

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1115 Session of 2011

INTRODUCED BY BROWNE, DINNIMAN, WASHINGTON, STACK, ERICKSON, RAFFERTY, SOLOBAY, COSTA, FERLO, VANCE, BRUBAKER, WAUGH, YUDICHAK, KASUNIC, HUGHES, SCHWANK, FARNESE, WILLIAMS, PIPPY, LEACH, FONTANA, GREENLEAF, ARGALL, SMUCKER, MENSCH, BOSCOLA, TOMLINSON, TARTAGLIONE, BAKER AND BLAKE, JUNE 16, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 27, 2012

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 PRELIMINARY PROVISIONS,
6 ESTABLISHING THE SPECIAL EDUCATION FUNDING COMMISSION; AND
7 IMPOSING DUTIES ON THE DEPARTMENT OF EDUCATION; IN
8 REIMBURSEMENTS BY THE COMMONWEALTH AND BETWEEN SCHOOL
9 DISTRICTS, further providing for definitions; and providing
10 for the distribution of special education funding for student
11 achievement and instruction of eligible students and for
12 special education accountability.



13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. ~~Section 2501(26) of the act of March 10, 1949~~
16 ~~(P.L.30, No.14), known as the Public School Code of 1949, added~~
17 ~~July 9, 2008 (P.L.846, No.61), is amended and the section is~~
18 ~~amended by adding clauses to read:~~



19 SECTION 1. THE ACT OF MARCH 10, 1949 (P.L.30, NO.14), KNOWN
20 AS THE PUBLIC SCHOOL CODE OF 1949, IS AMENDED BY ADDING A



1 SECTION TO READ:

2 SECTION 120. SPECIAL EDUCATION FUNDING COMMISSION.-- (A)
3 THERE IS HEREBY ESTABLISHED A SPECIAL EDUCATION FUNDING
4 COMMISSION.

5 (B) THE SPECIAL EDUCATION FUNDING COMMISSION SHALL REVIEW
6 AND MAKE RECOMMENDATIONS RELATED TO SPECIAL EDUCATION FUNDING AS
7 PROVIDED IN THIS SECTION.

8 (C) (1) THE COMMISSION SHALL CONSIST OF THE FOLLOWING
9 MEMBERS:

10 (I) THE CHAIRMAN AND MINORITY CHAIRMAN OF THE EDUCATION
11 COMMITTEE OF THE SENATE AND THE CHAIRMAN AND MINORITY CHAIRMAN
12 OF THE EDUCATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR
13 THEIR DESIGNEES.

14 (II) TWO (2) LEGISLATORS FROM EACH OF THE FOUR (4)
15 LEGISLATIVE CAUCUSES, TO BE APPOINTED BY THE PRESIDENT PRO
16 TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
17 REPRESENTATIVES, WITH THE CONSENT OF THE MAJORITY AND MINORITY
18 LEADERS OF THE SENATE AND THE MAJORITY AND MINORITY LEADERS OF
19 THE HOUSE OF REPRESENTATIVES.

20 (III) THE SECRETARY OF EDUCATION, OR A DESIGNEE.

21 (IV) THE SECRETARY OF THE BUDGET, OR A DESIGNEE.

22 (V) THE DEPUTY SECRETARY FOR ELEMENTARY AND SECONDARY
23 EDUCATION, OR A DESIGNEE.

24 (2) THE COMMISSION SHALL APPOINT A MEMBER TO SERVE AS
25 CHAIRPERSON OF THE COMMISSION.

26 (D) THE COMMISSION SHALL HOLD ITS FIRST MEETING WITHIN
27 THIRTY (30) DAYS OF THE EFFECTIVE DATE OF THIS SECTION.
28 REGARDLESS OF WHETHER THE GOVERNOR OR ALL LEGISLATIVE CAUCUSES
29 HAVE ACTUALLY APPROVED MEMBERS TO THE COMMISSION.

30 (E) THE COMMISSION SHALL HOLD MEETINGS AT THE CALL OF THE

1 CHAIRMAN.

2 (F) THE MEMBERS MAY NOT RECEIVE COMPENSATION FOR THEIR
3 SERVICES, BUT MUST BE REIMBURSED FOR ALL NECESSARY TRAVEL AND
4 OTHER REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE
5 PERFORMANCE OF THEIR DUTIES AS MEMBERS OF THE COMMISSION.

6 (G) THE GENERAL ASSEMBLY SHALL PROVIDE ADMINISTRATIVE
7 SUPPORT, MEETING SPACE AND ANY OTHER ASSISTANCE REQUIRED BY THE
8 COMMISSION TO CARRY OUT ITS DUTIES UNDER THIS SECTION IN
9 COOPERATION WITH THE GOVERNOR'S BUDGET OFFICE AND THE
10 DEPARTMENT. THE DEPARTMENT SHALL PROVIDE THE COMMISSION WITH
11 DATA, RESEARCH AND OTHER INFORMATION UPON REQUEST BY THE
12 COMMISSION.

13 (H) THE COMMISSION SHALL IDENTIFY FACTORS THAT MAY BE USED
14 TO DETERMINE THE DISTRIBUTION OF A CHANGE IN SPECIAL EDUCATION
15 FUNDING AMONG THE SCHOOL DISTRICTS IN THIS COMMONWEALTH.

16 (I) THE COMMISSION SHALL HAVE ALL OF THE FOLLOWING POWERS
17 AND DUTIES:

18 (1) REVIEW AND MAKE RECOMMENDATIONS RELATED TO SPECIAL
19 EDUCATION FUNDING IN THIS COMMONWEALTH.

20 (2) CONSULT WITH AND UTILIZE EXPERTS TO ASSIST IN CARRYING
21 OUT THE DUTIES UNDER THIS SUBSECTION.

22 (3) RECEIVE INPUT FROM INTERESTED PARTIES, INCLUDING, BUT
23 NOT LIMITED TO, CHARTER SCHOOL AND CYBER CHARTER SCHOOL
24 OPERATORS.

25 (4) HOLD PUBLIC HEARINGS IN DIFFERENT REGIONS OF THIS
26 COMMONWEALTH.

27 (5) ISSUE A REPORT OF ITS FINDINGS TO THE GOVERNOR, THE
28 PRESIDENT PRO TEMPORE OF THE SENATE, THE MAJORITY LEADER AND
29 MINORITY LEADER OF THE SENATE, THE EDUCATION COMMITTEE OF THE
30 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE

1 MAJORITY LEADER AND MINORITY LEADER OF THE HOUSE OF
2 REPRESENTATIVES, THE EDUCATION COMMITTEE OF THE HOUSE OF
3 REPRESENTATIVES, THE SECRETARY OF EDUCATION AND THE STATE BOARD
4 OF EDUCATION NOT LATER THAN NOVEMBER 30, 2012.

5 (6) DETERMINE THE FACTORS UNDER THIS PARAGRAPH THAT MAY
6 INCLUDE ALL OF THE FOLLOWING:

7 (I) THREE (3) CATEGORIES OF ELIGIBLE STUDENTS, ESTABLISHED
8 SO THAT STUDENTS WITH DISABILITIES TYPICALLY REQUIRING THE
9 LEAST-INTENSIVE RANGE OF SERVICES WOULD COMPROMISE CATEGORY 1,
10 STUDENTS WITH DISABILITIES TYPICALLY REQUIRING A MIDDLE RANGE OF
11 SERVICES WOULD COMPROMISE CATEGORY 2 AND STUDENTS WITH
12 DISABILITIES TYPICALLY REQUIRING THE MOST INTENSIVE RANGE OF
13 SERVICES WOULD COMPROMISE CATEGORY 3. THE COMMISSION SHALL
14 DETERMINE A DESCRIPTION OF AND PARAMETERS FOR EACH OF THE THREE
15 (3) CATEGORIES.

16 (II) A STUDENT COUNT FOR EACH SCHOOL DISTRICT FOR EACH OF
17 THE THREE (3) MOST RECENT YEARS FOR EACH CATEGORY OF ELIGIBLE
18 STUDENTS. FOR CATEGORY 3, THE NUMBER OF ELIGIBLE STUDENTS
19 RESIDING OR ENROLLED IN THE SCHOOL DISTRICT AND CLASSIFIED IN
20 CATEGORY 3, EXCEPT THAT THE NUMBER OF ELIGIBLE STUDENTS INCLUDED
21 WHO ARE PLACED BY THE SCHOOL DISTRICT AND SERVED IN PUBLIC OR
22 PRIVATE SEPARATE SCHOOLS, RESIDENTIAL PLACEMENTS OR HOMEBOUND OR
23 HOSPITAL PLACEMENTS MUST BE IDENTIFIED SEPARATELY.

24 (III) A WEIGHTING FACTOR THAT DIFFERS FROM EACH OF THE THREE
25 (3) CATEGORIES OF STUDENTS WITH DISABILITIES BASED ON THE
26 TYPICAL RANGE OF SERVICES FOR EACH CATEGORY. THE WEIGHTING MAY
27 INCLUDE ADJUSTMENTS FOR ANY OF THE FOLLOWING:

28 (A) THE MARKET VALUE/PERSONAL INCOME AID RATIO FOR EACH OF
29 THE THREE (3) MOST RECENT YEARS FOR EACH SCHOOL DISTRICT.

30 (B) THE EQUALIZED MILLAGE RATE AVERAGED FOR EACH OF THE

1 THREE (3) MOST RECENT YEARS FOR EACH SCHOOL DISTRICT.

2 (C) GEOGRAPHIC PRICE DIFFERENCES IDENTIFIED FOR EACH SCHOOL
3 DISTRICT OF THE DEPARTMENT.

4 (D) A PROPORTIONAL SYSTEM FOR DISTRIBUTING THE CHANGES IN
5 SPECIAL EDUCATION FUNDING AMONG THE SCHOOL DISTRICTS, BASED ON
6 FACTORS LISTED IN THIS SUBPARAGRAPH.

7 (IV) DEVELOPMENT AND IMPLEMENTATION BY THE DEPARTMENT OF
8 IMPROVED SYSTEMS FOR COLLECTING AND DOCUMENTING STUDENT
9 ENROLLMENT AND MEMBERSHIP IN PUBLIC SCHOOLS, INCLUDING REVISED
10 METHODS FOR CALCULATING AVERAGE DAILY MEMBERSHIP.

11 (V) OTHER FACTORS RELATED TO THE DISTRIBUTION OF SPECIAL
12 EDUCATION FUNDING.

13 (7) REVIEW AND CONSIDER SPECIAL EDUCATION FUNDING FACTORS
14 UTILIZED IN OPERATION THROUGHOUT THE UNITED STATES.

15 (8) IN DEVELOPING THE SPECIAL EDUCATION FUNDING FACTORS
16 UNDER SUBSECTION (H) AND IN COMPLETING THE REPORT REQUIRED UNDER
17 THIS SUBSECTION, CONSIDER THE IMPACT THESE FACTORS MAY HAVE ON
18 THE DISTRIBUTION OF SPECIAL EDUCATION FUNDING AMONG THE SCHOOL
19 DISTRICTS.

20 (9) REVIEW THE ADMINISTRATION OF STATE AND REGIONAL SPECIAL
21 EDUCATION PROGRAMS AND SERVICES TO DETERMINE IF COST SAVINGS MAY
22 BE ACHIEVED AND MAKE RECOMMENDATIONS TO IMPLEMENT THE SAVINGS.

23 (10) CONSULT WITH AND UTILIZE EXPERTS TO ASSIST THEM IN
24 CARRYING OUT THE DUTIES UNDER THIS SUBSECTION.

25 (11) PRIOR TO RECOMMENDING A SPECIAL EDUCATION FORMULA UNDER
26 THIS SECTION, CONSIDER NATIONALLY ACCEPTED ACCOUNTING AND
27 BUDGETING STANDARDS.

28 (J) THE SPECIAL EDUCATION FORMULA DEVELOPED BY THE
29 COMMISSION SHALL NOT GO INTO EFFECT UNLESS THE FORMULA IS
30 APPROVED BY AN ACT OF THE GENERAL ASSEMBLY ENACTED AFTER THE

1 EFFECTIVE DATE OF THIS SECTION.

2 (K) EVERY FIVE YEARS THE COMMISSION SHALL BE RECONSTITUTED
3 UNDER SUBSECTION (C) AND SHALL MEET AND HOLD PUBLIC HEARINGS TO
4 REVIEW THE OPERATIONS OF THE SPECIAL EDUCATION FUNDING PROVISION
5 OF THIS SECTION, SHALL MAKE A FURTHER REPORT AND ISSUE THE
6 REPORT TO THE RECIPIENTS LISTED IN SUBSECTION (I) (5). WHEN IN
7 RECEIPT OF A FURTHER REPORT RECOMMENDING CHANGES TO THE SPECIAL
8 EDUCATION FUNDING FORMULA, THE GENERAL ASSEMBLY SHALL CONSIDER
9 AND TAKE ACTION TO ENACT THE FORMULA INTO LAW IN ACCORDANCE WITH
10 SUBSECTION (J).

11 (L) AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES
12 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SUBSECTION UNLESS
13 THE CONTEXT CLEARLY INDICATES OTHERWISE:

14 "COMMISSION." THE SPECIAL EDUCATION FUNDING COMMISSION
15 ESTABLISHED UNDER THIS SECTION.

16 "DEPARTMENT." THE DEPARTMENT OF EDUCATION OF THE
17 COMMONWEALTH.

18 SECTION 2. SECTION 2501(26) OF THE ACT, ADDED JULY 9, 2008
19 (P.L.846, NO.61), IS AMENDED AND THE SECTION IS AMENDED BY
20 ADDING CLAUSES TO READ:

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

23 * * *

24 (26) "Actual Spending." An amount equal to a school
25 district's total expenditures to include General Fund
26 expenditures in all functional classifications, as designated in
27 the Manual of Accounting and Related Financial Procedures for
28 Pennsylvania School Systems, except for:

29 (i) actual special education spending;

30 (ii) adult education;

- 1 (iii) higher education;
- 2 (iv) student transportation;
- 3 (v) community services;
- 4 (vi) scholarships and awards;
- 5 (vii) facilities acquisition;
- 6 (viii) construction and improvement services; and
- 7 [(ix) other expenditures and financing uses; and]
- 8 (x) tuition from patrons revenue.

9 * * *

10 (31) "Actual Special Education Spending." An amount equal to
11 a school district's total annual expenditures for special
12 education as established by the Department of Education and
13 designated in the Manual of Accounting and Related Financial
14 Procedures for Pennsylvania School Systems. The amount shall not
15 include expenditures that are exclusively for gifted students
16 who do not receive special education pursuant to an
17 individualized education program.

18 (32) "Eligible Student." A student who has been identified
19 as a student with a disability who is in need of special
20 education under Federal and State law.

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

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

30 (i) in the Pennsylvania Bulletin;

1 (ii) on the department's publicly accessible Internet
2 website for no less than a duration of twelve (12) months; and
3 (iii) through the department's timely issuance of a related
4 Statewide press release.

5 (35) "Regular Classroom." A classroom in a regular school
6 operated primarily for students who have not been identified as
7 students with disabilities who are in need of special education.

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

11 (37) "Special Education Plan." A comprehensive plan as well
12 as revisions, updates and amendments for all special education
13 personnel, programs, services and supports provided by each
14 school district for eligible students, filed by each district
15 with the Department of Education under this act and other
16 applicable Federal and State law.

17 ~~(38) "Commission." The Legislative Commission on Special~~ ←
18 ~~Education Funding.~~

19 ~~(39) (38) "Base Year." Fiscal year 2010-2011 or another year~~ ←
20 ~~designated by statute.~~

21 ~~(40) (39) "Special Education Allocation." The amount of~~ ←
22 ~~special education funding received by a school district from the~~
23 ~~Commonwealth.~~

24 Section 2 3. The act is amended by adding sections to read: ←

25 Section 2509.13. Special Education Funding for Student
26 Achievement and Instruction of Eligible Students.--(a) The ←
27 General Assembly shall, through the annual appropriations
28 process, determine the level of State funding for special
29 education and the amount of any change in funding. The special
30 education formula developed under this section shall determine

1 ~~only the distribution of any increase in special education~~
2 ~~funding among the school districts of this Commonwealth above~~
3 ~~the amount of special education funding in the base year and~~
4 ~~shall not be used for any other purpose.~~

5 ~~(b) Notwithstanding any provision of law to the contrary,~~
6 ~~for the 2012-2013 school year and each school year thereafter,~~
7 ~~any State funding for special education in an amount that does~~
8 ~~not exceed the amount of State funding for special education in~~
9 ~~the base year shall be allocated in the same manner as the State~~
10 ~~funding was allocated in the base year.~~

11 ~~(c) The Department of Education shall distribute special~~
12 ~~education funding according to the calculations under~~
13 ~~subsections (a) and (b).~~

14 ~~(d) The Legislative Commission on Special Education Funding~~
15 ~~is established and shall develop a special education formula~~
16 ~~that will be used to determine the distribution of any change in~~
17 ~~special education funding among the school districts of this~~
18 ~~Commonwealth. The formula shall include all of the following:~~

19 ~~(1) Three (3) cost categories of eligible students,~~
20 ~~established such that students with disabilities typically~~
21 ~~requiring the least intensive range of services shall comprise~~
22 ~~category 1, students with disabilities typically requiring a~~
23 ~~middle range of services shall comprise category 2 and students~~
24 ~~with disabilities typically requiring the most intensive range~~
25 ~~of services shall comprise category 3. The commission shall~~
26 ~~determine a description of and parameters for each of the three~~
27 ~~(3) categories.~~

28 ~~(2) A student count for each school district averaged for~~
29 ~~the three (3) most recent years for each category of eligible~~
30 ~~students to be calculated as follows:~~

1 ~~(i) For category 3, calculate the number of eligible~~
2 ~~students residing or enrolled in the school district and~~
3 ~~classified in category 3, except that the number of eligible~~
4 ~~students included in this calculation who are placed by the~~
5 ~~school district and served in public or private separate~~
6 ~~schools, residential placements or homebound or hospital~~
7 ~~placements shall not exceed three and one half percent (3.5%) of~~
8 ~~all eligible students with individualized education programs~~
9 ~~residing or enrolled in the school district or the target~~
10 ~~established in the Part B State Annual Performance Plan filed by~~
11 ~~the Department of Education under the Individuals with~~
12 ~~Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400-~~
13 ~~et seq.), whichever is less. The reference in this paragraph to~~
14 ~~the target established in the Part B State Annual Performance~~
15 ~~Plan shall be used solely for the purpose of determining the~~
16 ~~student count for category 3, without limiting the use of this~~
17 ~~target for other purposes pursuant to the Part B State Annual~~
18 ~~Performance Plan. Eligible students exceeding this target shall~~
19 ~~be part of the other cost categories within the special~~
20 ~~education formula. Neither the reference to the target nor any~~
21 ~~other provision of this act shall be construed to alter Federal~~
22 ~~or State law regarding the protections provided to an eligible~~
23 ~~student for receiving education in the least restrictive~~
24 ~~environment or alter the legal authority of individualized~~
25 ~~education program teams to make appropriate program and~~
26 ~~placement decisions for eligible students in accordance with the~~
27 ~~individualized education program developed for each eligible~~
28 ~~student.~~

29 ~~(ii) For category 2, calculate the number of eligible~~
30 ~~students classified in category 2 determined by taking the~~

1 ~~product of:~~

2 ~~(A) the number of eligible students in the school district;~~

3 ~~and~~

4 ~~(B) the Statewide percentage of eligible students classified~~
5 ~~in category 2.~~

6 ~~(iii) For category 1, calculate the number of eligible~~
7 ~~students classified in category 1 determined by taking the~~
8 ~~product of:~~

9 ~~(A) the school district's modified average daily membership;~~

10 ~~and~~

11 ~~(B) the Statewide percentage of modified average daily~~
12 ~~membership classified in category 1.~~

13 ~~(iv) The two (2) Statewide percentages of modified average~~
14 ~~daily membership which shall be designated as category 1 and of~~
15 ~~eligible students which shall be designated as category 2 shall~~
16 ~~not exceed the actual proportion of students in this~~
17 ~~Commonwealth classified in categories 1 and 2 in the most recent~~
18 ~~year for which data is available.~~

19 ~~(3) A weighting factor that differs for each of the three~~
20 ~~(3) categories of students with disabilities based on the~~
21 ~~typical range of services for each category.~~

22 ~~(4) Adjustments for:~~

23 ~~(i) The market value/personal income aid ratio averaged for~~
24 ~~the three (3) most recent years for each school district.~~

25 ~~(ii) The equalized millage rate averaged for the three (3)~~
26 ~~most recent years for each school district.~~

27 ~~(iii) Geographic price differences identified for each~~
28 ~~school district.~~

29 ~~(5) A proportional system for distributing the change in~~
30 ~~special education funding among the school districts, based on~~

1 ~~the factors listed in paragraphs (1), (2), (3) and (4).~~

2 ~~(6) Other factors related to an accurate distribution of~~
3 ~~special education funding.~~

4 ~~(e) Prior to development of the special education formula~~
5 ~~required under subsection (d), the commission shall:~~

6 ~~(1) Consider nationally accepted accounting and budgeting~~
7 ~~standards.~~

8 ~~(2) In a timely manner, hold no fewer than three (3) public~~
9 ~~hearings in different regions of this Commonwealth to receive~~
10 ~~input and testimony from interested parties, which may include~~
11 ~~the Secretary of Education and other individuals representing~~
12 ~~the Department of Education, parents of eligible students,~~
13 ~~teachers, school administrators, school board members, higher~~
14 ~~education faculty and existing State committees, advisory panels~~
15 ~~and task forces established under Federal or State law,~~
16 ~~regulations or court orders.~~

17 ~~(f) (1) Membership of the commission shall include twelve~~
18 ~~(12) members, consisting of the chairman and minority chairman~~
19 ~~of the Education Committee of the Senate, the chairman and~~
20 ~~minority chairman of the Education Committee of the House of~~
21 ~~Representatives and two (2) legislators from each of the four~~
22 ~~(4) legislative caucuses, to be determined by the leadership of~~
23 ~~each caucus and to be replaced at the discretion of the~~
24 ~~leadership of each caucus. The commission may perform its duties~~
25 ~~regardless of whether all four (4) legislative caucuses have~~
26 ~~actually appointed members to the commission. The commission~~
27 ~~shall choose a chairperson and utilize legislative staff for~~
28 ~~assistance in developing the special education formula. The~~
29 ~~Department of Education shall provide the commission with data,~~
30 ~~research and other relevant information, upon request by the~~

1 ~~commission.~~

2 ~~(2) Members of the commission shall be appointed within~~
3 ~~forty five (45) days of the effective date of this section. The~~
4 ~~commission shall hold its first meeting within ninety (90) days~~
5 ~~of the effective date of this section. The commission shall~~
6 ~~develop the special education formula required under subsection~~
7 ~~(d) within one hundred twenty (120) days of the effective date~~
8 ~~of this section, and shall issue a report of its findings to the~~
9 ~~Governor, the President pro tempore of the Senate and Minority~~
10 ~~Leader of the Senate, the Speaker of the House of~~
11 ~~Representatives and the Minority Leader of the House of~~
12 ~~Representatives, the Education Committee of the Senate and the~~
13 ~~Education Committee of the House of Representatives, the~~
14 ~~Secretary of Education and the State Board of Education.~~

15 ~~(g) Upon completion of the commission's report, the State~~
16 ~~Board of Education shall draft proposed regulations to implement~~
17 ~~the special education funding provisions of this section using,~~
18 ~~without alteration, the special education formula as developed~~
19 ~~by the commission. If the commission does not issue the required~~
20 ~~report within the required time period or if the commission's~~
21 ~~report does not designate the special education formula required~~
22 ~~under subsection (d), the State Board of Education shall in a~~
23 ~~timely manner promulgate proposed regulations to designate the~~
24 ~~special education formula through the regulatory review process.~~

25 ~~(g.1) In developing the special education formula required~~
26 ~~under subsection (d) and in issuing the report required under~~
27 ~~subsection (f), the commission shall address the distribution of~~
28 ~~any change in special education funding among the school~~
29 ~~districts but shall not recommend the annual level of State~~
30 ~~funding which, under subsection (a), shall be determined by the~~

1 ~~General Assembly through the annual appropriations process.~~

2 ~~(h) In every fifth year subsequent to the initial~~
3 ~~promulgation of the regulations implementing the special~~
4 ~~education formula, the commission shall be reconstituted~~
5 ~~pursuant to subsection (f)(1), shall meet and hold public~~
6 ~~hearings to review the operation of the special education~~
7 ~~funding provisions of this section, shall make a further report~~
8 ~~and shall issue the report to the bodies and individuals listed~~
9 ~~under subsection (f)(2). When in receipt of a further report~~
10 ~~recommending changes to the special education formula, the State~~
11 ~~Board of Education shall promulgate proposed regulations through~~
12 ~~the regulatory review process to implement, without alteration,~~
13 ~~any changes developed by the commission in the special education~~
14 ~~formula.~~

15 ~~(i) The commission shall receive input from interested~~
16 ~~parties, which shall include, but not be limited to, charter and~~
17 ~~cyber charter school operators, and gather information on the~~
18 ~~identification of children as eligible students by charter and~~
19 ~~cyber charter schools. The commission shall also receive input~~
20 ~~and gather information on charter and cyber charter school~~
21 ~~funding reimbursements regarding eligible students. The~~
22 ~~commission shall draft proposed regulations and proposed~~
23 ~~legislation based on their findings.~~

24 ~~(j) The commission shall consider the development, by the~~
25 ~~Department of Education, of improved systems for documenting~~
26 ~~student enrollment in public schools, including new methods for~~
27 ~~documenting average daily membership. The commission, either~~
28 ~~initially or when reconstituted in every fifth year, shall draft~~
29 ~~proposed legislation based on its consideration of these issues~~
30 ~~to update the special education formula as needed to maintain~~

1 ~~accurate student counts for eligible students.~~

2 ~~(k)~~ (A) (1) The Department of Education shall set aside one ←
3 percent (1%) of the total State special education appropriation
4 in each year for extraordinary special education program
5 expenses under section 2509.8. The department shall utilize the
6 funds under section 2509.8(e) in order to meet, to the extent
7 that funds are available, extraordinary special education
8 expenses not anticipated through the special education funding
9 formula. School districts and charter and cyber charter schools
10 may apply for resources through the fund under procedures
11 established by the department. The department shall make
12 payments from the fund in response to the applications.

13 (2) The Department of Education shall issue a comprehensive
14 annual report documenting use of the fund to the General
15 Assembly and shall give public notice about the report.

16 (3) As used in this subsection, "extraordinary special
17 education expenses" shall mean expenses that result from needs
18 and circumstances of an eligible student with significant
19 disabilities which are not ordinarily present in a typical
20 special education service and program delivery system and which
21 have costs exceeding the school district or charter or cyber
22 charter school funding for special education, in order to
23 provide the student with an appropriate education in the least
24 restrictive environment.

25 ~~(l)~~ (B) (1) To the extent that special education funding is ←
26 appropriated in the 2013-2014 school year and any subsequent
27 school year FUNDS ARE APPROPRIATED ANY YEAR by the General ←
28 Assembly above the amount of special education funding in the ←
29 base year, the Department of Education shall establish and
30 implement a competitive grant program for school districts and, ←

1 charter schools AND CYBER CHARTER SCHOOLS meeting the following
2 criteria:

3 (i) Providing instruction within the regular classroom at
4 least eighty percent (80%) of the school day for at least sixty-
5 five percent (65%) of eligible students, as averaged for the two
6 (2) most recent school years for which data are available or
7 increasing the number of eligible students receiving instruction
8 within the regular classroom by at least fifteen percent (15%)
9 in the most recent school year for which data are available.

10 (ii) In the most recent school year for which data are
11 available, performance by eligible students on State academic
12 assessments in reading and math, averaged for the entire
13 district, meeting State standards for adequate yearly progress
14 by any method approved by the Federal and State governments,
15 such as meeting the annual target, the confidence interval, the
16 safe harbor target or by appeal.

17 (iii) Implementing programs or services that serve as a
18 model of excellence for meeting high standards for inclusion and
19 student achievement through quality special education.

20 (2) The Department of Education shall develop guidelines for
21 the administration of the grant program established under this
22 subsection, which shall be allocated to school districts and,
23 charter schools AND CYBER CHARTER SCHOOLS on a competitive
24 basis.

25 (3) The Department of Education shall issue an annual report
26 to the General Assembly documenting use of the grants issued
27 under paragraph (1) and shall give public notice about the
28 report.

29 (4) Nothing under paragraph (1) or any other provision of
30 this act shall alter Federal or State law regarding the

1 protections provided to an eligible student for receiving
2 education in the least restrictive environment or shall alter
3 the legal authority of individualized education program teams to
4 make appropriate program and placement decisions for eligible
5 students in accordance with the individualized education program
6 developed for each eligible student.

7 Section 2509.14. Special Education Funding for Eligible
8 Students with Disabilities in Category 3.--(a) For the
9 2014-2015 school year and each school year thereafter, the
10 Department of Education shall set aside an amount ~~equal to~~ NOT ←
11 LESS THAN one percent (1%) of the State special education
12 appropriation above the level of the appropriation in the base
13 year. The Department of Education shall distribute this amount
14 as provided in subsection (b).

15 (b) For the 2014-2015 school year and each school year
16 thereafter, each school district in this Commonwealth shall
17 receive a pro rata share of the amount set aside under
18 subsection (a) based upon the number of eligible students
19 residing or enrolled in each school district and classified in
20 category 3 during the immediately preceding school year.

21 (c) The funding provided under this section shall be
22 accounted for as part of actual special education spending and
23 as part of the special education allocation received by a school
24 district, according to the definitions in section 2501. School
25 districts shall also account for the funding provided under this
26 section and the resulting services and supports for eligible
27 students through the special education plans, revisions, updates
28 and amendments required by section 2509.15.

29 ~~(d) Amounts set aside by the Department of Education from~~ ←
30 ~~the State special education appropriation shall not exceed the~~

1 following:

2 (1) one percent (1%) of the total State special education
3 appropriation for extraordinary special education program
4 expenses pursuant to sections 2509.8 and 2509.13(k)(1); and

5 (2) one percent (1%) of the State special education
6 appropriation above the level of appropriation in the base year
7 pursuant to subsection (a).

8 Section 2509.15. Special Education Accountability.--(a) (1)
9 The Department of Education shall determine the form and manner
10 in which school districts shall submit a special education plan
11 and revisions, updates and amendments to the special education
12 plan under this section. The special education plan shall be
13 consistent with other existing plans and reports required by the
14 department to the greatest extent possible. Special education
15 plans shall be written in a manner that is easy to use and
16 understand by parents and the public, including a general
17 summary.

18 (2) The Department of Education shall:

19 (i) review the special education plans and revisions,
20 updates and amendments;

21 (ii) provide recommendations and technical assistance to
22 school districts;

23 (iii) approve or disapprove the plan within ninety (90)
24 calendar days of receipt; and

25 (iv) provide a written explanation when disapproving a
26 plan; AND

27 (V) PROVIDE GUIDANCE RELATED TO PLAN RESUBMISSION.

28 (3) The Department of Education shall approve a special
29 education plan and revisions, updates and amendments that in the
30 determination of the department:



1 (i) meet the requirements of this section;
2 (ii) address the academic and developmental challenges for
3 eligible students identified in the school district's most
4 recent student achievement results and pursuant to performance
5 indicators, with specific focus on individual schools, grade ←
6 levels and populations of students that demonstrate inadequate
7 levels of student outcomes and with student achievement for
8 eligible students as measured by academic performance whenever
9 possible in the general education curriculum, acquisition of
10 knowledge and skills, progress toward graduation, accomplishment
11 of individualized education program goals, including appropriate
12 functional skills, and other factors;

13 (iii) describe programs and strategies that are most likely
14 to improve student outcomes in the school district; AND ←

15 (iv) describe any programs offered by the school district ←
16 and strategies of the school district for children from birth
17 through five (5) years of age and five (5) years of age through
18 seven (7) years of age designed to reduce the need for special
19 education services; and

20 (v) (IV) describe policies of the school district to ensure ←
21 that a student identified as having a disability is no longer
22 identified as such if the student no longer qualifies under 22
23 Pa. Code Ch. 14 (relating to special education services and
24 programs), or any successor regulation.

25 (4) Upon disapproving a school district's special education
26 plan, update or revision submitted under this section, the
27 Department of Education shall MAY withhold the portion of the ←
28 annual State increase in special education funding which exceeds
29 the index until a written special education plan, update or
30 revision is approved.

1 (5) The Secretary of Education shall involve as appropriate
2 in special education monitoring, support, intervention,
3 technical assistance and special education plan review by the
4 Department of Education, the staff in relevant offices, bureaus
5 and divisions of the department, as well as staff in ←
6 intermediate units and consultants, and shall neither delegate
7 nor limit these functions solely to the Bureau of Special
8 Education. The Secretary of Education shall have the authority
9 to contract for additional assistance with intermediate units
10 and consultants for these purposes, if the contracts do not
11 create a conflict of interest or supplant existing service or
12 program obligations ANY OTHER RESOURCES AS APPROPRIATE. ←

13 (b) (1) By April 15, 2013, and by April 15 of each year ←
14 thereafter PURSUANT TO THE TIMETABLE SET FORTH IN SECTION 218, ←
15 each school district receiving an increase in its State special
16 education funding allocation of more than the index shall update
17 its special education plan based on overall circumstances, shall ←
18 also revise the special education plan to show in detail how the
19 increase above the index will be used BY ATTACHING THE ←
20 DISTRICT'S SPECIAL EDUCATION EXPENDITURES AS REPORTED ON THE
21 ANNUAL FINANCIAL REPORTS and shall submit the updates and
22 revisions to the Department of Education for approval under
23 subsection (a). Unless a school district decides to amend its ←
24 special education plan more broadly to reflect the receipt of
25 new funding, the THE department shall allow a district to meet ←
26 the requirements of this section by adding the mandated ←
27 information as an appendix to the existing plan.

28 (2) School districts shall use State funds for programs and
29 supports that expressly benefit eligible students educated in
30 the least restrictive environment in accordance with Federal and

1 State law and contribute to achievement of performance
2 indicators.

3 (3) The Department of Education shall ~~issue guidelines for~~ ←
4 ~~the suggested use of State funds~~ IDENTIFY RESOURCES for programs ←
5 and supports that benefit eligible students and contribute to
6 achievement of performance indicators and address the following
7 areas or related areas:

8 (i) curricula adaptation;

9 (ii) coteaching;

10 (iii) assistive technology;

11 (iv) school-wide positive behavior supports;

12 (v) supplementary aids and services;

13 (vi) professional development;

14 (vii) reading ~~specialist~~ services and supports; ←

15 (viii) ~~reducing caseloads~~ CASELOAD MANAGEMENT for special ←
16 education teachers and related services personnel; and

17 (ix) placing and serving eligible students in regular
18 classrooms with supports in accordance with the individualized
19 education program developed for each eligible student.

20 (4) ~~Nothing under this subsection shall be construed to~~ ←
21 ~~require school districts to implement only the programs and~~
22 ~~supports included in the guidelines issued by the Department of~~
23 ~~Education.~~ THE DEPARTMENT OF EDUCATION SHALL MAKE THE RESOURCES ←
24 IDENTIFIED IN PARAGRAPH (3) AVAILABLE TO ALL EDUCATIONAL
25 ENTITIES IN THIS COMMONWEALTH.

26 (c) Accountability for the effective use of resources to
27 meet student needs shall also be provided in the following ways:

28 (1) The Department of Education shall issue to the General
29 Assembly a comprehensive annual report on special education
30 funding, special education plans, the implementation of 22 Pa.

1 Code § 14.104 (relating to special education plans) and other
2 special education accountability issues for public school
3 entities serving eligible students and this Commonwealth.

4 (2) Upon disapproving a school district's special education
5 plan, update or revision, the Department of Education shall MAY ←
6 withhold the portion of the annual State increase in special
7 education funding which exceeds the index until a written
8 special education plan, update or revision is approved.

9 (3) (i) The Department of Education shall:

10 (A) review and monitor implementation of all special
11 education plans, such as compliance with subsection (b) and 22
12 Pa. Code § 14.104;

13 (B) provide support, intervention and technical assistance
14 in school districts failing to meet student needs based on
15 performance indicators or failing to comply with subsection (b);

16 (C) identify at any time and at least annually all school ←
17 districts failing to adequately implement their special
18 education plans in compliance with Federal and State law,
19 failing to comply with subsection (b) or not making annual
20 progress to meet POST ON ITS INTERNET WEBSITE EACH SCHOOL ←

21 DISTRICT'S PROGRESS ON MEETING student needs based on
22 performance indicators; and

23 (D) determine whether to withhold up to five percent (5%) of
24 all State special education funding for school districts
25 identified under this clause while the identified problems
26 remain unresolved.

27 (ii) If the Department of Education determines that a school
28 district is making substantial progress toward resolving the
29 identified problems, it shall restore the withheld funding
30 retroactively and continue to monitor the district for an

1 additional two (2) years.

2 (4) (i) To discourage the inappropriate over-identification
3 of children for special education, the Department of Education
4 shall automatically conduct a thorough review of the special
5 education plan of any school district with a substantially
6 higher ratio of eligible students in the district to its average
7 daily membership for all students than the State average, as
8 established by the department and of any district where the
9 ratio of eligible students in the school district to its average
10 daily membership for all students in the most recent school year
11 for which data is available has increased by more than ten
12 percent (10%) over the previous year or of any district where
13 the ratio has increased by an annual average of more than five
14 percent (5%) during the most recent five-year period.

15 ~~Appropriate~~ THE DEPARTMENT OF EDUCATION MAY TAKE remedial ←
16 action, including withholding up to five percent (5%) of all
17 State special education funding, may be taken, unless the ratio ←
18 or increase is determined to be justified by the department
19 after consultation with the school district IF THE DEPARTMENT OF ←
20 EDUCATION DETERMINES THAT A SCHOOL DISTRICT HAS OVER-IDENTIFIED
21 A STUDENT.

22 (ii) Nothing in this paragraph or any other provision of
23 this act shall be construed to alter Federal or State law
24 regarding the protections provided to an eligible student for
25 receiving education in the least restrictive environment or
26 alter the legal authority of individualized education program
27 teams to make appropriate program and placement decisions for
28 eligible students in accordance with the individualized
29 education program developed for each eligible student.

30 (d) In rendering a decision or determining remedial action

1 under this section, the Department of Education shall consider
2 extraordinary circumstances which a school district subject to
3 review is experiencing, including a substantial reduction in
4 Federal or State funds or other factors beyond the control of
5 the school district. The Department of Education shall issue to
6 any affected school district a notice specifying the
7 department's decisions and actions under this section and the
8 rationale for the decisions and actions. A school district may
9 file a written response to the department about the department's
10 decisions and actions regarding the district made under this
11 section. The written response must be submitted to the
12 department within thirty (30) calendar days of the department's
13 notice or within thirty (30) calendar days of receiving the
14 notice, whichever is greater. The department shall consider the
15 written response, consult with the school district and, within
16 thirty (30) calendar days after receiving the written response,
17 issue a written decision addressing the concerns and claims made
18 in the written response, explaining the judgment of the
19 department in response to these concerns and claims, and
20 specifying the opportunity to appeal this matter to the
21 Secretary of Education for a hearing under 2 Pa.C.S. Chs. 5
22 Subch. A (relating to practice and procedure of Commonwealth
23 agencies) and 7 Subch. A (relating to judicial review of
24 Commonwealth agency action) and 1 Pa. Code Pt. II (relating to
25 general rules of administrative practice and procedure). If
26 requested, the Secretary of Education shall convene a hearing
27 within thirty (30) calendar days after receipt of a school
28 district's hearing request. The Secretary of Education shall
29 render a written hearing decision within thirty (30) calendar
30 days following the hearing.

1 (e) The Department of Education shall give public notice of
2 the decisions, actions and reports made under this section.

3 (f) Nothing under this section shall supersede or preempt
4 any provisions of a collective bargaining agreement between a
5 school entity and an employe organization in effect on the
6 effective date of this section.

7 (g) Notwithstanding any other provision of this section, ←
8 the THE requirements of this section shall be waived until the ←
9 General Assembly appropriates special education funding above
10 the amount of special education funding in the base year and on
11 the effective date of the appropriation the requirements of this
12 section shall apply for that school year and for each school
13 year thereafter.

14 Section 2509.16. Data Collection.--Using existing resources
15 and data systems as well as nationally accepted accounting and
16 modeling standards, the Department of Education shall collect
17 data necessary for accurate functioning of the A special ←
18 education formula developed under section 2509.13 120, ←
19 including, but not limited to, data necessary for the
20 calculations related to category 1, category 2 and category 3 as
21 part of the formula developed by the commission. The Department
22 of Education shall begin collecting such data upon the effective
23 date of this section.

24 Section 2509.17. Restructuring. (a) The commission shall ←
25 study whether and the manner in which State and regional
26 administration of special education programs and services may be
27 restructured to reduce the cost of administering special
28 education programs and services by at least ten percent (10%) of
29 the cost of administering special education programs and
30 services in the base year and shall report its findings and

1 ~~recommendations, including recommended legislation and options~~
2 ~~to redirect administrative cost savings to school districts~~
3 ~~through the formula developed under section 2509.13(d), to the~~
4 ~~Governor and the General Assembly in the report required under~~
5 ~~section 2509.13(f)(2).~~

6 ~~(b) Nothing under subsection (a) or any other provision of~~
7 ~~SECTION 2509.17. PROTECTIONS.--NOTHING UNDER THE PROVISIONS~~ ←
8 ~~OF this act shall alter Federal or State law regarding the~~
9 ~~protections provided to an eligible student for receiving~~
10 ~~education in the least restrictive environment or shall alter~~
11 ~~the legal authority of individualized education program teams to~~
12 ~~make appropriate program and placement decisions for eligible~~
13 ~~students in accordance with the individualized education program~~
14 ~~developed for each eligible student.~~

15 Section 3 4. The Secretary of Education shall propose ←
16 regulations for promulgation by the State Board of Education
17 which implement this act.

18 Section 4 5. This act shall take effect immediately. ←