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My name is David Lapp and I am here today on behalf of the Education Law Center of Pennsylvania where I serve as a staff attorney. This testimony is not offered in regard to any particular one of the six cyber charter applications before you. Rather, it is in regard to all of them. We are asking the Department to utilize its clear legal authority to deny all six applications.

The Education Law Center is a non-profit legal advocacy organization which works to ensure access to a high quality public education for Pennsylvania's most vulnerable students – students with disabilities, English language learners, students in poverty, minority students, students experiencing homelessness, and students who have been placed in the foster care system. Prior to entering the legal profession, I was a teacher for nine years in Philadelphia charter schools. I recently served a three year term on the board of trustees of a third charter school. I am not “anti-charter” and neither is the Education Law Center.

As an organization, we have developed a set of principles which provide the lens through which we analyze charter policy.¹ These principles reflect that charter school policy should ensure that charter schools are only expanded when they:

- (1) are welcoming to and capable of educating all kinds of students;
- (2) operate with integrity and as responsible stewards of public financing;
- (3) provide something fundamentally innovative or better than existing opportunities;
- (4) ensure adequate and equitable funding for all public schools;
- (5) meaningfully include parents, students, and their communities in governance; and
- (6) are accountable to the local communities they serve

In addition, PDE is compelled to interpret the charter law through the lens of our state constitutional mandate which charges our state government with the “maintenance and support of a thorough and efficient system of public education.” Pa. Const. Art. III, § 14.

In the last ten years, we have represented dozens of children attending cyber charter schools and we have encountered a range of improper enrollment practices, inadequate special education and ELL services, and poor overall academic outcomes. We have witnessed the devastating financial drain from cyber charter expansion on our public school districts across the state. We have

¹ Available at http://www.elc-pa.org/ELC_PrinciplesforCharterSchoolReform_9.20.12.pdf.

seen how unregulated expansion of charter schools, including cyber charter schools has paradoxically *decreased* school choice, as their expansion defunds our community’s school district-operated neighborhood schools, the schools that the vast majority of Pennsylvania families prefer to choose. We have seen how the churn of students in an out of cyber charter schools has wreaked havoc on educational stability for thousands of students each year. We have witnessed the general lack of accountability for the vastly inferior academic instruction students receive in cyber charter schools. And we have seen an appalling violation of the public trust by cyber charter operators and waste of taxpayer funding designated for public education, squandered on marketing, advertisements, and private for-profit contractors.

Last year, we offered testimony in opposition to the eight applications before the Department at that time and called for a yearlong moratorium on cyber charter expansion.² A year later, the reasons for a moratorium are even stronger. To begin, in our testimony from last year, which is linked here, we provided evidence that cyber charter schools are not enabling students to meet academic standards. Since that time the Department has adopted a new metric for measuring schools – School Performance Profiles. Based on this metric, cyber charter schools are performing even worse. Below is a table comparing the average SPP scores of traditional public schools, brick and mortar charter schools, and cyber charter schools. This table was compiled by Research for Action (see <http://www.researchforaction.org/>) using publicly available data.³ As it shows, based on PDE’s own measurement of school quality, traditional public schools average an SPP score of 77.8, brick and mortar charters average a 67.3 SPP. Meanwhile cyber charter schools average only a 44.7 SPP. Even the highest individual cyber charter school score barely reaches the average brick and mortar charter and is still 10 points below the average traditional public school.

Table 1. Average, Median, Minimum, and Maximum School Performance Profile Scores: Statewide and By School Type

| | Average Score | Median Score | Minimum Score | Maximum Score |
|---|----------------------|---------------------|----------------------|----------------------|
| <i>All Pennsylvania Public Schools</i> | 77.2 | 79.3 | 15.8 | 100.6 |
| Cyber Charters | 44.7 | 39.7 | 30.6 | 67.9 |
| <i>Traditional Public Schools</i> | 77.8 | 79.7 | 15.8 | 100.6 |
| <i>Charters (Brick and Mortar Only)</i> | 67.3 | 67.8 | 22.5 | 94.2 |

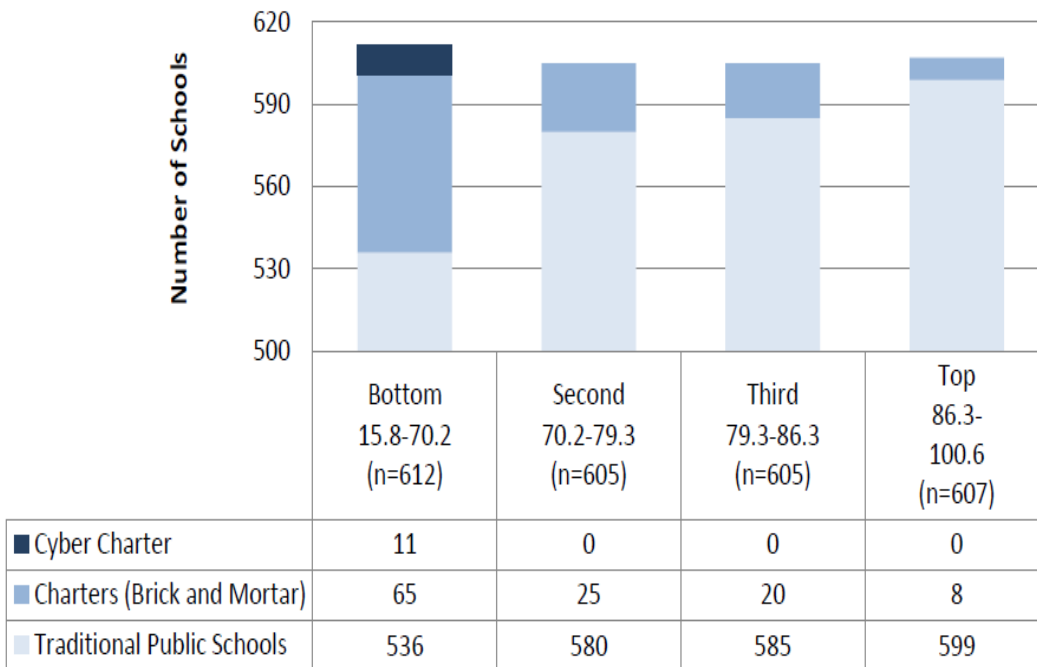
Source: Pennsylvania Department of Education- Pennsylvania School Performance Profile

² Available at http://www.elc-pa.org/ELC_CyberCharterTestimony.Nov2012.pdf.

³ See Examination of Cyber Charter Schools School Performance Profiles, November 2013, Research for Action. RFA cautions that “Due to a calculation error regarding Keystone Exams, Pennsylvania’s new end-of-course tests, scores are not available for all schools. As a result, only 2,429 schools (81 %) statewide, have a School Performance Profile (SPP) score. Similarly, only 11 cyber charter schools (69%) statewide have an SPP score. The five cyber charters which had suppressed scores account for 52 percent of the statewide cyber charter enrollment.”

RFA compiled the available SPP scores of all public schools in Pennsylvania and divided them by ranking into quartiles. All 11 of the available cyber charter schools fall in the bottom quartile of SPP scores.⁴

Figure 1. Distribution of All Pennsylvania Public Schools with SPP's across Quartiles



In our testimony last year, we gave four reasons why expanding cyber charter schools was an inefficient and unaccountable use of tax dollars. A year later all four of those reasons are even more compelling. First, we explained that it was wasteful to continue to allow cyber charter expansion in the face of evidence of the high turnover rate of students who leave their public schools to enter a cyber charter school, only to return a year later, having lost a year of academic growth. The importance of school stability has been well documented. Unfortunately, self-reported data found in charter school annual reports provide conclusive evidence that students in cyber charters schools withdraw from those schools at much higher rates than their peers in brick and mortar schools. During the 2011-2012 school year, 27% of the students in the five cyber charter for which data is available withdrew from those schools before the end of the school year. That number is striking all on its own, but to put that into perspective, we compared the rates for these five cyber charters to the 87 brick and mortar charter school in Pennsylvania that reported this data for the 2011-12 school year. The cyber charter withdrawal rate of 27% is three times the rate of 9% in brick and mortar charter schools.⁵

⁴ Figure from Research for Action.

⁵ Source: Pennsylvania Department of Education: Charter School Annual Reports and Enrollment Data, available at http://www.portal.state.pa.us/portal/server.pt/community/annual_reports/7357. (Data not available for traditional public schools).

Withdrawal Rates in Pennsylvania’s Cyber and Brick and Mortar Charters 2011-2012

| | Transfer-In Rate | | Withdrawal-Out Rate | |
|---------|------------------|------------------|---------------------|------------------|
| | Cyber | Brick and Mortar | Cyber | Brick and Mortar |
| Average | 31% | 8% | 27% | 9% |

It is true that increasing numbers of parents, lured by ubiquitous advertisements making false promises, keep gambling on cyber charters. But as the data shows, after experiencing the poor quality of instruction, they flee at record numbers. Unfortunately, for many it is not before their students lose a year of education and taxpayers foot the bill for remediation back in tradition public schools.

Second, we explained that it was irresponsible and inefficient to expand cyber schools when there has been widespread acknowledgement that the current cyber charter funding formula is fundamentally flawed.⁶ Today that view is even more broadly accepted, yet we are still operating under the same funding formula. In addition, the financial impact on school districts is even more widespread. The School District of Philadelphia had over a \$300 million budget deficit, much of which can be attributed to increasing charter school payments, including cyber charter schools. Dozens of school districts in both rural and suburban communities are in similar financial distress. Projections are for this financial crisis to continue into the foreseeable future. Adding additional inefficient cyber charters at this time, would further harm traditional public schools, and thus violate the state constitutional mandate to maintain and support the thorough and efficient system of public education.

Third, we explained that it was inefficient and wrong for taxpayers to continue to pay for a system of cyber charter schools which permits profiteering and personal gain on the backs of Pennsylvania taxpayers.⁷ Since then our state has seen major indictments of the leadership of both our two largest cyber charter operators, including the founder of the Pennsylvania Cyber Charter School and the founder and former head of the Agora Cyber Charter.⁸ As taxpayers continue to dig out of the massive waste and on-going legal fees still being paid with public funds, it is all too vividly clear that, one year later, these problems have not been resolved. Allowing six more schools to enter this educational climate will only exacerbate the problem.

⁶ Both state Auditor General Jack Wagner and the Task Force on School Cost Reduction have concluded that school districts are overpaying cyber charter schools because the existing formula structure is based on the cost to educate a student in his/her home school district, not the actual cost to educate the student through cyber education– which costs less given the lack of a physical school structure.

⁷ See e.g., Rich Lord and Eleanor Chute, *Cyber Charter is a Magnet for Money*, PITTSBURGH POST-GAZETTE (July 17, 2012), available at http://www.philly.com/philly/news/20120716_Cyber_charter_is_a_magnet_for_money.html; Rich Lord, *PA Cyber Connections Prompt Inquiry*, PITTSBURGH POST-GAZETTE (July 17, 2012), available at <http://www.post-gazette.com/stories/news/education/pa-cyber-connections-prompt-inquiry-648675/>; Stephanie Saul, *Profits and Questions at Cyber Schools*, THE NEW YORK TIMES (Dec. 12, 2011), available at <http://www.nytimes.com/2011/12/13/education/online-schools-score-better-on-wall-street-than-in-classrooms.html?pagewanted=all>; PR Newswire, *PA Department of Education Halts Payments to Agora Cyber Charter School, Citing Fraud and Improper Use Funds*, available at <http://www.prnewswire.com/news-releases/pa-department-of-education-halts-payments-to-agora-cyber-charter-school-citing-fraud-and-improper-use-funds-62075452.html>.

⁸ See Benjamin Herold, *Federal Indictment Fuels Concerns About Pa. Cyber Charters*, ED WEEK (August 26, 2013), available at http://blogs.edweek.org/edweek/DigitalEducation/2013/08/what_does_federal_indictment_m.html.

Pennsylvania already leads the nation in the number of cyber charter schools and because there is no cap on enrollment in the existing cyber charter schools, authorizing new cyber charter schools is unnecessary. The intent of the charter school law is to provide for greater innovation and for increased opportunities for parents. *See* 24 P.S. § 17-1702-A. The addition of new cyber charters will not add anything new and certainly nothing better. New cyber charters will merely duplicate what is already available and, by spreading school funding even thinner, perversely harm the existing choices within our system. In April 2011 the Center for Research on Education Outcomes (CREDO) at Stanford University, conducted the largest study ever completed of cyber charters schools, finding dismal results in Pennsylvania. As stated by Devora Davis, the Research Manager of that study, *“What we can say right now is that whatever they’re doing in Pennsylvania is definitely not working and should not be replicated.”*

Finally, last year we expressed concern about the Department’s ability to sufficiently monitor even the current number of cyber charter schools. The Department wisely denied all eight cyber charter applications before it last year. In addition, the Department has since revoked one cyber charter.⁹ However, even if the Department expands its oversight capacity, the overall state of cyber education has not improved.

The applicants cannot prove that they will do better than traditional public schools and, thus, cannot meet the threshold created by the charter school law and our state constitution of improving upon what we already have while maintaining and supporting our thorough and efficient system. For this reason the Department is on sound legal ground in denying all six applications. We call on the Secretary to do this and to apply a twelve month moratorium on cyber charter school expansion.

Sincerely,



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⁹ PDE revoked the Solomon Cyber Charter School and the school was recently shut down. However, as further evidence of the inefficiency and waste emanating from irresponsible cyber charter authorization, the School District of Philadelphia, along with taxpayers all across the state, has been stiffed with a \$305,000 bill for students that the cyber was not even authorized to enroll. See Martha Woodall, School District Must Pay Shuttered Charter’s Bill (November 11, 2013), *available at* http://articles.philly.com/2013-11-11/news/43935228_1_david-weashington-solomon-charter-school-district-officials.