Virtual Reality: Cyber Charter Schools And The Need For Reform

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ABSTRACT

Pennsylvania needs to reform its system for funding cyber charter schools. The fourteen cyber charters draw students and tuition dollars from nearly every public school district across the state, but those districts have no say in authorizing or overseeing cyber charters. Though the cybers are a financial drain on the districts, they are money makers for their operators due to weaknesses in the Charter School Law. First, the Charter School Law (CSL) directs the districts to remit the exact same per pupil funding to a cyber charter as they do to a bricks and mortar charter, even though the costs of running a cyber are much lower. Second, the per pupil payment a district must provide to the charter is based on the per pupil spending of that sending district, not on the charter’s cost to educate the student. Finally, cybers, like all charters, receive much higher payments for students with special education needs, but cybers, like all charters, have no obligation to spend that extra money on special education. The CSL should be revised to account for the true costs of operating cyber charter schools and to provide for a voice for districts in the oversight and accountability of these programs.

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I. INTRODUCTION

Fourteen cyber charter schools operate in Pennsylvania. Under the Charter School Law (CSL), the state Department of Education is authorized to grant new charters and to oversee existing cyber charter schools. These schools draw students from across the Commonwealth, affecting nearly every school district. Together, 496 of Pennsylvania’s 500 districts paid over $600 million in tuition to the cyber charters in 2018-2019. When districts lose students to cyber charters, they lose the tuition money associated with those students. However, it is a challenge for a district to mitigate those losses because the district cannot reduce staff or close a building when a few students per grade or school depart. It must still teach the remaining students, heat the buildings, pay the utility bills, and provide curriculum.

Although cybers are financial drains on the districts, they can be moneymakers for their operators as a result of three poorly thought out provisions in the CSL. First, the CSL directs the districts to remit the exact same per pupil funding to a cyber charter as it does to a bricks and mortar charter, even though the costs of running a cyber are much lower. Second, the per pupil payment a district must provide to the charter is based on the per pupil spending of that sending district, not on the charter’s cost to educate the student. A student coming from Lower Merion brings thousands of dollars more to the cyber school than a student from Sto-Rox, even though the cyber provides the same education to both of those students. Finally, cybers, like all charters, receive much higher payments for students with IEPs, but cybers, like all charters, have no obligation to spend that extra money on special education. The CSL should be revised to account for the true costs of operating cyber charter schools and to provide for a voice for districts in the oversight and accountability of these programs.

Together 496 of Pennsylvania’s 500 districts paid over $600 million in tuition to the cyber charters in 2018-2019.

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5. Id.
7. In 2018-2019, the tuition for a cyber student from Lower Merion was $20,357.86 for regular tuition and $41,442.82 for a special education student. The comparative tuitions for Sto-Rox were $7,798.64 and $26,595. Charter School Funding, PA. DEPT. OF EDUC., https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx.
9. This article does not directly address the educational value of cyber charters, but they have not been educational success stories. Objective research and analysis have shown repeatedly that cyber charters underperform compared to bricks and mortar charters and traditional public schools. See, e.g., Brian Fitzpatrick, et. al., Virtual charter schools and on-line learning during COVID 19: an imperfect comparison, THE BROOKINGS INSTITUTE, June 2, 2020, https://www.brookings.edu/blog/brown-center-chalkboard/2020/06/02/virtual-charter-schools-and-online-learning-during-covid-19/?preview_id=812228 (“We find the
This article will first provide a short history of cyber charters in Pennsylvania. It will then analyze the three key problems created by the poor drafting of the CSL. Finally, it will propose changes to the law which will help to ameliorate the negative and unfair financial impact cyber charters have on the budgets of Pennsylvania’s public school districts.

II. HISTORY OF CYBER CHARTER SCHOOLS

Cyber charters started in Pennsylvania even though the 1997 Charter School Law did not mention them. In 2002, in Pennsylvania Sch. Boards Ass’n, Inc. v. Zogby, the Commonwealth Court determined that cyber charters were not precluded under the CSL even though they were not explicitly mentioned in it.10 The respondents in the litigation included:

Western PA Cyber Charter School, chartered by the Midland Borough School District; Commonwealth Cyber Charter School, chartered by the School District of Lancaster, but later dropped as a party; T.E.A.C.H. Charter School, a/k/a Einstein Academy, chartered by the Morrisville School District; and Pennsylvania Virtual Charter School, chartered by the Norristown Area School District. Other cyber schools were not named as Respondents because, according to Petitioners, they operate differently from the named cyber schools, and no subsidies have been withheld on their account from the school districts.11

The unnamed cybers were those started and operated by Intermediate Units (IUs), county-wide consortia of school districts in Pennsylvania which included 21st Century Cyber Charter, Central PA Digital Learning Foundation, SUSQ-Cyber Charter, and PA Learners Online Regional Cyber Charter (PALO) which closed in 2013.12

The saga of Einstein/TEACH13 demonstrates some of the inherent problems of state-wide charters being authorized by individual school districts, especially under the Commonwealth Court interpretation that non-authorizing districts lacked standing to contest the grant of a cyber charter.14 Einstein was short-lived but a problem from the beginning. Mimi Rothschild set up a nonprofit called The National

impact of attending a virtual charter on student achievement is uniformly and profoundly negative . . . .") (full study available at 49 Educational Researcher 161 (April 2020); National Alliance for Public Charter Schools et. al., A Call to Action to Improve the Quality of Full-Time Virtual Charter Public Schools, https://www.publiccharters.org/publications/call-action-improve-quality-full-time-virtual-charter-public-schools (June 16, 2016); James D. Woodworth, et. al., Center for Research on Education Outcomes, Online Charter School Study, 2015 at 38-39, https://credo.stanford.edu/sites/g/files/sbiybj6481/f/online_charter_study_final.pdf (concluding that cyber students on average lost significant days per year in reading and math compared to students in brick and mortar charters and traditional public schools). The Keystone State Education Coalition notes that most Pennsylvania cybers failed to make adequate yearly progress under the federal No Child Left Behind Act; none ever achieved a passing score of 70 under Pennsylvania’s School Performance Profile system, in place from 2013-2017; and the Future Ready Pennsylvania Index of the state Department of Education identifies all of the cyber charters as in need of support and improvement. http://keystonestateeducationcoalition.blogspot.com/ (September 2, 2020).
Organization for Children (NOC). Rothschild, through NOC, applied to 62 districts for a charter for TEACH and, in March 2001, got a charter from Morrisville.\textsuperscript{15} NOC cut a deal with Morrisville to pay it $200\textsuperscript{16} for each student TEACH enrolled. NOC also promised to move its headquarters to Morrisville and rent space from the district, a promise it did not fulfill.\textsuperscript{17} TEACH contracted with Tutorbots to manage the school. Tutorbots, a for-profit, was created by Rothschild and her husband, Howard Mandel.\textsuperscript{18} TEACH proceeded to enroll thousands of students but did not consistently provide special education services to those in need of them.\textsuperscript{19} It also overpaid Tutorbots and made payments without proper documentation.\textsuperscript{20} It also apparently used another curriculum provider’s materials without paying for them.\textsuperscript{21} The TEACH Board ousted Rothschild, but the charter was revoked and the school closed.\textsuperscript{22}

Offering what could be viewed as kickbacks to a district in exchange for a charter was problematic and certainly did not encourage robust oversight by that district.\textsuperscript{23} From the newspaper accounts and a Department of Education (DOE) study from 2001, it appears that Morrisville revoked the charter only when the funds were not forthcoming and the school’s management team failed to move to Morrisville as they had promised.\textsuperscript{24}

In 2002, the Charter School Law was amended to explicitly allow cyber charters and to provide that such charters would be authorized only by the state DOE.\textsuperscript{25} However, the amendment was silent on funding, leaving intact the existing funding structure designed for the bricks and mortar charter schools that were typically chartered and overseen by a single school district.

The legislative history of the amendment is sparse. I could find no mention of costs or the funding structure in any of the legislative debates.


\textsuperscript{17} TEACH CAB Decision, supra note 15 at Findings 38 and 39 (finding Tutorbot’s fees were 42% to 73% higher than comparable vendors, Finding 38; and that Einstein’s budget proposed to pay Tutorbots $7.4 million in 2001-2002 which was 45-50% of its total budget.).

\textsuperscript{18} Greaves-Hirsch, Cyberschool is a cautionary tale, supra note 15.

\textsuperscript{19} TEACH CAB Decision, supra note 15 at Findings 21-37.

\textsuperscript{20} Id. at Findings 38-76.


\textsuperscript{22} TEACH CAB Decision, supra note 15.

\textsuperscript{23} Adams County Common Pleas Judge Spicer noted that the CSL does nothing to stop such behavior; a rejected charter applicant can simply enroll students from the rejecting district if it is able to secure a charter from a friendlier one. “Members of the Morrisville Borough School Board are doubtlessly fine people, but can hardly be considered motivated to police defendants’ performance. Under terms of the charter [Morrisville’s] children receive defendants’ services without costs and the district stands to receive some $600,000.00 per year from defendants . . . .” Fairfield Area Sch. Dist. v. Nat’l Org. for Children, Inc., No. 01-S-1008, 2001 WL 35960771 (Pa.Com.Pl.Adams Cty., Dec. 11, 2001) (Spicer, J.). This litigation was combined with similar litigation in other counties, and the Commonwealth Court held, on appeal, the non-charterizing school districts lacked standing to contest Morrisville’s grant of the charter. Fairfield Area Sch. Dist. v. Nat’l Org. for Children, Inc., 837 A.2d 644, 648 (Pa. Cmwlth. C t. 2003).


As of 2019-2020, Pennsylvania has 14 cyber charters, drawing students from 496 districts across the state. Three of the cyber charters were created and are run by Intermediate Units comprising a group of school districts. They are 21st Century Cyber Charter, Central PA Digital Learning Foundation, and Susq-Cyber Charter School. The remaining eleven charters are independent of any school district and are overseen only by the DOE. Of them, seven are managed by for-profit entities, including K-12, Inc., (Agora, Connections Academy, Insight, Pennsylvania Virtual) and Connections Education, LLC (Reach).26 ASPIRA Bilingual, Esperanza, and Pennsylvania Cyber are managed by related non-profit entities. These charters enroll 35,824 students.27

III. KEY PROBLEMS

A. Too Much Money

Because the cyber charters receive the identical per pupil funding as the bricks and mortar charter schools, they are overfunded to the detriment of the public school districts that have to pay this funding. A review of the audits, 990 tax forms, and available budget information for the non-IU charters shows that they are spending far less than they receive.28 For example, Commonwealth Charter Academy noted a surplus of $18,733,581 of revenue over expenses on its 2017 990 form.29

The most comprehensive comparison is available on the Future Ready Index site of the Department of Education.30 It lists fiscal information for each school, including total expenditures, total revenues, and general fund balance.31 The most recent data is from the 2017-2018 school year. Nine of the non-IU schools had general fund balances which totaled $102,291,962.32 Nine had surpluses of revenue over expenses as follows:


27. I calculated this from enrollments listed on Future Ready Index, PA. DEPT. OF EDUC., https://futurereadypa.org/Search/Charter (Future Ready Index).

28. I rely on three main sources of data here: the 990 tax returns that non-profits, like charter schools, must file and must make available to the public; the audits and financial statements included in the attachments to each cyber charter’s annual report, available on the Department of Education website at https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Annual-Reports.aspx; and the fiscal information on each school that is included in the Department of Education’s Future Ready Index at https://futurereadypa.org/Search/Charter.


30. Future Ready Index, supra note 27.

31. To get the data, one must search for an individual school and then go to the tab for “School Fast Facts” which itself lists “Fiscal Information” as a link at the bottom of the Fast Facts page. Id. I have provided links to the data for each individual school, but I did the calculations of revenue over expenses myself. There is no fiscal data for Insight Charter School as it was too new to report this information in 2017-2018.

32. Agora Cyber reported a negative General Fund Balance of $9,209,746, most likely related to the agreement it reached to repay funds related to its much-delayed audits and longstanding management problems. Agora contracted with the Cynwyd Group, LLC to manage the school in 2006. Cynwyd’s fee was 7% of the qualified gross revenues. Cynwyd in turn hired K-12, Inc. to provide various services at a cost of a 15% administrative services fee and a 7% technology fee. The founder of the school and several administrators were indicted, following a federal investigation of this arrangement. The Department of Education also charged the school’s former Board of Trustees with mismanagement. The Cynwyd contract was terminated and a new Board created, but the school incurred thousands in legal fees and costs for cancellation and the school failed to submit audits for several years. This story is laid out in the 2007 audit which was not filed until 2011. Agora Cyber Charter School, Financial Statements and Independent
<table>
<thead>
<tr>
<th>School</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Achievement House Charter School (CS)</td>
<td>$996,615.78</td>
</tr>
<tr>
<td>Agora Cyber CS</td>
<td>$1,284,222.00</td>
</tr>
<tr>
<td>ASPIRA Bilingual Cyber CS</td>
<td>$772,265.00</td>
</tr>
<tr>
<td>Commonwealth Charter Academy CS</td>
<td>$1,421,100.00</td>
</tr>
<tr>
<td>Esperanza Academy CS</td>
<td>$447,077.00</td>
</tr>
<tr>
<td>Pennsylvania Cyber CS</td>
<td>$18,103,846.00</td>
</tr>
<tr>
<td>Pennsylvania Distance Learning CS</td>
<td>$990,699.00</td>
</tr>
<tr>
<td>Pennsylvania Leadership CS</td>
<td>$5,718,135.80</td>
</tr>
<tr>
<td>Reach Cyber CS</td>
<td>$3,190,397.10</td>
</tr>
</tbody>
</table>

The outlier was Pennsylvania Virtual CS, which reported a loss of $670,259.40 although its 990 return for 2016 reported a surplus of $129,633.33.

Keep in mind that these surpluses were left even after the schools' expenses for management fees and advertising.

The overfunding and minimal oversight of cyber charters make them vulnerable to fraud and misuse of funds. In 2013, Nicholas Trombetta was charged with embezzling millions of dollars from the Pennsylvania Cyber Charter School which he helped found. He was the CEO of the school from 2000 to 2012. Trombetta pled guilty in 2016, admitting to not paying taxes on the misappropriated $8 million.


34. In 2014, the Governmental Accounting Standards Board adopted a new standard, GASB Standard 68, for reporting of pension liabilities. News Release, GASB Issues Guidance for Implementing Pension Standards, Jan. 30, 2014, [https://www.gasb.org/cs/ContentServer?c=GASBContent_C&cid=1176183790674&d=&pagename=GASB%2FGASBContent_C%2FGASBNewsPage&--text=The%20Guide%20to%20Implementation%20of%20beginning%20after%20June%201%20after%202015%2C%2C%20%20%20%20%2014 Standard 68 required all public schools, including cyber charters, to report their proportionate share of net pension liability should the Pennsylvania pension system fail in the future. This new reporting requirement created what are in effect sizable “paper” liabilities that, if real, would impact the cyber and all other schools in Pennsylvania. Because this requirement is imposed on all schools and because it is a theoretical obligation, not a current one, I am not including it in this analysis. I rely on information supplied by the Pennsylvania Auditor General’s office in a phone call on July 28, 2020, notes on file with author. The audit for Esperanza Cyber Charter described this obligation as follows:

“During the year ended June 30, 2015, the School was required to adopt GASB 68 relative to its participation in the Commonwealth of Pennsylvania’s Public School Employees’ Retirement System (“PSERS”) Pension Plan. Charter Schools are required to offer this retirement plan to their employees as a condition of their charter. The Commonwealth controls all aspects of the plan including assets and administration. . . . All public schools in Pennsylvania are required to record a proportionate share of the liability in their financial statements. Management is of the opinion that it is highly unlikely the School will ever be required to pay this liability.” Esperanza Cyber Charter School 2018-2019 Annual Report, Attachments at 15, [https://www.education.pa.gov/K-12/Charter%20Schools/Charter%20School%20Annual%20Reports/Esperanza%20Cyber%20Charter%20School%202018-2019%20Annual%20Report%20Attachments.pdf](https://www.education.pa.gov/K-12/Charter%20Schools/Charter%20School%20Annual%20Reports/Esperanza%20Cyber%20Charter%20School%202018-2019%20Annual%20Report%20Attachments.pdf).


ability to steal the money was facilitated by the overfunding of the school and by the layers of outside management the school contracted with. Its primary outside manager was NNDS (National Network of Digital Schools). 38 Pennsylvania Cyber paid NNDS for management and curriculum pegged at 12 percent of its Pennsylvania Cyber’s revenue, which came to $41,658,093 according to Pennsylvania Cyber’s 990 return in 2013, the year of the indictment. 39 NNDS in turn contracted with a number of for-profit entities that were set up by Trombetta, including Avanti which ostensibly provided services to NNDS and through it to Pennsylvania Cyber. But Trombetta used the illicit funds to buy a mansion in Florida and an airplane to get there, among other expenditures. 40

Pennsylvania Cyber was not charged with or accused of complicity in the fraud, and it is still getting tuition payments from school districts across Pennsylvania and it continues to pay management fees and purchase curriculum from NNDS’s successor, Lincoln Learning Solutions. 41 It is difficult to trace exactly what Lincoln Learning Solutions does other than engage with Pennsylvania Cyber. There are no price lists on its website. 42 It is organized as a non-profit and its 990 forms list annual income that is less than the fees paid by Pennsylvania Cyber. For example, LLS reports total revenue of $33,896,683 on its 2016 990 Return. 43

According to the tax documents, LLS provides curriculum and managed services to Pennsylvania Cyber in exchange for millions of dollars. But what does LLS do with these payments? It pays its top employees fairly generously. 44 But it also gives grants, totaling $1,846,948 in 2016, to various entities mostly located in southwestern Pennsylvania. 45 The biggest grant, nearly $1.5 million in 2016, went to the Lincoln Park Performing Arts Charter School, a bricks and mortar charter located in Midland, home of Pennsylvania Cyber. 46 This is certainly not venal in the same sense as Trombetta’s airplane, but why should financially struggling school districts across Pennsylvania have to provide extra funding for a bricks and mortar charter in Midland?

As detailed in Part II, supra, the TEACH saga showed similar issues. NOC grossly overpaid Tutorbots, even while it was failing to provide required special education services to its students or regularly paying its teachers. 47

Pennsylvania needs to have an objective analysis of the real costs of cyber education so that the funding of these schools is based on the real costs of education, not on excessive management fees and advertising.

42. Lincoln Learning Solutions, https://lincolnlerningsolutions.org/.
44. In 2016, the president earned $274,199; the chief technology officer earned $236,401; and another five employees earned over $150,000. Id.
45. Id. See DeJarnatt, Keep Following the Money, supra note 12 at 929-934 (describing the origin story of Pennsylvania Cyber and its relationship to Midland).
Management fees are a key issue. Three charters are operated by IUs, consortia of public school districts. Those schools are not the focus of this article. The others, however, including the largest cyber charters in Pa, spend over $130 million on outside managers, most of them profit-making entities.48

Courts have interpreted the CSL as allowing for-profit management of charter schools so long as the board of the charter itself has control over the management of the school.49 That control can be limited to hiring the outside for-profit manager. The fees for such management are often substantial:

<table>
<thead>
<tr>
<th>Charter</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Achievement House</td>
<td>$319,359 to Charter Choices, Inc.50</td>
</tr>
<tr>
<td>Agora Cyber Charter</td>
<td>$33,816,900 to K-12, Inc.51</td>
</tr>
<tr>
<td>ASPIRA Bilingual Cyber</td>
<td>$294,538 to ASPIRA, Inc.52</td>
</tr>
<tr>
<td>Commonwealth Charter Academy</td>
<td>$24,499,961 to K-12, Inc.53</td>
</tr>
<tr>
<td>Esperanza Cyber</td>
<td>$054</td>
</tr>
<tr>
<td>Insight Cyber</td>
<td>$12,441,023 to K-12, Inc.55</td>
</tr>
<tr>
<td>Pennsylvania Cyber</td>
<td>$43,306,515 to Lincoln Learning Systems,56</td>
</tr>
<tr>
<td></td>
<td>$533,757 to Lincoln Park Performing Arts Center for curriculum.</td>
</tr>
<tr>
<td>Pennsylvania Distance Learning</td>
<td>Charter Choices, Inc. $646 per student, estimated total $417,316 based on enrollment of 843.57</td>
</tr>
<tr>
<td>Pennsylvania Leadership</td>
<td>$058</td>
</tr>
<tr>
<td>Pennsylvania Virtual</td>
<td>$399,500 to Blackboard Inc. for “online school services.”</td>
</tr>
<tr>
<td></td>
<td>$679,484 to Hewlett Packard for “finance.”59</td>
</tr>
</tbody>
</table>

48. This total is calculated from the most recent 990 forms for each school where the school reports payments to outside contractors. Most of the 990s are for the tax year 2017. Insight is from 2018. Pennsylvania Distance Learning reports the management fee as $646 per student and the Future Ready Index report lists enrollment at 843 students.


Reach Cyber Charter: $14,318,385 to Connections Education LLC

Many cyber charters spend massive amounts on advertising, largely creating a market rather than serving an existing need. Spending on advertising and promotion distorts the choice parents and students make about these schools. It is also hard to decipher this spending because different amounts appear in different places on the 990 forms and in the audits attached to the annual reports:

**Achievement House:** $444,758 to 2120 Creative LLC for advertising; but the same 990 form separately lists $662,330 for advertising and promotion.

**Agora Cyber:** $3,523,249 listed on 990 form but the June 2017 Financial Statement in Attachments to the Annual Report said that advertising costs for the year ending June 30, 2017, totaled $5,864,588.

**ASPIRA Bilingual:** $790

**Commonwealth Academy:** $7,030,988 to the Bravo Group for advertising; but the same 990 lists a total of $6,654,647 for advertising and promotion.

**Insight Cyber Charter:** $1,072 on advertising and promotion in 2017.

**Pennsylvania Charter:** $1,949,924 on advertising and promotion in 2017.

**Pennsylvania Distance Learning:** $324,284 on advertising and promotion in 2017.

**Pennsylvania Leadership:** $857,603 for advertising and promotion.

**Pennsylvania Virtual:** $488,544 on advertising and promotion.

**Reach Cyber Charter:** $0 listed on 990 form.

Several other cyber charter expenditures raise questions. Two cyber charters recently applied for and received funds under the Paycheck Protection Program for small businesses. Is this warranted for entities that were among the least impacted...

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61. Achievement House, IRS Form 990 (2017), supra note 52.


65. Commonwealth Academy, IRS Form 990 (2017), supra note 55.

66. Insight, IRS Form 990 (2018), supra note 57.


68. Pennsylvania Distance Learning, IRS Form 990 (2017), supra note 59.

69. Pennsylvania Leadership, IRS Form 990 (2017), supra note 60.

70. Pennsylvania Virtual, IRS Form 990 (2017), supra note 61.

71. Reach Cyber, IRS Form 990 (2017), supra note 62.

72. The Paycheck Protection Program “is designed to provide a direct incentive for small businesses to keep their workers on the payroll.” SBA, Paycheck Protection Program Loan Information, https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#:~:text=The%20Paycheck%20Protection%20Program%20is,more%20about%20PPP%20loan%20forgiveness.

by the Covid-19 crisis? Esperanza Cyber Charter got a loan in the $350,000 to $1,000,000 range; Pennsylvania Virtual in the $2-5 million range.

Reach Cyber Charter leases space from its manager, Connections Education, LLC, and has Connections handling its bookkeeping and accounting. The auditor included as part of the attachments to the 2018-2019 Annual Report a letter sent to the Reach Board which noted the school’s limited access to its own books and records that were maintained by Connections and recommended a comprehensive monthly review of Connections’ accounting and bookkeeping services.

Pennsylvania Cyber’s history, detailed above, and ASPIRA Bilingual’s tangled relationship with its manager, detailed below, also raise concerns.

It is challenging to decipher the financial status of cyber charters and their management companies. Although cybers themselves have to be organized as non-profits, and federal and state non-profit law requires that nonprofits make public the membership of their boards, the board minutes, and 990 tax returns, not all of the cybers are compliant. Even more troubling, the for-profit managers do not have the obligation to make their financial information public, and they don’t.

ASPIRA Bilingual Cyber Charter’s relationship with its managing organization illustrates these issues. ASPIRA Cyber is one of five schools run by ASPIRA, Inc. and all of the schools share a board, even though the network of schools has not been and could not be designated a Multiple Charter School Organization. The schools would not qualify for that status based on their test scores. The website for ASPIRA Cyber does not provide access to board minutes. Indeed, it is very spare on information.

The schools’ finances are interconnected with each other and with the parent organization, ASPIRA, Inc., which is the cyber charter’s landlord and manager. The cyber school is a guarantor of the mortgage loan that ASPIRA, Inc. took out for the building that the cyber school leases a portion of, but the cyber’s revenue also secures a $12,750,000 note for a building housing another ASPIRA school and an $800,215 line-of-credit loan to the parent organization, ASPIRA.

Pennsylvania’s Auditor General’s May 2018 audit found extensive deficiencies in ASPIRA, Inc.’s management of the network of schools, with insufficient documentation of pay-
ments to the manager, overpayments, lack of transparency, and, in short, a messy and untenable situation.\textsuperscript{82}

These concerns—overpayments, huge surpluses, questionable spending, substantial payments to managers, lack of transparency—all raise questions about what cyber charter tuition is covering and what cyber education itself really should cost. Cyber proponents say that they have unique expenses that bricks and mortar charters lack, like costly technology needs.\textsuperscript{83} That is exactly why an objective, professional assessment of the true costs of cyber education is necessary.

\section*{B. Funding is Based on Sending District, Not on the Real Costs of the Education Provided}

Cybers draw students from 496 Pennsylvania school districts.\textsuperscript{84} Those districts vary widely in their per pupil spending. Lower Merion spent the most at $20,357.86, with five other districts exceeding $18,000.\textsuperscript{85} At the other end of the spectrum, Ston-Rox spent only $7,798.64, with three other districts under $9,000.\textsuperscript{86} But because cyber funding is not connected to actual costs; the cybers get the per pupil funding of the sending district no matter what it is.\textsuperscript{87} The cyber does not provide different levels of education for students from different districts. Instead, the cyber gets a financial windfall when it is able to recruit a student from a high spending district.

This windfall comes at the expense of the sending districts who have no control or oversight over the cyber charters. And there is no logic to the cybers’ receipt of such widely varying payments when the education they provide is the same for each student.

\section*{C. Special Education Poses Special Funding Problems}

Cybers are also over-funded by the peculiarities of Pennsylvania’s formula for special education tuition. Under the CSL, charter schools including cybers get additional funding for students with IEPs.\textsuperscript{88} This formula is complicated but favors the cybers in several ways.\textsuperscript{89}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{83} \textit{See, e.g.}, John Chandler, et al., \textit{PA cyber charter schools are flourishing}, \textit{Penn Live Patriot News}, July 29, 2020, \url{https://www.pennlive.com/opinion/2020/07/pa-cyber-charter-schools-are-flourishing-opinion.html}.
\item \textsuperscript{84} \url{https://www.pacharterchange.org/the-public-cost-of-charter-schools/}. I am relying on the 2018-2019 data to keep consistent with the data available from the 990s forms and the Annual Reports and because the more recent tables are incomplete. \url{https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx}.
\item \textsuperscript{85} Cheltenham at $19,153.45, Palisades at $18,954.78, Fox Chapel at $18,846.58, Riverview at $18,187.81, and Quaker Valley at $18,113.15, \url{https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx}.
\item \textsuperscript{86} Midland Borough at $7,925.75; Carbondale at $8,210.99, and S. Huntingdon County at $8,326.32. \textit{Id}.
\item \textsuperscript{87} 24 PA. STAT. ANN. §17-1744-A (West).
\item \textsuperscript{88} 24 PA. STAT. ANN. §17-1725(a)(3).
\end{itemize}
\end{footnotesize}
First, traditional school districts calculate special education funding based on the needs of students with IEPs. Those students are categorized in three tiers based on the costs of their special education needs. But for charters, including cyber charters, the tier structure is ignored and districts pay the cyber a higher special education tuition rate for any cyber student with an IEP, regardless of the cost to the cyber of that student’s IEP needs. This allotment is further distorted by the presumption that only 16% of the district’s students receive IEPs.\(^90\) As with the regular tuition rates, the rates for special education students also vary dramatically. Lower Merion also had the highest tuition rate for special education at $53,756.64, with seven additional districts spending more than $40,000.\(^91\)

Second, the cybers enroll a much higher percentage of students who would be in the first tier if they were in a traditional public school, that is they enroll the students with less expensive needs, forcing the districts to enroll and assume the costs associated with students in Tiers 2 and 3.\(^92\) This has a cascade effect because the tuition rate for special education is based on the costs incurred by the district—which has the higher costs associated with the higher percentage of students with more expensive needs. Yet, the cybers then benefit by getting that higher tuition even though they are not serving the bulk of the students with more expensive needs.

Third, the cybers have no obligation to spend the extra funds on special education but can use the money for any purpose they deem fit.\(^93\)

### IV. REFORMS ARE NEEDED

So how should Pennsylvania improve this situation? The biggest problem with the CSL is its silence on key issues. All charters impose significant costs on the public school districts across Pennsylvania. Everything in the text, history, and interpretation of the CSL directs the conclusion that authorizers, including the DOE in authorizing cyber charters, must consider the financial impact of granting and renewing charters.\(^94\) The CSL should be amended to make this crystal and explicitly clear.

There must be an objective assessment of actual costs of providing cyber education. We have years of history and should be able to determine the actual costs of cyber education. Cyber supporters acknowledge they spend less on buildings and staff but point out that they have technology costs that bricks and mortar schools normally lack. The bottom line is that Pennsylvanians need to know what cyber education actually costs and peg the tuition to those real costs, not just on the happenstance of the spending levels in the cyber students’ home districts. That assessment needs to consider what costs are truly necessary for quality cyber education. In particular, the assessment should examine the current excessive expenditures on advertising and management fees, which should be barred to the extent those expenditures are unnecessary to provide for quality cyber education.

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\(^91\). https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-School-Funding.aspx. They included Marple-Newtown at $43,037.76; Chester-Upland at $42,247.17; Palisades at $42,101.99; Radnor at $41,726.61; Mountain View at $41,360.09; Central Greene at $40,202.22; and Wissahickon at $40,115.84. Chester-Upland had the dubious distinction of having the widest disparity between its regular tuition of $9,948.21 and the special education rate.

\(^92\). Research for Action, supra note 92.


\(^94\). DeFarnatt, Legal Mandate, supra note 6.
The Department of Education should remain responsible for oversight of these schools, but it needs to be much more rigorous in the standards that govern cyber charters. I have written before about the value of the approach taken by the Charter School Office of the Philadelphia School District, though oversight must be coupled with accountability. 95 Rigorous oversight is essential to ensuring that tax dollars for education really go to education and to fulfill Pennsylvania’s Constitutional obligation to provide a thorough and efficient public education system for its children. 96

Effective oversight also requires transparency. The managers of cyber schools, whether or not they are for-profit entities, must comply with the requirements of the Right to Know Law 97 and to participate fully and transparently in the reporting requirements for the schools. Enforcement of these rules requires real oversight by the Department of Education. Too often oversight has consisted of requiring reports but with no follow up. The Department of Education should emulate the Philadelphia Charter Office in the rigor of reporting and assessment. But there should be real accountability where oversight reveals problems. Regulators need to pay attention and need to make it easy for researchers and interested parties to access public information about charter funding and spending to ensure that these entities that receive millions in public funding are fully accountable to the public that provides those funds.

I join with many others in calling for Pennsylvania to revise the special education funding structure so that all schools, traditional public and bricks and mortar charters and cyber charters, receive special education funding according to the tier structure that currently is followed only for traditional schools. 98 We should require that the charter schools spend special education dollars on the educational needs of special education students and not for general purposes. Funding that exceeds the needs of the special education students should be returned to the sending districts.

Finally, we should give real consideration to whether the legitimate need for cyber education is better met through programs offered by school districts directly. State Representative Curt Sonny’s proposal 99 would move authorization and supervision back to the districts and would encourage the districts themselves to provide effective cyber programs. It would also require involvement of third-party vendors, but those vendors would contract with the district, not with education management organizations (EMOs) like K-12, Inc. The proposal emphasizes the need for close oversight.

In May 2018, Auditor General DePasquale said, “I once again urge the General Assembly in Harrisburg to step up to the plate and do what’s correct and necessary: fix the worst Charter School Law in the nation.” 100 I agree: Pennsylvania urgently needs reform to protect our students, families, and taxpayers.

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96. Id.; DeJarnatt, Keep Following the Money, supra note 12.
97. 65 PA. STAT. ANN. §67.101 et seq. (West).