

September 25, 2013

Special Education Funding Commission

Testimony of David Lapp, Staff Attorney at the Education Law Center

Good afternoon. My name is David Lapp and I am a staff attorney at the Education Law Center where for over 35 years we have sought to ensure access to a high quality public education for Pennsylvania's most vulnerable, and often most costly, students – students experiencing homelessness, English language learning students, students in poverty, students in the foster care system, minority students, and, of course, students with disabilities. We commend this Commission for its dedication to exploring the important issue of how we finance our public schools and specifically how we ensure that schools have adequate resources to serve students with disabilities.

As no doubt this Commission has already recognized, an improved system of special education funding will be ineffective in isolation. All of school finance is connected and the state cannot improve the outcomes for students with disabilities if it continues to ignore its basic education funding obligations. The General Assembly commissioned a costing out study completed in 2007, which helped identify an adequacy target for all schools. As of 2010-2011, the most recent year calculated by the Pennsylvania Department of Education, only 32 out of 500 school districts were operating *without* a gap between adequate funding and actual funding. Over 300 school districts have a per-pupil gap of over \$2,000 per year. Over 150 school districts have a per-pupil gap of more than \$3,000. Thirty-six school districts have a per-pupil gap more than \$4,000. In a classroom of 30 students, this comes to \$120,000 less per class per year. We need a formula that considers all factors and ensures that all schools are moving toward their financial adequacy targets.

I would like to speak to you briefly about one aspect of that system, our current charter school funding system, and, in particular, the impact it has on students with severe disabilities, both those enrolled in charter schools and those who choose traditional public schools. The current funding system rewards charter schools, both "brick and mortar" and cyber charter schools, for serving students with relatively mild disabilities and punishes them for serving students with severe disabilities. The result has been that greater concentrations of students with severe disabilities are served in traditional school districts and those school districts are left with fewer resources to adequately serve them.

Prior to my work at ELC, I was a high school social studies teacher for nine years in two of Philadelphia’s charter schools. I also served for three years on the Board of Trustees of a third charter school in Philadelphia. I am not “anti-charter school,” and neither is the Ed Law Center. Rather we believe that providing parents with a choice to attend smaller autonomous public schools – where management works in closer proximity to teachers, students, and parents and that are accountable for providing a quality education to all students – can be an important *addition* to the system of public education in Pennsylvania.

The Pennsylvania state constitution requires that the General Assembly “provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa. Const. Art. III, § 14. Meanwhile, *charter schools can be full*. Unlike school districts, they have no mandate to serve all students seeking enrollment. The only *thorough and efficient* system of public education in Pennsylvania, the only system that must serve every student who shows up on the proverbial schoolhouse doorstep, is the school district system. However we choose, as a state, to fund a charter school system, it cannot negatively impact our constitutional mandate to provide for the maintenance and support of the thorough and efficient system of public education.

Yet, particularly in the area of special education funding, the current system of charter school funding is doing just that. School funding experts have pointed out that there are perverse incentives built into the charter school law itself.¹ The current charter school funding mechanism provides charter schools the same funding for each student with a disability, regardless of the severity of that student's disability. 24 P.S. 17-1725-A(a)(3). This creates a strong incentive to over-identify students with less costly disabilities and to under-identify (or under-enroll) students with severe (or more costly) disabilities. A student with a mild disability can be a financial boon to a charter school, given that the funding the charter receives will exceed the charter’s cost to educate the child. In contrast, when a charter school does enroll a student with a severe disability, the funding may be inadequate. This creates a disincentive for charters to serve students with severe disabilities.

We have examined the data of students with disabilities in Philadelphia’s charter schools – where the vast majority of the state’s charter schools are located. On first glance, it appears as if charter schools are educating special education students in a number proportionate to their overall enrollment. In 2011-2012, charter schools educated 23.6% of all public school students in Philadelphia.² Pa. Dep’t Educ., Bureau Special Educ. *Special Education Statistical Summary 2011-2012*, 99-100, 137-38 (2012) available at http://penndata.hbg.psu.edu/documents/PennDataBooks/Statistical_Summary_2011-

¹ See, e.g., Bruce Baker, *The Commonwealth Triple-Screw: Special Education Funding & Charter School Payments in Pennsylvania*, School Finance 101 (June 5, 2012), <http://schoolfinance101.wordpress.com/2012/06/05/the-commonwealth-triple-screw-special-education-funding-charter-school-payments-in-pennsylvania>.

² In this analysis, we use 2011-2012 data, the most recent data available that includes student counts by the severity of disability.

[2012 Final.pdf](#). Of the total number of special education students in Philadelphia, 24.17%, slightly more than the charter proportion of the overall student population, were enrolled in charter schools. *Id.*

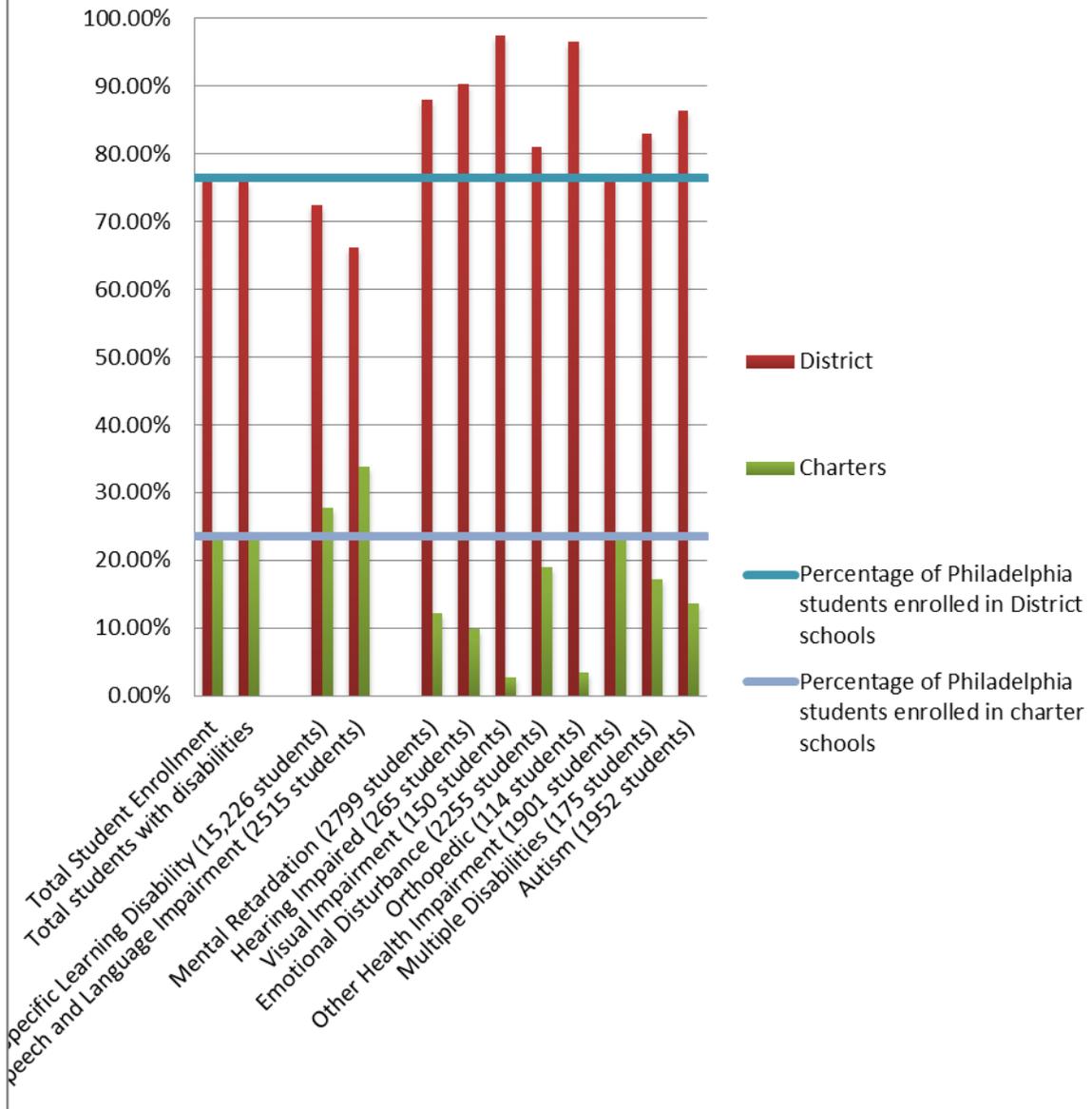
However, when examining the data by the *type* of disabilities, it is apparent that, consistent with the funding incentives, charter schools serve primarily students with mild disabilities -- the disabilities that are less costly to serve.

Given that charters are legally open to all students, they should serve similar percentages of each type of disability as they serve of the overall student population. Instead, Philadelphia charter schools serve a significantly larger percentage of students with specific learning disabilities (SLD) and speech and language impairment (SLI), the two most common special education categories and also the two that, on average, are the least costly to serve.³ Meanwhile, the District serves far larger percentages of students with “severe,” or costly, disabilities, such as autism, multiple disabilities, mental retardation (MR), visual impairment, and emotional disturbance. *Id.*

Of the 2,515 students who qualified for speech and language IEPs in Philadelphia, 33.88% of them are in charter schools. *Id.* Similarly, charter schools enrolled almost 28% of students with specific learning disabilities. *Id.* In contrast, charter schools educate only 12% of the students with mental retardation, 18% of the students with emotional disturbance, 13% of students with autism, 17% of students with multiple disabilities, and only 2% of students with visual impairments. *Id.* Conversely, of course, the School District of Philadelphia enrolls significantly *higher* proportions of these same costly-to-educate students with disabilities – 87% of the students with mental retardation, 97% of students with visual impairment, 81% of students with emotional disturbance, 83% of students with multiple disabilities, and 87% of the Philadelphia students with autism. *Id.* These percentages are far higher than the overall 76% of Philadelphia students that are served in the District. In short, although charter schools educate a proportionate number of students with disabilities overall, they serve a disproportionate share of the less-expensive, more easily served special education students, while the school district educates all of the populations that require greater resources to adequately serve.

³ See Jay G. Chambers, *Total Expenditures for Students with Disabilities: Variation by Disability*, Special Education Expenditures Project (2003), available at http://csef.air.org/publications/seep/national/final_seep_report_5.pdf (reporting that “the two most common disabilities, specific learning disability (SLD) and speech/language impairment (SLI), make up over 60 percent of the population. These are also the two disabilities with the lowest per pupil expenditures...”).

Percentage of students with disabilities enrolled in charter and District schools, by disability



Even within this already smaller portion of students with “severe disabilities” that charter schools do serve, it appears that charters serve an even smaller slice of the “severest of the severe.” Charter schools rarely apply to the state’s Special Education Contingency Fund.⁴

⁴ 24 P.S. § 25-2509.8 grants the Secretary of Education the authority to establish guidelines for the application, approval, distribution and expenditure of funds for “extraordinary” special education program expenses, also known as Special Education Contingency Funds. The fund’s purpose is to provide additional state funding for the implementation of the Individualized Education Program (IEP)

While charter schools serve 6.2% of the overall public school population in Pennsylvania, Pa. Dep't Educ., *Enrollment Public Schools, 2012-2013*, http://www.portal.state.pa.us/portal/server.pt/document/1338093/enrollment_public_schools_2012-13_xlsx (last visited Aug. 20, 2013), only 1.27% of the applicants for special education contingency funds came from charter schools.⁵ Charter schools are eligible for contingency funds based on the same criteria as school districts. If charters and school districts were educating identical populations of students, those percentages should mirror the percentages of overall students.

It is important to note that the numbers provided above are significantly skewed by the inclusion of Philadelphia's Renaissance Charter Schools, which are District schools under charter operation.⁶ When removing Renaissance Charter Schools from the equation, the disparities are even more dramatic.

It's worth noting, again because all school funding is inextricably intertwined, that students with disabilities are not the only subgroup of vulnerable children who are served by charter schools. While some charters are serving all kids, the disparities are so systemic that charters as a whole in Philadelphia underrepresent students with severe disabilities, English Language Learners, students in extreme poverty, and even boys. Here are some numbers for Philadelphia in 2010-2011:

- **English Language Learners** – 7.35% of District students were ELL students, compared to only 2.35% in charter schools (60% of charter schools serve **zero** ELLs). (Data provided by the Pennsylvania Department of Education).
- **Students in Poverty** – Even though many charters are located in communities with extremely high poverty rates and some charters enroll much higher than the district average of FRL students, charters as a whole enroll over 8 percentage points (8.4%) fewer students eligible for the national Free/Reduced Lunch program than do District schools. (79.5% in the district v. 71.1% in charters). Another way of looking

for a student with significant disabilities. A contingency fund application may be submitted by a school district or charter school to partially meet the extraordinary educational needs of an individual child with significant disabilities who requires a highly specialized program or related services in order to receive an appropriate education in the least restrictive environment.

⁵ See email from Ron Wells, Special Education Adviser, Pennsylvania Department of Education, to David Lapp, Staff Attorney, Education Law Center (Aug. 13, 2013) (on file with Education Law Center).

⁶ Of the 56,270 students in the charter sector, 12,791 were enrolled in Renaissance charter schools. Unlike traditional charter schools, Renaissance charters maintain a catchment area for student enrollment, which in turn produces student demographics that are more like district schools than traditional charter schools. The numbers above were all calculated with Renaissance charter schools included as "charter schools." The disparities are significantly more stark in each category if calculated using only traditional charter schools.

at it is that, in order for both the district and the charter to be equally serving public school FRL kids in Philadelphia county, the district would have to send 3,127 of its FRL students to charters and take back 3,127 of the charters non-FRL kids. These numbers make a significant difference in the overall climate of charters compared to district schools. (See data at

http://www.portal.state.pa.us/portal/server.pt/community/national_school_lunch/7487).

- **Boys** – Charter schools in Philadelphia enroll 1,072 fewer boys than girls, even though in the District there are 4,376 more boys than girls (these numbers even include the 463 boys in the all-boy, Boys Latin Charter School and the 1,105 girls in the district’s all-girl Girl’s High School). A number of charters enroll fewer than 40% boys. (See http://www.portal.state.pa.us/portal/server.pt/community/enrollment/7407/public_school_enrollment_reports/620541).

These disparities have a dramatic impact on school climate of both charters and traditional public schools.

There are currently a number of charter school bills introduced in the Pennsylvania General Assembly, most notably HB 618 and SB 1085, which fail to address the problems with special education funding of charter schools or the problems of charter schools not equitably serving vulnerable student populations. These bills actually make the problem worse, by permitting the unfettered expansion of all charter schools, regardless of how well they are serving all students. The bills remove the ability of districts and charters to even negotiate to limit the number of students enrolled in a particular charter school and would retroactively nullify the dozens of already agreed to caps. This would permit unlimited expansion of every charter school—regardless of whether the school is providing all students with a quality education.

The Commonwealth should not permit the unaccountable expansion of all charter schools until we have addressed the issue of under-served vulnerable populations and until we have solved the perverse incentives of charter school special education. One way to do this is to ensure that charter school special education funding measures the level of service required for their students with disabilities.

Perhaps these disparities and the underserving of vulnerable students groups by the charter community would not be so troubling if it were the case that, as ELC has long advocated, the Commonwealth were fulfilling its constitutional mandate of providing for a thorough and efficient system of public education fund, so that all schools, traditional public and charter school alike, were provided adequate resources. But what we have instead is a system in which traditional public schools and charter schools are forced to scramble over the same inadequate resources. For this reason, as we mentioned at the beginning of our

testimony, we also ask this commission to include a finding in its final report that too many Pennsylvania public schools are operating with inadequate resources and that special education funding cannot be fixed until we have rational formula in place to provide for our basic education funding.

Thank you for allowing me to speak on this important issue.

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