

## Inequities in Pennsylvania’s Charter Sector: Segregation by Disability

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

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

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

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<sup>1</sup> 24 P.S. § 17-1702-A.

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

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

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

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

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

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

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

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<sup>4</sup> See James G. Chambers, et al., *Special Education Expenditures Report: Total Expenditures for Students with Disabilities: Variation by Disability*, CENTER FOR SPECIAL EDUCATION FINANCE (June 2003), available at [http://csef.air.org/publications/seep/national/Final\\_SEEP\\_Report\\_5.PDF](http://csef.air.org/publications/seep/national/Final_SEEP_Report_5.PDF).

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

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

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

<sup>8</sup> See Special Education Statistical Summary, 2014-2015, Pennsylvania Department of Education Bureau of Special Education, Table 3 (November 2015), available at [https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical\\_Summary\\_2014-2015.pdf](https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical_Summary_2014-2015.pdf).

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

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creates a perverse incentive for charter schools to underserve students with disabilities who require higher cost aids and services. In contrast, since the enactment of a new special education funding formula in the 2014-2015 school year—which was based on recommendations made by a *bipartisan* Special Education Funding Commission<sup>10</sup>—school districts have received new state special education funding based on the number of students with a disability in each of three cost categories, with funding allocated based on the level of resources needed to serve those students. Unlike the current charter school funding scheme which creates a disincentive to serve our most vulnerable students, this approach ensures that schools drive dollars to our students with disabilities who require high-cost aids and services.

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

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

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

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

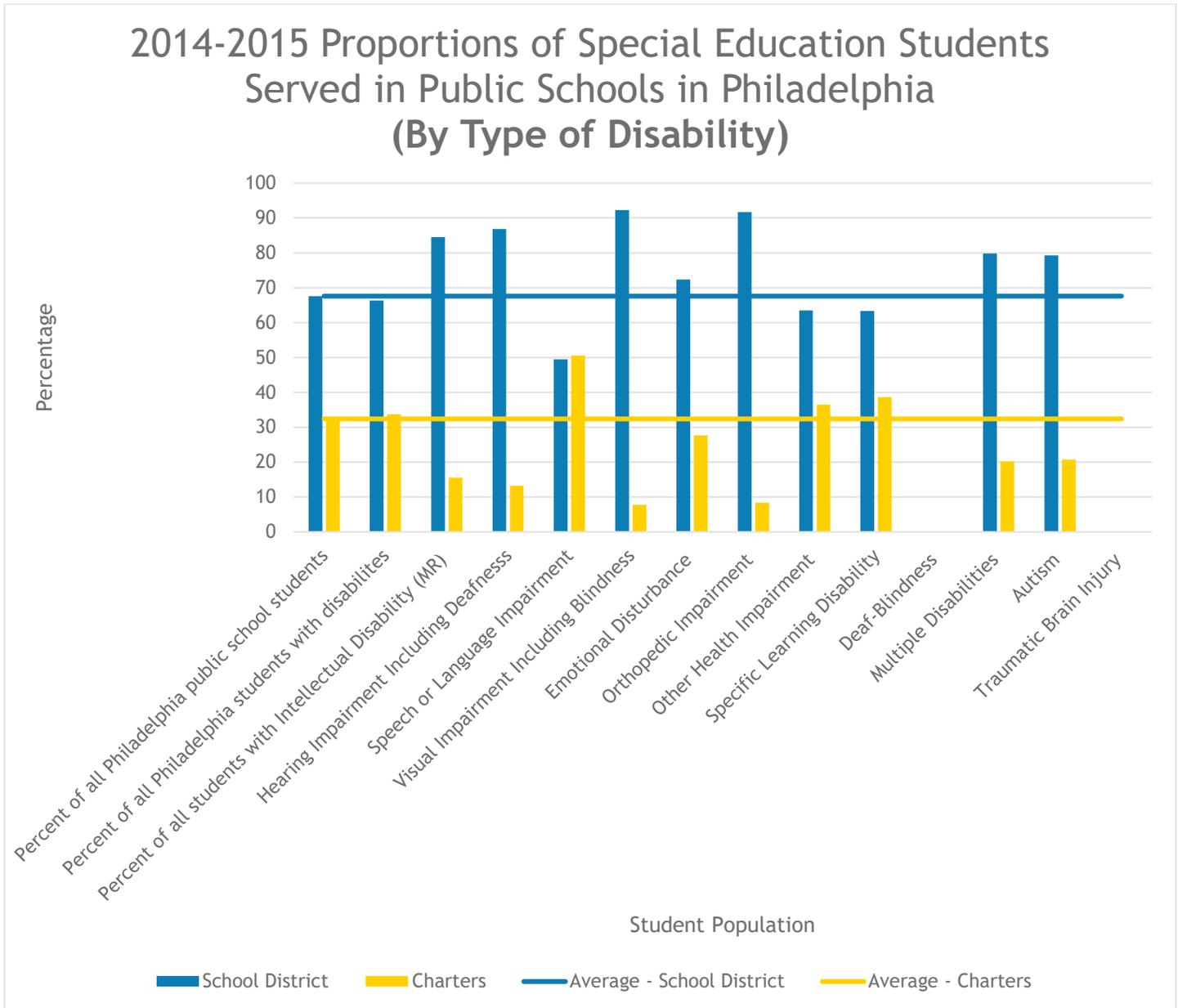
<sup>11</sup> 20 U.S.C. § 1412(5)(B); 34 C.F.R. §§ 300.550-300.556; and Section 504 of the Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 394, codified at 29 U.S.C. § 701, *et seq.*

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

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

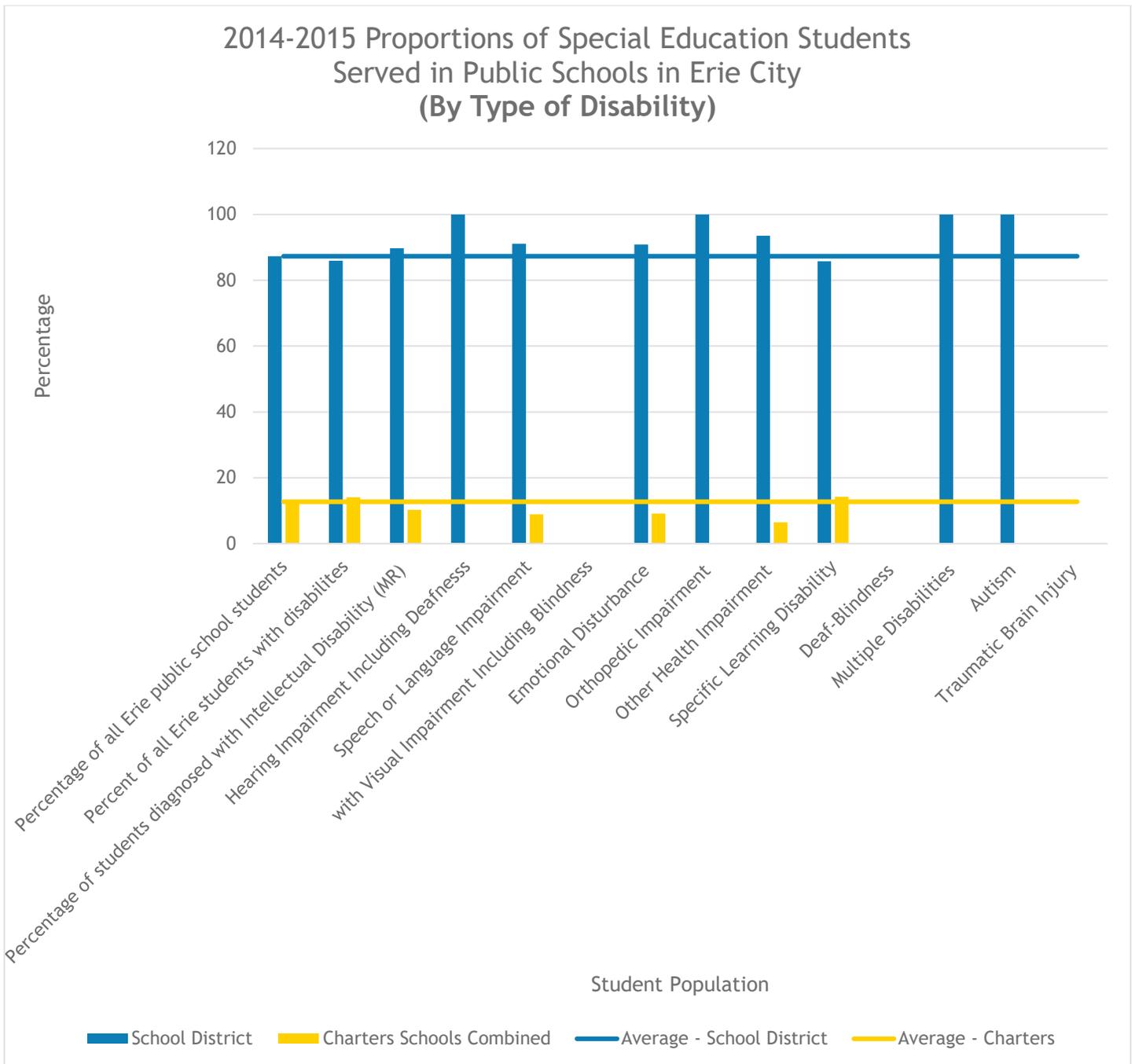
[https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical\\_Summary\\_2014-2015.pdf](https://penndata.hbg.psu.edu/Portals/66/documents/PennDataBooks/Statistical_Summary_2014-2015.pdf). Enrollment data comes from PDE’s Public School Enrollment 2014-2015 report, available here: <http://www.education.pa.gov/Data-and-Statistics/Pages/Enrollment%20Reports%20and%20Projections.aspx#tab-1>.

## Philadelphia



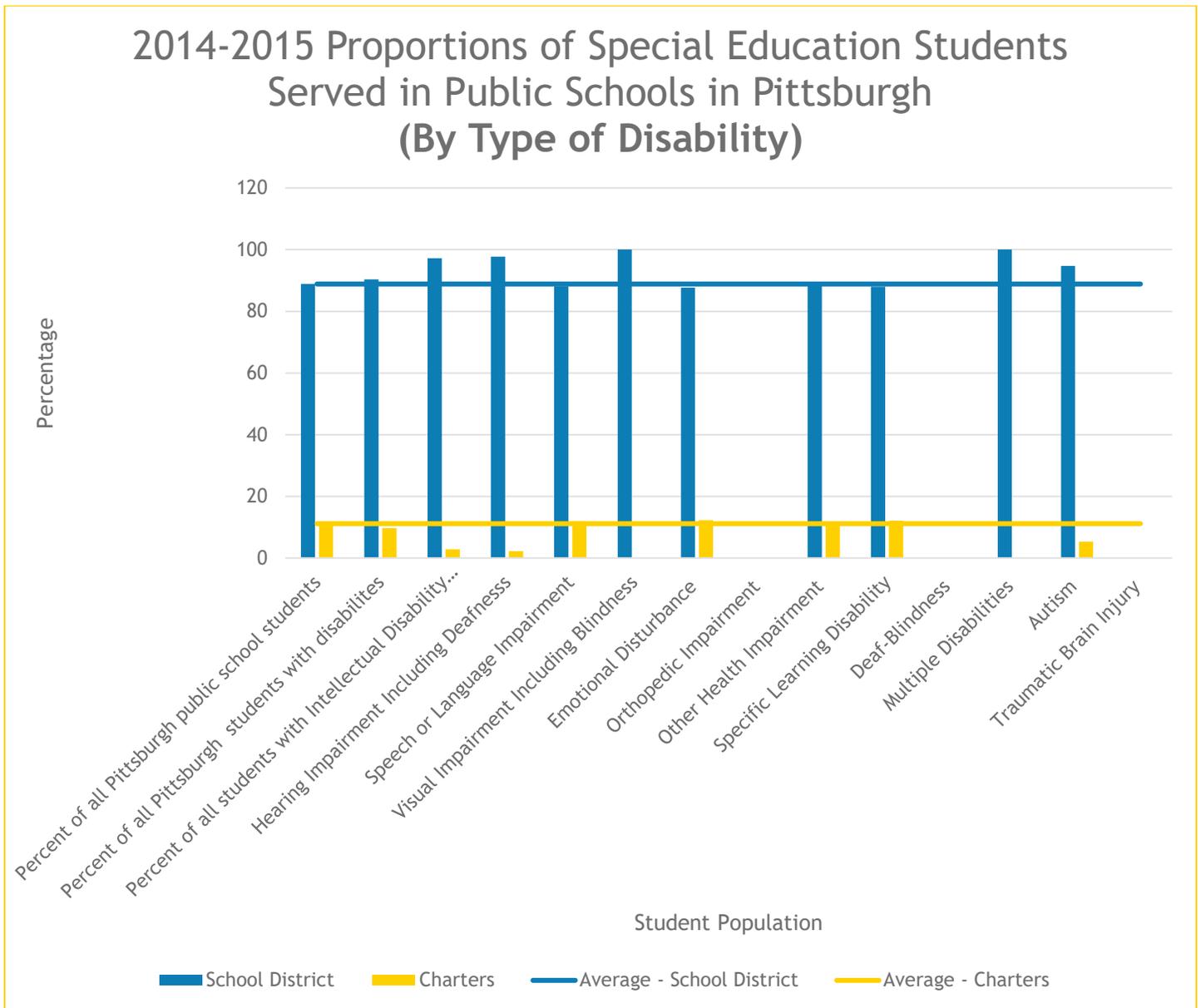
In Philadelphia, charters serve 32.4% of all students attending public schools, and 33.7% of all students with disabilities enrolled in public schools. On the surface, this seems equitable. But the devil is in the details: an overwhelming and disproportionate number—50.6%—Philadelphia’s students with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

Erie



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

Pittsburgh



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

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