

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2 Session of 2013

INTRODUCED BY O'NEILL, CLYMER, ROEBUCK, STURLA, FLECK, CARROLL, DAVIS, DELUCA, DIGIROLAMO, EMRICK, GINGRICH, GROVE, HARKINS, HESS, KAVULICH, KORTZ, KOTIK, LONGIETTI, MACKENZIE, MAHER, MARSICO, MILLARD, MOLCHANY, MOUL, MURT, NEUMAN, O'BRIEN, PASHINSKI, PEIFER, PETRI, QUINN, READSHAW, REESE, ROSS, SANTARSIERO, SAYLOR, SCAVELLO, SIMS, STERN AND WATSON, FEBRUARY 5, 2013

REFERRED TO COMMITTEE ON EDUCATION, FEBRUARY 5, 2013

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; in
7 reimbursements by the Commonwealth and between school
8 districts, further providing for definitions; and providing
9 for the distribution of special education funding for student
10 achievement and instruction of eligible students and for
11 special education accountability.

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

14 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
15 as the Public School Code of 1949, is amended by adding a
16 section to read:

17 Section 122. Special Education Funding Commission.--(a)
18 There is hereby established a Special Education Funding
19 Commission.

20 (b) The Special Education Funding Commission shall review

1 and make recommendations related to special education funding as
2 provided in this section.

3 (c) (1) The commission shall consist of the following
4 members:

5 (i) The chair and minority chair of the Education Committee
6 of the Senate and the chair and minority chair of the Education
7 Committee of the House of Representatives, or their designees.

8 (ii) Two (2) legislators from each of the four (4)
9 legislative caucuses, to be appointed by the President pro
10 tempore of the Senate and the Speaker of the House of
11 Representatives, in consultation with the Majority and Minority
12 Leaders of the Senate and the Majority and Minority Leaders of
13 the House of Representatives.

14 (iii) The Secretary of Education, or a designee.

15 (iv) The Secretary of the Budget, or a designee.

16 (v) The Deputy Secretary for Elementary and Secondary
17 Education, or a designee.

18 (2) The commission shall appoint a member to serve as chair
19 of the commission.

20 (d) The commission shall hold its first meeting within
21 thirty (30) days of the effective date of this section,
22 regardless of whether the Governor or all legislative caucuses
23 have actually approved members to the commission.

24 (e) The commission shall hold meetings at the call of the
25 chair.

26 (f) The members may not receive compensation for their
27 services, but shall be reimbursed for all necessary travel and
28 other reasonable expenses incurred in connection with the
29 performance of their duties as members of the commission.

30 (g) The General Assembly shall provide administrative

1 support, meeting space and any other assistance required by the
2 commission to carry out its duties under this section in
3 cooperation with the department. The department shall provide
4 the commission with data, research and other information upon
5 request by the commission.

6 (h) The commission shall develop a special education formula
7 and identify factors that may be used to determine the
8 distribution of a change in special education funding among the
9 school districts in this Commonwealth.

10 (i) The commission shall have all of the following powers
11 and duties:

12 (1) Review and make findings and recommendations related to
13 special education funding in this Commonwealth.

14 (2) Consult with and utilize experts to assist in carrying
15 out the duties under this subsection.

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

24 (4) Hold public hearings in different regions of this
25 Commonwealth.

26 (5) Issue a report of its findings and recommendations to
27 the Governor, the President pro tempore of the Senate, the
28 Majority Leader and Minority Leader of the Senate, the Education
29 Committee of the Senate, the Speaker of the House of
30 Representatives, the Majority Leader and Minority Leader of the

House of Representatives, the Education Committee of the House of Representatives, the Secretary of Education and the State Board of Education not later than September 30, 2013.

(6) Determine the factors under this paragraph that may include all of the following:

(i) Three (3) cost categories of eligible students, established so that students with disabilities typically requiring the least-intensive range of services would comprise Cost Category 1, students with disabilities typically requiring a middle range of services would comprise Cost Category 2 and students with disabilities typically requiring the most intensive range of services would comprise Cost Category 3. The commission shall determine a description of and parameters for each of the three (3) cost categories.

(ii) A student count for each school district averaged for each of the three (3) most recent years for each cost category of eligible students. For Cost Category 3, the number of eligible students residing or enrolled in the school district and classified in Cost Category 3 shall be calculated in a manner that limits the potential incentive for school districts to overidentify, except for the number of eligible students who are placed by the school district and served in public or private separate schools, residential placements or homebound or hospital placements.

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

(iv) Adjustments for any of the following:

(A) The market value/personal income aid ratio averaged for each of the three (3) most recent years for each school

district.

(B) The equalized millage rate averaged for each of the three (3) most recent years for each school district.

(C) Geographic price differences identified for each school district.

(v) A proportional system for distributing the changes in special education funding among the school districts, based on factors listed in this section.

(vi) Development and implementation by the department of improved systems for collecting and documenting student enrollment and membership in public schools, including revised methods for calculating average daily membership.

(vii) Other factors related to the distribution of special education funding.

(7) Review and consider special education funding factors utilized throughout the United States.

(8) In developing the special education funding factors under subsection (h) and in completing the report required under this subsection, consider the impact these factors may have on the distribution of special education funding among the school districts.

(9) Review the administration of State and regional special education programs and services to determine if cost savings may be achieved and make recommendations to implement the savings.

(10) Consult with and utilize experts to assist the commission in carrying out the duties under this subsection.

(11) Prior to recommending a special education formula under this section, consider nationally accepted accounting and budgeting standards.

(j) The special education formula developed by the

commission shall not go into effect unless the formula is
approved by an act of the General Assembly enacted after the
effective date of this section.

(k) Every five years the commission shall be reconstituted
in accordance with subsection (c) and shall meet and hold public
hearings to review the operation of the special education
funding provisions of this section, shall make a further report
and shall issue the report to the recipients listed in
subsection (i) (5). When in receipt of a further report
recommending changes to the special education funding formula,
the General Assembly shall consider and take action to enact the
formula into law in accordance with subsection (j).

(l) The General Assembly shall, through the annual
appropriations process, determine the level of State funding for
special education and the amount of any change in funding. The
special education formula developed under this section shall
determine only the distribution of any increase in special
education funding among the school districts of this
Commonwealth above the amount of special education funding in
the base year and shall not be used for any other purpose.

(m) Notwithstanding any provision of law to the contrary,
for the 2013-2014 school year and each school year thereafter,
any State funding for special education in an amount that does
not exceed the amount of State funding for special education in
the base year shall be allocated in the same manner as the State
funding was allocated in the base year.

(n) As used in this section, the following words and phrases
shall have the meanings given to them in this subsection unless
the context clearly indicates otherwise:

"Base year." Fiscal year 2010-2011.

1 "Commission." The Special Education Funding Commission
2 established under this section.

3 "Department." The Department of Education of the
4 Commonwealth.

5 Section 2. Section 2501(26) of the act, added July 9, 2008
6 (P.L.846, No.61), is amended and the section is amended by
7 adding clauses to read:

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

10 * * *

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

- 16 (i) actual special education spending;
- 17 (ii) adult education;
- 18 (iii) higher education;
- 19 (iv) student transportation;
- 20 (v) community services;
- 21 (vi) scholarships and awards;
- 22 (vii) facilities acquisition;
- 23 (viii) construction and improvement services; and
- 24 [(ix) other expenditures and financing uses; and]
- 25 (x) tuition from patrons revenue.

26 * * *

27 (31) "Actual Special Education Spending." An amount equal to
28 a school district's total annual expenditures for special
29 education as established by the Department of Education and
30 designated in the Manual of Accounting and Related Financial

Procedures for Pennsylvania School Systems. The amount shall not include expenditures that are exclusively for gifted students who do not receive special education pursuant to an individualized education program.

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

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

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

(i) in the Pennsylvania Bulletin;

(ii) on the Department of Education's publicly accessible Internet website for no less than a duration of twelve (12) months; and

(iii) through the Department of Education's timely issuance of a related Statewide press release.

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

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

(37) "Special Education Plan." A comprehensive plan as well as revisions, updates and amendments for all special education

personnel, programs, services and supports provided by each
school district for eligible students, filed by each district
with the Department of Education under this act and other
applicable Federal and State law.

(38) "Base Year." Fiscal year 2010-2011 or another year
designated by statute.

(39) "Special Education Allocation." The amount of special
education funding received by a school district from the
Commonwealth.

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

Section 2509.13. Special Education Funding for Student
Achievement and Instruction of Eligible Students.--(a) (1) The
Department of Education shall utilize the funds under section
2509.8(e) in order to meet, to the extent that funds are
available, extraordinary special education expenses not
anticipated through the special education funding formula.
School districts and charter and cyber charter schools may apply
for resources through the fund under procedures established by
the Department of Education. The Department of Education shall
make payments from the fund in response to the applications.

(2) The Department of Education shall issue a comprehensive
annual report documenting use of the fund to the General
Assembly and shall provide public access to the report.

(3) As used in this subsection, "extraordinary special
education expenses" shall mean expenses that result from needs
and circumstances of an eligible student with significant
disabilities which are not ordinarily present in a typical
special education service and program delivery system and which
have costs exceeding the school district or charter or cyber
charter school funding for special education, in order to

provide the student with an appropriate education in the least restrictive environment.

(b) (1) To the extent that funds are appropriated any year by the General Assembly, the Department of Education shall establish and implement a competitive grant program for school districts and charter schools meeting the following criteria:

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

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

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

(2) The Department of Education shall develop guidelines for the administration of the grant program established under this subsection, which shall be allocated to school districts and charter schools on a competitive basis.

(3) The Department of Education shall issue an annual report to the General Assembly documenting use of the grants issued under paragraph (1) and shall provide public access to the

1 report.

2 (4) Nothing under paragraph (1) or any other provision of
3 this act shall alter Federal or State law regarding the
4 protections provided to an eligible student for receiving
5 education in the least restrictive environment or shall alter
6 the legal authority of individualized education program teams to
7 make appropriate program and placement decisions for eligible
8 students in accordance with the individualized education program
9 developed for each eligible student.

10 Section 2509.14. Special Education Funding for Eligible
11 Students with Disabilities in Cost Category 3.--(a) For the
12 2014-2015 school year and each school year thereafter, the
13 Department of Education shall set aside an amount not less than
14 one percent (1%) of the State special education appropriation
15 above the level of the appropriation in the base year. The
16 Department of Education shall distribute this amount as provided
17 in subsection (b).

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

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

1 and amendments required by section 2509.15.

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

12 (2) The Department of Education shall:

13 (i) review the special education plans and revisions,
14 updates and amendments;

15 (ii) provide recommendations and technical assistance to
16 school districts;

17 (iii) approve or disapprove the plan within ninety (90)
18 calendar days of receipt;

19 (iv) provide a written explanation when disapproving a plan;
20 and

21 (v) provide guidance related to plan resubmission.

22 (3) The Department of Education shall approve a special
23 education plan and revisions, updates and amendments that in the
24 determination of the Department of Education:

25 (i) meet the requirements of this section;

26 (ii) address the academic and developmental challenges for
27 eligible students identified in the school district's most
28 recent student achievement results and pursuant to performance
29 indicators;

30 (iii) describe programs and strategies that are most likely

1 to improve student outcomes in the school district; and
2 (iv) describe policies of the school district to ensure that
3 a student identified as having a disability is no longer
4 identified as such if the student no longer qualifies under 22
5 Pa. Code Ch. 14 (relating to special education services and
6 programs), or any successor regulation.

7 (4) Upon disapproving a school district's special education
8 plan, update or revision submitted under this section, the
9 Department of Education may withhold the portion of the annual
10 State increase in special education funding which exceeds the
11 index until a written special education plan, update or revision
12 is approved.

13 (5) The Secretary of Education shall involve as appropriate
14 in special education monitoring, support, intervention,
15 technical assistance and special education plan review by the
16 Department of Education, the staff in relevant offices, bureaus
17 and divisions of the Department of Education, as well as any
18 other resources as appropriate.

19 (b) (1) Pursuant to the timetable set forth in section 218,
20 each school district receiving an increase in its State special
21 education funding allocation of more than the index shall update
22 its special education plan by attaching the district's special
23 education expenditures as reported on the annual financial
24 reports and shall submit the updates and revisions to the
25 Department of Education for approval under subsection (a). The
26 Department of Education shall allow a district to meet the
27 requirements of this section by adding the information as an
28 appendix to the existing plan.

29 (2) School districts shall use State funds for programs and
30 supports that expressly benefit eligible students educated in

the least restrictive environment in accordance with Federal and State law and contribute to achievement of performance indicators.

(3) The Department of Education shall identify resources for programs and supports that benefit eligible students and contribute to achievement of performance indicators and address the following areas or related areas:

- (i) curricula adaptation;
- (ii) coteaching;
- (iii) assistive technology;
- (iv) school-wide positive behavior supports;
- (v) supplementary aids and services;
- (vi) professional development;
- (vii) reading services and supports;
- (viii) caseload management for special education teachers and related services personnel; and
- (ix) placing and serving eligible students in regular classrooms with supports in accordance with the individualized education program developed for each eligible student.

(4) The Department of Education shall make the resources identified in paragraph (3) available to all educational entities in this Commonwealth.

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

- (1) The Department of Education shall issue to the General Assembly a comprehensive annual report on special education funding, special education plans, the implementation of 22 Pa. Code § 14.104 (relating to special education plans) and other special education accountability issues for public school entities serving eligible students and this Commonwealth.

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

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

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

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

13 (C) post on its Internet website each school district's
14 progress on meeting student needs based on performance
15 indicators; and

16 (D) determine whether to withhold up to five percent (5%) of
17 all State special education funding for school districts
18 identified under this clause while the identified problems
19 remain unresolved.

20 (ii) If the Department of Education determines that a school
21 district is making substantial progress toward resolving the
22 identified problems, it shall restore the withheld funding
23 retroactively and continue to monitor the district for an
24 additional two (2) years.

25 (4) (i) To discourage the inappropriate overidentification
26 of children for special education, the Department of Education
27 shall automatically conduct a thorough review of the special
28 education plan of any school district with a substantially
29 higher ratio of eligible students in the district to its average
30 daily membership for all students than the State average, as

established by the Department of Education, and of any district where the ratio of eligible students in the school district to its average daily membership for all students in the most recent school year for which data is available has increased by more than ten percent (10%) over the previous year or of any district where the ratio has increased by an annual average of more than five percent (5%) during the most recent five-year period. The Department of Education may take remedial action, including withholding up to five percent (5%) of all State special education funding, if the Department of Education determines that a school district has overidentified children for special education.

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

(d) In rendering a decision or determining remedial action under this section, the Department of Education shall consider extraordinary circumstances which a school district subject to review is experiencing, including a substantial reduction in Federal or State funds or other factors beyond the control of the school district. The Department of Education shall issue to any affected school district a notice specifying the Department of Education's decisions and actions under this section and the rationale for the decisions and actions. A school district may file a written response to the Department of Education about the

Department of Education's decisions and actions regarding the district made under this section. The written response must be submitted to the Department of Education within thirty (30) calendar days of the Department of Education's notice or within thirty (30) calendar days of receiving the notice, whichever is later. The Department of Education shall consider the written response, consult with the school district and, within thirty (30) calendar days after receiving the written response, issue a written decision addressing the concerns and claims made in the written response, explaining the judgment of the Department of Education in response to these concerns and claims, and specifying the opportunity to appeal this matter to the Secretary of Education for a hearing under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) and 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure). If requested, the Secretary of Education shall convene a hearing within thirty (30) calendar days after receipt of a school district's hearing request. The Secretary of Education shall render a written hearing decision within thirty (30) calendar days following the hearing.

(e) The Department of Education shall provide public access to the decisions, actions and reports made under this section.

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

(g) The requirements of this section shall be waived until the General Assembly appropriates special education funding

above the amount of special education funding in the base year
and on the effective date of the appropriation the requirements
of this section shall apply for that school year and for each
school year thereafter.

Section 2509.16. Data Collection.--Using existing resources
and data systems as well as nationally accepted accounting and
modeling standards, the Department of Education shall collect
data necessary for accurate functioning of a special education
formula developed under section 122, including, but not limited
to, data necessary for the calculations related to Cost Category
1, Cost Category 2 and Cost Category 3 as part of the formula
developed by the commission. The Department of Education shall
begin collecting such data upon the effective date of this
section.

Section 2509.17. Protections.--Nothing under the provisions
of this act shall alter Federal or State law regarding the
protections provided to an eligible student for receiving
education in the least restrictive environment or shall alter
the legal authority of individualized education program teams to
make appropriate program and placement decisions for eligible
students in accordance with the individualized education program
developed for each eligible student.

Section 4. The Secretary of Education shall propose
regulations for promulgation by the State Board of Education
which implement the amendment or addition of the following
provisions of the act:

(1) Section 122.

(2) Section 2501(26), (31), (32), (33), (34), (35),
(36), (37), (38) and (39).

(3) Section 2509.13.

1 (4) Section 2509.14.

2 (5) Section 2509.15.

3 (6) Section 2509.16.

4 (7) Section 2509.17.

5 Section 5. This act shall take effect immediately.