

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 704 Session of 2009

INTRODUCED BY STURLA, McILVAINE SMITH, ROEBUCK, McCALL, KOTIK, BRENNAN, BRIGGS, BUXTON, CALTAGIRONE, CARROLL, D. COSTA, DALEY, DeLUCA, DePASQUALE, DeWEESE, J. EVANS, FABRIZIO, FREEMAN, GIBBONS, GINGRICH, HALUSKA, HARKINS, HORNAMAN, JOSEPHS, KIRKLAND, KORTZ, KULA, LEVDANSKY, MAHONEY, MANDERINO, MANN, MATZIE, MILLARD, MILNE, MURPHY, MUSTIO, M. O'BRIEN, PARKER, PASHINSKI, PAYNE, PAYTON, READSHAW, SANTONI, SIPTROTH, K. SMITH, SONNEY, SWANGER, WANSACZ, YOUNGBLOOD, LENTZ AND CURRY, APRIL 27, 2009

REFERRED TO COMMITTEE ON EDUCATION, APRIL 27, 2009

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
 2 act relating to the public school system, including certain  
 3 provisions applicable as well to private and parochial  
 4 schools; amending, revising, consolidating and changing the  
 5 laws relating thereto," in reimbursement by Commonwealth and  
 6 between school districts, further providing for definitions;  
 7 and providing for special education funding for student  
 8 achievement and instruction of eligible students in regular  
 9 classrooms and for special education accountability to  
 10 Commonwealth taxpayers.

11 The General Assembly of the Commonwealth of Pennsylvania  
 12 hereby enacts as follows:

13 Section 1. Section 2501(29) of the act of March 10, 1949  
 14 (P.L.30, No.14), known as the Public School Code of 1949, added  
 15 July 9, 2008 (P.L.846, No.61), is amended and the section is  
 16 amended by adding clauses to read:

17 Section 2501. Definitions.--For the purposes of this article  
 18 the following terms shall have the following meanings:

1 \* \* \*

2 (29) "Location Cost Metric." An index of geographic cost  
3 differences for each county as published by the department on  
4 its publicly accessible Internet website [on February 5, 2008]  
5 in February of each year. The index shall be published in the  
6 Pennsylvania Bulletin no later than thirty (30) days after the  
7 effective date of this clause.

8 \* \* \*

9 (31) "Special Education Average Daily Membership." Shall be  
10 computed to determine the number of eligible students in each  
11 school district in accordance with rules of procedure as  
12 established by the Secretary of Education. For the purpose of  
13 calculating the special education funding allocation under  
14 section 2509.13, the computation shall be adjusted for each  
15 level of instruction for eligible students as follows:

16 (i) Half-time prekindergarten and half-time kindergarten:  
17 0.50.

18 (ii) Full-time prekindergarten, full-time kindergarten and  
19 prekindergarten or kindergarten level totaling full-time through  
20 multiple placements: 1.00.

21 (iii) Elementary and secondary: 1.00.

22 (32) "Actual Special Education Spending." An amount equal to  
23 a school district's total annual expenditures for special  
24 education in all functional classifications for students with  
25 disabilities, as designated in the Manual of Accounting and  
26 Related Financial Procedures for Pennsylvania School Systems.

27 (33) "Base Cost per Student." The cost of educating an  
28 average student in Pennsylvania without special needs to meet  
29 State performance expectations as originally determined in the  
30 final revised Statewide Costing-out Study of 2007 performed

1 pursuant to section 2599.3 and as adjusted annually for the  
2 fiscal year in the formula for basic education funding.

3 (34) "Eligible Student." A student with a disability  
4 eligible for special education under Federal and State law.

5 (35) "Modified Special Education Average Daily Membership"  
6 or "Modified SEADM." The sum of the following products:

7 (i) fifty-two one-hundredths (0.52) and the school  
8 district's special education average daily membership in the  
9 funding year;

10 (ii) twenty-six one-hundredths (0.26) and the school  
11 district's special education average daily membership in the  
12 school year prior to the funding year;

13 (iii) thirteen one-hundredths (0.13) and the school  
14 district's special education average daily membership two (2)  
15 school years prior to the funding year;

16 (iv) six one-hundredths (0.06) and the school district's  
17 special education average daily membership three (3) school  
18 years prior to the funding year; and

19 (v) three one-hundredths (0.03) and the school district's  
20 special education average daily membership four (4) years prior  
21 to the funding year.

22 (36) "Performance Indicators." Measurable annual objectives  
23 established by the Department of Education pursuant to section  
24 612(a)(15) of the Individuals with Disabilities Education Act  
25 (Public Law 91-230, 20 U.S.C. § 1412(a)(15)), to assess progress  
26 toward achieving State goals for the performance of eligible  
27 students.

28 (37) "Public Notice." Full and timely release of information  
29 and documents for public access at a minimum through publication  
30 by the Department of Education:

1 (i) in the Pennsylvania Bulletin;  
2 (ii) on its publicly accessible Internet website for no less  
3 than a duration of twelve (12) months; and  
4 (iii) through its timely issuance of a related Statewide  
5 press release.

6 (38) "Regular Classroom." A classroom in a regular school  
7 operated primarily for students who are not eligible for special  
8 education.

9 (39) "Regular School." A neighborhood school, magnet school,  
10 charter school, or other public school operated for all  
11 students, not solely eligible students, in a school district.

12 (40) "Special Education Plan." A comprehensive plan as well  
13 as revisions, updates and amendments for all special education  
14 personnel, programs, services and supports provided by each  
15 school district for eligible students, filed by each district  
16 with the Department of Education under this act and other  
17 applicable Federal and State law, including 22 Pa. Code 14.104  
18 (relating to special education plans).

19 (41) "Student Achievement." Outcomes for eligible students  
20 as measured by academic performance whenever possible in the  
21 general education curriculum, acquisition of knowledge and  
22 skills, progress toward graduation, accomplishment of  
23 individualized education program goals, including appropriate  
24 functional skills, and other factors.

25 Section 2. The act is amended by adding sections to read:

26 Section 2509.13. Special Education Funding for Student  
27 Achievement and Instruction of Eligible Students in Regular  
28 Classrooms.--(a) The Department of Education shall determine a  
29 special education adequacy target for each school district by  
30 calculating the sum of the following:

1 (1) A special education supplement determined by calculating  
2 the product of:  
3 (i) the base cost per student;  
4 (ii) the school district's Modified SEADM; and  
5 (iii) one and thirty one-hundredths (1.3).  
6 (2) An adjustment for geographic price differences  
7 calculated as follows:  
8 (i) Multiply the amount under clause (1) by the school  
9 district's location cost metric or one (1), whichever is  
10 greater.  
11 (ii) Subtract the amount under clause (1) from the product  
12 under subclause (i).  
13 (b) The Department of Education shall determine a State  
14 special education funding target for each school district by  
15 calculating the product of:  
16 (1) the difference between the school district's special  
17 education adequacy target determined under subsection (a) and  
18 its actual special education spending for the funding year, or  
19 zero, whichever is greater;  
20 (2) the school district's market value/personal income aid  
21 ratio for the school year in which funding occurs;  
22 (3) the lesser of one (1) and the school district's funding  
23 year equalized millage divided by the equalized millage that  
24 represents the seventy-fifth percentile of the equalized millage  
25 of all school districts in the funding year; and  
26 (4) one and fifteen one-hundredths (1.15) for school  
27 districts meeting the following criteria:  
28 (i) either providing instruction within the regular  
29 classroom at least eighty percent (80%) of the school day for at  
30 least sixty-five percent (65%) of eligible students, as averaged

1 for the two (2) most recent school years for which data is  
2 available, or increasing the number of eligible students  
3 receiving instruction within the regular classroom by at least  
4 fifteen percent (15%) in the most recent school year for which  
5 data is available; and

6 (ii) in the most recent school year for which data is  
7 available, performance by eligible students on State academic  
8 assessments in reading and math, averaged for the entire  
9 district, meeting State standards for adequate yearly progress  
10 by any method approved by the Federal and State governments,  
11 including, but not limited to, meeting the annual target, the  
12 confidence interval, the safe harbor target, or by appeal.

13 (c) The Department of Education shall submit a report to the  
14 Governor and General Assembly recommending increased standards  
15 for the criteria in subsection (b) (4), and the General Assembly  
16 shall consider legislation revising the criteria, in any year in  
17 which seventy-five percent (75%) of all school districts meet  
18 the criteria and qualify for the one and fifteen one-hundredths  
19 (1.15) factor for funding.

20 (d) In furtherance of the General Assembly's commitment to  
21 provide adequate special education funding that will ensure  
22 equitable State and local investments in special education in  
23 public schools, and in order to enable eligible students to  
24 attain applicable Federal and State academic standards and to be  
25 educated in regular classrooms when appropriate, it is the goal  
26 of the Commonwealth to review and meet State special education  
27 funding targets by fiscal year 2014-2015.

28 (e) The Commonwealth shall pay to each school district a  
29 special education funding allocation for the 2009-2010 school  
30 year which shall consist of the sum of the following:

1 (1) an amount equal to the district's special education  
2 funding allocation for the 2008-2009 school year under section  
3 2509.5; and

4 (2) (i) For a school district with 2007-2008 equalized  
5 millage that is greater than or equal to twenty-four (24), which  
6 represents the eightieth percentile of the equalized millage of  
7 all school districts as of the effective date of this section,  
8 for the 2008-2009 school year, sixteen and seventy-five one-  
9 hundredths percent (16.75%) of the State special education  
10 funding target determined under subsection (b).

11 (ii) For a school district with 2007-2008 equalized millage  
12 that is less than twenty-four (24), which represents the  
13 eightieth percentile of the equalized millage of all school  
14 districts as of the effective date of this section, for the  
15 2008-2009 school year, ten percent (10%) of the State special  
16 education funding target determined under subsection (b).

17 (f) The Department of Education shall provide additional  
18 funding for the 2009-2010 school year to any school district  
19 where the amount under subsection (e) (2) provides an amount less  
20 than the percentage increase in the school district's special  
21 education funding allocation for the 2008-2009 school year under  
22 section 2509.5. The amount of the additional funding shall be  
23 the amount required so that the sum of subsection (e) (2) and  
24 this subsection is at least equal to the percentage increase in  
25 the school district's special education funding allocation for  
26 the 2008-2009 school year under section 2509.5.

27 (g) (1) The Commonwealth shall appropriate additional  
28 funding in each year for the Special Education Contingency Fund,  
29 which is hereby established as a special fund in the State  
30 Treasury. The appropriation for the fund shall be at one and

1 fifty one-hundredths percent (1.50%) of the total of special  
2 education appropriations made pursuant to subsection (e) and  
3 shall be made in addition to such total.

4 (2) The Department of Education shall utilize the fund to  
5 provide resources needed:

6 (i) to partially meet extraordinary special education  
7 expenses not anticipated through the special education funding  
8 formula in this section for eligible students within the first  
9 three (3) school years of eligibility for special education or  
10 enrollment in a school district; and

11 (ii) to the extent that the resources of the fund are not  
12 issued to meet the needs determined by subclause (i), to provide  
13 resources for school districts implementing programs or services  
14 that serve as a model of excellence for meeting high standards  
15 for student achievement through quality special education.

16 (3) At least three-quarters of the fund shall be used for  
17 the purposes under clause (2)(i) and no more than one-quarter  
18 shall be used for the purposes under clause (2)(ii).

19 (4) School districts may apply for resources through the  
20 fund pursuant to procedures established by the Department of  
21 Education. The Department of Education shall issue resources  
22 from the fund only in response to such applications. The  
23 Department of Education shall give priority to districts with a  
24 relatively high percentage of students in poverty, annually  
25 setting these criteria and granting a higher percentage of the  
26 resources requested by such districts.

27 (5) The Department of Education shall issue a comprehensive  
28 annual report documenting use of the fund to the Governor and  
29 all members of the General Assembly, and shall give public  
30 notice about such report.

1 (6) As used in this subsection, "extraordinary special  
2 education expenses" are expenses that result from needs and  
3 circumstances of an eligible student with significant  
4 disabilities which are not ordinarily present in a typical  
5 special education service and program delivery system and which  
6 have costs exceeding the school district funding for special  
7 education, in order to provide the student with an appropriate  
8 education in the least restrictive environment.

9 Section 2509.14. Special Education Accountability to  
10 Commonwealth Taxpayers.--(a) (1) The Department of Education  
11 shall determine the form and manner in which school districts  
12 shall submit a special education plan and revisions, updates and  
13 amendments to the special education plan pursuant to this  
14 section. The special education plan shall be consistent with  
15 other existing plans and reports required by the Department of  
16 Education to the greatest extent possible, including those  
17 required under 22 Pa. Code § 14.104 (relating to special  
18 education plans). Special education plans shall be written in a  
19 manner that is easy to use and understand by parents and the  
20 public, including a general summary.

21 (2) The Department of Education:

22 (i) Shall review all special education plans and revisions,  
23 updates and amendments.

24 (ii) May provide recommendations to school districts.

25 (iii) Shall approve, disapprove or conditionally approve the  
26 special education plan for each district within ninety (90)  
27 calendar days of receipt.

28 (iv) Shall provide technical assistance to any school  
29 district for the development or implementation of a special  
30 education plan upon request by a district or when a special

1 education plan is disapproved or conditionally approved, with  
2 extra assistance provided for smaller districts with more  
3 limited special education administrative staff.

4 (v) Shall provide a written explanation to the board of  
5 school directors of any school district whose special education  
6 plan is disapproved or conditionally approved.

7 (vi) Shall give public notice of the decisions and actions  
8 made pursuant to this section.

9 (3) A school district shall timely amend and resubmit its  
10 special education plan as necessary until approved by the  
11 Department of Education, if its plan has been:

12 (i) disapproved; or

13 (ii) conditionally approved and it has been so directed by  
14 the Department of Education.

15 (4) The Department of Education shall approve any school  
16 district special education plan and revisions, updates and  
17 amendments that, in its determination, does the following:

18 (i) Meets the requirements of this section, including  
19 subsections (b) (2) and (c) (2).

20 (ii) Describes and addresses, with reference to specific  
21 schools, grade levels and populations of students most in need  
22 in the district, the programs and strategies that are most  
23 likely to make progress in resolving student achievement  
24 challenges for eligible students and the challenges of placing  
25 eligible students in regular classrooms with supports as  
26 identified in the most recent measurements of student outcomes,  
27 school district performance and other performance indicators.

28 (iii) Establishes a reasonable budget, timeline and  
29 benchmarks for implementation, with the budget considered in  
30 evaluating the special education plan but not subject itself to

1 approval by the Department of Education.

2 (iv) Documents progress made in addressing student needs and  
3 improving student outcomes since the district last submitted a  
4 special education plan, revision, update or amendment to the  
5 Department of Education.

6 (5) The Secretary of Education shall involve as appropriate  
7 in special education monitoring, support, intervention,  
8 technical assistance and special education plan review by the  
9 Department of Education, the staff in relevant offices, bureaus,  
10 and divisions of the Department of Education, as well as staff  
11 in intermediate units and consultants, and shall neither  
12 delegate nor limit these functions solely to the Bureau of  
13 Special Education. The secretary shall have the authority to  
14 contract for additional assistance with intermediate units and  
15 consultants for these purposes, so long as such contracts do not  
16 create a conflict of interest or supplant existing service or  
17 program obligations.

18 (6) In addition to public notice provided under clause (2)  
19 (vi), the Department of Education shall also give public notice  
20 annually of the names of the districts in which it is providing  
21 monitoring, support, intervention, technical assistance and  
22 fiscal penalties related to special education pursuant to this  
23 section and a detailed description of these Department of  
24 Education activities in each district.

25 (b) (1) Each school district shall submit to the Department  
26 of Education for approval pursuant to subsection (a) a  
27 comprehensive special education plan every three (3) years,  
28 annual revisions and updates to the special education plan and  
29 other amendments as needed. The special education plan and  
30 revisions and updates shall be submitted according to deadlines

1 established in or pursuant to this section, and shall  
2 incorporate other existing plans and reports required by the  
3 Department of Education to the greatest extent possible. A full  
4 and accurate budget, timeline and benchmarks for implementation  
5 must accompany all special education plans and must be revised  
6 and updated as required and amended as needed.

7 (2) The special education plan shall address and measure how  
8 the needs of eligible students are being met based on all  
9 performance indicators as defined in this act and in Federal  
10 law.

11 (3) The Department of Education shall hold school districts  
12 accountable for the effective use of resources to meet student  
13 needs by:

14 (i) Reviewing and monitoring implementation of all special  
15 education plans.

16 (ii) Providing support, intervention, and technical  
17 assistance in districts failing to meet student needs based on  
18 performance indicators.

19 (iii) Identifying at any time and at least annually all  
20 districts failing to adequately implement their special  
21 education plans or not making annual progress to meet student  
22 needs in accordance with this section.

23 (iv) Determining whether to withhold up to five percent (5%)  
24 of all Federal and State special education funding for districts  
25 identified pursuant to subclause (iii), while the identified  
26 problems remain unresolved. If the Department of Education  
27 determines that a district is making substantial progress toward  
28 resolving the identified problems, it shall restore no more than  
29 six (6) months of the withheld funding retroactively.

30 (c) (1) By August 15, 2009, and by April 15 of each year

1 thereafter, each school district receiving an increase in its  
2 State special education funding allocation of more than the  
3 index shall update its special education plan based on overall  
4 circumstances, shall also revise the special education plan to  
5 show in detail how the increase above the index will be used and  
6 shall submit the updates and revisions to the Department of  
7 Education for approval pursuant to subsection (a). The special  
8 education plan, update or revision shall be accompanied by a  
9 budget, timeline and benchmarks for implementation and shall  
10 incorporate other existing plans and reports required by the  
11 Department of Education to the greatest extent possible.

12 (2) Any increased allocation above the index received in any  
13 given year shall be used by each district for one or more  
14 research-based programs and supports expressly benefiting  
15 eligible students, contributing to achievement of performance  
16 indicators, and approved by the Department of Education in  
17 guidelines issued by July 15, 2009, and by February 15 of each  
18 year thereafter. Research-based programs and supports approved  
19 by the Department of Education based on these criteria shall  
20 include or shall be related to:

21 (i) Adapting curricula and providing co-teaching in regular  
22 classrooms for the purpose of including eligible students.

23 (ii) Providing assistive technology and support services to  
24 meet eligible student needs.

25 (iii) Placing and serving eligible students in regular  
26 classrooms with supports.

27 (iv) Reducing caseloads for special education teachers and  
28 related services personnel for the purpose of including eligible  
29 students in regular classrooms.

30 (v) Reducing the teacher-pupil ratio in regular classrooms

1 for the purpose of including eligible students.

2 (vi) School-wide positive behavior supports for the benefit  
3 of eligible students.

4 (vii) Supplementary aids and services to support including  
5 eligible students in regular classrooms.

6 (viii) Professional development to implement the strategies  
7 and programs approved through or listed in this clause.

8 (3) The special education plan, update or revision submitted  
9 pursuant to this subsection by each district shall document  
10 that:

11 (i) The increased allocation above the index is used for the  
12 purposes approved through or listed in clause (2) and is used to  
13 supplement and not supplant other resources.

14 (ii) The district is maintaining its effort for special  
15 education expenditures by showing that the aggregate special  
16 education expenditures within the district from local funds for  
17 the funding year will not be less than the corresponding amount  
18 for the fiscal year preceding the funding year. After written  
19 application by a district with public notice occurring both upon  
20 application and upon the subsequent decision by the Secretary of  
21 Education, the secretary may waive only for one (1) fiscal year  
22 and up to the amount of expenditures directly related to the  
23 circumstances the maintenance of effort requirements of this  
24 subclause if the secretary determines that a waiver would be  
25 equitable due to exceptional or uncontrollable circumstances,  
26 such as a decrease in eligible students or the lawful  
27 termination of special education obligations for a student with  
28 an exceptionally costly program.

29 (4) The Department of Education shall hold school districts  
30 accountable for the effective use of resources to meet student

1 needs by:

2 (i) Upon disapproving a district's special education plan,  
3 update or revision submitted pursuant to this section,  
4 withholding the portion of the annual State increase in special  
5 education funding which exceeds the index until such a time as a  
6 special education plan, update or revision is approved or  
7 conditionally approved.

8 (ii) Reviewing and monitoring implementation of all special  
9 education plans, including district compliance with clause (3).

10 (iii) Providing support, intervention and technical  
11 assistance in districts failing to meet student needs based on  
12 performance indicators or failing to comply with clause (3).

13 (iv) Identifying at any time and at least annually all  
14 districts failing to adequately implement their special  
15 education plans, failing to comply with clause (3) or not making  
16 annual progress to meet student needs in accordance with this  
17 section.

18 (v) For districts identified pursuant to subclause (iv),  
19 determining whether to review the entire special education plan  
20 and take accountability actions pursuant to subsection (b)(3).

21 (d) To discourage the inappropriate overidentification of  
22 children for special education, the Department of Education  
23 shall automatically conduct a thorough review of the special  
24 education plan in consultation with the school district and  
25 shall take appropriate remedial action, including withholding up  
26 to five percent (5%) of all Federal and State special education  
27 funding, for any district increasing the ratio of its special  
28 education average daily membership to its average daily  
29 membership for all students in the most recent school year for  
30 which data is available by more than ten percent (10%) over the

1 previous year or for any district increasing this ratio by an  
2 average of more than five percent (5%) annually during the most  
3 recent five (5) year period, unless the increase is determined  
4 by the Department of Education after consultation with the  
5 district to be justified.

6 (e) The Department of Education may release special  
7 education funding to a school district in periodic payments in  
8 the current and subsequent years, upon finding that the district  
9 is failing to adequately develop and implement special education  
10 plans, is not making annual progress to meet student needs in  
11 accordance with this section, is found to be overidentifying  
12 children pursuant to subsection (d) or is failing to comply with  
13 subsection (c) (3).

14 (f) The Department of Education shall issue a comprehensive  
15 annual report on special education funding, special education  
16 plans and special education accountability issues to the  
17 Governor and all members of the General Assembly and shall give  
18 public notice about such annual report.

19 (g) The Department of Education shall issue to any affected  
20 school district a notice specifying the Department of  
21 Education's decisions and actions pursuant to this section and  
22 the rationale for such decisions and actions. A school district  
23 may file a written complaint with the Secretary of Education  
24 about the Department of Education's decisions and actions  
25 regarding that district made pursuant to this section. The  
26 complaint must be submitted to the secretary's office within  
27 thirty (30) calendar days of the Department of Education's  
28 decision or action or within thirty (30) calendar days of  
29 receiving the notice, whichever is greater. The secretary shall  
30 consider the complaint, consult with the district and, within

1 thirty (30) calendar days after receiving the complaint, issue a  
2 written complaint decision addressing the concerns and claims  
3 made in the complaint, explaining the judgment of the Department  
4 of Education in response to these concerns and claims and  
5 specifying the opportunity for a subsequent hearing under 2  
6 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of  
7 Commonwealth agencies) and 7 Subch. A (relating to judicial  
8 review of Commonwealth agency action) and 1 Pa. Code Part II  
9 (relating to general rules of administrative practice and  
10 procedure). If requested, the Department of Education shall then  
11 convene a hearing within thirty (30) calendar days after the  
12 receipt of a district's hearing request following its written  
13 complaint decision. The Department of Education shall render a  
14 written hearing decision within thirty (30) calendar days  
15 following the hearing.

16 (h) Nothing in this section shall supersede or preempt any  
17 provisions of a collective bargaining agreement between a school  
18 entity and an employe organization in effect on the effective  
19 date of this section.

20 Section 3. Within 60 calendar days following the effective  
21 date of this act, the Secretary of Education shall propose  
22 regulations for promulgation by the State Board of Education  
23 which implement this act.

24 Section 4. This act shall take effect immediately.