

Safeguarding Educational Equity:

Protecting Philadelphia Students' Civil Rights
Through Charter Oversight

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Executive Summary

As public schools, district and charter schools share in the legal responsibility to educate all school-aged children. The law requires charter schools to provide equitable access and inclusive opportunities for all students. It similarly requires charter authorizers to ensure equity and protect students' civil rights when exercising their authority over charter school applicants and operators.

The oversight of an effective charter authorizer matters in a district like Philadelphia. The decision to grant a new charter or renew an existing one is always significant because it signals to parents and the community at large that the school is worthy of public trust. In addition, such oversight is a matter of fiscal responsibility, as charter school spending in Philadelphia has increased as a percentage of the total district budget from 13% in 2008 to 31% in 2018.ⁱ Responsible charter authorizing is particularly critical in Pennsylvania, where the law vests responsibility for brick-and-mortar charter authorization in the same local school board that governs the community's district-run public schools. The significance of the local school board's role as charter authorizer is amplified in Philadelphia by the district's sizable charter school enrollment, large

percentages of historically underserved student populations, and longstanding struggles in meeting student needs. This makes the new Philadelphia Board of Education's decisions on charter applications and renewals and its actions to protect the rights of all students particularly critical.

An examination of "traditional charter schools"ⁱⁱ in Philadelphia suggests that these schools are not sharing equitably in the responsibility of educating all students. While not all Philadelphia charter schools have data or practices that raise concerns about equitable access, these schools as a whole disproportionately enroll more advantaged students. This reality gives traditional charters a significant edge in meeting the "academic success," "financial health," and "sustainability" measures on which they are most often evaluated. However, the conduct of these charters raises systemic concerns about the extent to which they are compliant with federal and state laws protecting the civil rights of students with disabilities, English learners, students in poverty, students of color, and other historically underserved student groups.

Among the key findings of the report are:

i David Lapp & Kate Shaw, *The state of school choice in Philly: 22 years after the first charter, what have we learned?*, THE PHILADELPHIA INQUIRER, Jan. 25, 2019, <https://www.philly.com/opinion/commentary/school-choice-charter-schools-philadelphia-20190125.html>.

ii As used in this report, the term "traditional charter schools" refers to brick-and-mortar schools that were authorized as new citywide schools by the local school board pursuant to the process for establishment of a charter school in Section 1717-A of Pennsylvania's Charter School Law. Existing Philadelphia district schools that were converted to charter schools through "turnaround" or "Renaissance" processes are therefore excluded from the analysis.

- As a whole, traditional charter schools in Philadelphia are failing to ensure equitable access for all students, and the district's Charter School Performance Framework fails to provide a complete picture of this concerning reality.
- Annual compliance metrics and overall data on special education enrollment mask high levels of segregation between district and traditional charter schools. Traditional charter schools serve proportionately high percentages of students with disabilities, such as speech and language impairments, that typically require lower-cost aids and services. However, they benefit financially from a state funding structure that allocates special education funding independent of student need, leaving district schools with fewer resources to serve children with more significant special education needs.
- District schools on average serve roughly *three times* as many English learners as traditional charter schools, and there are high levels of language segregation across charter schools. *Roughly 30% of traditional charters have no English learners at all.* In addition, nearly all of the charters at or above the district average of 11% are dedicated to promoting bilingualism, suggesting the percentages at the remaining charter schools may be even further below the district average.
- Despite provisions in the Charter School Law permitting charters to target economically disadvantaged students, traditional charters, in fact, serve a population that is *less economically disadvantaged* than the students in district-run schools.
- Students in Philadelphia charters are *more racially isolated* than their district school counterparts. More than half of Philadelphia charters met our definition of "hyper-segregated," with more than two-thirds of the students coming from a single racial group *and* white students comprising less than 1% of the student body. This is roughly six

times the rate for district schools. Conversely, 12% of traditional charters in Philadelphia enroll over 50% white students in a single school. This is more than twice the rate of district schools (5%).ⁱⁱⁱ

We know from other research that certain underserved student populations – such as students experiencing homelessness and students in foster care – are underserved by charter schools. For example, Philadelphia's traditional charter schools serve only one third the number of students experiencing homelessness compared with district schools.^{iv}

Both the district's own Charter School Performance Framework and national research point to systemic practices that contribute to these inequities. Among them are enrollment and other school-level practices that keep out or push out students with the greatest educational needs.

A charter authorizing system that focuses attention on academic and financial performance to the exclusion of equity incentivizes charters to continue to underserve students with the greatest educational needs. To improve equity, the Education Law Center recommends that the Philadelphia Board of Education do the following:

- Ensure that its evaluation of new and existing charters includes and monitors equitable access findings.
- Direct the Charter School Office to build upon the existing Charter School Performance Framework to better center issues of equity during the application and renewal processes, including collecting and reporting key data elements regarding equitable access.
- Grant the Charter School Office additional capacity to provide appropriate oversight, including serving as a recognized resource for parent complaints and reviewing each charter school's policies and practices.

iii Additional findings are available in the Data Appendix to this report at <http://at.elc-pa.org/charter-data>.

iv Anna Shaw-Amoah & David Lapp, *Students Experiencing Homelessness in Pennsylvania: Under-Identification and Inequitable Enrollment*, RESEARCH FOR ACTION, <https://www.researchforaction.org/publications/students-experiencing-homelessness-in-pennsylvania-under-identification-and-inequitable-enrollment/>.

The Role of Charter Authorizers in Protecting Civil Rights

Charter school authorizers play an important role in protecting students' rights. This is particularly true under Pennsylvania law because the authorizing entity for brick-and-mortar charters is the same local school board governing the community's district-run public schools.^v Local school boards thus have the tremendous responsibility of fulfilling "the fundamental public policy, expressed in the Constitution and underlying school laws, [of] obtain[ing] a better education for the children of the Commonwealth,"¹ including those who have historically been underserved by the public education system.

This responsibility includes ensuring that district and charter schools work in common purpose to support a unified and cohesive system that provides equitable and accessible educational opportunities and options for every child. It also includes ensuring that charter schools – as public schools required by law to be open to all – provide equitable access and inclusive educational opportunities for all students, regardless of socioeconomic, family, or language background, prior academic performance, special education status, parental involvement or other factors.

The authorizing legislation for Pennsylvania charters, the Charter School Law (CSL), echoes this commitment to equity in the legislative intent of "increas[ing] learning opportunities for all pupils," not just the selected few.² The law makes clear that, while charter schools are free from many of the requirements imposed on district-run schools, charters, like *all* public schools, are bound by law not to discriminate.^{vi} It also vests broad authority

in local school boards to ensure "that requirements for ... civil rights and student health and safety are being met."³ That authority includes denying charters that fail to demonstrate the ability to meet the educational needs of *all* students⁴ as well as revoking existing charters⁵ in the face of violations of federal civil rights laws⁶ and other "significant, material, and fundamental" violations.⁷

This report looks at the role the new Philadelphia Board of Education (Board) can play in protecting the civil rights of students in the district. Philadelphia offers an important focus given the size of its charter school enrollment. The city is home to the third-largest charter population in the nation, exceeded only by Los Angeles and New York City.⁸ More than half (56%) of the brick-and-mortar charters in Pennsylvania are located in Philadelphia.⁹ In addition, one-third (33%) of public-school students in Philadelphia are educated in charter schools.¹⁰ From 2008 to 2018, charter school spending in Philadelphia has increased as a percentage of the total district budget from 13% in 2008 to 31% in 2018.¹¹

The concerns raised in this report about equity in charter practices extend outside the city limits, particularly given the circumstances under which charters typically exist. Nationally, charters have grown the most in school districts that were already struggling to meet students' needs due to longstanding, systemic, and ingrained patterns of underfunding and inequitable school funding, institutional neglect, racial and ethnic segregation, and disparities in staff, programs, and services. This

v For cyber charters, charter schools that use the internet or other electronic/digital methods to provide instruction to students, the Pennsylvania Department of Education serves as the authorizing body.

vi The CSL references the anti-discrimination requirements applicable to charters in several different sections of the law. Section 1715(A)(3) prohibits discrimination in "admissions, hiring or operation." Section 1723(A)(b)(1) prohibits discrimination in "admissions policies or practices" on any legally protected basis, including disability status and English proficiency. 24 Pa. C.S. § 17-1715-A(3); 24 Pa. C.S. § 17-1723-A(b)(1). The law also states that charters are required to abide by the sections of the Public School Code prohibiting discrimination based race, religion, color, sex, national origin, ancestry, disability, age or marital status. 24 Pa. C.S. § 17-1732-A(b); 24 Pa. C.S. § 17-1749-A(b).

is true in Pennsylvania, not just in Philadelphia, but in places like Chester Upland School District, where charter schools account for 54% of the public school enrollment.¹² This pattern also applies to places like New Orleans, Flint, and Detroit, where the charter school enrollment now reaches 93%, 55%, and 53%, respectively.¹³ Therefore, the issues, legal framework, findings, and recommendations in this report have statewide and, in some cases, national implications.

Studies have found that, absent “regulatory guardrails,” charters can compromise equity and promote segregation.¹⁴ One recent study by scholars at the Learning Policy Institute even cited Philadelphia as a cautionary tale.¹⁵ It is therefore critical for Philadelphia’s Board to determine what types of regulatory guardrails are needed to protect local public school students.

The equity concerns raised in this report are not to suggest that these are universal issues across all Philadelphia charter schools. Nor is it our view that district-run schools are models of educational equity. But the rapid growth of the charter sector over the past two decades demands a focus on developing systems and practices to ensure that the rights of all students are being protected.

Understanding the Philadelphia Charter School Performance Framework

Philadelphia benefits from a Charter School Performance Framework that includes considerations of equity. “Protection of student rights and the public interest” serves as one of its three guiding principles.¹⁶ The Framework provides the basis for a comprehensive review of each charter school seeking renewal, focused on outcomes-based performance during the current charter term. It also informs the Annual Charter Evaluations (ACEs) that provide an

interim annual assessment of charter performance in each of the years – typically four years – between initial charter approval and any subsequent charter renewals.¹⁷

Philadelphia’s Framework includes three domains: (1) Academic Success, (2) Organizational Compliance and Viability, and (3) Financial Health and Sustainability. The first domain assessing academic performance is always a primary concern in evaluating charters. The third domain related to charter finances frequently comes to the fore with charter schools that are struggling. In this report, we give primary attention to the second domain, Organizational Compliance and Viability (OCV), as this domain is most focused on student rights.

The OCV domain is rooted in strong legal authority. It identifies standards that correlate with, and are premised upon, a “legal reference,” such as the CSL, the Pennsylvania Public School Code, the Civil Rights Act, or the Equal Education Opportunity Act. The CSL grants the Board clear statutory authority to revoke or non-renew on the basis of non-compliance with state and federal law.¹⁸ Standards that fall outside enumerated factors in the CSL are identified as best practices. These standards “do not impact the Organizational Compliance and Viability domain rating at renewal but may be included as informational in a Renewal Recommendation Report.”¹⁹

This report focuses on a subset of the OCV domain data that bears most directly on issues of access and equity impacting historically underserved student populations on whose behalf the Education Law Center advocates: 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

The issues, legal framework, findings, and recommendations in this report have statewide and, in some cases, national implications.

experiencing homelessness.^{vii} Using qualitative data from the OCV domain categories related to special education, English learners, and enrollment as well as quantitative data from the School District of Philadelphia website and other publicly available sources, the report examines the ways in which charters are impacting school system equity and the ways these impacts are being monitored.

ACEs data receive particular attention, as they provide an opportunity to look at a broader cross-section of charter schools than renewal data alone. Best practice standards are excluded from the analysis as they do not impact school renewal ratings or authorization decisions.

This report examines the practices of what we call “traditional charter schools,” created as new public schools to serve students from the entire chartering school district. We analyzed data for 58 charters serving a total of roughly 43,000 students.²⁰ Philadelphia has another group of 25 charter schools that previously existed as neighborhood schools, serving as the default school for any student living in the catchment area. All of the data compiled here excludes these “Renaissance” and “turnaround” schools, categories of charter schools not in widespread use in Pennsylvania.^{viii} The report also

excludes cyber charter schools, which are subject to state, rather than Board, authorization. The non-Renaissance, non-turnaround, brick-and-mortar charters are the ones we describe as “traditional charters” throughout the report. While fitting the definition of a traditional charter, Deep Roots Charter School, KIPP North Philadelphia, Mastery Prep

Elementary, and The Mathematics, Civics and Sciences Charter School were also excluded from the analysis due to lack of data.^{ix}

This report focuses on “traditional charter schools,” created to serve students from the entire chartering school district. Renaissance, turnaround and cyber charters are excluded from the analysis.

The report is divided into three sections. Section I examines equity issues impacting students with disabilities. Section II explores the rights and access afforded to English learner students and families. Section III examines charter enrollment and its impact on children of color and children in poverty.

The report concludes with recommendations for how the Board can leverage its authorization and ongoing oversight functions to catalyze charter school accountability, ensure educational equity, and improve the experiences of all students in Philadelphia. A data appendix for the traditional charter schools identified in this report is available at <http://at.elc-pa.org/charter-data>.

vii However, several of the other categories, such as Student Discipline and Personnel, also impact student equity and access. For example, research has found that in charters, as in district-run schools, black students and children with disabilities are disproportionately more likely to be suspended than their white and non-disabled charter school peers. See DANIEL J. LOSEN ET AL., CHARTER SCHOOLS, CIVIL RIGHTS AND SCHOOL DISCIPLINE: A COMPREHENSIVE REVIEW (The Civil Rights Project at UCLA 2016), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/charter-schools-civil-rights-and-school-discipline-a-comprehensive-review/losen-et-al-charter-school-discipline-review-2016.pdf>. In addition, a recent report found that the racial demographics of teachers vary between district and charter schools, and teacher race has documented effects on the achievement of students, particularly students of color. See JASON FONTANA & DAVID LAPP, NEW DATA ON TEACHER DIVERSITY IN PENNSYLVANIA (Research for Action 2018), <https://8rri53pm0cs22jk3v-vqna1ub-wpengine.netdna-ssl.com/wp-content/uploads/2018/09/RFA-New-Data-on-Teacher-Diversity-PACER-FINAL.pdf>.

viii As district schools reorganized as charter schools and operated by independent charter management organizations, Renaissance and turnaround schools maintain characteristics of district-run schools, such as a catchment area for student enrollment, that make them ill-suited for categorization with the new charter schools envisioned by the CSL.

ix Deep Roots, KIPP North Philadelphia, and Mastery Prep Elementary all received their initial charters in 2018 and have not yet been assessed through the district’s charter evaluation process. The Mathematics Civics and Sciences Charter School’s renewal report was not publicly available on the school district website.

I

Special Education: Inequitably Serving Students with Disabilities

Both annual compliance and overall special education enrollment data mask high levels of disability segregation between district and traditional charter schools. Closer examination reveals that

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traditional charters serve proportionately high percentages of students with more common disabilities, such as speech and language impairments, that typically require lower-cost aids and services and proportionately

low percentages of students with more significant disabilities that typically require higher-cost aids and services. This fact, coupled with flaws in the state funding structure for charter schools and special education, leaves district schools with fewer resources to serve students with more significant educational needs. Segregation by disability also contributes to racial segregation across district and traditional charter schools.

Recognizing the Rights of Students with Disabilities

While charters are free of many of the requirements governing district-run schools, the law is clear that all public schools, including charters, must protect the civil rights of students with disabilities, including ensuring equal access to educational opportunities. The CSL itself lists special education requirements

among the School Code provisions that explicitly apply to charters.²¹ In addition, the CSL specifies that “violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities” is cause for revocation or non-renewal.²² The federal laws that prohibit disability discrimination in education – Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Individuals with Disabilities Education Act of 1990 – apply to all public charter schools. Notably, Title II, which prohibits disability-based discrimination against current or prospective students, applies to all public entities, including charter schools, regardless of whether they receive federal funds.²³

These federal laws provide that every student with a disability enrolled in a public school, including a charter school, must be provided a “free and appropriate public education” – *i.e.*, regular or special education and related aids and services designed to meet the students’ individual educational needs as adequately as the needs of nondisabled students are met.²⁴ Charter schools may not ask or require students or parents to waive their right to a free appropriate public education in order to attend. They must provide academic, non-academic, and extracurricular services and programs in a manner that gives students with disabilities an equal opportunity to participate.²⁵

Importantly, all public schools are prohibited from asking a prospective student about disability status during the admission process.²⁶ This prohibition comes with limited exceptions, such as allowing a school chartered to serve students with a specific

disability to ask prospective students if they have that disability.²⁷ Charters are also prohibited from “counseling out” prospective or current students or limiting the services provided to a student on the basis of disability.²⁸ Indiscriminately, they must provide a free and appropriate public education in the least restrictive environment in which the student’s individualized education plan can be implemented and ensure, to the maximum extent appropriate, that students with disabilities are educated with nondisabled students.²⁹

Despite robust federal and state protections afforded to students with disabilities in charter schools, compliance monitoring of schools is limited under state law, Pennsylvania’s Every Student Succeeds Act (ESSA) State Plan and federal monitoring under the

IDEA.^x At the state level, the Bureau of Special Education within the Pennsylvania Department of Education (PDE) conducts comprehensive monitoring on a number of metrics and standards related to the performance of students with disabilities every six years and focused

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monitoring may or may not be conducted annually depending in part on whether charter or district school data meets established accountability benchmarks. BSE’s Cyclical Monitoring Report provides information on district-run and charter schools reflecting compliance with such requirements as timely student evaluations, identification for special education services and provision of services

OCV Special Education Assessment Criteria

Annual Assessment Standards

Child Find Notice: Website has a child find policy that includes language regarding required public awareness and systemic screening activities.

Renewal Standards

Screening: Implementation and evidence of universal screening and/or initial assessments to determine levels of student achievement and behavior.

Monitoring: Implementation of ongoing assessment and progress monitoring to provide information on student’s learning progress and behavioral outcomes.

Tiered Instruction: Implementation and evidence of a multi-tiered approach to differentiate instruction and implement academic and behavioral interventions.

IEP Progress Monitoring: Evidence of how students’ progress towards meeting annual IEP goals is tracked

BSE Findings: Absence of findings of significant areas of noncompliance in most recent PDE Bureau of Special Education review

in accordance with the student’s individualized education program, including extended school year services as needed. However, monitoring is based in large measure on self-assessments by charter schools, surveys, limited classroom observation, and random file reviews. The state relies on local monitoring to ensure compliance with disability-related protections.

Local compliance is monitored through OCV domain “Category 2: Special Education,” which identifies a number of standards for review either annually or at renewal every five years (*see chart*). Annual ACEs data collection is limited to just one standard, “Child Find Notice,” defined as the requirement that “the school’s

x ESSA requires every state to submit a plan to the U.S. Department of Education outlining long-term educational goals and academic indicators that will be used to rate public schools. These plans went into effect for the 2017-18 school year. Pennsylvania’s State Plan Academic includes indicators for academic proficiency, academic growth using value-added measures, graduation rate (four- and five-year cohorts), English-language proficiency, chronic absenteeism, and career readiness, among other factors. Similarly, the IDEA requires each state to develop a performance plan that evaluates the state’s efforts to implement the requirements and purposes of the IDEA and describes how the state will improve its implementation.

website has a child find policy that includes language regarding required public awareness and systemic screening activities.” At renewal, a limited number of additional special education compliance standards are also evaluated. These include special education screening, monitoring, tiered instruction, and IEP progress monitoring.

As a result, ACEs special education data provide an incomplete picture of charter performance in meeting the needs of students with disabilities. Nearly all (92%) traditional charters met the Child Find Notice requirements in the most recent annual review. Notably, however, the schools that were out of compliance failed to meet the most basic requirements related to the provision of services for students with disabilities. For example, one school failed to specify available special education services or information on how parents can request them. Similarly, another school’s child find notice was not available until February 2018, more than halfway through the school year. Once the notice was posted, it failed to specify what special education services were actually available.³⁰ Such failures to provide information about special education services can discourage enrollment of students with disabilities. Not surprisingly, these two schools’ special education student cohorts (14% and 15%) are both below the district average (17%).³¹

Charter Segregation by Disability

On average, both district-run and traditional charter schools serve similar percentages of students with disabilities (17% vs. 18%).³² However, disability populations served by district and charter schools are far from equal.

Only 5 traditional charter schools (7%) serve at or above the district average percentage for students with autism. For 20 charters, the percentage of students with autism served was 0%.

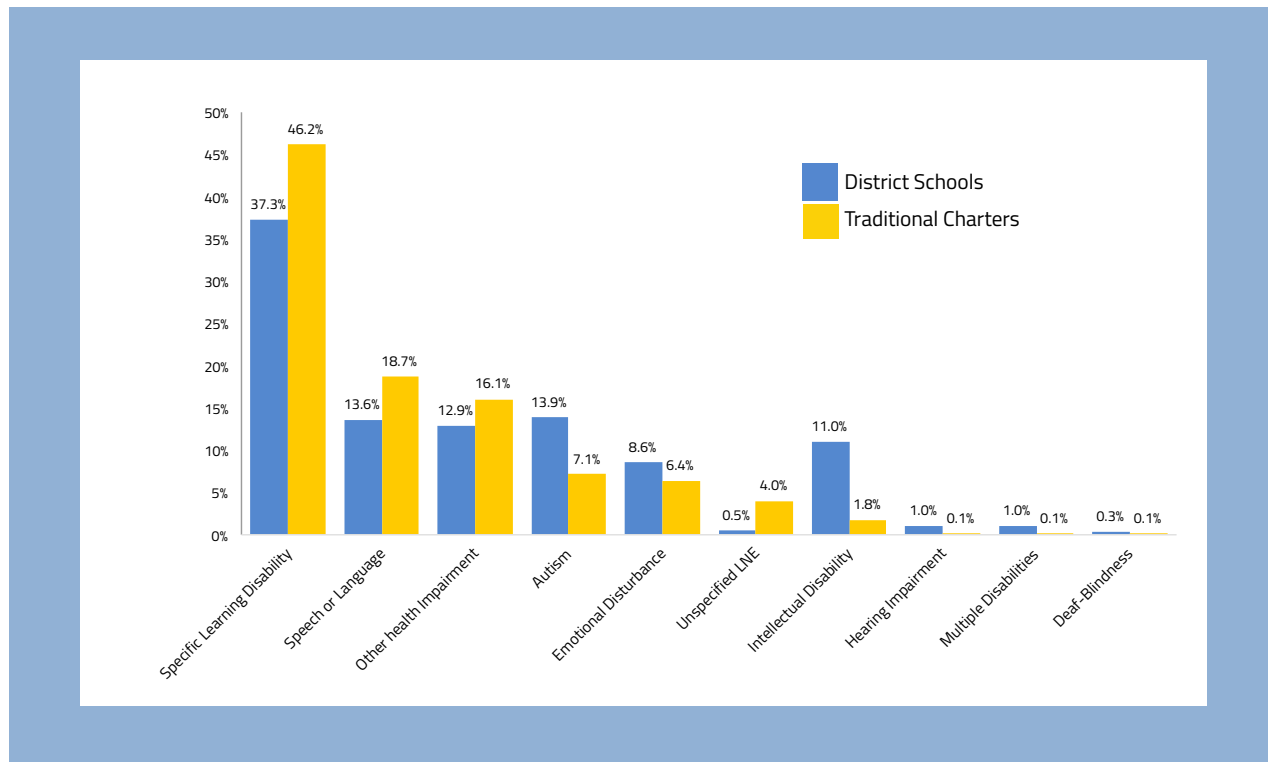
Overall, traditional charters serve 21% of Philadelphia students, but they serve 23% of special education eligible students.³³ This is a slightly higher than expected percentage given the size of their sector. However, in looking at each specific category of disability, the percentage of students served by the traditional charter sector varies widely. Traditional charters serve higher percentages of students with disabilities that typically require lower-cost aids and services, such as speech and language impairments, specific learning disabilities, and other health impairments. Students with specific learning

disabilities, such as dyslexia and ADHD, account for 46% of the traditional charter school special education cohort. For district schools, the rate is 37%. Charters also serve a higher percentage of students with speech or language impairments (18%) and other health impairments (16%) relative to district schools (14% and 13%, respectively). Three schools serve more than triple the district school percentage of speech or language impairment students, at 40%, 41% and 56%.

Of the 28 charters that serve at or above the district average percentage of students with disabilities, all but two serve higher than average percentages of students with specific learning disabilities and/or speech language impairments.³⁴

Conversely, charters serve proportionately few students with autism, serious emotional disturbances, intellectual disabilities, hearing impairments, multiple disabilities, and students experiencing deaf-blindness. Students with low-incidence disabilities are disproportionately educated in district-run schools. In the traditional charter sector, only 7% of the special education population is students with autism, half the district school percentage. Only 5 traditional charter schools (7%) serve at or above the district average percentage for students with autism. For 20 charters,

Disability Type in District Schools vs. Traditional Charters



Compared to district schools, traditional charters have more students with high-incidence disabilities that are less expensive to serve, but fewer students with low-incidence disabilities that typically require more expensive services.

the percentage of students with autism served was 0%. District schools serve more than 5 times the percentage of students with intellectual disabilities as traditional charters (11% vs. 2%) and a higher percentage of students with emotional disturbances (9% vs. 7%).³⁵ As autism and intellectual disabilities tend to require a higher level of educational support, this means that many of the students with the greatest educational need are disproportionately in district schools.

Understanding the Underlying Practices and the Resulting Consequences

A number of national studies have shown similar patterns of disability segregation between district and charter schools, with charters underserving students

whose disabilities require higher-cost aids.³⁶ Research also cites systemic charter practices that likely contribute to this segregation.³⁷ One study found that charters are “significantly less likely to provide information to families with students who have low grades, behavior problems, or an IEP requiring they be taught in a separate classroom.”³⁸ Another found that charters may steer high-needs families away from their school by advising parents that better opportunities for their high-needs child are available elsewhere.³⁹ They may keep or push students out by deciding not to offer services designed to meet the needs of a given group of students, such as resources to meet the needs of children with low-incidence disabilities. They may “counsel out” difficult students through ongoing meetings with charter school teachers and administrators who communicate that

the family should consider a different option. They may also implement harsh discipline regimes and expulsion measures that selectively remove students who are considered to be more disruptive.⁴⁰

A number of these practices are evident in Philadelphia charters; anecdotally, we receive many calls to our Helpline that reflect these trends.^{xi} Many local charters lack adequate numbers of properly trained professionals to effectively modify the general education curriculum to meet each student's individual needs. The traditional charter sector employs significantly fewer social workers, psychologists, and counselors than do district schools. This is particularly startling given the low levels of supports available in district schools until recent years. The School District of Philadelphia employed an average of 4.1 social workers, psychologists, and counselors per 1,000 students. Of the 54 charters for which data was available,^{xii} 41 employed below the district average amount, with 12 employing support staff at less than half the district rate. Another 5 schools reported having no counselors at all.⁴¹ In addition, 7 charters (12%) reported employing at least one special education staff member without the appropriate certifications.

There is considerable evidence nationally that charter schools actively discourage families from enrolling children with disabilities and counsel them to leave when they do manage to enroll. The largest study on this topic, commissioned by the U.S. Department of Education, found a disturbing pattern of charter

schools systematically counseling out students with disabilities rather than making accommodations and providing the required services and supports.⁴² Administrators at one-quarter of the charter schools in the study reported having advised parents that the school was not a good fit for their children with disabilities.⁴³

In addition, as the U.S. Government Accountability Office has noted, financial considerations may incentivize some charters to discourage students with disabilities from enrolling and to deny admission to students whose disabilities require more extensive supports and services.⁴⁴ The method for calculating the special education tuition paid to Pennsylvania charter schools exacerbates such financial incentives. The calculation is based on the average amount the *school district* spends on its own special education students and is allocated to charters on a per-student basis, with money transferred from the school district of residence for each eligible student. Thus, a charter school receives the same amount in special education tuition for a child requiring speech therapy once a week as it does for a child requiring a full-time support aide, personal care and health services, special instructional materials, furniture and equipment, or specialized buses for transportation services.

Because the tuition that charter schools receive for special education does not have to be spent on students with disabilities, charter schools benefit financially when the amount they receive exceeds the

The traditional charter sector employs significantly fewer social workers, psychologists, and counselors than do district schools.

xi For example, one such call involving a child with a disability who had her acceptance to a traditional charter rescinded as soon as the school received a copy of the student's IEP received local media attention.

Greg Windle, *Franklin Towne Accused of Discriminating Against Special Needs Student*, THE NOTEBOOK, July 19, 2018, <https://thenotebook.org/articles/2018/07/19/franklin-towne-accused-of-discriminating-against-special-needs-student/>.

xii These data come from the 2015 Miseducation Report. Since the report was issued, 4 new traditional charters have opened in Philadelphia and are consequently not included in this data. Miseducation Report: Philadelphia City School District, PROPUBLICA (last visited February 25, 2019), <https://projects.propublica.org/miseducation/district/4218990>.

costs of services they actually provide.

A recent report found that only 58% of special education charter school tuition paid by suburban southeastern Pennsylvania districts was actually used for special education services.⁴⁵ Data similarly show that for every dollar spent on regular education programming, traditional Philadelphia charter schools spend only \$0.29 on special education services, compared to a ratio of \$0.45 spent per dollar in district-run schools.⁴⁶

Beyond the financial implications, the current concentration of students requiring higher cost services in traditional public schools has significant social implications. It violates the principles of inclusion that are at the core of state and federal laws

Disability segregation contributes to racial segregation, as black students are overrepresented in the populations of students with disabilities requiring higher cost aids and services.

protecting students with disabilities.⁴⁷

In addition, disability segregation contributes to racial segregation, as black students are overrepresented in the populations of students with disabilities requiring higher cost aids and services. Research has shown that black students in Pennsylvania are 1.48 times more likely than white students to be identified with an intellectual disability and 1.61 times more likely to be identified with emotional disturbance. Conversely, white students in the Commonwealth

are 1.8 times more likely than black students to be identified with a speech and language impairment.⁴⁸

As discussed more fully in Section III, other charter practices further reinforce the racial segregation of Philadelphia students.



English Learners: Inadequately Providing for Limited English Proficient Students

ACEs data indicate that many traditional charter schools are also non-compliant with federal and state requirements regarding English as a Second Language policies and the screening and assessment for English learner (EL) students. Equally concerning is the fact the majority of charter schools serve negligible numbers of EL students, and that many of these charters nonetheless are deemed compliant with the legal requirements designed to provide equitable access to EL students. In addition, there is no monitoring of how charter schools effectively serve EL students by eliminating language barriers and ensuring access to curriculum and equal educational opportunities as required under federal law.⁴⁹

Recognizing the Rights of English Learners

State and federal laws require charters to protect the civil rights and meet the educational needs of English learners. Like all public schools, charters must take “affirmative steps” to help EL students overcome language barriers so they can participate meaningfully in their schools’ educational programs.⁵⁰ This requires ensuring a student’s effective progression through the entirety of an EL program, from enrollment in school and identifying students as potential EL students, to accurately assessing students to determine their level of progress and monitoring of students to ensure their ability to participate meaningfully in school, and supporting a successful transition from EL services.⁵¹ In addition, throughout this process, schools must ensure parent participation of limited English proficient parents by providing translation and interpretation services.⁵²

All local education agencies, including charters, are required to ensure that ELs can participate meaningfully and equally in all educational programs.⁵³ Charters must select a sound educational approach for providing English language development services through a meaningful language instruction education program (LIEP) for their ELs.⁵⁴ Charters must follow uniform identification procedures to ensure that all students potentially eligible for placement in a language assistance program are identified in a timely fashion. Identification should occur within 30 school days if the student is enrolled at the beginning of the year or within two weeks if the student is enrolled during the school year, and parents must be notified of the results.⁵⁵

Students identified as ELs must immediately receive English language development services based on the charter’s educational approach. A charter school must provide the necessary resources and qualified staff to implement its educational approach, including language acquisition training for all teachers.⁵⁶ Schools must meaningfully engage parents and families of ELs to inform them of how they can be active participants in their child’s language acquisition and seek input into the development and evaluation of the school’s LIEP program.⁵⁷ Students identified as ELs must be assessed annually for English language proficiency.⁵⁸ Charter schools must use established criteria to determine if a student has reached English language proficiency, exit the student from the language assistance program if such proficiency is reached, and monitor after exiting to ensure academic progress.⁵⁹ In addition, charters must evaluate the success of the language assistance

program periodically and, as necessary, make modifications.⁶⁰

OCV domain “Category 3: English Learners” closely mirrors the charters’ legal obligations to provide students “meaningful access to the district’s educational program.”⁶¹ It provides for annual assessment of charters’ EL policies as well as their procedures for screening and assessment for EL students.^{xiii} At renewal, charter compliance with provisions for EL identification, parental notification, and exiting are further assessed (*see chart*).⁶² However, none of the categories consider whether EL students are making progress towards exiting EL services.

Most EL Students in Charter Schools Are Not Getting What They Need To Be Successful

Philadelphia’s traditional charter schools educate 21% of all Philadelphia public school students, but they serve roughly 10% of the total EL population

of Philadelphia public-school students.⁶³ A high percentage of those students are educated in charter schools that have been found non-compliant with EL provisions under the Framework.

Half of all EL students enrolled in traditional Philadelphia charters were educated in schools that were non-compliant in at least one of the OCV EL categories. These schools accounted for roughly an equivalent proportion of all of traditional charter schools (48%).⁶⁴

The single most significant area of non-compliance related to ESL policies: Many schools failed to have ESL policies that conformed with the basic legal provisions required by federal and state law. The majority of charters with non-compliant ESL policies failed to describe the LIEP used for EL students. Many also failed to inform parents of their right to decline English language development programs or services in whole or in part.⁶⁵ The U.S. Departments of Justice

OCV English Learner Assessment Criteria

Annual Assessment Standards

ESL Policy: mandates that the school policy provides for: timely family notification of EL identification process, including the results and the recommended program placement; information about the LIEP, including description, intended benefits, and effectiveness; criteria for reclassification and projected timeline.

EL Timely Evaluation: requires the administration of WIDA W-APT test and placement into LIEP with first 30 days of school/14 days of enrollment after first day of school.

ESL ACCESS: specifies compliance with the PDE requirement to administer the ELP assessment instrument, Assessing Communication and

Comprehension in English State to State for English Language Learners (ACCESS for ELLs), for each identified EL.

Renewal Standards

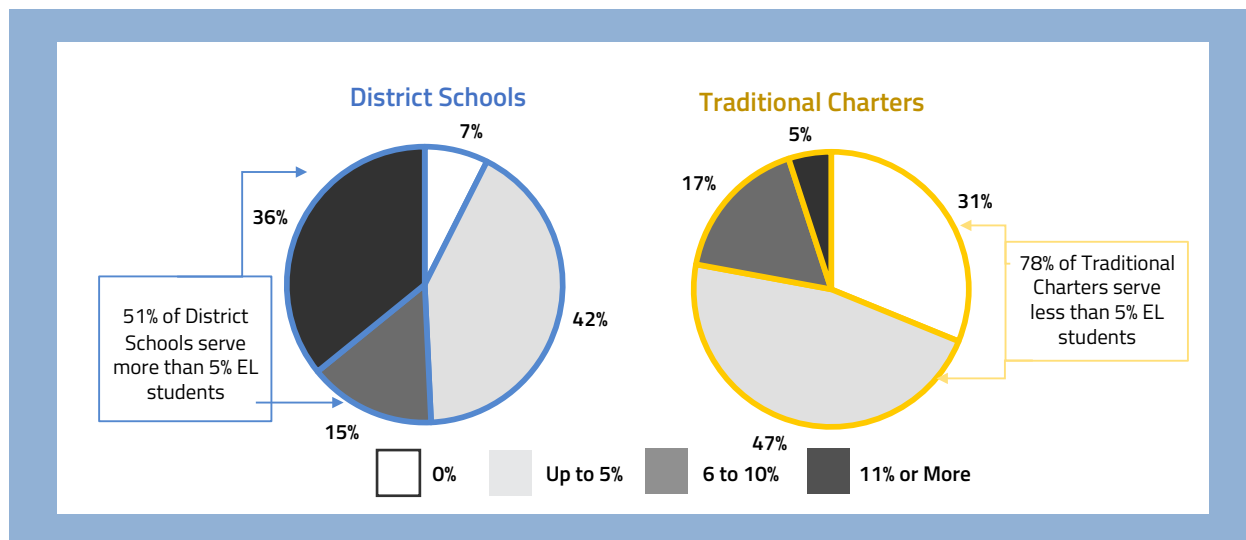
EL Identification: examines the implementation of EL identification process, including submission of home language survey, W-APT or WIDA results.

EL Notification: confirming proof of written parental notification of ESL program placement and screening outcomes in preferred language.

EL Exiting: evaluating the placement process for existing students who meet appropriate criteria for moving out of the ESL program.

xiii The OCV category for English learners previously included an “EL Instruction” standard requiring charters to provide EL students with 5 days of planned instruction by a qualified ESL/Bilingual teacher. This standard was eliminated from assessment effective July 1, 2017 given new PDE guidance regarding instruction of EL students.

Proportion of Schools With Zero, Low, Moderate, or High Percentages of English Learners



Numbers of English learners are much lower in traditional charters than District schools. Nearly one-third of traditional charters serve no English learners at all; only 7% of district-run schools have no English learners.

and Education have stated that a description of LIEP and information explaining parents' right to refusal are essential information that must be provided to parents so they can make informed decisions about their child's educational program.⁶⁶ PDE has similarly reinforced that parents of currently enrolled ELs have a right to understand the components of their child's educational program, the intended benefits, and the program's effectiveness.⁶⁷

A number of charters also failed to screen students whose Home Language Survey indicated a language other than English for possible identification as an EL student using an appropriate screener. At several charters, both the total EL-eligible population and unscreened student populations were small. But at other charter schools, these numbers were far from negligible. For example, at one school, 97% of potential EL students were unscreened. In addition, 10 charters failed to annually assess identified EL students for English language proficiency in the four domains of listening, speaking, reading, and writing,⁶⁸ as required by PDE guidance and federal law.⁶⁹ One school with a particularly high EL traditional charter

enrollment was non-compliant for both EL Timely Evaluation and ESL ACCESS.⁷⁰ These data points reflect ELC's anecdotal experience with EL students in charter schools. Parent complaints have ranged from the failure of a school to identify an EL student, to the failure to provide interpretation services for LEP parents, to providing only one hour of language instruction for a beginner EL immigrant student.

Segregation of EL Students

Challenges in meeting the needs of EL students are not unique to traditional charters. The Education Law Center has engaged in sustained advocacy to enforce the rights of EL students in the district, including the right to making publicly available information pertaining to the provision of ESL services and programs, being properly identified as LIEP eligible upon enrollment, the right to program placement and a specified program exit strategy, and the provision of LIEP and ELD services. ELC has also advocated to ensure that EL students receive timely bilingual special education evaluations and to secure meaningful parent participation in the special

education process for EL students. However, charters are uniquely likely to meet EL compliance standards without actually serving EL students. Many of the schools that score compliant on the EL standards of the ACEs have no EL students at all. Because 2 of the 3 EL standards are dependent on the presence of EL students (EL Timely Evaluation and ESL Access), charters can be deemed successful in serving EL students while enrolling few, if any, of such students. In fact, of the 30 schools that are EL-compliant, 11 (37%) served no EL students, and an additional 4 (13%) enrolled EL students at a rate equal or below 1%. Thus, half of the “EL-compliant” charters served negligible numbers of EL students.⁷¹ District-run schools with such small percentages of EL students are rare. In fact, the average district school has roughly 3 times as many ELs as the typical charter school (11% vs. 4%).⁷² The vast majority (78%) of traditional charters enroll *fewer* than 5% EL students, while the majority of district-run schools (52%) have EL enrollment rates of 5% or more. Only 3 traditional charters enroll over the district average of 11% EL students, and 31% of all traditional charters enroll no EL students at all, roughly four times the rate of district schools.⁷³

Only 3 traditional charters enroll over the district average of 11% EL students, and 31% of all traditional charters enroll no EL students at all.

A closer look at the traditional charter sector also reveals that ELs attending charters are disproportionately enrolled in a small subset of “mission-oriented” schools.^{xiv} The six charters with 10% or more ELs are all dedicated to the positive mission of promoting bilingualism. Esperanza Academy Charter School (24% EL) includes bilingual education as part of its mission, stating it aims to prepare young adults “who can use English,

Spanish and technology as tools for success.”⁷⁴ Pan American Academy Charter School (24% EL) states it incorporates bilingualism into all aspects of the curriculum.⁷⁵ Folk Arts-Cultural Treasures Charter School (19% EL) was established to meet “the particular needs of Asian American immigrant and refugee students” and defines its mission as serving “students of diverse racial, ethnic, linguistic and cultural backgrounds from the City of Philadelphia.”⁷⁶ Laboratory Charter School of Communication and Languages (10% EL) pursues a mission to “provide a program that will prepare students to communicate effectively in more than one language.”⁷⁷ Eugenio Maria De Hostos Charter School (10% EL) aims for “students [to] earn the Seal of Biliteracy (English and Spanish).” The mission of Antonia Pantoja Charter School (10% EL) is “to ensure that all entering elementary students will graduate able to read, write, and communicate in English and Spanish according to their potential and goals.”⁷⁸ *Removing these schools from analysis, the percentage of EL students in the traditional charter sector drops from 4% to 2%.*⁷⁹

Understanding the Underlying Practices and the Resulting Consequences

A report examining a similar pattern of lower EL enrollments at charter schools than district schools in California concluded that charter enrollment practices offered the most likely explanation for the differences in sector profiles. Several school leaders cited in the report stated that their primary challenge in serving EL students was that these students were behind their peers academically

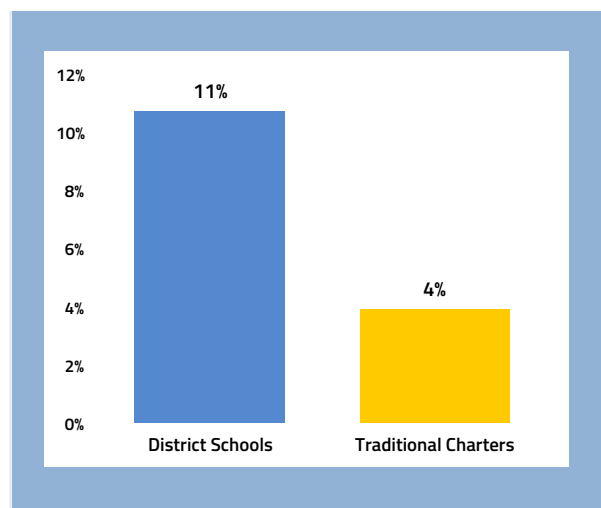
xiv “Mission-oriented” charters are defined as “those dedicated to serving a particular type of at-risk student.” See Kevin G. Welner, *The Dirty Dozen: How Charter Schools Influence Student Enrollment*, TEACHERS COLLEGE RECORD, Apr. 22, 2013, <https://nepc.colorado.edu/sites/default/files/welner-charter-enrollment-teachers-college-record.pdf>.

upon entering school, both in English language skills and frequently in “basic foundation in their home language.” They further noted that “many of their EL students had never experienced academic content in a developmentally appropriate preschool setting, or lacked books in the home, factors that could contribute to a student entering kindergarten behind his or her peers.”⁸⁰

The report concluded that efforts to increase the numbers of ELs in charters should focus on recruitment. However, given the challenges in serving EL students identified by school leaders, there is little incentive to affirmatively seek out EL students outside mission-driven charter schools. To the contrary, studies have noted charter schools are likely to engage in systemic practices that may limit the number of ELs enrolled. These practices include not employing certified ESL teachers and marketing and advertising only in English.⁸¹

A review of ACEs data related to enrollment standards suggests reason for concern about traditional charter practices. “Category 4: Enrollment” includes an “Enrollment Language Policy” standard designed to ensure that limited English proficient students and families receive translation and interpretation services to ensure understanding of process and prompt enrollment. Nine traditional charter schools (15%) failed to demonstrate compliance with the legal requirements for enrollment language policy.⁸² The vast majority of these schools failed to affirm during testing calls from fictitious applicants that they would provide translation or interpretation services to interested applicants. In addition, compliance data for the “Enrollment Materials” standard indicates that one charter requested a Social Security number as part of

English Learner Population in District Schools vs. Traditional Charters



English learners represent 11% of students in district-run schools but only 4% of students in traditional charters.

its application process, an illegal request that would disproportionately impact undocumented immigrant families.⁸³

Charter patterns and practices related to ELs have negative implications for students across the district. Research indicates that meaningful exposure to English-speaking peers and contexts is vital for English-language acquisition.⁸⁴ In addition, ELs “may be at risk for school failure, delayed graduation, and negative academic self-concepts” from prolonged exposure to segregated settings.⁸⁵ Ensuring equity for EL students requires making access to inclusive programming accessible in all Philadelphia schools, including charter schools.

Enrollment: Discriminatory Practices in a Highly Segregated Sector



Roughly 40% of traditional charters failed to adhere to federal and state enrollment requirements designed to ensure that charters are truly accessible to all students in accordance with their mandate as public schools. Across the traditional charter sector, data show limited diversity in student enrollment relative to district-run schools. Traditional charters show strikingly lower levels of economically disadvantaged students compared to district-run schools. They also show low percentages of Asian students, and high levels of racial isolation, particularly for black, Latin(x) and white students. A single racial group, typically black or Latin(x), makes up at least two-thirds of the student body at the vast majority of traditional charters. In addition, in a district with only 14% white students, a notable number of charters serve populations that are at least 50% white and, in some cases, more than two-thirds white.

A single racial group makes up at least two-thirds of the student body at the vast majority of traditional charters.

set “reasonable criteria” for evaluating prospective students.⁸⁸ They also can limit the number of attendance slots available in their schools and conduct lotteries to randomly admit students if the applicant pool exceeds the number of available slots.⁸⁹

Yet the law makes clear that when engaging in these permissible enrollment practices, charters are prohibited from engaging in discrimination. Charters remain bound by the CSL’s anti-discrimination provisions prohibiting student selection based on intellectual ability, athletic ability, measures of achievement or aptitude, disability status, English proficiency, “or any other basis that would be illegal if used by a school district.”⁹⁰

Following federal guidance designed to eliminate enrollment practices that could deter undocumented, immigrant students and students experiencing homelessness, PDE has promulgated guidance to ensure the prompt and effective enrollment of students across the Commonwealth. The guidance is designed to ensure that school districts and charter schools do not request information with the purpose or result of denying access to education on the basis of race, color, or national origin. It further ensures that in verifying educational eligibility, districts and charters do not require documentation that would unlawfully bar or discourage the enrollment or attendance of marginalized students. For example, in providing that educational services are enjoyed only by residents of the district, districts and charters

Recognizing the Rights of Students of All Identities

Charter schools are subject to the same legal requirement as district-run schools that “every child of school age who is a resident of a Pennsylvania school district is entitled to a public-school education.”⁸⁶ However, the CSL grants charter schools greater flexibility in enrollment practices relative to district-run schools. For example, charters can focus on “a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts.”⁸⁷ They can

should ensure that they avoid documentation requirements that impact the enrollment of students who are undocumented or experiencing homelessness. Similarly, in requiring documentation to show whether students fall within mandated minimum and maximum age requirements, school administrators cannot use inability to produce a U.S.-issued birth certificate as a basis to bar student enrollment.⁹¹

The OCV domain “Category 4: Enrollment” builds upon this guidance to assess charter compliance in reference to policies and practices impacting matriculation (*see chart below*). Annually, Philadelphia charters are assessed for compliance with state guidance related to the existence of a formal enrollment policy and the nature and accessibility of application and enrollment materials. At renewal, only once every five years, each charter’s lottery process is assessed to ensure random, unbiased selection. The enrollment process is also reviewed to ensure that only mandated documentation is required for student registration.

Charters are More Economically and Racially Segregated Than District Schools

As noted above, charter non-compliance with enrollment practices can impact the diversity of a school community, particularly with respect to EL students. These standards can also impact other aspects of diversity, including accessibility to historically underserved racial and economic groups. Federal guidance has recognized the significance of application and enrollment practices, noting that “the fact that students choose ... and are not simply assigned to attend a charter school underscores the need to be mindful of the rights of children and parents in the community when publicizing the school to attract students and when evaluating their applications for admission.”⁹²

In total, 38% (22 of 58) of Philadelphia’s traditional charters were non-compliant with annual enrollment standards.⁹³ Schools not compliant in aligning required and requested enrollment materials with state standards frequently designated additional

OCV Enrollment Assessment Criteria

Annual Assessment Standards

Enrollment Policy: accounts for written policy compliance with CSL, Enrollment of Students BEC, and school charter, the Student Application ensures that the charter’s application does not require information beyond what the law mandates

Student Application: ensures that enrollment materials require and request information in alignment with state law and regulations.

Enrollment Materials: ensures that requested and required information align with CSL and Enrollment of Students BEC and are clearly differentiated

Enrollment Accessibility: confirms that the charter accepts at least two types of documentation to demonstrate proof of age and residency during enrollment

Enrollment Language Policy: assures that translation and interpretation services are provided when needed to LEP families to aid understanding and prompt enrollment.

Renewal Standards

Lottery Process: confirms a random, unbiased selection occurs when timely applications exceed available attendance slots, except that preference may be given, if explicitly stated in the charter, to children whose parents were actively involved in the school’s development or whose sibling is currently enrolled

Enrollment Process: specifies that only 5 items are required for enrollment - proof of child’s age, legally required immunizations, proof of residency, parent registration statement, and Home Language Survey.

documents as required in the application. For example, schools required families to provide a report card/transcript, medical records, parent volunteer questionnaire, parent/guardian identification, Social Security number, or the student's IEP during the application process.⁹⁴

One violation of particular note is that one school indicated that it was an open enrollment school but reserved the right to evaluate prospective students and limit enrollment of at-risk students.⁹⁵ The CSL allows targeting admission to specific categories of "at-risk student,"⁹⁶ defined as "a student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage."⁹⁷ It does not permit limiting enrollment of such students. To the contrary, the CSL requires a lottery when available slots exceed applications,⁹⁸ prohibits discrimination in admissions policies and practices,⁹⁹ and deems violation of any legal provisions applicable to charters to be a basis for nonrenewal or termination.¹⁰⁰

Despite provisions permitting charters to target economically disadvantaged students, traditional charters, in fact, serve much lower percentages of these students compared to district-run schools. A review of ACEs data indicates that there is a 14-point difference in the percentage of economically disadvantaged students in traditional charters relative to district schools (56% vs. 70%).¹⁰¹ The majority of district schools (53%) serve 75% or more students identified as economically disadvantaged.¹⁰² By contrast, the vast majority (81%) of traditional charters have *fewer than 75%* economically disadvantaged students. Thirteen charters had enrollments with less than half the students economically disadvantaged. At one school, a mere 17% of the enrollment qualified as economically

disadvantaged. Of the 10 charters serving the lowest percentages of economically disadvantaged students, 8 also enroll a predominantly white cohort.¹⁰³

Patterns of racial segregation are also evident, as traditional charters are more racial homogenous than district-run schools, for both white and non-white students.¹⁰⁴ District and traditional charter schools serve equivalent percentages of Latin(x) students (20%).¹⁰⁵ District schools serve three times as many Asian students as charters (9% vs. 3%). Although charters serve slightly higher percentages of black and white students than district schools (54% vs.

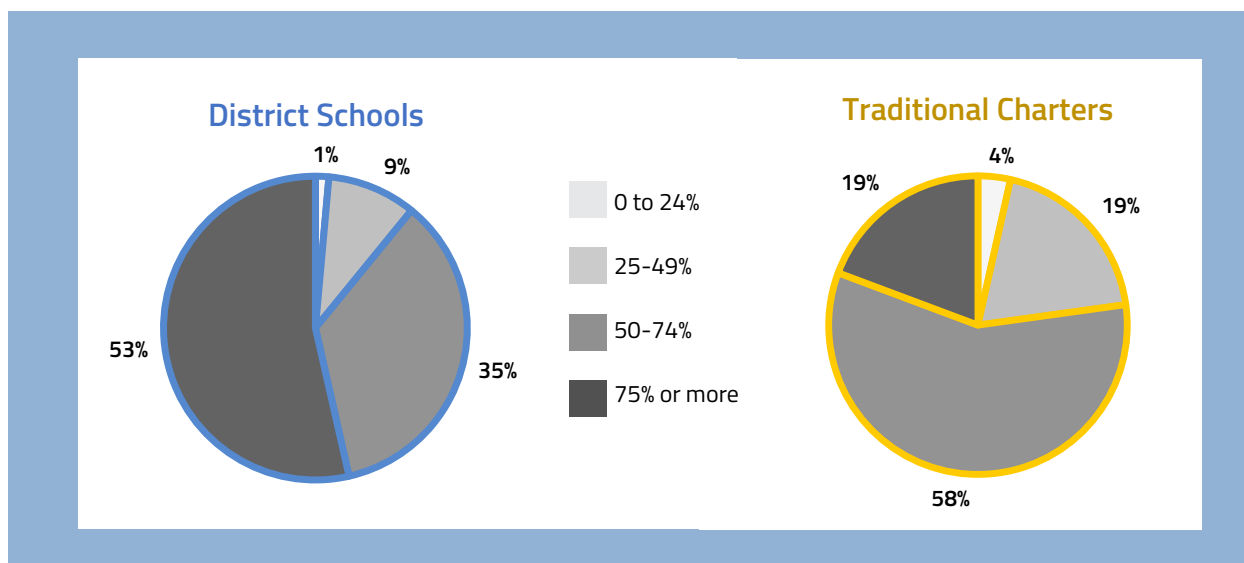
49% and 20% vs. 15%, respectively), those students are more likely to be in intensely segregated schools. The majority of Philadelphia charters (52%) can be termed hyper-segregated, with white students making up 1% or less of the student body and their largest cohort being comprised of over two-thirds students of one racial group. This is roughly six times the rate for district schools (9%).¹⁰⁶

There is a 14-point difference in the percentage of economically disadvantaged students in traditional charters relative to district schools — 56% vs. 70%.

Students of color in Philadelphia charters are more racially isolated than their district school counterparts. In over four-fifths of traditional charter schools (83%), the largest racial group makes up at least two-thirds of student body, whereas only half (50%) of district schools eclipse the two-thirds margin. In all but one of these racially isolated traditional charters, the largest racial group is black or Latin(x).¹⁰⁷

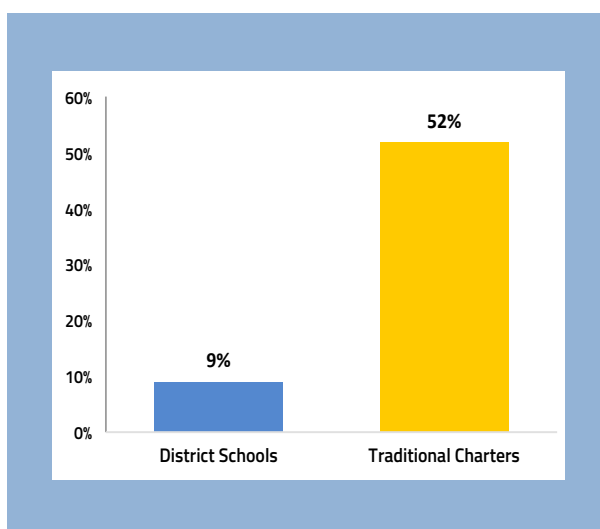
Traditional charters are also significantly more likely than district schools to have student populations that are predominantly white.¹⁰⁸ They are twice as likely to enroll 50% or more white students as compared to district schools (12% vs. 5%). In a district with only 14% white students, there are seven charters that are at least 50% white, five of which are over two-thirds white. The percentage of schools that are over

Levels of Economically Disadvantaged Students in District Schools vs. Traditional Charters



Most district-run schools have student bodies that are more than 75% economically disadvantaged. Most traditional charters have populations that are 50-74% economically disadvantaged.

Proportion of District Schools and Traditional Charters That Are Hyper-Segregated



About half of Philadelphia's traditional charters are both more than two-thirds students of one racial group and less than 1% white students. Just 9% of district-run schools meet those criteria.

two-thirds white is nine times higher in charters than it is in district schools (9% vs. 1%).¹⁰⁹

These findings are consistent with national research on racial segregation in charters. A UCLA Civil Rights Project study of 40 states, the District of Columbia, and several dozen metropolitan areas with large charter enrollments found charters to be more racially isolated than district-run schools almost everywhere they operate.¹¹⁰ Black and Latin(x) students in charters are less likely to be educated with white students than their district-run counterparts. In Pennsylvania, black/white and Latin(x)/white exposure were both reported roughly twice as high in district than charter schools.¹¹¹

Understanding the Underlying Practices and the Resulting Consequences

The fact that charters are contributing to racial segregation in Philadelphia schools is particularly

troubling, given the context in which charter growth has occurred. When the School District of Philadelphia was removed from a court-ordered desegregation order after four decades of litigation with the Pennsylvania Human Relations Commission, the expectation was that voluntary choice measures would decrease educational segregation.¹¹² The 2009 consent agreement formally ending the case was based on the district's "Imagine 2014" five-year strategic plan, which identified school choice as one of five priority initiatives to improve educational outcomes for students of color.¹¹³ Ten years later, data reveal more segregated educational experiences for students of color.

Neighborhood segregation undoubtedly influences school segregation across all school sectors – district, magnet, and charter. However, the choice of physical

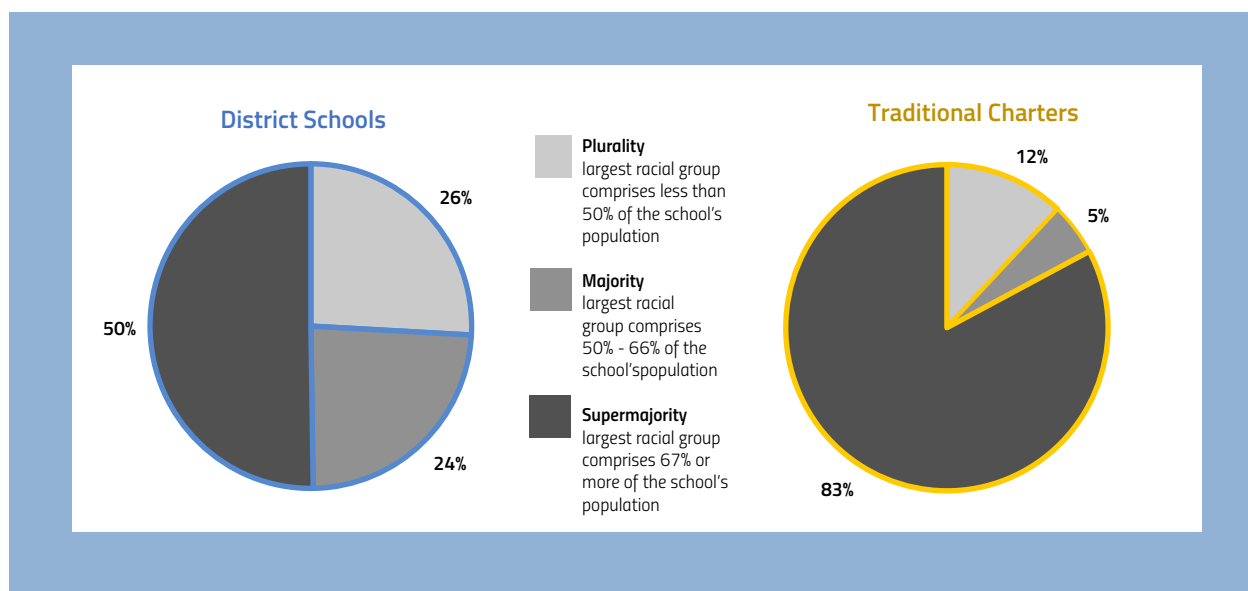
By enrolling few or no new students during the school year or in higher grades, many charters minimize enrollment of highly mobile students.

location of a charter school can itself limit or promote racial and economic diversity in student enrollment.

A charter's physical location determines, among other things, the ease or difficulty of a student's commute,¹¹⁴ a significant factor in a city covering over 142 square miles, where traveling from one end of the city to another on public transportation can take well over an hour. Seven traditional charters are located in predominantly white ZIP codes, far away from either of the two major city subway lines. Not surprisingly, most of these schools serve a predominantly white student body.

Other charter practices can similarly isolate student populations based on race and socioeconomic status.¹¹⁵ Onerous charter application and enrollment conditions, such as short application windows and other requirements linked to scheduling flexibility

Levels of Racial Integration and Segregation in District Schools vs. Traditional Charters



In 83% of traditional charter schools, more than two-thirds of the students are of one racial group; that is true at only 50% of district-run schools.

or parental involvement, can play a role in limiting access for underserved communities.¹¹⁶ Research has shown that contact with advantaged social networks and socioeconomic status impact families' ability to access charter schools.¹¹⁷

Studies have shown that "the resources that are consistently linked to predominately white and/or wealthy schools help foster real and serious educational advantages over minority segregated settings."¹¹⁹

In addition, by enrolling few or no new students during the school year or in higher grades, many charters minimize enrollment of highly mobile students. It is therefore not surprising that a recent study found that Philadelphia district schools enroll students experiencing homelessness at a rate more than three times that of brick-and-mortar charter schools (2.3% vs. 0.7%).¹¹⁸

The mere requirement that parents must, on their own initiative, take the affirmative step to apply to a charter school means that the pool of applicants begins with a self-selected cohort. However, systemic charter practices exacerbate the differences between district and charter populations, deepening the "double segregation" of race and poverty for students who remain in district schools. This segregation is not merely an issue of demographics; it has profound implications for the resources and opportunities available to students across educational settings.

Desegregated schools are linked to important benefits for all children, including prejudice reduction, heightened civic engagement, more complex thinking, and better learning outcomes in general.

Schools of concentrated poverty and segregated communities of color are strongly associated with a variety of factors limiting educational opportunities and outcomes, including less experienced and less qualified teachers, high levels of teacher turnover, less successful peer groups, inadequate facilities and learning materials, deprivation of basic resources, and the consequent denial of educational opportunities.¹²⁰ As a result, high-poverty schools with high numbers of students of color typically have higher dropout rates and lower academic achievement than more socioeconomically diverse schools. In addition, there is a mounting body of evidence indicating that desegregated schools are linked to important benefits for all children, including prejudice reduction, heightened civic engagement, more complex thinking, and better learning outcomes in general.¹²¹ Ensuring increased learning opportunities for all students therefore requires addressing racial and economic segregation.

Moving Toward Greater Equity: Recommendations and Next Steps



Addressing the disproportionate enrollment of more advantaged students in charters requires reform at multiple levels. Flaws in the Charter School Law and Pennsylvania's funding system that focus attention on academic and financial performance to the exclusion of equity incentivize charters to underserve students with the greatest educational needs. In addition, as long as the process for closing a charter is as protracted and difficult as it is now in Pennsylvania, there is little to deter charters from engaging in practices that compromise student rights.

As the law stands now, district and charter schools do not compete on a level playing field. For example, charters can decide to not admit students during the school year and not backfill empty seats that open up in higher grades. Data show that charters as a group serve fewer economically disadvantaged students, fewer students experiencing homelessness, fewer English learners, and the population of students with disabilities is very different from that served by district schools

in terms of disability type. Charters can more easily accomplish promised achievement levels that they are evaluated on annually by serving more advantaged students.¹²² This is, in part, because these students require fewer resources to achieve academic success.^{xv} We currently lack metrics that provide adequate ways to compare academic performance of district and charter schools, given these disparities.

Change is undoubtedly needed at the state level.

For example, multiple studies have documented the financial impact of charter expansion on district resources, suggesting the need to reinstate the charter reimbursement line in the state education budget.^{xvi} However, there is also more that charter authorizers can do within the context of the existing legal framework. Evidence of significant and systemic inequities, both between district-run and charter schools and within the charter sector, highlight the need for local reform in three key areas: (1) ensuring that the Board's evaluation of new and

Change is undoubtedly needed at the state level. However, there is also more that charter authorizers can do within the context of the existing legal framework.

xv A report commissioned by the General Assembly more than 10 years ago found that in Pennsylvania, it costs 1.3 times more to educate a student with disabilities, 0.43 times more to educate a student in poverty, and somewhere between 1.48 and 2.43 times more to educate an English language learner. See AUGENBLICK, PALAICH & ASSOC., INC., COSTING OUT THE RESOURCES NEEDED TO MEET PENNSYLVANIA'S PUBLIC EDUCATION GOALS (Pa. State Bd. of Educ. 2007), <https://www.stateboard.education.pa.gov/Documents/Research%20Reports%20and%20Studies/PA%20Costing%20Out%20Study%20rev%2012%2007.pdf> Research for Action found school districts recouped only between 44%-68% of each student's tuition bill when students left to attend a charter school. The portion they could not recoup — their stranded costs — ranged from \$3,000 to more than \$10,000 per student. See DAVID LAPP ET AL., THE FISCAL IMPACT OF CHARTER SCHOOL EXPANSION: CALCULATIONS IN SIX PENNSYLVANIA SCHOOL DISTRICTS (Research for Action 2017), <https://www.researchforaction.org/wp-content/uploads/2017/09/RFA-Fiscal-Impact-of-Charter-Expansion-September-2017.pdf> Two 2012 reports conducted by pro-charter organizations, one by Boston Consulting Group and one by Afton Partners, estimated the adverse financial impact on school districts of students attending a charter school at \$7,000 and \$4,800 per student, respectively. See BOSTON CONSULTING GRP., INC., TRANSFORMING PHILADELPHIA'S PUBLIC SCHOOLS: KEY FINDINGS AND RECOMMENDATIONS (2012), https://www.crpe.org/sites/default/files/BCG-Summary-Findings-and-Recommendations_August_2012.pdf

existing charters includes and monitors equitable access findings; (2) improving the existing Framework to better center issues of equity; and (3) granting the Charter School Office sufficient capacity to provide appropriate oversight.

Assessing Equity for Charter Applications and Renewals

Philadelphia's Board of Education has both a moral and a legal obligation to protect the rights and well-being of all students seeking and obtaining enrollment in charters. Approving a charter is arguably the most important decision a charter authorizer can make, as it signals to the public that the school is worthy of public support, and parents trust authorizers to behave with the best interest of their children in mind. In the face of concerns about the ability of a charter applicant or operator to fulfill its public purpose, the Charter School Law empowers the Board to deny or terminate a charter.

Non-discrimination is a mandatory requirement under the CSL that should be independently assessed by the Board during the charter application and renewal processes. The Board should explicitly evaluate whether existing charters are complying with federal and state civil rights laws and promoting equitable access. It should similarly assess whether charter applicants demonstrate that their admissions, hiring, and operations are designed to promote equity.

Improving the Existing Framework to Better Center Issues of Equity

Enabling the Board to fully consider issues of equity requires a revision of their existing Framework. Currently, considerations of equity are embedded in

the larger Organizational Compliance and Viability domain, which includes such disparate factors as English learners, board governance, and food, health, and safety. In addition, a charter could commit egregious compliance violations implicating students' civil rights and still be eligible for renewal. This include the example violations identified in the Framework itself of reviewing academic records prior to student enrollment or operating more than one year without identifying, programming, and testing ELs.¹²³

A charter could effectively fail the EL, Special Education, and Enrollment categories by generating no points in each and still be eligible for renewal if it earns sufficient points in the other 6 OCV categories.

The OCV domain ratings aggregate compliance scores in a way that minimizes the impact of significant, material, and fundamental violations of the CSL on a charter's evaluation score. Unlike the Academic Success domain, which has 4 categories, and the Financial Health and Sustainability domain, which has 2, the OCV domain has 9 categories, each of which, therefore, has limited impact on a charter's overall domain score.

A charter could effectively fail the EL, Special Education, and Enrollment categories by generating no points in each and still be eligible for renewal if it earns sufficient points in the other 6 OCV categories. Such a result is not in line with the legal principles identified by Charter Appeals Board and state court precedent.

The existing domain ratings "Meets Standard" (>80%), "Approaches Standard" (50% to 80%), or "Does Not Meet Standard" (<50%) send the message that charters are operating within acceptable norms even when requirements for civil rights and student health and safety are not being met. They allow charters to continue operation by simply meeting a majority of the OCV standards, with minimal consideration of the relative importance of each standard. Significant, material and fundamental violations of the law, including those that are part of a wider pattern of

non-compliance, on their own are sufficient basis for revocation.¹²⁴ The fact that a charter meets standards in other areas should not negate clear and compelling reasons for termination.

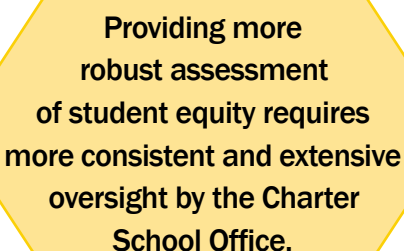
To ensure that schoolchildren's rights are adequately protected, student equity factors should be evaluated under their own domain. Each compliance standard should be afforded appropriate weight to reflect the materiality of a potential violation. Each category should be subject to sufficiently robust annual assessment to inspire confidence that student rights are being protected during each of the four years between renewal decisions. For example, the Special Education assessment standards should be expanded beyond Child Find notification to ensure that students with disabilities are actually receiving a free and appropriate public education.

In addition, the range of relevant evidence sources should be expanded. Document reviews should be coupled with reviews of statistical data to better identify systemic practices. In addition, mystery calls as well as calls and complaints to the CSO itself should be included, where possible, for all standards dependent on student and family information.

Granting the CSO Sufficient Capacity to Provide Appropriate Oversight

Providing more robust assessment of student equity requires more consistent and extensive oversight by the CSO. A 2015 Pew report cited Los Angeles'

Unified School District's Charter School Division as "one of the more vigorous and proactive operations" that exist today.¹²⁵ The office's oversight included annual site visits, ensuring that charters comply with reporting requirements, and monitoring of the fiscal condition of the schools. By contrast, Philadelphia's CSO collects annual ACEs data but only requires site visits upon renewal. As a result, a charter could operate for five years without an onsite visit by the CSO.



Providing more robust assessment of student equity requires more consistent and extensive oversight by the Charter School Office.

Where charter practices raise concerns about discrimination, the CSO must have sufficient capacity to collect evidence of charter operations and identify discriminatory unwritten practices. This requires staffing the office to conduct mystery testing and monitoring lotteries more than once every five years, among other responsibilities. It also requires ensuring that the CSO can serve and be recognized as a resource for parent complaints and reviewing each charter school's policies and practices.

As research has noted, "unless proactive equity measures ... are embedded in the design of charters, and subsequently monitored and enforced," charter schools "simply reinforce unequal educational opportunity."¹²⁶ There are strong legal grounds for the Philadelphia Board of Education to do more to ensure that all schools within the district are sharing in the responsibility to provide educational services to all students equitably. The Framework standards and other available data, if used correctly, could catalyze charter school accountability and improve the experience of all students in Philadelphia.

Endnotes

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- 3 24 Pa. C.S. § 17-1728-A(a).
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- 5 *Pocono Mountain Sch. Dist. v. Pa. Dep’t of Educ.*, 151 A.3d 129, 137 (Pa. 2016) (citing to 24 Pa. C.S. § 17-1729-A(a)(3)); see also id. at 149 (Dougherty, J., dissenting) (“Section 1728-A(a) places upon the chartering school district an obligation to monitor a charter school . . . The CSL empowers and thus requires a chartering school district to be diligent in fulfilling its obligations. . .”).
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- 13 David et al., *A Growing Movement: America’s Largest Public Charter School Communities*, *supra* note 8, at 3.
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- 23 Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802 (codified as amended at 20 U.S.C. §§ 7221-7225g (2018)); see also Dear Colleague Letter from Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Dep’t of Ed. (May 14, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>.
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- 40 *Id.* at 4.
- 41 See Data Appendix, Special Education at <http://at.elc-pa.org/charter-data>.
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- 65 See Data Appendix, Non-Compliance Detail at <http://at.elc-pa.org/charter-data>.
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