to be felt across the public schools, not just by the charter schools. Payments will go down with more development and less tax revenue to everyone on a per capita basis.

- **The Language of the Resolution:** Much has been made of the fact that the charter population was included in the calculations for the amount of the PILOT payment to be made to the Hoboken Public School District; using this as "evidence" that the intent of the resolution was always to divert some of these funds to the three Hoboken charter schools. This assertion is an over-simplistic basis for what is attempting to be accomplished, and is simply not supported by the plain language of the resolution itself or the law applied to the language of the resolution. Specifically, and as mentioned, when the Hoboken Public School Board adopts its budget, it also accounts for the City's entire public school population, including charter schools. Accordingly, the inclusion of these numbers by City Council is of no import when it comes to whom the PILOT payment is required to be made. In addition, the language of the resolution clearly refers to the "Hoboken School District" in the singular and not to a multitude of schools or districts. And it is singular for good reason because the Hoboken Public School District is not only the sole school district in Hoboken entitled to levy and collect taxes, but is also the only actual "school district" that exists in Hoboken under the law. Charter schools are NOT considered school districts under New Jersey school law because they cannot

assess taxes, among other things. See N.J.S.A. 18A:7G-3. The language referring to a singular district in the resolution, is also referring to the only district in Hoboken.

Moreover, in investigating the claims regarding PILOT payments that the charter schools have jointly inserted into the public discourse, we discovered a number of factual distortions and untruths -- many culled together in a single FAQ document. For the Council's benefit, and the public's, we have addressed the charter schools' misstatements in the enclosed response, entitled The Truth about PILOT Programs and Public Schools. Furthermore, we would like to remind our City Council colleagues that matters of school funding are not within their purview or jurisdiction.

To the extent the charter schools believe that their non-receipt of PILOT payments represents an unfairness under the funding laws currently applicable to them, their recourse should not have been to press the City for a share of PILOT funds to which they are not entitled. We are aware of no such direct grant of PILOT funds to any charter school in the history of PILOT programs within the State. Furthermore, the City Council appears to be prioritizing the needs of a small group of families over the bulk of Hoboken taxpayers who looked forward to the impact of this PILOT payment on the school tax portion of their municipal tax bill.

We ask you to honor the original intent of the 2017 resolution which recognizes the Hoboken Public School District as a taxing authority impacted by the PILOT payment. We ask you to honor the process that the state of New Jersey has set forth for funding charter schools. We ask you to speak up for the 3400 district students and staff who reside in Hoboken, who are all too often ignored by this body despite their accomplishments. For all of the foregoing reasons, we urge the Council to honor its resolution as adopted in 2017.

Educationally yours,

The Hoboken Board of Education