Testimony Before House Education Committee

May 8, 2025

Good afternoon, Chairman Schweyer, Chairman Cutler, and Members of the Education Committee. Thank you for the opportunity to speak to the Committee today. My name is Maura McInerney and I am the Legal Director at the **Education Law Center-PA (ELC),** a statewide nonprofit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education.[1] My testimony is informed by ELC's experience handling hundreds of individual matters on behalf of children educated in cyber charter schools and ELC's advocacy work analyzing cyber charter laws and governance. I am also one of the attorneys who represented Petitioners in the school funding lawsuit, *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ*., 294 A.3d 537 (Pa. Commw. Ct. 2023) where the court made findings based on the consistent testimony of several witnesses that students in cyber charter schools underperform traditional schools and brick and mortar charters across the state.[2]

[1] **The Education Law Center-PA (ELC)** is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved 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.

[2] *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ*., 294 A.3d at 930-31. Specifically, the court referenced the testimony of Matthew Stem former Deputy Secretary for Elementary and Secondary Education of the Pennsylvania Department of Education, Petitioner's expert witness, Dr. Matthew Kelly and Dr. Maurice Flurie, former CEO of Commonwealth Charter Academy (CCA) all of whom documented the lower test scores of students in cyber charters, particularly those who are economically disadvantaged.

Reforms are needed to address three major issues: (1) the need for commonsense cyber charter funding reform; (2) increased transparency and oversight of cyber charter school spending; and (3) increased accountability and oversight by the Pennsylvania Department of Education ("Department") to improve academic performance of cyber charter schools. Each of these issues is critically important because Pennsylvania is now home to the highest student enrollment in cyber charter schools of any state in the nation. Enrollment in Pennsylvania's 14 cyber charter schools is over 60,0000, representing 5% of all public school enrollment. Notably, this is a 63% increase in charter school enrollment since the 2019-2020 school year when 38,266 students attended cyber charter schools.[3]

Cyber Charter Funding Reform is Needed

For decades we have funded cyber charter schools in a manner which is costly, inefficient, and fails to recognize the distinct cost structure of cyber charter schools. The financial impact of cyber school enrollment on school districts is significant and growing: cyber charter tuition rates have more than doubled since 2016-2017.[4] Notably, of the 27 states that have cyber charters, none fund them as Pennsylvania does as most fund cyber charter schools at the state level, whereas cyber charter schools in Pennsylvania are funded by local school districts.[5] Pennsylvania's approach is a by-product of an outdated charter school law which did not anticipate the advent of virtual charter schools. As you know, Pennsylvania funds cyber charters as if they were brick and mortar schools when they are not. Cyber charter schools don't have the

[3] See Pennsylvania Department of Education Public School Enrollment 2023-2024 available at https://www.pa.gov/agencies/education/data-and-reporting/enrollment.html#accordion-cb5f3bee47-item-9b3fcf9ab9 and Enrollment Data and Statistics (historical enrollment data) available at https://public.tableau.com/app/profile/padeptofed/viz/EnrollmentDataandStatistics/Enrollment.
[4] PA Disconnect in Cyber Charter Oversight and Funding, PA Charter Performance Center and Children First (2022) at p. 10, available at https://www.childrenfirstpa.org/wp-content/uploads/2022/01/PA-Disconnect-in-Cyber-Charter-Oversight-and-Funding-Children-First-2022.pdf
[5] *Id.*

same costs -- such as physical classrooms and laboratories, energy costs, food service, maintenance of buildings and grounds, or other infrastructure needs. Yet cyber charters receive the same per-student tuition from a local public school district as a child in a brick and mortar school, providing a windfall to cyber charters to use on advertising, travel for administrators, or to increase their reserves. Per pupil tuition rates also vary widely for students who are educated in the same cyber charter school, as the rate is based on a student's current school district tuition instead of the actual cost of educating children. For example, in 2021-2022 per student cyber charter tuition payments ranged from $8,917 to $23,799.[6]

Another windfall to cyber charters is the well-documented "special education charter school loophole" whereby all charter schools – unlike school districts – receive the same amount of special education funding per student regardless of a student's disability category. While school district funding is predicted on a cost-based Special Education Funding Formula (SEFF) that differentiates funding for students with disabilities based on cost tiers which reflect their educational needs, special education funding for cyber charter schools is allocated based on a flat fixed special education rate without regard to a student's needs or the actual cost of providing services.[7] This loophole creates an incentive for cyber charter schools to educate students with low-cost special education needs and not to serve students with high-cost needs.[8] According to data from Pennsylvania's Department of Education in 2021-22 there are about half as many students with disabilities in the two highest cost service tiers as would be expected in charter

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[6] Id. at p.9.
[7] 24 P.S.§ 25-2509.5
[8] See *Fixing the Special Education Funding Gap*, 2022, Education Law Center and PA Schools Work available at https://www.elc-pa.org/wp-content/uploads/2022/05/Special_Ed_Report_PASWEDU_Law_Center_2022-5-24.pdf ; Still Shortchanging Children with Disabilities: State Underfunding of Special Education Continues Education Law Center, Oct. 2019 at https://www.elc-pa.org/wp-content/uploads/2019/10/Special-Education-Report-10-1-19.pdf; Shortchanging Students with Disabilities, Education Law Center and PA Schools Work, Oct. 2018 available at https://www.elc-pa.org/wp-content/uploads/2018/10/Special-Education-Report-Online.pdf.

schools. Charter schools typically serve students with more mild disabilities (*e.g.*, speech/language) and in many cases the flat special education rate may be higher than the money actually expended to serve students with less costly disabilities, leading to a surplus for charter schools and overpayments by districts, who consequently serve a disproportionate number of students with higher-cost needs. Notably, approximately 20% of students enrolled in the state's cyber charter schools receive special education, compared to just over 17% of students in school districts.[9]

Both the basic education and special education funding schemes waste taxpayer dollars because neither funding mechanism aligns with a cyber charter's actual expenditures for serving students. The overpayments to cyber charters impose a significant cost on school districts. As documented by Research for Action, the current funding mechanism negatively impacts a vast majority of districts statewide and disproportionately siphons money away from our most underfunded school districts where enrollment in cyber charters is higher.[10] Moreover, there is a secondary cost to school districts which ELC has observed in most of our cases: many students cycle in and out of cyber charter schools and often return to their home school district far behind their peers, requiring additional investments in tutoring and support, special education services, etc. in order to meet a child's needs. Reviewing cases over the past three years, ELC attorneys have represented many students in cyber charter schools. In the majority of cases, students with disabilities have IEPs which were not implemented while they were in cyber charter schools. In other cases, a child's lack of attendance or remedial needs were never addressed. In one case, a child leaving a cyber charter school and entering a district's 6th grade was unable to read; in

[9] The Negative Fiscal Impact of Cyber Charter School Expansion in Pennsylvania Due to COVID-19 (2022) available at https://www.researchforaction.org/wp-content/uploads/2022/06/RFA-PACER-cybercharterfiscalimpact-final.pdf.
[10] *Id*. at p. 1.

another matter a 9th grader was told she would need to repeat a grade when in fact her IEP was not implemented, and in another case, a child's IEP from another state was unilaterally dropped while the child was in a cyber charter and the child was not re-evaluated until the following year. These failures and barriers to success are often unearthed when a child returns to their home school district and the negative impact of high "churn rates" – that is students entering and exiting cyber charters -- becomes clear.

For all these reasons, **ELC strongly supports Governor Shapiro's 2025-26 budget proposal to eliminate wasteful spending by setting a statewide flat rate of $8,000 for school district payments to cyber charter schools**. The rate is based on cybers' estimated actual costs and would save districts $265 million in taxpayer funds annually. The Governor's proposed tuition cap for cyber charter schools to reflect what is actually being spent to educate students is an essential and much needed commonsense reform and long overdue. In addition, ELC recommends implementing the same tiered Special Education Fair Funding Formula used by public schools for cyber charter school special education funding. This change would direct dollars based upon the needs and cost of each student and eliminate the current incentive to serve only students with less costly disabilities.

Providing Greater Fiscal Accountability

The need for greater fiscal oversight of cyber charter school spending is also clear to ensure that public school dollars are used to educate students and not mis-used by cyber charter schools. The 14 cyber charter schools currently operating in Pennsylvania cost taxpayers $1 billion with very few guardrails or guidance on how they spend this money. This issue has been documented in several reports. During the COVID-19 cyber charter enrollment surge, over half the $335 million in additional tuition to cybers went to increasing cyber charter school fund balances,

leaving cyber charters flush with cash. According to Research for Action's analysis, in the 2020-21 school year, cyber charters in Pennsylvania maintained fund balances at nearly $2,250/pupil more than school districts. In addition, cyber charters used these "excess" resources to pay millions for advertising which commonly target low-wealth communities.[11]

More recently, this past February, state Auditor General Timothy L. DeFoor became the third auditor general to call for cyber charter funding reform. He conducted an audit of five Pennsylvania cyber charter schools[12] which called for major funding reform and highlighted the misuse of public education dollars. In addition to finding that cyber charters had "legally increased their revenue from $473 million in the 2019-2020 fiscal year to $898 million in the 2022-2023 fiscal year," Auditor General DeFoor observed:

> *We found instances of the cyber charter schools legally using taxpayer dollars on things like staff bonuses, gift cards, vehicle payments and fuel stipends. Additionally, Commonwealth Charter Academy spent $196 million to purchase and/or renovate 21 buildings, which to us seems a bit out of the ordinary for a public school that is based in online instruction*.

Cyber Charter School Performance Audit and Calls for Major Reform to How They are Funded at p.1.[13]

These findings were reinforced in a report by Education Voters PA which documented extravagant spending by the state's largest cyber charter, Commonwealth Charter Academy (CCA) which is the second largest local education agency in the state behind the

[11] *Id.* at p. 3*;* FN 14. *See* fund balance data available at *https://www.pa.gov/agencies/education/programs-and-services/schools/grants-and-funding/school-finances/financial-data/summary-of-annual-financial-report-data.html*.
[12] The five cyber charter schools selected for the audit were: Commonwealth Charter Academy; Pennsylvania Leadership Charter School; Insight PA Cyber Charter School; Pennsylvania Cyber Charter School; and Reach Cyber Charter School.
[13] Auditor General Timothy DeFoor, Cyber Charter School Performance Audit and Calls for Major Reform to How They are Funded at p.1 (Feb. 2025). available at https://www.paauditor.gov/auditor-general-defoor-releases-cyber-charter-school-performance-audit-and-calls-for-major-reform-to-how-they-are-funded/.

Philadelphia School District.[14] According to this report, CCA spent nearly $600,000 at car dealerships and car washes in one year and more than $115,000 for dining – including $5,000 to a vineyard.[15]

To address these issues, legislation is needed to ensure transparency and impose reasonable restrictions on cyber charters spending which should include a cap on advertising expenses, event sponsorships, and the elimination of expenses not related to providing a virtual education for students. There should also be caps on unassigned fund balances which are already required for school districts. This is another commonsense reform which is clearly needed and overdue. We must update Pennsylvania's outdated Charter School Law to accomplish this.

Greater Academic Oversight and Accountability By the Department

Finally, we must address and remedy the cost to our students of poor academic outcomes in cyber charter schools, which disproportionately harm Black and Brown students.[16] Due to systemic and structural racism, Black students are far more likely to be educated in underfunded schools and deprived of a quality education.[17] Academically, cyber charters post consistently poor academic results, falling far below school districts and other charter schools

[14] Auditor General Timothy DeFoor, A Performance Audit Commonwealth Charter Academy, Pennsylvania Leadership Charter School, Insight PA Cyber Charter School, Pennsylvania Cyber Charter School, and Reach Cyber Charter School, (July 11, 2024) available at https://www.paauditor.gov/wp-content/uploads/Commonwealth-Charter-Academy.pdf.

[15] Our Taxes, Their Slush Fund, Ed Voters, (Feb 2025) available at https://edvoterspa.org/wp-content/uploads/2025/02/Revised-Full-Report-1.pdf.

[16] Pennsylvania Cyber Charter Schools Fail Black and Brown Students (August 2024), Good Jobs First, available at https://goodjobsfirst.org/wp-content/uploads/2024/08/Pennsylvania-Cyber-Charter-Schools-Fail-Black-and-Brown-Students.pdf.

[17] David Lapp and Anna Shaw-Amoah, Pennsylvania School Funding and School Staffing Disparities (May 2023) available at https://www.researchforaction.org/wp-content/uploads/2023/06/Pennsylvania-School-Funding-and-School-Staffing-Disparities-6-1-2023.pdf.

across Pennsylvania.[18] It is well documented that cyber charter schools are failing our children academically. This is not a surprise as nationwide research discloses that virtual charter schools "have substantially worse high school graduation rates, college enrollment rates, bachelor's degree attainment, employment rates, and earnings than students in traditional public schools."[19] Certainly many reports analyzing student outcome data during and after COVID-19 have documented negative academic results.[20]

Accordingly, any system of governance must provide sufficient oversight and accountability to approve only those cyber charter schools that can provide a quality education, deny reauthorization to failing cyber charter schools, and hold cyber charters accountable to improve academic outcomes through the imposition of enrollment caps. This includes decisions related to the approval, renewal, or nonrenewal and revocation of a cyber charter school's charter. However, the Department has indicated that it lacks capacity to provide such oversight. In 2022, 11 of 14 cyber charter schools were operating without renewed charters and many cyber charter schools have never undergone an enrollment or financial audit.[21] This trend has continued.[22] Once again, we must ensure greater oversight. Specifically, we recommend that the Department be required to issue a public annual report to the legislature on students outcomes of cyber charter schools and its efforts to hold cyber charters accountable. This report should include

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[18] Sarah A. Cordes, Cyber versus Brick and Mortar: Achievement, Attainment, and Postsecondary Outcomes in Pennsylvania Charter High Schools. *Education Finance and Policy* 2024; 19 (3): 361–384. doi: https://doi.org/10.1162/edfp_a_00399.

[19] Yoo, Paul, Thurston Domina, Andrew McEachin, Leah Clark, Hannah Hertenstein, and Andrew M. Penner. (2023). Virtual Charter Students Have Worse Labor Market Outcomes as Young Adults. (EdWorkingPaper: 23-773). Retrieved from Annenberg Institute at Brown University: https://doi.org/10.26300/7n80-pv38.

[20] *See e.g.*, Cortés-Albornoz MC, Ramírez-Guerrero S, García-Guáqueta DP, Vélez-Van-Meerbeke A, Talero-Gutiérrez C. Effects of remote learning during COVID-19 lockdown on children's learning abilities and school performance: A systematic review. Int J Educ Dev. 2023 Sep;101:102835. doi: 10.1016/j.ijedudev.2023.102835. Epub 2023 Jun 14. PMID: 37361921; PMCID: PMC10266495, https://pmc.ncbi.nlm.nih.gov/articles/PMC10266495/;

[21] The Negative Fiscal Impact of Cyber Charter School Expansion Report at p. 3.

[22] Our Taxes Their Slush Fund Report at Appendix A, Cyber Charter Renewal chart.

student attendance, churn rates, special education data by disability category, and a range of academic performance outcomes including standardized test scores, graduation rates, and post-secondary outcomes. This report should include recommendations to the General Assembly regarding the imposition of enrollment caps on cyber charter schools whose students fail to meet academic proficiency measures and other outcomes. The Department must delineate the academic, operational, and financial performance expectations by which a cyber charter school will be evaluated, including standards for renewal, non-renewal, imposition of enrollment caps, and revocation of a cyber charter authorization. Until such a system is in place, ELC supports efforts like Senate Bill 27, which calls for a moratorium on cyber charter school applications.

Conclusion

Cyber charter schools have largely failed the majority of our students at a high financial cost to our state and school districts but at an even higher cost to individual students who have failed to receive a quality education through cyber learning. Legislative reforms are needed to remedy fiscal waste and ensure greater oversight by the Department as a charter authorizer. Creating laws to align cyber charter tuition with the actual cost of educating students and ensure greater oversight and accountability fiscally and academically is essential for the future of our students, our school districts, and our state. Thank you.