



## EDUCATION LAW CENTER

To: Auditor General  
From: David Lapp, Staff Attorney at the Education Law Center  
Re: Charter School Accountability  
Date: 3-7-2014

My name is David Lapp and I am a staff attorney at the Education Law Center, 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 two different 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.<sup>1</sup> But we have serious concerns about our state’s current charter school policy and the impact it is having on our system of public education.

I use the word “system” intentionally, because our legislators, courts, and state government are compelled to interpret the charter law through the lens of our state constitutional mandate which charges our state government “to provide for the maintenance and support of a thorough and efficient *system* of public education to serve the needs of the Commonwealth.” Pa. Const. Art. III, § 14 (emphasis added).

Much has been written and discussed about scandals involving some individual charter school operators and the overall lack of financial accountability for charter schools. These are important issues and worthy of greater investigation by the Auditor General’s office. Today, however, we would like to talk about a different kind of accountability that is sorely missing in our charter school law – accountability for the impact of charter expansion on vulnerable student populations and on the public school systems in our impoverished communities. The current lack of accountability for this impact threatens our state’s constitutional mandate for a thorough and efficient system.

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<sup>1</sup> At ELC we analyze charter policy through the lens of the following principles; that charter schools should only be created and expanded when they:

1. are welcoming to and equitably serve all kinds of students;
2. operate with integrity and as responsible stewards of public financing;
3. provide educational opportunities that are innovative or superior to 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.

Available at [http://www.elc-pa.org/ELC\\_PrinciplesforCharterSchoolReform\\_9.20.12.pdf](http://www.elc-pa.org/ELC_PrinciplesforCharterSchoolReform_9.20.12.pdf).

Recently, we documented some startling demographic disparities when comparing the brick and mortar charter schools as a whole in Philadelphia to the School District of Philadelphia. We have included a copy of our recent publication on these disparities as Appendix A, but I would like to highlight the findings here as well. In general, we found that brick and mortar charter schools in Philadelphia are underserving students with severe disabilities, English language learners, and students in poverty. The result is that these students are often more heavily concentrated in the neighborhood schools operated by the School District of Philadelphia.

With regard to students eligible for special education, the data on page 2 of Appendix A demonstrates that the charter sector serves comparable proportions of students overall. However, the students are disproportionately students with “mild” and less costly-to-serve disabilities (speech and language impairments or specific learning disabilities). The students with disabilities that are typically more severe and more costly (intellectual disabilities, autism, multiple disabilities, etc.) are disproportionately served by the school district. Others have noted that this disparity may be rooted in the charter school law itself, which provides charter schools the same funding for any student with an IEP, regardless of the severity of the student’s disability or the cost of the services the student requires. This may create a perverse incentive for charter schools to over-identify students with relatively mild disabilities and to underserve students with more severe or costly-to-serve disabilities.<sup>2</sup>

Federal Free/Reduced Lunch (FRL) data is considered “a reliable poverty indicator in the elementary grades, but less so in the high school grades.”<sup>3</sup> For this reason, we compared FRL data between charter schools and traditional district schools for both the overall student population and isolated by elementary school students. The data on page 3 of Appendix A, demonstrates that the school district serves higher numbers of FRL students overall and that the disparity is slightly greater in the elementary school grades where the data is more reliable.

With regard to English language learning students on page 4, the charter school sector enrolls *less than half* their expected proportion.

It is important to understand that all these numbers are generous in favor of charter schools because they include “Renaissance charter schools,” even though Renaissance schools might arguably be better described as school district schools that are currently under charter operation. Removing Renaissance charter schools from the calculation would result in even greater disparities. In addition, the school district data includes all of the district’s special admission schools, which are permitted to utilize selective admission practices. A more accurate comparison would be to only include district schools with

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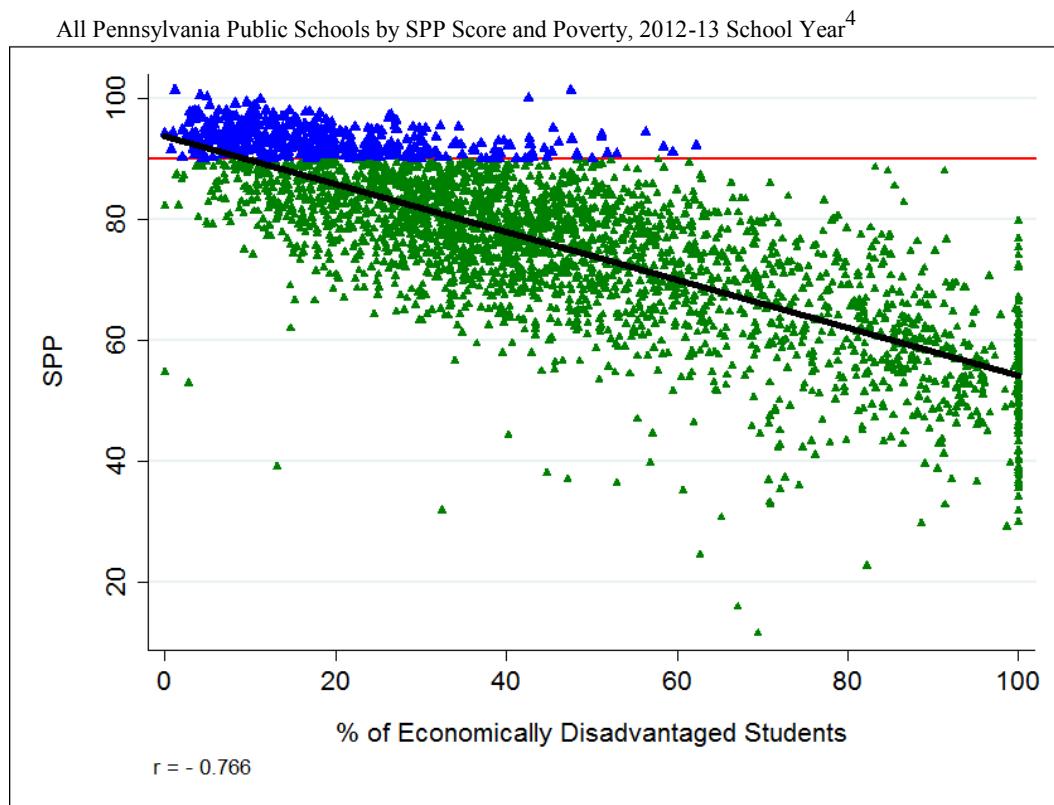
<sup>2</sup> See, e.g., Bruce Baker, *The Commonwealth Triple-Screw: Special Education Funding & Charter School Payments in Pennsylvania*, School Finance 101 (June 5, 2012), <http://schoolfinance101.wordpress.com/2012/06/05/the-commonwealth-triple-screw-special-education-funding-charter-school-payments-in-pennsylvania>.

<sup>3</sup> New America Foundation, “Federal Education Budget Project.” (Available at <http://febp.newamerica.net/background-analysis/federal-school-nutrition-programs>).

comprehensive enrollment, since the charter sector is also supposed to have comprehensive enrollment. The vulnerable students in the district's comprehensive schools are significantly higher and the disparities with the charter sector would, again, be much greater.

Finally, I would note that we have not been able to document, based on available public data, other vulnerable student populations such as students in foster care or students experiencing homelessness. Anecdotally we know that these students struggle to get enrolled and to stay in charter schools.

It is also important to recognize that there are a number of individual charter schools that serve equitable, even higher, proportions of these vulnerable student populations. In general it is true that charter schools that serve equitable populations of students – the only schools it is fair to compare – have virtually the same academic outcomes as district schools. Research for Action recently published data demonstrating that statewide scores on the state's School Performance Profile have a direct negative correlation to the percentage of economically disadvantaged students enrolled in the school.



But there are a few outliers, a few high performers. These are the charter schools that should be permitted to expand. Unfortunately, current law is too permissive of

<sup>4</sup> Research for Action, "Governor Corbett's Expanding Excellent Program." February 4, 2014. (available at <http://www.researchforaction.org/wp-content/uploads/2014/02/RFA-Policy-Note-on-SPP-Analysis-Feb-4-20141.pdf>.)

expansion, and charter legislation currently under consideration by the General Assembly would allow any charter unlimited expansion, resulting in major additional loss of resources for neighborhood schools.<sup>5</sup>

Charters schools, quite simply, have not been the panacea that many predicted. Some charters are excellent, just like some traditional public schools are excellent. But the charter sector taken as a whole is doing no better, and by many measures is doing worse, than school districts.

On top of this, some charters erect enrollment barriers and expel or counsel out the students they perceive as difficult to serve; some refuse to enroll students in particular grades; and some refuse to enroll students throughout the school year, which ensures that more transient students are less likely to secure a seat in a charter school.

District-run schools, of course, cannot turn students away, even students expelled from charters. They must always accommodate all students — in any grade, at any time of the year — and that creates a vastly different playing field between charter schools and district-run schools.

The intent of the charter school law was to *increase* educational opportunities. However, when any charter school is permitted to expand at local school district expense, regardless of whether that charter school is equitably serving all kinds of students and regardless of whether the school is doing so better than the local school district, the result is the erosion of the ability of our neighborhood schools, the schools that over 90% of Pennsylvanians rely on, to provide a quality option for parents. If this is how our charter school law is interpreted, the law can paradoxically decrease educational options, the opposite of the stated legislative intent.

I would like to share a few additional comments about cyber charter schools. We recently testified before the Pennsylvania Department of Education urging it to reject all applications for additional cyber charter schools and to institute an indefinite moratorium on cyber charter school expansion and I would urge you to review that testimony, attached here as Appendix B.<sup>6</sup> The bottom line is that while cyber charter schools in general serve higher proportions of students with disabilities,<sup>7</sup> they continue to underserve students in poverty and English language learners. More importantly, cyber charter schools are woefully underperforming as compared to both school district neighborhood schools and brick and mortar charter schools. Meanwhile, the financial drain from cyber charter expansion has been particularly damaging to school districts.

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<sup>5</sup> ELC's analysis of the two most prominent charter "reform" bills in the General Assembly, SB 1085 and HB 618 are available here - <http://www.elc-pa.org/resource/updated-elc-analysis-charter-school-law-revisions-in-sb-1085/> - and here -

<sup>6</sup> Also available at [http://www.elc-pa.org/wp-content/uploads/2013/12/ELC\\_Cyber\\_Charter\\_Testimony\\_11\\_15\\_13.pdf](http://www.elc-pa.org/wp-content/uploads/2013/12/ELC_Cyber_Charter_Testimony_11_15_13.pdf).

<sup>7</sup> Note, we know anecdotally that while the numbers are high in some cyber charters, many of the special education students in those schools are not receiving appropriate educational services.

While there is no question that the use of virtual and computer based education has exciting potential, there is little doubt that the model created under the Pennsylvania charter school law has been an absolute failure. Under the state's metric, cyber charter schools are all underperforming academically. See Appendix B pages 2-3.<sup>8</sup>

Perhaps more troubling is rate of “churn” in cyber charters, as high numbers of students enroll, only to withdraw weeks or months later, resulting in even greater disruption to their educational. See Appendix B, page 4.

As stated by *Devora Davis, the Research Manager* of the April 2011 study by the Center for Research on Education Outcomes (CREDO) at Stanford University *the largest study ever completed of cyber charter schools, “What we can say right now is that whatever they’re doing in Pennsylvania is definitely not working and should not be replicated.”*

We were encouraged that the Department of Education denied the most recent cyber charter applications. Equally important is to strengthen the accountability provisions in the charter school law for the existing cyber charter schools. There is a need for greater financial accountability. But just as important, is the need for accountability for the kinds of students served in charter schools, as well as their educational stability and the educational outcomes.

Since Act 22 created charter schools in the Commonwealth in 1997, the Education Law Center has represented hundreds of families whose children attend or wish to attend charter schools throughout the state. Out of this experience representing families, we propose several common sense charter school reforms needed in the Commonwealth:

- The charter law should ensure that all public schools — both district-run and charter — are adequately funded and able to serve all kinds of students
- The charter law should allow school districts to set enrollment caps on charter schools as an important accountability tool.
- The charter law should permit the gradual expansion of charter schools that demonstrate, over time, that they equitably serve vulnerable student populations on par with or in excess of their authorizing district; follow the same enrollment and withdrawal rules as comprehensive district schools; protect the rights of students; and consistently meet or exceed the performance of the district schools they are chartered by.
- The charter law should permit local communities to implement strategic use of charters that prioritize enrollment in particular neighborhood catchments and restrict the awarding of those charters to proven educators. Currently, this type of

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<sup>8</sup> To see the demographic breakdown of the brick and mortar charters represented at today’s and a performance profile of the cyber charter represented see Appendix C.

“neighborhood charter” is permitted only in the School District of Philadelphia. Instead, a charter reform bill should explicitly permit this model in any school district.

- The charter law should ensure that charter schools with open seats, as determined by their enrollment cap, enroll new students at all times of the school year and in all grades, just like traditional public schools.
- The charter law should abolish perverse financial incentives to over-identify or over-enroll students with mild disabilities.
- The burden of proof and the standard of review in appeals of a charter denial or revocation should be more deferential to the locally elected or appointed school district officials. The current legal standard for revoking a charter has proven too difficult, too expensive, and too time-consuming — allowing even poorly performing charters to continue operating and expanding.

We hope the Auditor General will support these reforms and push for greater accountability, not just for financial responsibility, but also to ensure that charters are adequately serving all kinds of students.

Sincerely,



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## Education Law Center Analysis: Philadelphia Charter School Demographics

January 2014

The graphs below were created by the Education Law Center using publicly reported data on public school enrollment demographics. We compared Philadelphia's brick and mortar charter schools to the School District of Philadelphia's own brick and mortar schools, focusing on three particularly vulnerable student populations:<sup>1</sup>

- students receiving special education;
- students with limited English proficiency (LEPs); and
- students eligible for the national Free / Reduced Lunch program.

The data demonstrates that, while a number of individual charter schools equitably serve all students, the charter school sector taken as a whole underserves these vulnerable student populations. The result is that these students are often more heavily concentrated in the School District of Philadelphia.

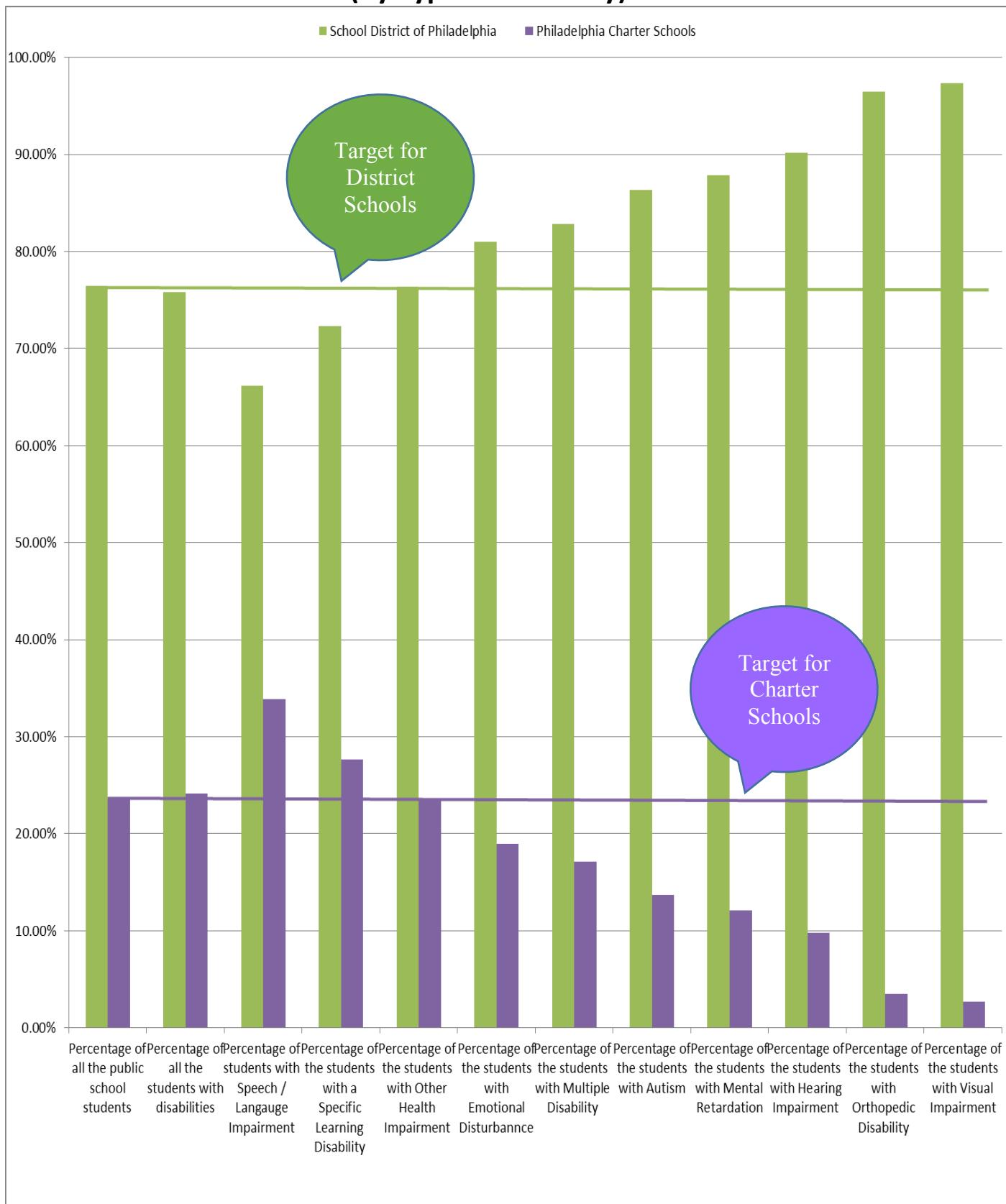
With regard to students eligible for special education, the data demonstrates that the charter sector serves comparable proportions of students overall. However, the students are disproportionately students with "mild" and less costly-to-serve disabilities (speech and language impairments or specific learning disabilities). The students with disabilities that are typically more severe and more costly (mental retardation, autism, multiple disabilities, etc.) are disproportionately served by the school district. Others have noted that this disparity may be rooted in the charter school law itself, which provides charter schools the same funding for any student with an IEP, regardless of the severity of the student's disability or the cost of the services the student requires. This may create a perverse incentive for charter schools to over-identify students with relatively mild disabilities and to underserve students with more severe or costly-to-serve disabilities.<sup>2</sup>

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<sup>1</sup> We did not analyze data with regard to race. Others have determined that Philadelphia charter schools serve higher concentrations of African American students than the school district. (See Pew Charitable Trusts' Philadelphia Research Initiative, Philadelphia's Changing Schools and What Parents Want from Them (2010), at [http://www.pewtrusts.org/our\\_work\\_report\\_detail.aspx?id=59683](http://www.pewtrusts.org/our_work_report_detail.aspx?id=59683)). As African American students make up the majority of the public school population, this may result in greater racial stratification.

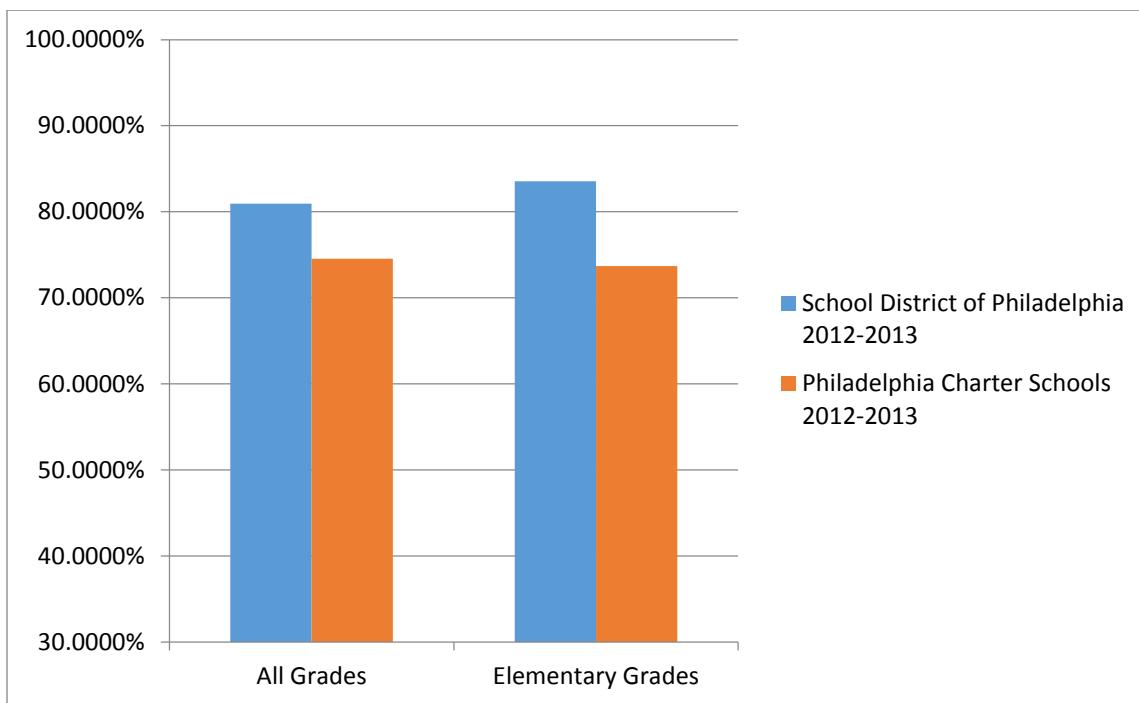
<sup>2</sup> See, e.g., Bruce Baker, *The Commonwealth Triple-Screw: Special Education Funding & Charter School Payments in Pennsylvania*, School Finance 101 (June 5, 2012), <http://schoolfinance101.wordpress.com/2012/06/05/the-commonwealth-triple-screw-special-education-funding-charter-school-payments-in-pennsylvania>.

**2011-2012 Proportions of Special Education Students  
Served in Public Schools in Philadelphia  
(By Type of Disability)**



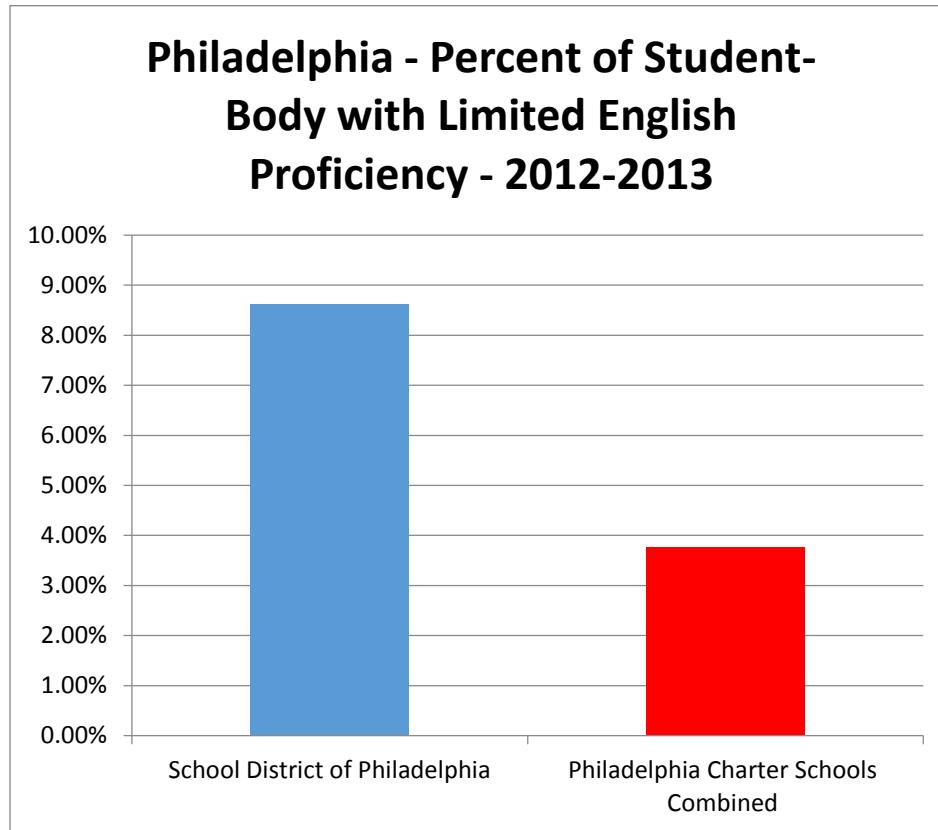
Federal Free/Reduced Lunch (FRL) data is considered “a reliable poverty indicator in the elementary grades, but less so in the high school grades.”<sup>3</sup> For this reason, we compared FRL data between charter schools and traditional district schools for both the overall student population and isolated by elementary school students. The data demonstrates that the school district serves higher numbers of FRL students overall and that the disparity is slightly greater in the elementary school grades where the data is more reliable.

### Free / Reduced Lunch in Philadelphia – 2012-2013



<sup>3</sup> New America Foundation, “Federal Education Budget Project.” (Available at <http://febpb.newamerica.net/background-analysis/federal-school-nutrition-programs>).

With regard to students with Limited English Proficiency, the charter school sector enrolls *less than half* their expected proportion.



#### A Note about the Data:<sup>4</sup>

It is important to understand that the charter school data above includes “Renaissance charter schools,” even though Renaissance schools might arguably be better described as school district schools that are currently under charter operation. While we have not yet fully disaggregated the data below, it is clear that by removing Renaissance charter schools, the charter proportions drop significantly in each category of vulnerable students for the charter sector, making the disparities with the district even more significant. In addition, the school district data includes all of the district’s special admission schools, which are permitted to utilize selective admission practices. A more accurate comparison would be to only include district

<sup>4</sup> Special education data comes from the Pennsylvania Department of Education, Bureau of Special Education (available at [http://penndata.hbg.psu.edu/documents/PennDataBooks/Statistical\\_Summary\\_2011-2012\\_Final.pdf](http://penndata.hbg.psu.edu/documents/PennDataBooks/Statistical_Summary_2011-2012_Final.pdf)). Data was compiled and calculated by the Education Law Center using the numbers reported on Tables 12 and 12a in the linked document. LEP data for Philadelphia was provided by the School District of Philadelphia and available upon request. LEP data is also available from PDE in the “English as a Second Language Toolkit,” available at <http://toolkit.eslportalpa.info/index.cfm?pageid=4749>. All the FRL data is from 2012-2013 and comes from PDE in the “National School Lunch Program” statistics available at [http://www.portal.state.pa.us/portal/server.pt/community/national\\_school\\_lunch](http://www.portal.state.pa.us/portal/server.pt/community/national_school_lunch). The data for a number of charter schools with a historically low numbers of FRL students was not available. ELC’s spreadsheet is available at [http://www.elc-pa.org/wp-content/uploads/2014/01/PhiladelphiaCharterSchoolDemographics\\_10\\_29\\_13.xlsx](http://www.elc-pa.org/wp-content/uploads/2014/01/PhiladelphiaCharterSchoolDemographics_10_29_13.xlsx).

schools with comprehensive enrollment, since the charter sector is also supposed to have comprehensive enrollment. The vulnerable students in the district's comprehensive schools are significantly higher and the disparities with the charter sector would, again, be much greater.

A Word of Caution:

We urge caution in drawing quick conclusions about easy solutions to the above disparities. For example, while ELC and others have documented that numerous charter schools have erected various barriers to enrollment, it is likely that there are other, perhaps more influential, reasons for these disparities.

First, the cohort of students and parents who seek charter school enrollment may be significantly self-selective to begin with. The mere fact that enrolling in a charter school requires extra steps can serve to exclude children who are living without an adult capable or willing to take those steps. Second, since most charters are not "neighborhood" schools and must enroll students from within the entire city, most children are not able to enroll in a charter school that is within walking distance of their home. Transportation barriers may be insurmountable to some families, leaving the neighborhood school as the only practical option.

Third, the fact that charter schools can be "full" or may decide to stop enrolling students after particular times of the school year or after particular grade levels, means that various kinds of highly-mobile student groups – students in poverty, students experiencing homelessness, students in the foster care system, students of immigrant families, and others – are often effectively barred from charter school enrollment.

Fourth, charter schools enjoy unique differences with regard to issues of school discipline. For example, many charter schools can push-out or "counsel out" students exhibiting disruptive behavior, even relatively mild misbehavior, through the threat of expulsion or other school discipline, without even having to follow due process. This is because the school district is legally required to enroll such students at any time, for any reason, and can never be "full." In contrast, a charter school can be full and, even if it is not, the Pennsylvania Department of Education has declared that charter schools are under no obligation to enroll a student who has been expelled from their district of residence.<sup>5</sup> This means that district-operated neighborhood schools, again, often serve as the default school for students exhibiting disruptive behavior.

Finally, much has been reported about the large number of students who leave the parochial school sector to enter a charter school. This has added significant financial cost to the district which previously suffered no expense for these students, but now pays their full tuition. It is likely that this cohort includes relatively few "vulnerable students." It is also likely that many of these students would not enroll in the district if they were not admitted to a charter school.

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<sup>5</sup> ELC disagrees with this legal conclusion and believes it is an issue that could be settled differently in the courts.



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November 14, 2013

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.<sup>1</sup> 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

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<sup>1</sup> Available at [http://www.elc-pa.org/ELC\\_PrinciplesforCharterSchoolReform\\_9.20.12.pdf](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.<sup>2</sup> 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.<sup>3</sup> 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
All Pennsylvania Public Schools	77.2	79.3	15.8	100.6
<b>Cyber Charters</b>	<b>44.7</b>	<b>39.7</b>	<b>30.6</b>	<b>67.9</b>
Traditional Public Schools	77.8	79.7	15.8	100.6
Charters (Brick and Mortar Only)	67.3	67.8	22.5	94.2

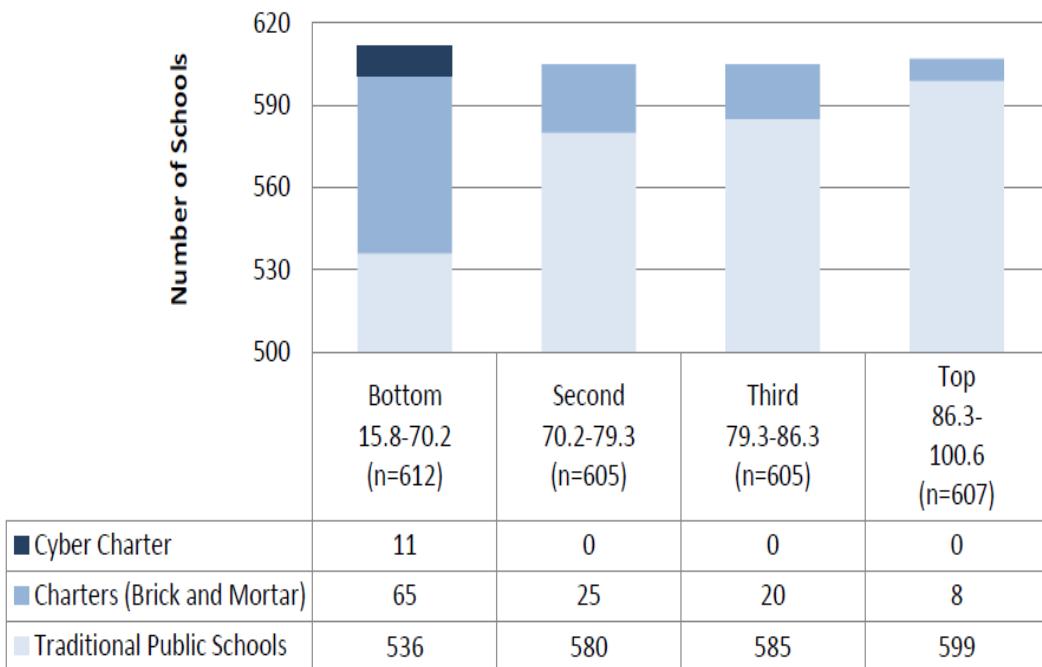
Source: Pennsylvania Department of Education- Pennsylvania School Performance Profile

<sup>2</sup> Available at [http://www.elc-pa.org/ELC\\_CyberCharterTestimony.Nov2012.pdf](http://www.elc-pa.org/ELC_CyberCharterTestimony.Nov2012.pdf).

<sup>3</sup> 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.<sup>4</sup>

**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 charter 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.<sup>5</sup>

<sup>4</sup> Figure from Research for Action.

<sup>5</sup> 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](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		<b>Withdrawal-Out Rate</b>	
Cyber	Brick and Mortar	Cyber	Brick and Mortar
Average	31%	8%	<b>27%</b>
			<b>9%</b>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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](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>.

<sup>8</sup> 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](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 charter 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.<sup>9</sup> 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,



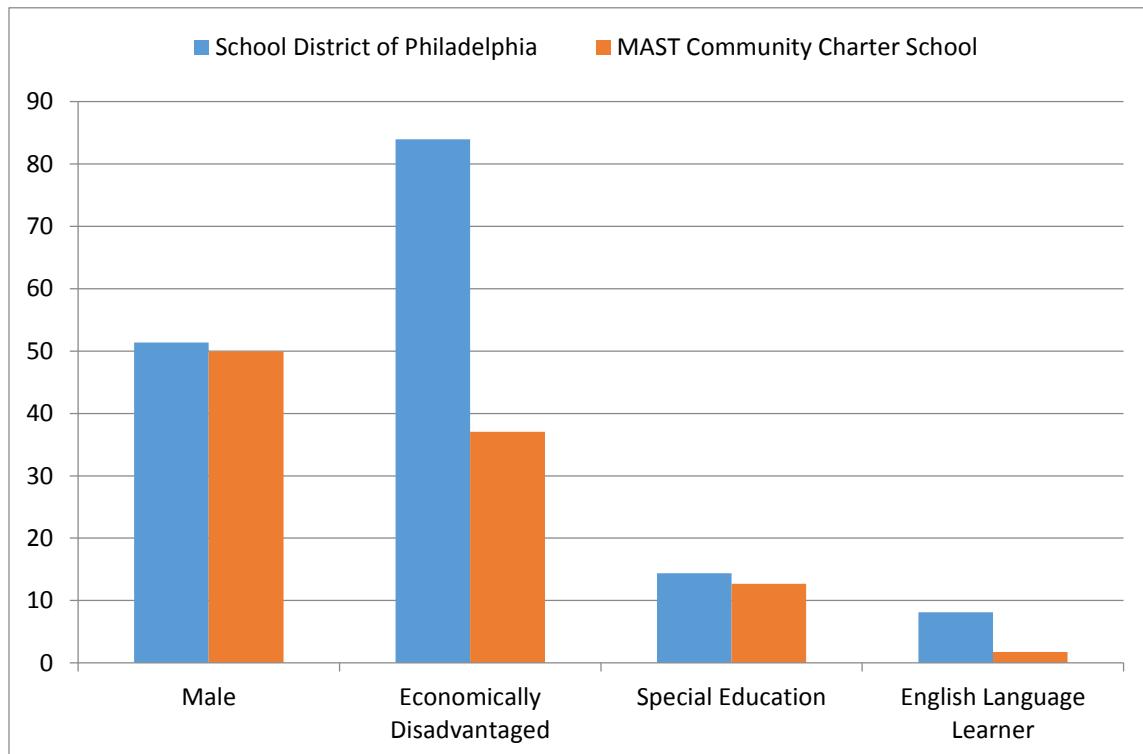
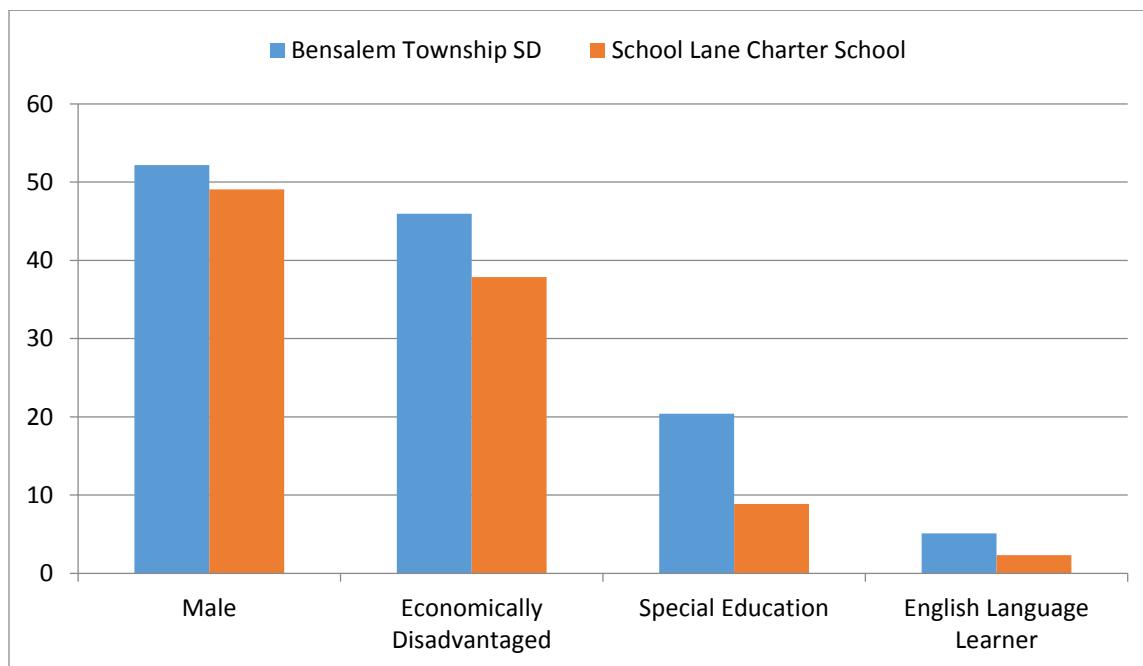
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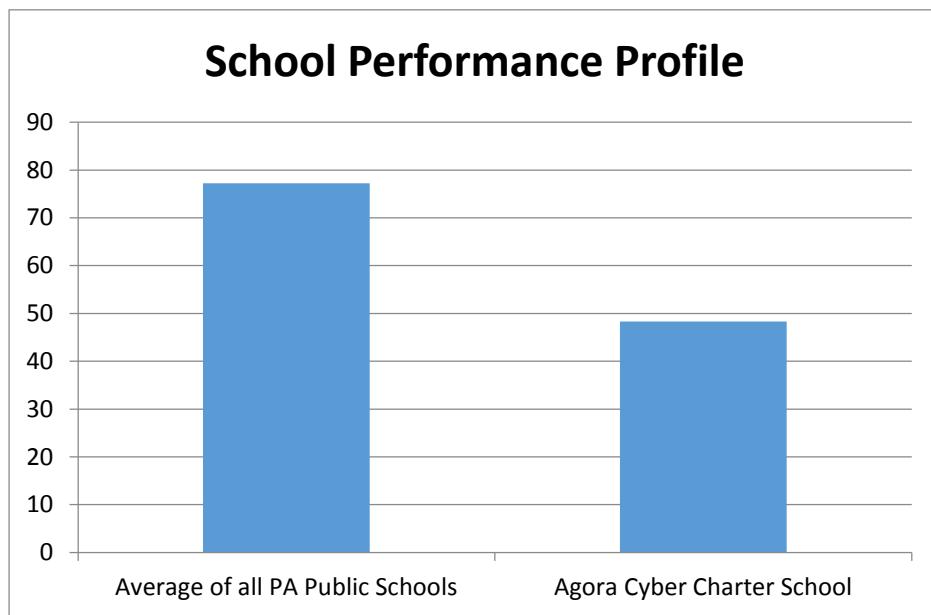
<sup>9</sup> PDE revoked the Solomon Cyber Charter School and the school was recently shut down. However, as further evidence of the inefficiency and waste emanating from irresponsible cyber charter authorization, the School District of Philadelphia, along with taxpayers all across the state, has been 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-weathington-solomon-charter-school-district-officials](http://articles.philly.com/2013-11-11/news/43935228_1_david-weathington-solomon-charter-school-district-officials).

# EDUCATION LAW CENTER

## Appendix C



All data from the Pennsylvania Department of Education's "fast facts" spreadsheet, available at <http://paschoolperformance.org/Downloads>.



Data from <http://paschoolperformance.org/Profile/7191>