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Testimony of the Education Law Center Philadelphia School Board Action Meeting

October 18, 2018

My name is Reynelle Brown Staley, and I am testifying today on behalf of the parents, students, and community members my colleagues and I work with at the Education Law Center, where I serve as Policy Attorney. ELC is a legal advocacy organization dedicated to ensuring that all of Pennsylvania's children have access to quality public education. Advocating on behalf of students here in Philadelphia is central to our work because our main office is located here, because the size of the district and scale of its challenges make Philadelphia a bellwether for the rest of the state, and because the district and the students it serves have been historically underserved by the state public education system.

We know from complaints we hear from our HelpLine and community partners that the district needs to do more for students with disabilities, so we urge you to approve the donations of transitional training and support services for them. Additional resources are desperately needed to provide students with disabilities with age-appropriate transition assessments and robust transition plans that give them the skills they need for the transition to further education, employment, and independent living. Without these services, students with disabilities will not have the tools they need, and are entitled to by law, for post-high school success.

We also know from our advocacy on school funding that inadequate state support is part of the problem. From the Corbett cuts to the inadequate levels of funding Philadelphia receives from the state each year, we know that the current system of public education in Pennsylvania isn't thorough, it's not efficient, and it's not protecting all students in the state equally. That's why we brought a lawsuit against the state on behalf of a family here in the district as well as families and school districts across the state challenging Pennsylvania's school funding system.

Just last week, we released a report on special education funding, highlighting the damaging impact of state underfunding of special education on students with disabilities. (See Appendix A.) We found that from 2008 to 2017, Philadelphia's special education expenses went up by \$294 million or 97 percent. State special education funding covered less than 5% of that increase, leaving the district to comb its budget for almost all of the increased costs. Philadelphia isn't unique in having to find innovative ways to pay for critical education services. Districts across the state are having to raise taxes, cut programs, or rely on donated services like the ones being voted upon today. Yet the situation we're discussing today – of voting on

\$100,000 in donations to support special education services that cost the district \$600 million last year – is distressing in scale and scope.

I want to conclude by noting one last related special education funding issue, and that concerns students with disabilities and charter schools. For a number of reasons, including the fact that charters serve fewer students with disabilities than the district as a whole, that the students they enroll require lower-cost special education services than district students (see Appendix B), and that charters aren't actually required to use special education dollars on special education services like the district is,¹ every time this school board approves charter seats, you allow that charter to use the allotment they receive for special education students as a general subsidy that they can use anyway they please. Those funds would otherwise remain in the school district's budget and could be earmarked for students with disabilities. So when you think about renewing or approving charter schools, please consider whether and how well they actually serve students with disabilities.

We all must ensure that Harrisburg pays its fair share to support students with disabilities and ends the special education loophole that allows charters to reap the financial benefits of serving students with disabilities while actually underserving them. We thank you for considering proposals to better support students with disabilities. And we look forward to continuing to partner with you as together we ensure that all children with disabilities have access to a free appropriate public education. Thank you.

¹ William T. Hartman, *Special Education Funding in Pennsylvania: The Effects of a Policy of Neglect*, COMMONWEALTH, Vol. 18, Issue 1, 78-79 (June 2016).

Appendix A

Shortchanging Children with Disabilities: State Underfunding of Special Education in Pennsylvania

October 2018

The trajectory of a person's life is profoundly shaped by what happens in school. For students with disabilities, the stakes could not be higher, as these children are more likely to face unemployment and underemployment later in life,¹ leading to homelessness or institutional placement.² Prior to the adoption of federal and state civil rights laws, these students were literally shut out of school. Today, we recognize that students with disabilities need and are legally entitled to a free and appropriate public education ("FAPE") in the least restrictive environment.³

Providing a FAPE to children with disabilities involves providing specialized instruction tailored to meet their unique needs, integration in the regular classroom with supplemental supports and services, and providing an education calculated to achieve grade advancement and true progress in light of their potential.⁴ Under the law, needed educational services must be provided through a combination of federal, state, and local funding, without additional cost to parents or students.

Providing a FAPE means meeting the needs of a child like Tammy, a 12-year old student with multiple physical and neurological disabilities in an underfunded school district. Tammy was unable to attend school for four months because her district could not hire the nurse she needed. She is now far behind her peers because her communication and social skills regressed while she languished at home, receiving only a few hours of education each week.

Five years ago, in response to advocacy by the Education Law Center, parents, and other partners statewide, Pennsylvania's General Assembly convened a [Special Education Funding Commission](#) and held [hearings](#) across the state to examine how to improve funding to better serve students with disabilities. "State support for special education in public schools is important for helping students to achieve academically and fulfill their individual potential," the Commission's December 2013 [Report](#) observed. Despite this important purpose, the Funding Commission Report went on to say that the state's existing funding system "is often seen as not fairly and adequately serving the current needs in Pennsylvania for students with disabilities and their schools."⁵

In response, the General Assembly adopted a new special education formula that distributes funding in excess of 2013-14 levels based on the number of eligible students, the severity of their disability, and the cost of services. But does the current system enable Pennsylvania school districts to fairly and adequately serve the current needs of students with disabilities? Does state funding provide what is required to ensure that these students receive a FAPE as required by law? Those questions are the subjects of this report.

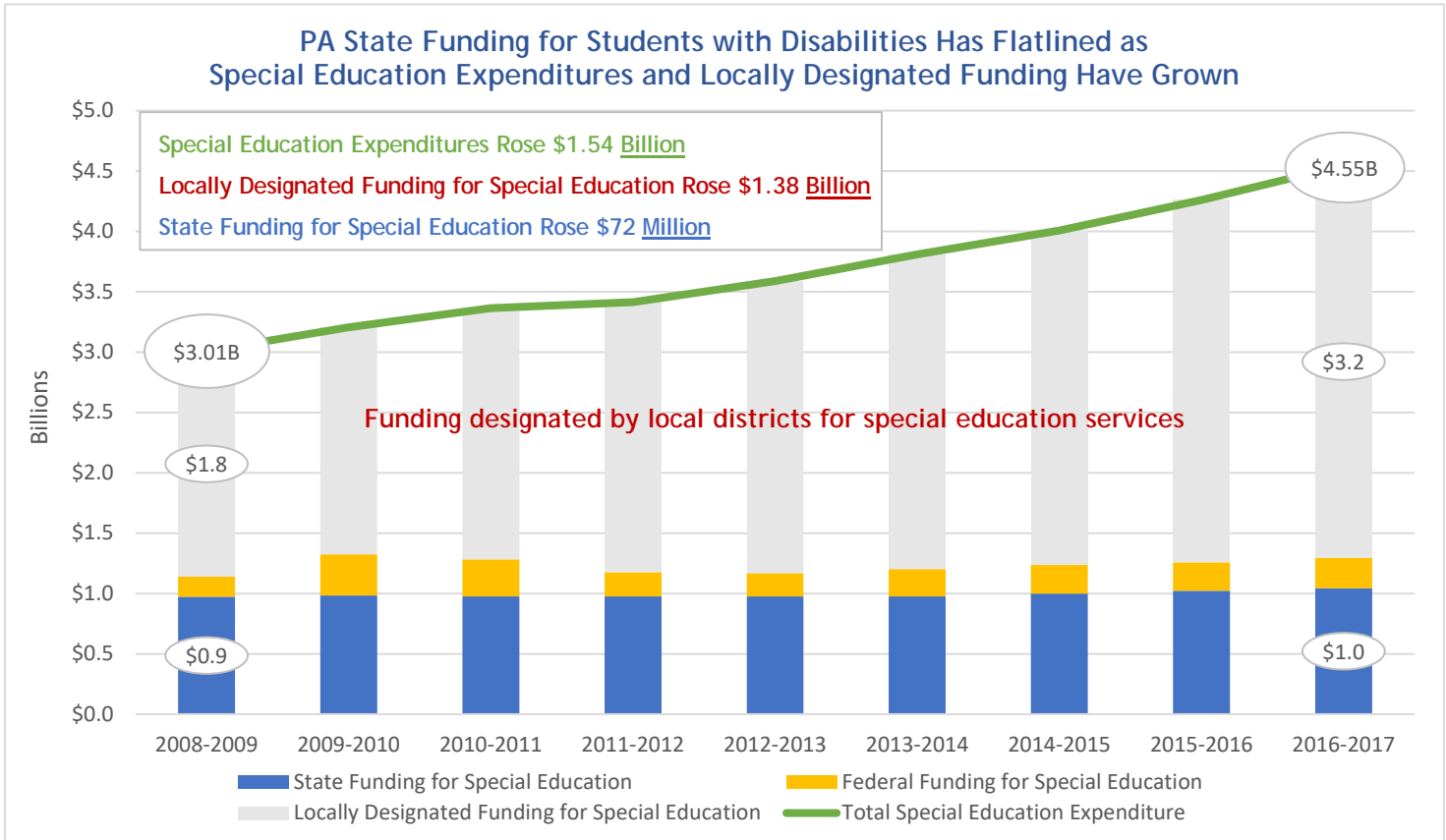
Despite Modest Progress in Recent Years, State Special Education Funding Remains Inadequate

Recent state increases in special education have been a welcome shift from the years of stagnation that preceded the Commission's Report. From 2014 to 2018, the state increased special education funding by \$90 million, a notable change from the preceding four-year period where state funding for special education instead fell by \$6.1 million. The General Assembly itself acknowledged this previous lack of investment in special education, noting in the 2013 Funding Commission Report that "since 2008-09, Pennsylvania has not increased special education funding."⁶

Despite this upward trend, the rate of state investment has failed to keep pace with local needs. Statewide, special education costs have been rising at a rate averaging nearly \$200 million per year, with the most recent years reflecting even larger increases.⁷ From 2008 to 2016, the most recent year for which both revenue and expenditure data are available, state investment in special education increased by \$72 million. Yet during that time, *district special education costs increased by \$1.54 billion, from \$3 billion to \$4.5*

billion.⁸ Local districts had to allocate funds to cover 90% of those increased costs, the equivalent of \$1.38 billion, in district budgets. In other words, local districts designated close to \$20 to special education for every additional \$1 contributed by the state. This creates significant revenue challenges for local communities that must be met through general education sources, such as local taxes and state basic education funding. For example, in Wilkes-Barre Area School District, the cost of special education services increased by \$11 million from 2008 to 2016. The state’s special education funding increase of only \$641,000 required the district to designate \$10.3 million in other education funding to meet increased costs.

Since 2008, local districts designated close to \$20 to special education for every additional \$1 contributed by the state.



Source: Pennsylvania Department of Education. Annual Financial Reports. Online at <https://bit.ly/2P7d3hG>

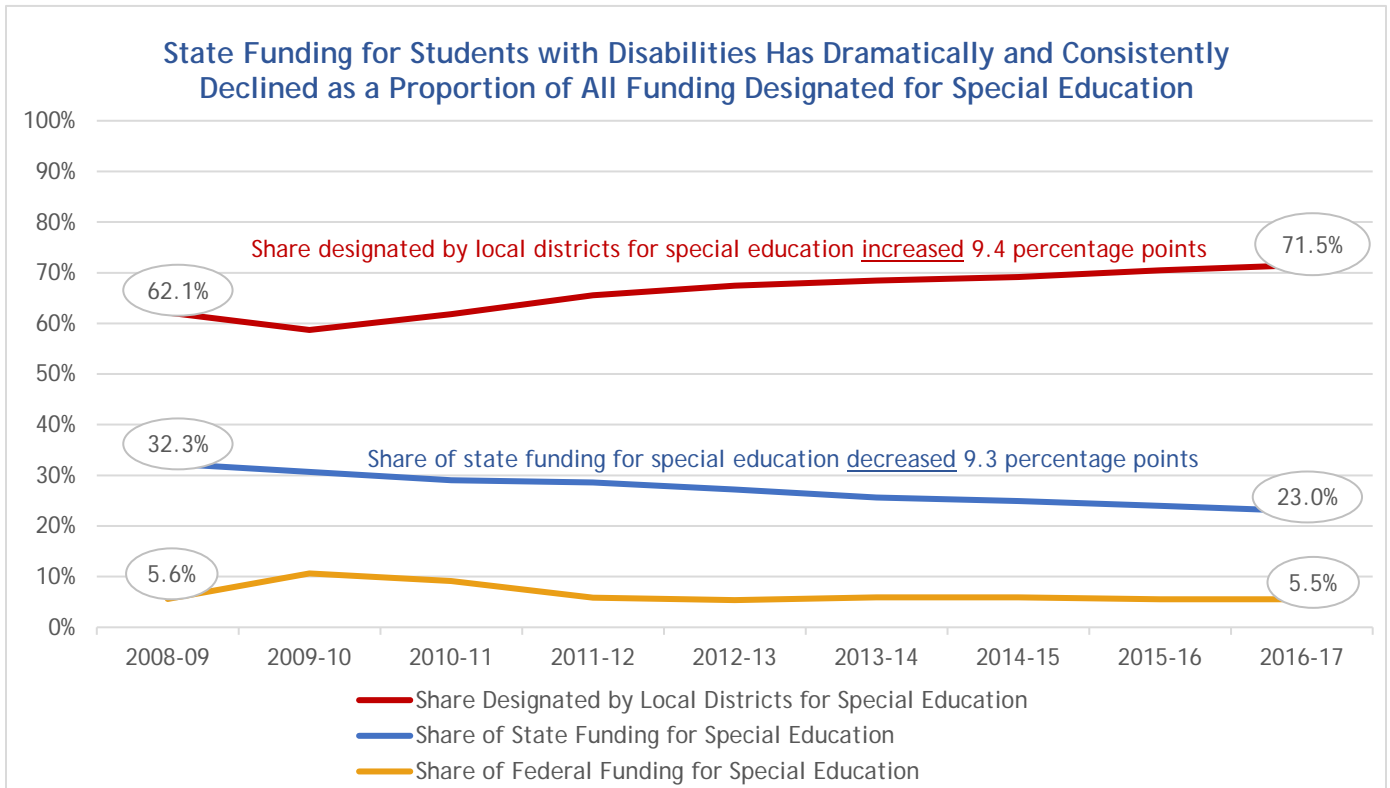
Even with such significant local funding increases, most districts still lack sufficient resources to ensure that students with disabilities receive the services and supports they are legally entitled to receive. A 2009 report found that 391 school districts had inadequate funding for special education, resulting in an annual funding gap of \$380 million, or \$1,947 per pupil on average.⁹ Given minimal state investments and local challenges meeting increased fiscal pressures,¹⁰ problems of underfunding and inadequate special education services have undoubtedly grown since then.

Pennsylvania’s Declining State Share of Special Education Revenues Deepens Funding Inequities

Because state contributions have so significantly lagged behind local expenditures, the allocation of funding between state and locally designated sources has become increasingly inequitable. In 2008-09, the state provided nearly one-third of total special education funding; by 2016-17, the state share had declined to less than one-quarter. Over that same time, the share designated by local districts increased from 62% to 72%.¹¹ Many districts faced even more dramatic changes in state and local allocations. More than 83% of districts, 417 in total, have seen their share of special education expenditure increase since 2008, and 53 districts have seen

their share increase by 20 percentage points or more. Changes in special education expenditures and revenues for all 500 Pennsylvania districts are provided in the spreadsheet found at bit.ly/spec-ed.

Pennsylvania’s growing reliance on locally-designated funding to provide needed services for students with disabilities is unsustainable. It forces local school boards to choose between raising additional revenue to meet funding gaps, spreading limited resources across a range of programs, and/or reducing needed services and supports for students with disabilities. It exposes families to local tax increases and service cuts. It also



Source: Pennsylvania Department of Education. Annual Financial Reports. Online at <https://bit.ly/2P7d3hG>

exacerbates inequality. State dollars are the funds that state legislatures can and should use to address funding disparities resulting from differences in local wealth. When adequate state funding is not available, poorer districts – the communities least able to compensate for state underfunding through local tax increases – are particularly ill-equipped to provide students with disabilities the FAPE the law requires.¹² This leaves vulnerable students in poorer districts acutely harmed by state underfunding.

Inadequate and Inequitable Basic Education Funding Compounds Revenue Challenges

The state’s basic education funding system compounds the resource challenges that schools face in meeting the needs of students with disabilities. Providing students with disabilities a FAPE in the least restrictive environment where their unique needs can be met requires adequate levels of *both* basic and special education funding. General education classrooms must be well-resourced with the basic instruction services that all students need, *and* students with disabilities must receive the individualized supports and services they need to succeed in that integrated environment. When both basic and special education funding systems are broken, as they are in Pennsylvania, students with disabilities suffer twofold.

Basic education in Pennsylvania suffers from the same funding flaws as special education, among them, persistent state underfunding, low state share, and overreliance on local district wealth to support students with complex educational needs. State underfunding of basic education exceeds \$3 billion each year.¹³ Pennsylvania ranks 46th in the nation in terms of state share of basic education funding and last in the nation in terms of the gap between what our wealthiest and poorest school districts spend.¹⁴ Providing students with disabilities the resources they need requires that we address *both* basic and special education funding.

The State Must Ensure Students with Disabilities Receive the Resources They Need to Succeed

The state has both a moral and legal obligation to better educate and support children with disabilities. Under the Individuals with Disabilities Education Act, a state education agency has an obligation — independent of the local district — to ensure a FAPE for students with disabilities in the least restrictive environment. This obligation involves ensuring that school districts and other local educational agencies comply with state and federal requirements applicable to children with disabilities.¹⁵ Students with disabilities are entitled to an education that is specially designed to meet their needs, modifies instruction and materials, and provides the necessary related supplemental aids and services to accommodate their unique learning needs in the most integrated setting — independent of how much those supports and services cost. In addition, teachers must be specially trained, and facilities and equipment must be adapted as needed to accommodate these students.

Despite the state's legal obligation to protect and advance the rights of students with disabilities and the pivotal reforms of the Commission, ELC and our partners across the Commonwealth continue to hear from and advocate for parents and caregivers in financially strapped school districts whose children have failed to receive the services they need, and to which they are legally entitled in order to receive FAPE: the boy who was out of school for more than a year because his school district failed to provide an aide, the girl who was repeatedly suspended because her behavior support plan was not properly implemented, the boy who was required to travel for hours to access needed speech and language services, and hundreds of children who failed to be identified or fell further behind while waiting for evaluations.

Part of the Commission's charge was to review the state's special education funding system every five years.¹⁶ Five years later, it is abundantly clear that we need an increased state investment. Without prompt and comprehensive state action to address both basic and special education funding, issues of inadequacy and inequity will deepen for students with disabilities. None of us can afford to have the Commonwealth continue to ignore its obligation to meet the resource needs of these students. We must uphold their right to learn, progress, and thrive. Their life outcomes depend on it.

The Education Law Center-PA ("ELC") is a nonprofit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness. Visit elc-pa.org/contact or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).

PA Schools Work is a coalition of organizations from across Pennsylvania representing teachers and other educators; urban, suburban and rural communities; and parents and other community members working together to advocate for PA public schools, their students, and the communities they serve.

¹ According to [the Department of Labor](#), in 2017, the [unemployment rate](#) for the general population was 4.2%, while it was 9.2% for individuals with disabilities. DEP'T OF LABOR, *Persons with a Disability: Labor Force Characteristics Summary*, BUREAU OF LABOR STATISTICS, <https://bit.ly/2jdEFVS>.

² See, e.g., Shaun Heasley, *Report: Housing A 'Crisis' For People with Disabilities*, DISABILITY SCOOP (Dec. 15, 2017), <https://bit.ly/2QnMJjo>.

³ See Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400(d)(1)(A), 1401(9), 1415; 22 PA CODE § 14.102; Daniel G. ex rel. Robert G. v. Delaware Valley Sch. Dist., 813 A.2d 36, n.2 (Pa. Commw. Ct. 2002) (stating that Pennsylvania has adopted regulations to implement the Individuals with Disabilities Education Act (IDEA)).

⁴ PAT BROWNE & BERNIE O'NEILL, SPECIAL EDUCATION FUNDING COMMISSION REPORT 19-21 (2013), <https://bit.ly/2QnUdd3> (describing "least restrictive environment" and support options for students eligible for special education).

⁵ See *id.* at 5.

⁶ See *id.* at 3.

⁷ In 2014-15, expenditure increased by \$198 million, in 2015-16 it increased by \$253 million, and in 2016-17 it increased by \$286 million. PENNSYLVANIA DEP'T OF EDUC., *AFR Data: Detailed*, <https://bit.ly/2OtdPZ3> (navigate to the appropriate expenditure year, which are listed under "expenditures").

⁸ *Id.*

⁹ PALAICH AUGENBLICK AND ASSOCIATES, INC., COSTING-OUT THE RESOURCES NEEDED TO MEET PENNSYLVANIA'S EDUCATION GOALS FOR STUDENTS WITH DISABILITIES: SPECIAL EDUCATION SOLUTIONS BASED ON THE 2007 COSTING-OUT STUDY BY THE COMMONWEALTH 2 (Feb. 2009), <https://bit.ly/2DMhkFY>.

¹⁰ For a discussion of the fiscal challenges faced by local school districts, see PASBO-PASA SCHOOL DISTRICT BUDGET REPORT (June 2018), <https://bit.ly/2NfpyWw>.

¹¹ PENNSYLVANIA DEP'T OF EDUC., *AFR Data: Detailed*, <https://bit.ly/2OtdPZ3> (navigate to the links indicating local revenue, state revenue, federal revenue, and expenditure detail).

¹² Research has shown that the low state share and inequitable distribution of education funding in Pennsylvania also disadvantages students of color. EDUCATION LAW CENTER, MONEY MATTERS IN EDUCATION JUSTICE: ADDRESSING RACIAL AND CLASS INEQUITIES IN PENNSYLVANIA'S SCHOOL FUNDING SYSTEM 4 (2017), <https://bit.ly/2P1lytf>.

¹³ MICHAEL CHURCHILL, PA BASIC EDUCATION FUNDING COMMISSION FORMULA MEANS DISTRICTS NEED AT LEAST \$3.2 BILLION MORE IN STATE FUNDING (May 2016), <https://bit.ly/2zK68pr>.

¹⁴ See 2016 *Public Elementary-Secondary Education Data*, UNITED STATES CENSUS BUREAU, <https://bit.ly/2zJVzIZ> (navigate to link indicating summary tables and select the 5th sheet in the workbook).

¹⁵ See 20 U.S.C. 1232d(b)(3)(E); 34 CFR §§ 300.149, 300.600(e).

¹⁶ 24 Pa. Stat. Ann. § 1-122 (West).

Appendix B

Inequities in Pennsylvania's Charter Sector: Segregation by Disability

February 2017

The legislative intent of Pennsylvania's Charter School Law ("CSL") is to create and improve public school options for *all pupils*, including students with disabilities and other vulnerable student populations.¹ Notwithstanding a few notable exceptions, that has *not* been the story of Pennsylvania's experiment with charter schools.

Instead, the charter sector, on the whole, has and continues to serve *disproportionately fewer* of Pennsylvania's vulnerable students than traditional public schools. Economic disadvantage is one proxy for vulnerable students, but there are other proxies as well, including: student with disabilities, English Language Learners, students experiencing homelessness, and students in the dependency and delinquency systems. For instance, data from the PolicyLab at the Children's Hospital of Philadelphia suggests that the traditional public schools in the School District of Philadelphia serve much greater concentrations of students in "deep" poverty as compared to Philadelphia's charter sector.² Vulnerable students require different kinds of services—and resources—to meet their unique challenges. Notably, based on a comprehensive review of the most recent School Performance Profiles ("SPPs") and PennData, it is *not at all* apparent that Pennsylvania's charter sector is performing any better than traditional public schools even while serving fewer of our most vulnerable student groups.³

However, federal and state laws are clear that charter schools must provide quality public options for *all pupils*. With respect to students eligible for special education under Pennsylvania law and the federal Individuals with Disabilities Education Act, the data demonstrates that, even where charter schools are serving proportionate numbers of students with disabilities in line with their share of the overall student population, the charter sector by and large does *not* educate students with disabilities who require *higher* cost aids and services—e.g. students with intellectual disabilities, serious emotional disturbance, and multiple disabilities. Instead, the charter sector serves students with disabilities who require *lower* cost aids and services, such as speech and language impairment and specific learning disabilities. The result is that, with some notable exceptions, students requiring higher cost services are more heavily concentrated in traditional public schools, a phenomenon that not only cuts against the principles of inclusion that are at the core of state and federal laws respecting students with disabilities, but also strains the pockets of traditional public schools, as students with intellectual disabilities or emotional disturbance often cost more

¹ 24 P.S. § 17-1702-A.

² Sophia Hwang, et al., *Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia*, POLICYLAB, CHILDREN'S HOSPITAL OF PHILADELPHIA, at 15 (June 2014), available at http://www.projectturn.net/docs/supporting_needs.pdf.

³ For example, in the 2014-15 school year, the statewide average score for district public schools on the SPP issued by the Pennsylvania Department of Education ("PDE") was 77.1 while the average SPP for charter schools was 65.7. See Pennsylvania School Performance Profile, available at <http://paschoolperformance.org/>.

This analysis was prepared by Alex M. Dutton, Esq., Maura McInerney, Esq., and Michaela Ward at the Education Law Center - PA. It is adapted in part from testimony previously delivered by David Lapp, Esq., when he was a Staff Attorney at the Education Law Center - PA. All numbers have been updated based on the most recently published PennData and School Performance Profile data sets.

Inequities in Pennsylvania's Charter Sector: Segregation by Disability | 2017

to serve.⁴ A 2016 report issued by PASA/PASBO reports that 88% of Pennsylvania's school districts projected an increase in special education services during the 2016-17 school year.⁵

Furthermore, civil rights advocates and others have criticized charter schools and their supporters for contributing to and maintaining *racial* segregation in public schools.⁶ One way the charter sector creates racial segregation in Pennsylvania is through segregating students by the severity of disability. This occurs because Black students are overrepresented in the populations of students with disabilities requiring higher cost aids and services. (It is worth noting that Black students are simply overrepresented in these disability categories and the reasons for this trend require further exploration as a related, but separate problem.⁷) For instance, of students identified as eligible for special education in Pennsylvania:

- Black students are **1.48** times more likely than White students to be identified with an **intellectual disability**;
- White students are **1.8** times more likely than Black students to be identified with a **speech and language impairment**;
- Black students are **1.61** times more likely than White students to be identified with **emotional disturbance**;
- White students are **1.5** times more likely than Black students to be identified with **autism**.⁸

With the exception of autism, Black students are significantly more likely to be labeled with intellectual disability and emotional disturbance, which require higher cost aids and services, while White students are much more likely than Black students to be labeled with a disability that requires lower cost aids and services, like speech and language impairment. The analysis above demonstrates that the students requiring high cost services are more likely to attend traditional public schools and less likely to be educated in charter schools. Thus, the segregation-by-disability-type phenomenon also results in racial segregation.

Commentators have noted that this situation is rooted in the Charter School Law itself, which provides charter schools with the same amount of funding for *any* student receiving special education, regardless of the nature of the student's disability or the cost of the services the student requires.⁹ This

⁴ See James G. Chambers, et al., *Special Education Expenditures Report: Total Expenditures for Students with Disabilities: Variation by Disability*, CENTER FOR SPECIAL EDUCATION FINANCE (June 2003), available at http://csef.air.org/publications/seep/national/Final_SEEP_Report_5.PDF.

⁵PENNSYLVANIA ASSOCIATION OF SCHOOL ADMINISTRATORS, *Continued Cuts: Losing Confidence, Losing Learning*, at 6 (June 2016) available at <http://www.pasa-net.org//Files/SurveysAndReports/2016/PASA-PASBOReportSpring2016.pdf>.

⁶ See, e.g., Erica Frankenburg, et al., *Choice Without Equity: Charter School Segregation and the Need for Civil Rights Standards*, THE CIVIL RIGHTS PROJECT (January 2010), available at <http://escholarship.org/uc/item/4r07q8kg#page-1>; Iris C. Rotberg, *Charter Schools and the Risk of Increased Segregation*, PHI DELTA KAPPAN (Feb. 2014), available at <http://journals.sagepub.com/doi/pdf/10.1177/003172171409500507>.

⁷ See, e.g., NATIONAL EDUCATION ASSOCIATION, *Truth in Labeling: Disproportionality in Special Education* (2007), available at <http://www.nea.org/assets/docs/HE/EW-TruthInLabeling.pdf>; J. Weston Phippen, *The Racial Imbalances of Special Education*, THE ATLANTIC (July 16, 2015), <https://www.theatlantic.com/education/archive/2015/07/the-racial-imbalances-of-special-education/397775/>.

⁸ See Special Education Statistical Summary, 2014-2015, Pennsylvania Department of Education Bureau of Special Education, Table 3 (November 2015), available at https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical_Summary_2014-2015.pdf.

⁹ 24 P.S. § 17-1725-A(3). See, e.g., Kathy Boccella, *Battle Brews Over Charter School Compensation*, THE MORNING CALL (Aug. 23, 2015), <http://www.mcall.com/news/local/mc-charter-school-education-funding-20150823-story.html>; Patrick Varine & Daveen Rae Kurutz, *Special-Education Charter Funding Skews the Numbers in Pennsylvania*, TRIB LIVE (June 4, 2014), <http://triblive.com/news/education/6196278-74/education-charter-special>; Rich Lord, *Special-Needs Education is Battleground for Charter Schools, Other Districts in Pa.*, THE POST-GAZETTE (May 29, 2012), <http://www.post-gazette.com/news/education/2012/05/27/Special-needs-education-is-battleground-for-charter-schools-other-districts-in-Pa/stories/201205270267>; THE PUBLIC INTEREST LAW CENTER, *How the Charter Formula Games Special Education*, <http://www.pilcop.org/how-the-charter-formula-games-special-education/> (last visited, Feb. 1, 2017).

creates a perverse incentive for charter schools to underserve students with disabilities who require higher cost aids and services. In contrast, since the enactment of a new special education funding formula in the 2014-2015 school year—which was based on recommendations made by a *bipartisan* Special Education Funding Commission¹⁰—school districts have received new state special education funding based on the number of students with a disability in each of three cost categories, with funding allocated based on the level of resources needed to serve those students. Unlike the current charter school funding scheme which creates a disincentive to serve our most vulnerable students, this approach ensures that schools drive dollars to our students with disabilities who require high-cost aids and services.

We must address the segregation that is happening across Pennsylvania’s “system” of public education as a result of these disparate funding mechanisms. Until funding with respect to students with disabilities in the charter sector is equitable, Pennsylvania’s schools will remain and continue to become more segregated by disability and race. There is simply no fiscal motivation for charter schools to reform these policies, as maintaining such practices create a funding “windfall” for charter schools who receive “surplus” special education funding—and benefit from better performance on the SPP. To be clear, even the windfall in this context does not change the fact that both school districts *and charter schools* continue to be severely underfunded by the state.

The intent of the CSL was never to segregate students by type of disability nor deny students with significant disabilities access to charter schools. Obviously, this result directly contravenes federal student disability and anti-discrimination laws.¹¹ Yet, this is exactly what is happening in districts across Pennsylvania. The exclusion of students with certain disabilities from charter schools often goes unchallenged or even unreported as parents are “counseled away” from applying to charter schools, or dissuaded from enrolling their child once selected by a lottery.¹²

To illustrate the current trend described above, we compare the disability types of students attending the charter sectors in three of the largest school districts in the Commonwealth—Philadelphia, Erie City, and Pittsburgh Public—as compared to students with disabilities attending traditional public schools in those jurisdictions.¹³

¹⁰ SPECIAL EDUCATION FUNDING COMMISSION, *Final Report and Recommendations* (Jan. 27, 2014), available at <http://www.senatorbrowne.com/files/2015/05/Special-Education-Funding-Commission-Briefing-FINAL.pdf>

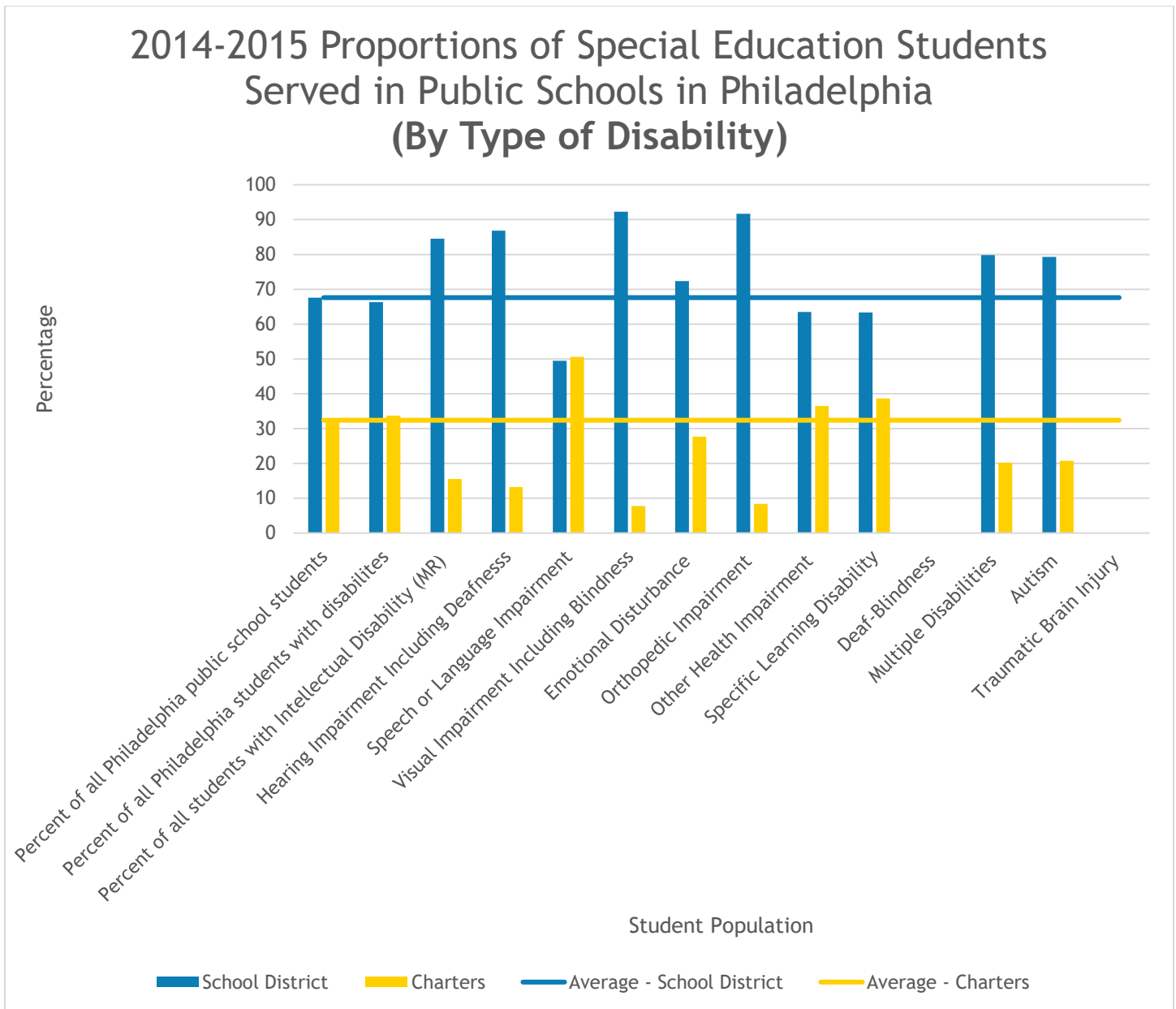
¹¹ 20 U.S.C. § 1412(5)(B); 34 C.F.R. §§ 300.550-300.556; and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, codified at 29 U.S.C. § 701, *et seq.*

¹² Notably, families in these situations often question their ability to assert a legal claim where they will have the burden of proof.

¹³ A note on sources and methodology. The data for the special education calculations comes from the Pennsylvania Department of Education (“PDE”) Special Education Statistical Summary, 2014-2015, which is the most recent available report available publicly as of February 2, 2017, and available here:

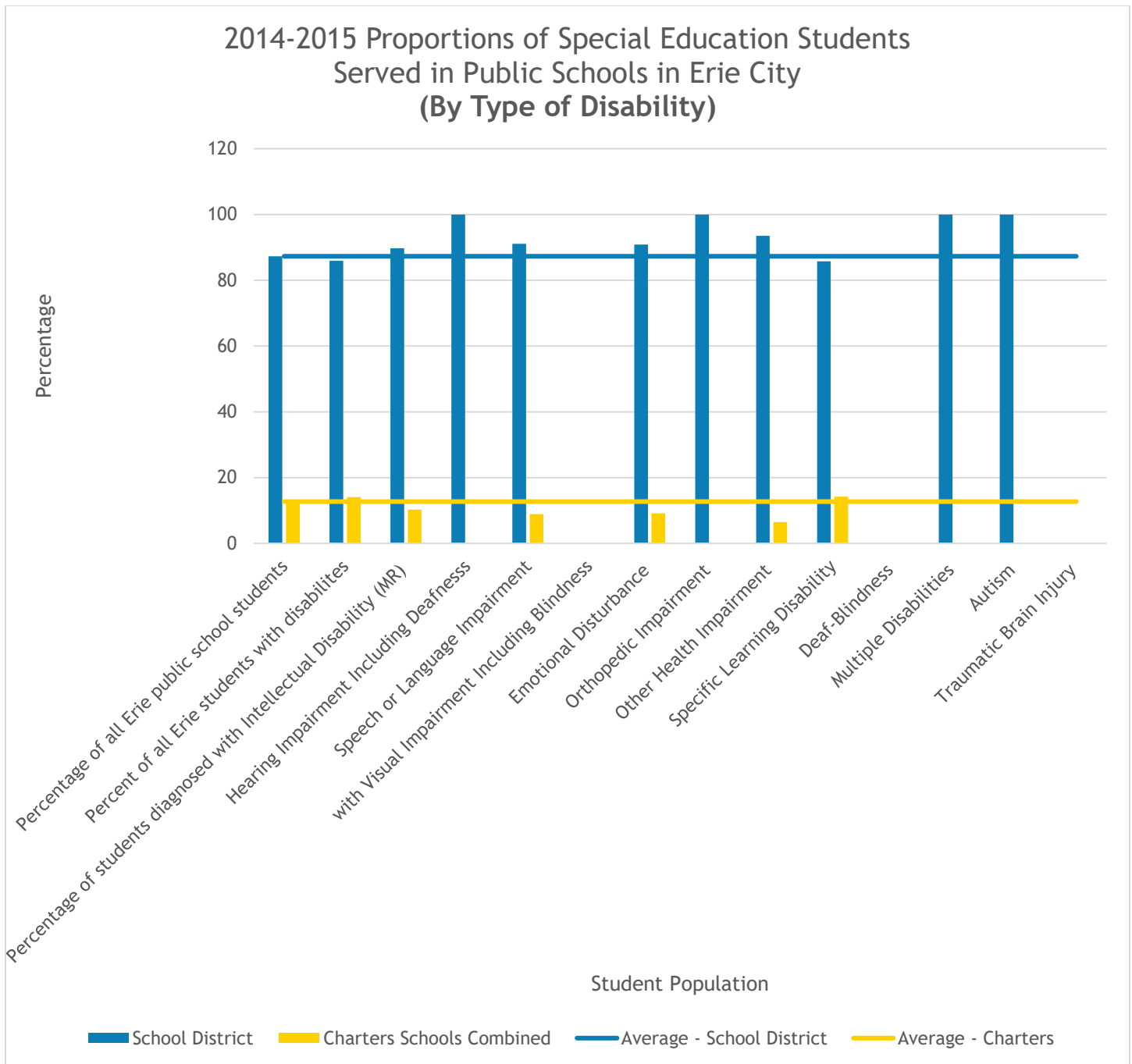
https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical_Summary_2014-2015.pdf. Enrollment data comes from PDE’s Public School Enrollment 2014-2015 report, available here: <http://www.education.pa.gov/Data-and-Statistics/Pages/Enrollment%20Reports%20and%20Projections.aspx#tab-1>.

Philadelphia



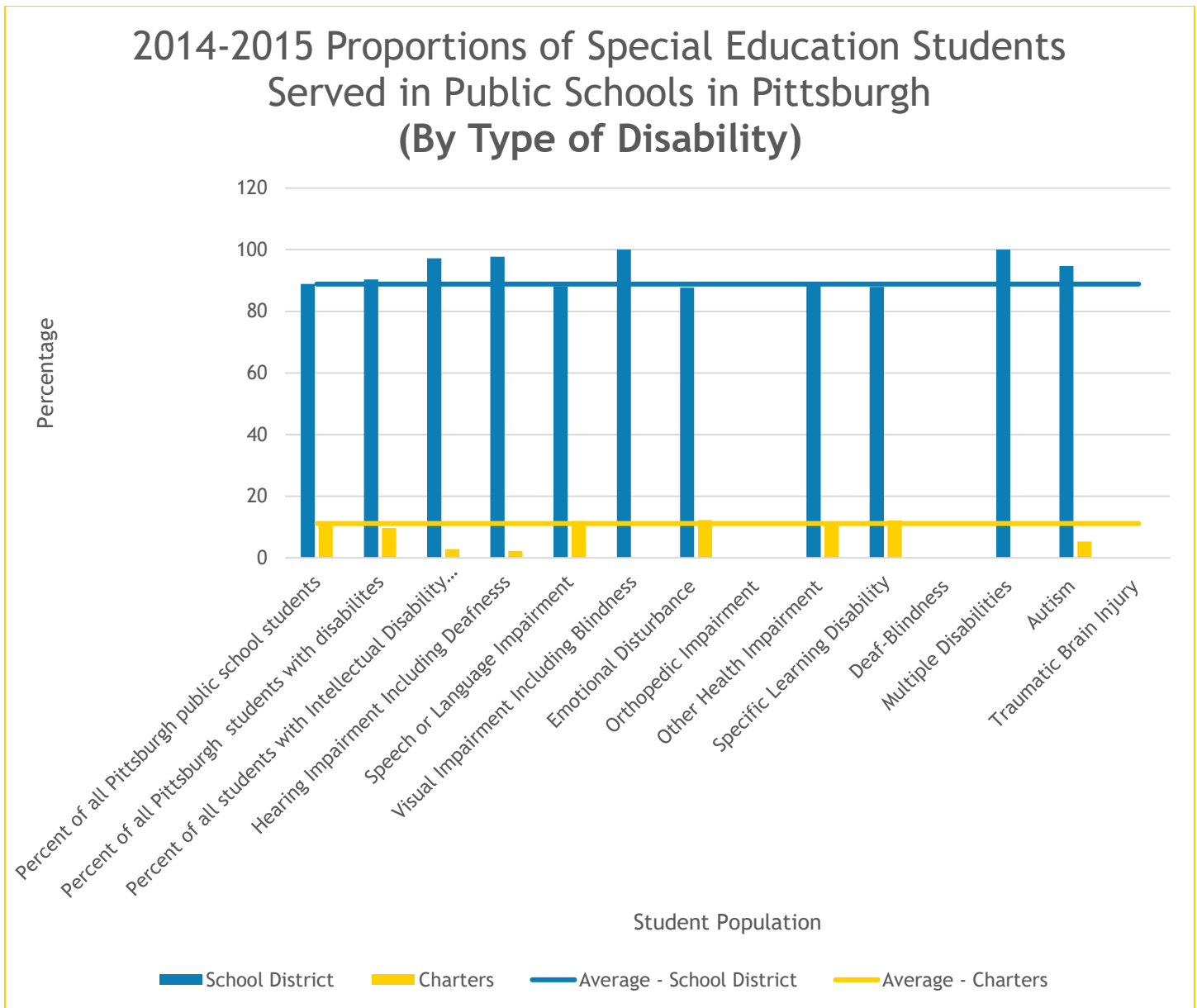
In Philadelphia, charters serve 32.4% of all students attending public schools, and 33.7% of all students with disabilities enrolled in public schools. On the surface, this seems equitable. But the devil is in the details: an overwhelming and disproportionate number—50.6%—Philadelphia’s students with speech or language impairment attend charters, while only 15.5% of students with intellectual disabilities, 27.7% with emotional disturbance, 20.2% with multiple disabilities, and 20.7% with autism do. This disparity is clear: charter schools in Philadelphia are serving far fewer students with the most severe disabilities, in favor of students with disabilities requiring low-cost services. This often creates a windfall for those charter schools.

Erie



In Erie City, charters serve 12.7% of the students attending public schools, and 14% of students with disabilities. Again, this appears equitable on its face. But only 9.1% of students in Erie City who are identified with emotional disturbance, 6.5% with other health impairment (which covers chronic conditions), and 10.3% with intellectual disability attend charters, while 14.2% of students in Erie with specific learning disabilities do. This disparity is clear: charter schools in Erie are serving far fewer students with the most severe disabilities, in favor of students with disabilities who need less costly services.

Pittsburgh



Finally, in Pittsburgh, charters enroll 11.2% of the city’s students attending public schools, and 9.7% of students with disabilities enrolled in public schools. Strikingly, however, Pittsburgh’s charters serve only 2.8% of Pittsburgh’s students with intellectual disabilities and only 5.3% of its autistic students. Conversely, charters enroll 11.9% of students in Pittsburgh with speech or language impairment and 12.1% of its students with specific learning disabilities. This disparity is clear: charter schools in Pittsburgh are serving far fewer students with disabilities who require high-cost services, in favor of students with disabilities who need low-cost services.

Unless we fundamentally change how charter schools are funded with respect to special education and create *incentives*—rather than disincentives—for serving our most vulnerable students with disabilities, these striking disparities and the entrenched segregation of our students based on disability and race will continue.