
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 866 Session of
1999

INTRODUCED BY HART, SALVATORE, JUBELIRER, BRIGHTBILL AND
HELFRICK, APRIL 28, 1999

REFERRED TO EDUCATION, APRIL 28, 1999

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," providing educational opportunity
6 grants to enable qualified parents to make educational
7 choices for their children and for academically bankrupt
8 school districts and students within such districts; and
9 further providing for funding bases, for transportation and
10 for tuition charges for nonresident students.

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

13 Section 1. Section 1361 of the act of March 10, 1949
14 (P.L.30, No.14), known as the Public School Code of 1949,
15 amended May 11, 1979 (P.L.26, No.7), is amended to read:

16 Section 1361. When Provided.--(1) The board of school
17 directors in any school district may, out of the funds of the
18 district, provide for the free transportation of any resident
19 pupil to and from the kindergarten, elementary school, or
20 secondary school in which he is lawfully enrolled, provided that
21 such school is [not operated for profit and is] located within

1 the district boundaries or outside the district boundaries at a
2 distance not exceeding ten miles by the nearest public highway,
3 except that such ten-mile limit shall not apply to area
4 vocational technical schools which regularly serve eligible
5 district pupils or to special schools and classes approved by
6 the Department of Education, and to and from any points within
7 or without the Commonwealth in order to provide field trips for
8 any purpose connected with the educational pursuits of the
9 pupils. When provision is made by a board of school directors
10 for the transportation of public school pupils to and from such
11 schools or to and from any points within or without the
12 Commonwealth in order to provide field trips as herein provided,
13 the board of school directors shall also make identical
14 provision for the free transportation of:

15 (i) public school students who are resident within the
16 district and who regularly attend a charter school, pursuant to
17 section 1303-B, or regularly attend a public school within their
18 district of residence or outside the boundaries of their
19 district of residence at a distance not exceeding ten (10) miles
20 by the nearest public highway to and from such schools; and

21 (ii) pupils who regularly attend nonpublic kindergarten,
22 elementary and high schools not operated for profit to and from
23 such schools or to and from any points within or without the
24 Commonwealth in order to provide field trips as herein provided.
25 Such transportation of pupils attending nonpublic schools shall
26 be provided during regular school hours on such dates and
27 periods that the nonpublic school not operated for profit is in
28 regular session, according to the school calendar officially
29 adopted by the directors of the same in accordance with
30 provisions of law. The board of school directors shall provide

1 such transportation whenever so required by any of the
2 provisions of this act or of any other act of Assembly.

3 (2) The board of school directors in any school district
4 may, if the board deems it to the best interest of the school
5 district, for the purposes of transporting pupils as required or
6 authorized by any of the provisions of this act or of any other
7 act of the Assembly, appropriate funds for urban common carrier
8 mass transportation purposes from current revenues to urban
9 common carrier mass transportation authorities to assist the
10 authorities to meet costs of operation, maintenance, capital
11 improvements, and debt service. Said contributions shall not be
12 subject to reimbursement by the Commonwealth of Pennsylvania.

13 (3) The State Board of Education shall adopt regulations,
14 including qualifications of school bus drivers, to govern the
15 transportation of school pupils.

16 Section 2. The act is amended by adding an article to read:

17 ARTICLE XIII-B.

18 EDUCATIONAL OPPORTUNITY GRANTS.

19 Section 1301-B. Legislative Findings.--(a) The General
20 Assembly finds that:

21 (1) It is the policy of the Commonwealth to enhance the
22 primary right and obligation of parents to choose the education
23 and training of their school-age children.

24 (2) An educated populace is essential to the political and
25 economic health of the Commonwealth.

26 (3) Providing educational opportunities for the children of
27 this Commonwealth is a governmental duty and must be
28 accomplished through innovative approaches and a variety of
29 programming options.

30 (4) The legitimate interest and governmental duty of the

Commonwealth in facilitating education of the highest quality for children of this Commonwealth is enhanced by encouraging competitive and diverse alternatives for parents and students that enable them to choose from both public and nonpublic educational programs.

(5) The importance of quality education and the need to maintain and enhance an effective system of education supports the creation of programs to provide for the increased availability of diverse opportunities, including both public and nonpublic programs of education which benefit all citizens of this Commonwealth.

(6) Providing parents with nonpublic educational alternatives decreases the burdens on the Commonwealth and increases the range of educational choices available to families of this Commonwealth, thus providing a benefit to all citizens of this Commonwealth.

(7) A comparatively far greater proportion of public funds are and, upon implementation of an educational choice program, will continue to be devoted to the benefit of students enrolled in the public schools of this Commonwealth.

(8) School-age residents of this Commonwealth, their parents and the Commonwealth in general will benefit from a program of economic assistance which gives parents the ability to choose the educational setting best suited to each child's needs.

(9) A program of economic assistance to enhance educational choice in this Commonwealth will better prepare its citizens to compete for employment opportunities, and will foster development of a more capable and a better-educated work force.

Section 1302-B. Definitions.--The following words and phrases when used in this article shall have the meanings given

1 to them in this section unless the context clearly indicates
2 otherwise:

3 "Basic education funding" shall mean a school district's
4 portion as defined by this act of the annual appropriation made
5 by the Commonwealth to the Department of Education for payment
6 of basic education funding to school districts.

7 "Department" shall mean the Department of Education of the
8 Commonwealth.

9 "Educational opportunity grant" or "grant" shall mean a grant
10 awarded to the parents of an eligible grant recipient pursuant
11 to this article.

12 "Eligible grant recipient" shall mean a school-age resident
13 of this Commonwealth who attends or is about to attend a full-
14 time kindergarten, a part-time kindergarten, an elementary
15 school or a secondary school in this Commonwealth on a tuition-
16 paying basis whose parent received taxable income as prescribed
17 in section 1304-B(b)(2) and who resides in any of the following:

18 (1) A county of the first class.

19 (2) In the following counties or townships contiguous to or
20 in close proximity with a city of the first or second class:

21 (i) A county of the second class.

22 (ii) A county of the second class A with a population
23 greater than five hundred forty-five thousand (545,000).

24 (iii) A township of the first class with a population over
25 fifty thousand (50,000).

26 (iv) A township of the second class with a population over
27 fifty thousand (50,000).

28 (3) A county of the third class with a population over three
29 hundred seventy-five thousand (375,000).

30 (4) A county of the third class with a population greater

1 than two hundred twenty-five thousand (225,000) but less than
2 two hundred forty thousand (240,000).

3 (5) A city of the second class, second class A or of the
4 third class with a population over forty-seven thousand
5 (47,000), except for a city of the third class with a population
6 between seventy thousand (70,000) and seventy-five thousand
7 (75,000).

8 Population figures shall be determined by using the official
9 1990 census as established in 13 U.S.C. (relating to census).
10 School-age residents in these communities shall remain eligible
11 for a grant irrespective of population figures in the official
12 2000 census.

13 "Nonpublic" or "nonpublic school" shall mean any school,
14 other than a public school, located within this Commonwealth
15 where a Commonwealth resident may legally fulfill the compulsory
16 school attendance requirements of this act and which meets the
17 applicable requirements of Title VI of the Civil Rights Act of
18 1964 (Public Law 88-352, 78 Stat. 241). The term includes a
19 full-day or half-day kindergarten program operated by a
20 nonpublic school.

21 "Parent" or "parents" shall mean a Commonwealth resident who
22 is a parent or guardian of, or person in parental relation to, a
23 school-age child.

24 "School" shall mean any public or nonpublic elementary or
25 secondary school located within this Commonwealth where a
26 Commonwealth resident may legally fulfill the compulsory school
27 attendance requirements of this act which meets the applicable
28 requirements of Title VI of the Civil Rights Act of 1964 (Public
29 Law 88-352, 78 Stat. 241). The term includes a full-time or
30 part-time kindergarten program operated by a school. The term

1 does not include an approved private school as provided for in
2 section 1376 or a charter school as provided in section 1376.1
3 or a charter school established under Article XVII-A.

4 "School-age" shall mean the age of a child from the earliest
5 admission age to a school's kindergarten program until the age
6 of twenty-one (21) years or graduation from high school,
7 whichever occurs first.

8 "Secretary" shall mean the Secretary of Education of the
9 Commonwealth.

10 "Student" shall mean a school-age resident of this
11 Commonwealth who attends or is about to attend a full-day
12 kindergarten, a half-day kindergarten, an elementary school or a
13 secondary school within this Commonwealth.

14 "Taxable income" shall mean the term as defined in section 63
15 of the Internal Revenue Code of 1986 (Public Law 99-514, 26
16 U.S.C. § 1 et seq.) or the corresponding provision of any
17 successor statute and reported by the parent of an eligible
18 grant recipient on the parent's Federal income tax return as
19 taxable income during the calendar year immediately preceding
20 the beginning of the school year for which an educational
21 opportunity grant is sought. For individuals who are not
22 required to file a Federal income tax return, the term shall
23 mean all income from whatever source derived, calculated as if
24 that individual was required to file a Federal income tax
25 return.

26 Section 1303-B. Public Schools.--(a) Beginning with the
27 1999-2000 school year, every public school student in this
28 Commonwealth shall be permitted to attend the public school
29 selected by the student's parents, unless any of the following
30 occurs:

1 (1) The public school selected has no additional attendance
2 slots and the district so notifies the department and the
3 student within the time limitations established by the
4 department.

5 (2) The student's attendance would place either the
6 receiving school district or the student's district of residence
7 in violation of a valid and binding desegregation order.

8 (3) The public school requested does not offer appropriate
9 programs or is not structured or equipped with the necessary
10 facilities to meet the special needs of the student or does not
11 offer a particular program requested.

12 (4) The student has been expelled or is in the process of
13 being expelled pursuant to sections 1317.2 and 1318 and
14 applicable regulations of the State Board of Education.

15 (5) The student does not meet the established eligibility
16 criteria for participation in magnet schools or in schools with
17 specialized academic missions.

18 (b) (1) The parents of a school-age student who is
19 attending or about to attend a public school may apply to up to
20 three public schools which the student wishes to attend during
21 the 1999-2000 school year and every school year thereafter. The
22 application shall be on a form provided by the department. For
23 the 1999-2000 school year, the application shall be made no
24 later than July 15. In subsequent years the deadline for filing
25 applications shall be March 1 preceding the school term which
26 commences in that year. The school district shall notify the
27 parents not later than August 15, 1999, for the 1999-2000 school
28 year and not later than May 1 preceding the school term which
29 commences in subsequent years, whether or not the application
30 has been accepted. If the application is not made in a timely

fashion or cannot be approved pursuant to subsection (a), the student's district of residence shall use its normal procedures to determine the public school within that district to which the student shall be assigned.

(2) The Commonwealth shall make payment, pursuant to the schedule contained in section 2517, to each public school district, area vocational-technical school or intermediate unit which accepts a nonresident student under this section in the following manner:

(i) The Commonwealth shall pay on a current year basis from current year appropriations for educational opportunity grants to each school district, area vocational-technical school or intermediate unit which accepts a nonresident student, on a tuition basis, an amount equal to the greater of the per pupil basic education funding of the student's school district of residence or of the receiving school district. A student attending a public school outside the student's district of residence shall not be included in the average daily membership of any school district for the purpose of determining the basic education funding.

(ii) For a nonresident student defined as a "child with exceptionalities" under section 1371, who receives a grant, the district of residence shall not be required to pay more for services provided to the student by the receiving district than the difference between the current year budgeted cost of the services, had the student remained in the district of residence, and the sum of the grant plus the per pupil basic education funding. The district of residence shall provide the receiving district with documentation of the prior year's cost of services provided to the student and the budgeted cost of providing those

services in the current year had the student remained in the district of residence. Additional costs shall be borne by the receiving school district.

(iii) For a nonresident student who is not a grant recipient and who is defined as a "child with exceptionalities" under section 1371, the district of residence shall not be required to pay more for services provided to the student by the receiving district than the difference between the current year budgeted cost of the services, had the student remained in the district of residence, and the per pupil basic education funding credited to the grant recipient. The district of residence shall provide the receiving district with documentation of the prior year's cost of services provided to the student and the budgeted cost of providing those services in the current year had the student remained in the district of residence. Additional costs shall be borne by the receiving school district.

(iv) A student receiving services under subclause (ii) or (iii) shall be included in the average daily membership of the student's district of residence for the purpose of determining special education funding pursuant to section 2509.5.

(3) In addition to the grant awarded to the parents of an eligible grant recipient attending a public school outside the grant recipient's district of residence, an amount equal to the greater of the per pupil basic education funding credit in the grant recipient's district of residence or of the receiving school district shall be credited toward the tuition charged to that student by the receiving district. Should the grant award plus the per pupil basic education funding credit exceed the tuition charge of the receiving school district, the grant award shall be reduced by the amount in excess of the tuition charge.

1 Should the grant award plus the per pupil basic education
2 funding credit not be sufficient to meet the tuition charge of
3 the receiving school district, an amount equal to thirty-three
4 and one-third (33 1/3) per centum of the balance of the charge
5 shall be payable by the eligible grant recipient's parents and,
6 along with the grant and the per pupil basic education funding
7 credit, and shall be deemed to be payment in full of the
8 receiving district's tuition charge. In the case of a student
9 who is not eligible for a grant, only the per pupil basic
10 education funding authorized by this subsection shall be applied
11 toward the tuition charge of the receiving school district. The
12 student's parents shall pay an amount equal to thirty-three and
13 one-third (33 1/3) per centum of the balance of the charge which
14 shall be deemed to be payment in full of the receiving
15 district's tuition charge: Provided, however, That funding for a
16 nonresident student defined as a "child with exceptionalities"
17 under section 1371 shall be provided pursuant to clause
18 (2)(ii)(iii) and (iv).

19 (4) Each school district, area vocational-technical school
20 or intermediate unit in its sole discretion, shall determine by
21 resolution the number of available attendance slots on an annual
22 basis at each age or grade level at each of its public schools
23 and shall report that number to the department each year by a
24 date to be established by the department. The department shall
25 not have any authority to abrogate or modify a determination of
26 a school entity regarding the number of available attendance
27 slots. In determining and allocating attendance slots, each
28 school district shall provide for the accommodation of any
29 resident student of the district who desires to attend a
30 particular public school in the district, giving first

preference to students residing within a school's attendance boundary. After providing for the attendance of the remaining resident students, the school district shall give first preference to nonresident students who were in attendance in the district's schools during the immediately preceding school term. If sufficient slots are not available to accommodate nonresident students who were in attendance in the district's schools during the immediately preceding school term, available slots shall be allocated through a publicly conducted lottery among these students. Should any attendance slots remain available after providing for nonresident students who were in attendance during the preceding term, the slots shall be filled by the superintendent or his designee, through a publicly conducted lottery from the pool of all remaining qualified applicants who have made timely application. With the exception of magnet schools or schools with specialized academic missions, selection procedures shall not include eligibility criteria in the allocation of available slots.

Section 1304-B. Educational Opportunity Grants.--(a) Educational opportunity grants authorized under this article shall be made from and limited to annual appropriations made by the General Assembly to the department for this purpose. In the event that insufficient moneys are appropriated in any fiscal year to provide grants to all parents of eligible grant recipients in the full amount authorized, the department shall make pro rata reductions in the amount of the grant provided to each parent.

(b) The department shall administer a program of educational opportunity grant awards to be made annually to the parents of each eligible grant recipient subject to the following:

1 (1) Grants shall be made only for the payment of tuition at
2 a school within this Commonwealth. Grants shall not be made for
3 a home education program provided pursuant to section 1327.1.

4 (2) For the school year 1999-2000, a grant shall be
5 available only to eligible grant recipients whose parents
6 received annual taxable income which did not exceed fifteen
7 thousand dollars (\$15,000). For the school year 2000-2001, a
8 grant shall be available only to eligible grant recipients whose
9 parents received taxable income which did not exceed twenty-five
10 thousand dollars (\$25,000). For the school year 2001-2002, a
11 grant shall be available only to eligible grant recipients whose
12 parents received taxable income which did not exceed thirty-five
13 thousand dollars (\$35,000). For the school year 2002-2003, a
14 grant shall be available only to eligible grant recipients whose
15 parents received taxable income which did not exceed fifty
16 thousand dollars (\$50,000). For the school year 2003-2004, a
17 grant shall be available only to eligible grant recipients whose
18 parents received taxable income which did not exceed seventy-
19 five thousand dollars (\$75,000). The yearly taxable income limit
20 shall be published by the department as a notice in the
21 Pennsylvania Bulletin.

22 (3) For the school years 1999-2000 through 2003-2004, the
23 grant shall be the lesser of seven hundred dollars (\$700) or an
24 amount equal to ninety (90) per centum of the actual amount of
25 tuition:

26 (i) for an eligible grant recipient enrolled in a full-day
27 kindergarten program meeting the requirements relating to
28 minimum hours or days of instruction in section 1327; or

29 (ii) for an eligible grant recipient enrolled in any grade
30 one (1) through eight (8).

1 (4) For the school years 1999-2000 through 2003-2004, the
2 grant shall be the lesser of three hundred fifty dollars (\$350)
3 or an amount equal to ninety (90) per centum of the actual
4 amount of tuition for an eligible grant recipient enrolled in a
5 half-day kindergarten program meeting the requirements of this
6 act.

7 (5) For the school years 1999-2000 through 2003-2004, a
8 grant for an eligible grant recipient whose parents received
9 taxable income which did not exceed fifteen thousand dollars
10 (\$15,000) shall be two times the grant level established in
11 clauses (3) and (4) but in no case shall the grant exceed an
12 amount equal to ninety (90%) per centum of the actual amount of
13 tuition.

14 (6) For the school years 2000-2001 through 2003-2004, a
15 grant for an eligible grant recipient who was enrolled in grade
16 eight in the prior school year and who is enrolled in grade nine
17 through twelve in a subsequent school year, shall be the grant
18 level received during the eighth grade under clause (3), (4) or
19 (5).

20 Section 1305-B. Administration.--(a) The department shall
21 adopt guidelines to establish:

22 (1) an application form and approval process;

23 (2) standards for verification of the accuracy of
24 application information;

25 (3) confirmation of attendance;

26 (4) pro rata refunds of grants for students who withdraw
27 during the school year;

28 (5) repayment of refunded grants to the department;

29 (6) reasonable deadlines for submission of applications; and

30 (7) the general establishment and operation of the grant

program and basic education funding payments.

The department shall announce the award of grants no later than August 15 for the 1999-2000 school year and thereafter as provided in the guidelines. If a grant recipient is no longer enrolled prior to the completion of the school term, the school shall send written notice to the department. The guidelines shall be published in the Pennsylvania Bulletin. A copy of the guidelines shall be mailed by the department to each school district and nonpublic school in this Commonwealth.

(b) Adjudications under this article shall be subject to 2 Pa.C.S. (relating to administrative law and procedure).

(c) Grants shall be paid to the parent of an eligible recipient upon receipt of written confirmation of enrollment from the school. If a grant recipient is no longer enrolled prior to the end of the school term, the school shall notify the department in writing within seven (7) days.

(d) The department shall adopt procedures to assist school districts to develop and distribute public information concerning educational choice programs. In addition to other public information programs used by the department, procedures for dissemination of public information shall be published in the Pennsylvania Bulletin and shall be mailed by the department to each school district and nonpublic school in this Commonwealth.

(e) The accuracy of the application shall be verified in writing by the parents. The application shall also include a verified statement from the school district or nonpublic school setting forth the educational program for which a grant is sought and attesting to the enrollment of the eligible grant recipient and the tuition charge. Each year the department shall

1 verify the accuracy of grant applications through a random audit
2 process. The audit process may include requesting a copy of the
3 applicant's applicable Federal income tax return or other
4 evidence of the applicant's financial status. If the applicant
5 is not required to submit a Federal income tax return, income
6 shall be verified by appropriate documentation requested by the
7 department. An applicant who fails to submit information and
8 documentation requested by the department without a showing
9 satisfactory to the department that the information or
10 documentation is unavailable and without offering substitute
11 documentation satisfactory to the department shall forfeit
12 eligibility for a grant until a copy of the required
13 documentation has been received by the department. Income
14 verification under this subsection may also be used when the
15 department has probable cause to believe an applicant has
16 submitted incorrect income information. Copies of Federal tax
17 returns and other income information and documentation received
18 pursuant to this subsection shall be confidential. Department
19 personnel shall be subject to all disclosure and penalty
20 provisions of section 353 (f) of the act of March 4, 1971
21 (P.L.6, No.2), known as the "Tax Reform Code of 1971."

22 (f) If a student attends a public school outside the
23 student's district of residence and the receiving school
24 district has received per pupil basic education funding for the
25 student and the student is no longer enrolled prior to
26 completion of the school term, the receiving district shall
27 refund a pro rata portion of the per pupil basic education
28 funding for the balance of the school year to the department
29 within ten (10) days of determining that the student is no
30 longer enrolled.

1 (g) (1) If a grant recipient is no longer enrolled in a
2 school and is not subsequently timely enrolled in another full-
3 day kindergarten, half-day kindergarten, or elementary or
4 secondary program, the parent of the grant recipient shall
5 submit the full amount of a pro rata grant refund payment to the
6 department within thirty (30) days of receipt of notification
7 that the payment is due. If the parent fails to submit the pro
8 rata grant refund, the department may impose interest on the
9 amount owed by the parent. Interest shall be calculated from the
10 due date at the rate determined by the Secretary of Revenue for
11 interest payments on overdue taxes or the refund of taxes as
12 provided in sections 806 and 806.1 of the act of April 9, 1929
13 (P.L.343, No.176), known as "The Fiscal Code." Should the
14 parents of the grant recipient fail to submit the full amount of
15 the refund to the department within one hundred eighty (180)
16 days of a written demand therefore, the department may also
17 impose a civil penalty not to exceed the full amount of the
18 annual grant award made to the parents and disqualify the grant
19 recipient from eligibility for an educational opportunity grant
20 for a period of up to two (2) years.

21 (2) In addition to the penalties in clause (1), any parent
22 who fraudulently submits a grant application or who knowingly
23 falsifies information on a grant application or other
24 documentation submitted to the department shall be subject to
25 imposition by the department of a civil penalty of up to five
26 thousand dollars (\$5,000) and shall be disqualified from
27 participation in the educational opportunity grant program for a
28 period of up to five (5) years.

29 (3) In addition to the penalties contained in clauses (1)
30 and (2), any parent who fails to make a required refund to the

department or who fraudulently submits a grant application or who knowingly falsifies information on a grant application or other documentation submitted to the department shall reimburse the department for the full amount of any grant or pro rata refund received by the parent.

(4) Any school that wilfully fails to provide timely notice that a student is no longer enrolled as prescribed by department guidelines, shall be subject to imposition by the department of a civil penalty not to exceed one thousand dollars (\$1,000) for each failure.

(5) Any parent who is convicted of or who pleads guilty or nolo contendere to a charge of fraudulently submitting or knowingly falsifying a grant application or fraudulently or knowingly failing to timely reimburse the department for the pro rata refund of a grant shall be guilty of a misdemeanor of the third degree and shall be subject to a fine of up to five thousand dollars (\$5,000) and/or to imprisonment for up to one (1) year.

(6) Any school, person or entity that is convicted of or pleads guilty or nolo contendere to fraudulently or wilfully submitting, or causing to be submitted false or misleading information shall be guilty of a misdemeanor of the third degree and shall be subject to a fine of up to five thousand dollars (\$5,000) and/or to imprisonment for up to one (1) year.

(h) Notwithstanding any other provision of law, procedures and guidelines under this article shall not be subject to review, regulation or approval by the State Board of Education.

(i) Nothing in this article shall be construed to empower the Commonwealth or any of its agencies or officers or political subdivisions to impose any additional requirements on any

nonpublic school which are not otherwise authorized under the laws of this Commonwealth or to require any nonpublic school to accept eligible grant recipients if the nonpublic school does not offer appropriate programs or is not structured or equipped with the necessary facilities to meet the special needs of the student or does not offer a particular program requested.

(j) Educational opportunity grant funds received by a parent of an eligible grant recipient under this article shall not be considered to be taxable income for purposes of Article III of the "Tax Reform Code of 1971," nor constitute financial assistance or appropriations to the educational institution attended by the grant recipient.

(k) No nonpublic school may be compelled to accept or enroll eligible grant recipients.

(l) No school may charge a grant recipient a higher tuition than the student would have been charged without receiving a grant.

(m) (1) Except as provided in clause (2), the provisions of this article are severable. If any provision of this article or its application to any person or circumstances is finally determined to be invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application.

(2) (i) If the provision in section 1303-B(b)(4) which empowers school entities to determine the number of attendance slots on an annual basis at each age or grade level at each public school is finally determined to be invalid by an appellate court of competent jurisdiction, this article shall be invalid.

(ii) If the statutory authority for the award of educational

1 opportunity grants to parents of students attending nonpublic
2 schools is finally determined by an appellate court of competent
3 jurisdiction to be unconstitutional, then the award of
4 educational opportunity grants to parents of students attending
5 public school shall be invalid. If the statutory authority for
6 the award of educational opportunity grants to parents of
7 students attending public schools is finally determined by an
8 appellate court of competent jurisdiction to be
9 unconstitutional, then the award of educational opportunity
10 grants to parents of students attending nonpublic schools shall
11 be invalid.

12 (n) If the award of educational opportunity grants to
13 parents of students attending public or nonpublic schools is
14 enjoined or otherwise delayed by a court of competent
15 jurisdiction, the five-year schedule under section 1304-B,
16 established for the awarding of grants and the basic education
17 funding base established in section 2502.36 shall begin with the
18 school year commencing after:

19 (1) If an injunction or delay occurs in a court of this
20 Commonwealth, final determination of the Pennsylvania Supreme
21 Court or an intermediate appellate court of this Commonwealth,
22 so long as in the latter case, further review has been either
23 precluded or denied.

24 (2) If an injunction occurs in Federal court, final
25 determination by the United States Supreme Court or the Third
26 Circuit Court of Appeals, so long as in the latter case further
27 appeal or review has been precluded or denied.

28 Section 1306-B. Time Period for Program.--Provisions of this
29 article pertaining to the award of educational opportunity
30 grants shall terminate five (5) years after the effective date

of this article or five (5) years after the commencement of the
educational opportunity grant program under this article,
whichever is later, unless reenacted. This section shall not
apply to provisions relating to the selection of a public school
by a parent, which the parent's child will attend and the per
pupil basic education funding, transportation and other
provisions related to that choice.

Section 1307-B. Report.--(a) No later than February 1,
2001, and no later than January 1 each year thereafter, the
secretary shall submit a report to the Governor and the
Appropriations Committee and the Education Committee of the
Senate and the Appropriations Committee and Education Committee
of the House of Representatives, which shall include the
following:

(1) The total number of educational opportunity grants
awarded to students attending public schools outside their
district of residence and students attending nonpublic schools.

(2) From the information provided on the grant application
forms filed pursuant to section 1305-B(d).

(i) The number and amounts of grants awarded.

(ii) The schools for which grants were sought.

(iii) The tuition charge for the schools in which grant
recipients were enrolled.

(3) The number of grant recipients who subsequently withdrew
from their original enrollment choice.

(4) The number of public school students who were not grant
recipients but attended a public school outside their district
of residence.

(5) The number of exceptional students who attended a school
outside their district of residence, and for whom the resident

district forwarded funding for their special education services.

(6) An estimate of additional transportation costs to public school districts under this article.

(7) The number of persons or schools for whom penalties were assessed under the provisions of section 1305-B(f). In no case shall the individual names of educational opportunity grant recipients or their parents be included in the report.

Section 1308-B. Evaluation.--(a) On February 1 of the fourth year of the implementation of the educational opportunity grant program under section 1304-B, the Governor shall provide for an independent evaluation of the educational opportunity grant program. The evaluation report shall be provided to the Governor and the General Assembly by December 1 of the same calendar year.

(b) The department shall solicit requests for proposals for the evaluation of the educational opportunity grant program. The proposals shall be available for public inspection at least thirty (30) days prior to the awarding of the contract for the evaluation. The evaluation procedure shall include the receipt of public comments on the educational opportunity grant program.

(c) The evaluation shall consider where available:

(1) the levels of academic performance of students in public schools, students receiving educational opportunity grants to attend public and nonpublic schools, and students who are not grant recipients who attend a public school outside of their district of residence under section 1303-B;

(2) academic and extracurricular programs available for the education of students in all public schools and public and nonpublic schools with students receiving educational opportunity grants;

1 (3) parental involvement in the activities of all public
2 schools and nonpublic schools enrolling students receiving
3 educational opportunity grants; and

4 (4) parental satisfaction with the educational opportunity
5 grant and public school choice programs under this article.

6 (d) The department shall provide technical and other
7 assistance to facilitate completion of the report.

8 (e) The evaluation shall not include any listing of programs
9 or contain any assessments or measurements which address or
10 measure the attitudes, values or personal beliefs of the
11 students attending a school under the educational opportunity
12 grant program or public school choice options provided in this
13 article.

14 (f) A nonpublic school shall only be required to provide
15 information for the independent evaluation to the extent that
16 the information required under subsection (c) is readily
17 available and does not require the administration of any
18 additional tests or other academic assessments or require
19 significant additional data collection by the school.

20 Section 3. Section 1726-A of the act, added June 19, 1997
21 (P.L.225, No.22), is amended to read:

22 Section 1726-A. Transportation.--Students who reside in the
23 school district in which the charter school is located or who
24 are residents of a school district which is part of a regional
25 charter school shall be provided transportation to the charter
26 school on the same terms and conditions as transportation is
27 provided to students attending the schools of the district.

28 School districts of the first class shall also provide
29 transportation to such students if they are of the same age or
30 are enrolled in the same grade, grades or their grade

equivalents, as any students of the district for whom
transportation is provided under any other program or policy to
the schools of the district. Nonresident students shall be
provided transportation under section 1361. Districts providing
transportation to a charter school outside the district shall be
eligible for payments under section 2509.3 for each public
school student transported.

Section 4. The act is amended by adding sections to read:

Section 2502.36. Basic Education Funding Base.--

Notwithstanding any other provisions of this act, for the 1999-
2000 school year through the school year 2003-2004, a school
district of residence for a student attending a public or
nonpublic school under Article XIII-B shall not receive less in
basic education funding as established in section 2502.13 and
2502.35, and its successor provisions, than it received in the
prior school year.

Section 2502.37. Unexpended Basic Education Funding.--(a)

No later than March 1 of the fourth school year in which the
expiration of the five-year pilot period for educational
opportunity grants as provided in section 1306-B would occur,
the department shall submit to the Appropriations Committee and
Education Committee of the Senate and the Appropriations
Committee and Education Committee of the House of
Representatives an estimate of all funds not expended under
basic education funding, as defined in Article XIII-B, by the
Commonwealth for students attending a nonpublic school with an
educational opportunity grant under section 1304-B. The estimate
shall be made by determining the number of students who were
enrolled in a public school in their district of residence
during the school year prior to the implementation of the

1 educational opportunity grant program and who attend a nonpublic
2 school in the fall of the fourth school year of the five-year
3 implementation period of the grant program using an educational
4 opportunity grant under section 1304-B.

5 (b) For the first school year following the five-year
6 implementation period under section 1306-B, the Commonwealth
7 shall provide funds equivalent to the estimated basic education
8 funding not expended under subsection (a). The funds shall be
9 paid on an equal per pupil basis to school districts with market
10 value/income aid ratios equal to or greater than five thousand
11 ten-thousandths (.5000) and which are in whole, or in part,
12 located within counties of the fifth through eighth class. The
13 board of directors of a school district shall use the funds:

14 (1) for professional development activities for staff to
15 enable students to attain State and local academic standards;

16 (2) to hire additional teaching staff to reduce class sizes
17 in grades kindergarten through three;

18 (3) to hire additional special education teachers and
19 classroom aids; or

20 (4) to address other expenses of providing special education
21 services to students who are defined as exceptional under
22 section 1371. The funds shall not be used for administrative or
23 legal expenses incurred in providing special education services.

24 (c) The submission date for the information required under
25 subsection (a) shall be postponed to coincide with section 1306-
26 B if the implementation of the educational opportunity grant
27 program in section 1304-B is delayed.

28 Section 5. Section 2509.3 of the act, amended April 27, 1998
29 (P.L.270, No.46), is amended to read:

30 Section 2509.3. Payments on Account of Certain Interdistrict

1 School Transportation and Transportation of Nonpublic School
2 Pupils.--Each school district, regardless of classification,
3 shall be paid by the Commonwealth the sum of thirty-five dollars
4 (\$35) for each nonpublic school pupil transported in the school
5 year 1978-1979 through the school year 1983-1984. For the school
6 year 1984-1985 through the school year 1989-1990, each school
7 district shall be paid the sum of seventy dollars (\$70) for each
8 nonpublic school pupil transported. For the school years 1990-
9 1991 and 1991-1992, each school district shall be paid the sum
10 of one hundred twenty-four dollars (\$124) for each nonpublic
11 school pupil transported. For the school year 1992-1993 and the
12 1993-1994 school year, each school district shall be paid the
13 sum of one hundred fifty-nine dollars (\$159) for each nonpublic
14 school pupil transported. For the school year 1994-1995 through
15 the school year 1996-1997, each school district shall be paid
16 the sum of two hundred dollars (\$200) for each nonpublic school
17 pupil transported. For the school year 1997-1998 and each school
18 year thereafter, each school district shall be paid the sum of
19 two hundred eighty-five dollars (\$285) for each nonpublic school
20 pupil transported[.] and for each charter school pupil
21 transported to a charter school outside the district boundaries.
22 For the school year 1999-2000, and each school year thereafter,
23 each district shall be paid the sum of two hundred eighty-five
24 dollars (\$285) for each public school pupil transported to a
25 public school outside the school district pursuant to Article
26 XIII-B.

27 Section 6. Section 2541(d) of the act, amended November 20,
28 1979 (P.L.465, No.97), is amended to read:

29 Section 2541. Payments on Account of Pupil Transportation.--

30 * * *

(d) The Commonwealth shall reimburse the school districts for the school year 1973-1974 and for each year thereafter for the approved reimbursable costs incurred in providing transportation under section 1361 for students attending a public school or a charter school outside of their district of residence pursuant to Article XIII-B, for nonpublic school pupils and under section 1362 for hazardous conditions: Provided, however, That no district shall receive less than fifty percent (50%) of such approved reimbursable costs.

* * *

Section 7. Section 2561 of the act, amended or added September 11, 1959 (P.L.873, No.348), July 25, 1963 (P.L.281, No.151), December 17, 1982 (P.L.1378, No.316), June 7, 1993 (P.L.49, No.16) and June 25, 1997 (P.L.297, No.30), is amended to read:

Section 2561. Tuition Charges for Pupils of Other Districts.--(a) A school district or vocational school district receiving elementary or high school pupils or vocational or other extension education pupils who are residents of another school district or another vocational school district shall compute the tuition charges as follows:

(1) General. Add the salaries of secretaries, treasurers, auditors, superintendents, the cost of library books, the salaries of librarians, lectures, health, medical, nurse and dental services, the wages of janitors, and other comparable employes, the cost of fuel, water, light and power, telephone rentals and tolls, the cost of maintenance of school plant, including ordinary repairs, but not including alterations or remodeling, the cost of care of school grounds, premiums on fire and workmen's compensation insurance, the cost of attendance at

1 teachers' institutes, and the district's contribution to the
2 retirement fund and social security contribution fund on behalf
3 of the above listed employees incurred for the school year
4 immediately preceding, and divide the sum so obtained by the
5 total number of pupils in average daily membership in the
6 receiving district's public schools during the school year
7 immediately preceding. The quotient so obtained shall be
8 designated the "overhead cost per pupil."

9 (2) Elementary Tuition Charge. Add the salaries of
10 supervisors, principals, clerks, assistants and teachers
11 employed in the receiving district's elementary schools, the
12 district's contribution to the retirement fund and social
13 security contribution fund on behalf of teachers, supervisors
14 and principals employed in the district's elementary schools,
15 the cost of textbooks, and supplies of the second class used in
16 the district's elementary schools incurred for the school year
17 immediately preceding, and divide the sum so obtained by the
18 total number of pupils in average daily membership in the
19 receiving district's elementary schools during the school year
20 immediately preceding. The quotient so obtained shall be
21 designated as the "instruction cost per elementary pupil." Add
22 to the instruction cost per elementary pupil, the overhead cost
23 per pupil and a rental charge of eight dollars (\$8) per pupil
24 for the use of the receiving district's school plant. For the
25 school years 1952-1953 and 1953-1954 only, but not thereafter,
26 deduct from the amount so obtained the per pupil State
27 appropriation on account of elementary school teaching units.
28 The cost so determined shall be the "tuition charge per
29 elementary pupil."

30 (3) High School Tuition Charge. Add the salaries of

1 supervisors, principals, clerks, assistants and teachers
2 employed in the receiving district's high schools, the
3 district's contribution to the retirement fund and social
4 security contribution fund on behalf of teachers, supervisors
5 and principals employed in the district's high schools, the cost
6 of textbooks and supplies of the second class used in the
7 district's high schools incurred for the school year immediately
8 preceding, and divide the sum so obtained by the total number of
9 pupils in average daily membership in the receiving district's
10 high schools during the school year immediately preceding. The
11 quotient so obtained shall be designated as the "instruction
12 cost per high school pupil." Add to the instruction cost per
13 high school pupil the overhead cost per pupil and a rental
14 charge of eighteen dollars (\$18) per pupil for the use of the
15 receiving district's school plant. For the school years 1952-
16 1953 and 1953-1954 only, but not thereafter, deduct from the
17 amount so obtained the per pupil State appropriation on account
18 of high school teaching units. The cost so determined shall be
19 the "tuition charge per high school pupil." Upon the request of
20 the receiving district, the "tuition charge per high school
21 pupil" shall be computed separately for pupils attending junior
22 high school and pupils attending senior high school.

23 (4) Vocational or Other Extension Tuition Charge. Add the
24 salaries of administrators, supervisors, instructors, clerks and
25 custodians specifically employed in the school district's or
26 vocational school district's annual program of Vocational or
27 other Extension Education, the cost of textbooks, and supplies
28 of the second class issued for the program incurred for the
29 school year immediately preceding. A charge of five cents (.05)
30 per pupil hour of instruction for the district overhead and

1 plant usage. Subtract from the sum so obtained the amount of
2 State appropriation applicable. The remainder shall be
3 designated as the "district cost for vocational or other
4 extension education." Determine the total pupil hours of
5 instruction during the school year immediately preceding, divide
6 the "district cost for vocational or other extension education"
7 by the total pupil hours of instruction. The cost so determined
8 shall be the "vocational or other extension tuition charge per
9 pupil hour of instruction.

10 (5) A school district shall compute the tuition charges for
11 pupils who are residents of another school district for
12 budgetary purposes at the beginning of each school year, and
13 shall use the expenses of the next preceding school year as a
14 basis for such computation. At the end of each school year, the
15 tuition charges shall again be computed and be based on the
16 actual expenses for the school year immediately preceding and
17 the tuition charges for non-resident pupils shall then be
18 adjusted in accordance with this latter computation. The school
19 district in which the non-resident pupil is a legal resident
20 shall pay the tuition charges in accordance with the computation
21 based upon these actual expenses.

22 (6) When the public school district administers and delivers
23 the educational services required by this act to a child
24 referred to an institution, pursuant to a proceeding under 42
25 Pa.C.S. Ch. 63 (relating to juvenile matters), at the
26 institution itself, the tuition to be charged to the district of
27 residence of such child shall be one and one-half times the
28 amount determined in accordance with clauses (1) through (5),
29 but not to exceed the actual cost of the educational services
30 provided to such child.

1 (7) Special Education Tuition Charge. When the receiving
2 district voluntarily receives exceptional children, the
3 receiving district and sending district may agree that the
4 sending district will pay a special education charge in addition
5 to the applicable tuition charge. Such special education charge
6 shall be an amount as determined by the two school districts.

7 (b) The provisions of this section shall apply to the
8 calculation of a tuition charge by a school district for a
9 nonresident student attending a school within that district
10 under the provisions of Article XIII, except for a "child with
11 exceptionalities" as defined in section 1371. The provision of
12 this section shall not establish the tuition payment to be made
13 by a nonresident student attending the district under the
14 provisions of Article XIII-B. The provisions of Article XIII-B
15 shall supersede the provision of this section regarding the
16 tuition payment made by a nonresident student.

17 Section 8. The Department of Education shall, within 120
18 days of the effective date of this act, adopt and publish such
19 guidelines and procedures as may be required to fully implement
20 Article XIII-B of the act. The initial guidelines and procedures
21 shall not be subject to the act of June 25, 1982 (P.L.633,
22 No.181), known as the Regulatory Review Act.

23 Section 9. The amendment of section 1726-A of the act shall
24 be retroactive to July 1, 1998.

25 Section 10. This act shall take effect immediately.