

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 704 Session of
2009

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 22, 2010

AN ACT

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

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

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

17 ~~Section 2501. Definitions. For the purposes of this article~~

1 ~~the following terms shall have the following meanings:~~

2 ~~* * *~~

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

9 ~~* * *~~

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

17 ~~(i) Half time prekindergarten and half time kindergarten:~~
18 ~~0.50.~~

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

22 ~~(iii) Elementary and secondary: 1.00.~~

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

28 ~~(33) "Base Cost per Student." The cost of educating an~~
29 ~~average student in Pennsylvania without special needs to meet~~
30 ~~State performance expectations as originally determined in the~~

~~final revised Statewide Costing out Study of 2007 performed pursuant to section 2599.3 and as adjusted annually for the fiscal year in the formula for basic education funding.~~

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

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

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

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

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

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

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

~~(36) "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.~~

~~(37) "Public Notice." 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 its publicly accessible Internet website for no less than a duration of twelve (12) months; and~~

~~(iii) through its timely issuance of a related Statewide press release.~~

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

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

~~(40) "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, including 22 Pa. Code 14.104 (relating to special education plans).~~

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

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

~~Section 2509.13. Special Education Funding for Student Achievement and Instruction of Eligible Students in Regular Classrooms. (a) The Department of Education shall determine a special education adequacy target for each school district by~~

~~calculating the sum of the following:~~

~~(1) A special education supplement determined by calculating the product of:~~

~~(i) the base cost per student;~~

~~(ii) the school district's Modified SEADM; and~~

~~(iii) one and thirty one hundredths (1.3).~~

~~(2) An adjustment for geographic price differences calculated as follows:~~

~~(i) Multiply the amount under clause (1) by the school district's location cost metric or one (1), whichever is greater.~~

~~(ii) Subtract the amount under clause (1) from the product under subclause (i).~~

~~(b) The Department of Education shall determine a State special education funding target for each school district by calculating the product of:~~

~~(1) the difference between the school district's special education adequacy target determined under subsection (a) and its actual special education spending for the funding year, or zero, whichever is greater;~~

~~(2) the school district's market value/personal income aid ratio for the school year in which funding occurs;~~

~~(3) the lesser of one (1) and the school district's funding year equalized millage divided by the equalized millage that represents the seventy fifth percentile of the equalized millage of all school districts in the funding year; and~~

~~(4) one and fifteen one hundredths (1.15) for school districts meeting the following criteria:~~

~~(i) either 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 is 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 is available; and~~

~~(ii) in the most recent school year for which data is 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, including, but not limited to, meeting the annual target, the confidence interval, the safe harbor target, or by appeal.~~

~~Nothing in this subsection or any other provision of this act alters Federal or State law regarding the right of an eligible student to receive education in the least restrictive environment or alters the legal authority of Individualized Education Program (IEP) teams to make appropriate program and placement decisions for eligible students in accordance with the IEP developed for each eligible student.~~

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

~~(d) In furtherance of the General Assembly's commitment to provide adequate special education funding that will ensure equitable State and local investments in special education in~~

~~public schools, and in order to enable eligible students to attain applicable Federal and State academic standards and to be educated in regular classrooms when appropriate, it is the goal of the Commonwealth to review and meet State special education funding targets by fiscal year 2014-2015.~~

~~(e) The Commonwealth shall pay to each school district a special education funding allocation for the 2010-2011 school year which shall consist of the sum of the following:~~

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

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

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

~~(f) The Department of Education shall provide additional funding for the 2010-2011 school year to any school district where the amount under subsection (e) (2) provides an amount less than the percentage increase in the school district's special education funding allocation for the 2008-2009 school year under section 2509.5. The amount of the additional funding shall be~~

~~the amount required so that the sum of subsection (c) (2) and this subsection is at least equal to the percentage increase in the school district's special education funding allocation for the 2008-2009 school year under section 2509.5.~~

~~(g) (1) The Commonwealth shall appropriate additional funding in each year for extraordinary special education program expenses under section 2509.8. The appropriation for the fund shall be at one and fifty one hundredths percent (1.50%) of the total of special education appropriations made pursuant to subsection (c) and shall be made in addition to such total.~~

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

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

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

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

~~(4) School districts or charter schools may apply for resources through the fund pursuant to procedures established by the Department of Education. The Department of Education shall issue resources from the fund only in response to such~~

~~applications. The Department of Education shall give priority to districts or charter schools with a relatively high percentage of students in poverty, annually setting these criteria and granting a higher percentage of the resources requested by such districts or charter schools.~~

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

~~(6) As used in this subsection, "extraordinary special education expenses" are 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 funding for special education, in order to provide the student with an appropriate education in the least restrictive environment.~~

~~(h) Notwithstanding any other provision of this section, if insufficient funds are appropriated for purposes of this section for the 2010-2011 school year, each school district shall be paid the amount it received during the 2008-2009 school year under section 2509.5(zz).~~

~~Section 2509.14. Special Education Accountability to Commonwealth Taxpayers. (a) (1) The Department of Education shall determine the form and manner in which school districts shall submit a special education plan and revisions, updates and amendments to the special education plan pursuant to this section. The special education plan shall be consistent with other existing plans and reports required by the Department of Education to the greatest extent possible, including those~~

~~required under 22 Pa. Code § 14.104 (relating to special education plans). Special education plans shall be written in a manner that is easy to use and understand by parents and the public, including a general summary.~~

~~(2) The Department of Education shall:~~

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

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

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

~~(iv) provide a written explanation when disapproving a plan.~~

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

~~(i) meet the requirements of this section;~~

~~(ii) address the academic and developmental challenges for eligible students identified in the school district's most recent student achievement results and pursuant to performance indicators, with specific focus on individual schools, grade levels and populations of students that demonstrate inadequate levels of student outcomes; and~~

~~(iii) describe programs and strategies that are most likely to improve student outcomes in the school district.~~

~~(4) Upon disapproving a school district's special education plan, update or revision submitted pursuant to this section, the Department of Education shall withhold the portion of the annual State increase in special education funding which exceeds the index until such a time as a written special education plan, update or revision is approved.~~

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

~~(b) (1) By September 15, 2010, and by April 15 of each year thereafter, each school district receiving an increase in its State special education funding allocation of more than the index shall update its special education plan based on overall circumstances, shall also revise the special education plan to show in detail how the increase above the index will be used and shall submit the updates and revisions to the Department of Education for approval pursuant to subsection (a). Unless a school district decides to amend its special education plan more broadly to reflect the receipt of new funding or for other reasons, the guidelines and regulations developed by the Department of Education pursuant to this section for plan updates or revisions shall allow a district to meet the requirements of this section by adding the mandated information as an appendix to the existing plan. The special education plan, update or revision shall document the challenges remaining and progress made in addressing student needs and improving student outcomes, shall be accompanied by a budget, timeline and~~

~~benchmarks for implementation, and shall incorporate other existing plans and reports required by the Department of Education to the greatest extent possible. The budget required by this subsection shall be considered by the Department of Education in evaluating the special education plan but is not itself subject to approval or disapproval by the department.~~

~~(2) (i) Each school district receiving an increased allocation above the index shall use these funds for one or more research-based programs and supports that meet the following basic criteria:~~

~~(A) expressly benefit eligible students educated in the least restrictive environment in accordance with Federal and State law;~~

~~(B) contribute to achievement of performance indicators; and~~

~~(C) are approved by the Department of Education in guidelines issued by August 15, 2010, and by February 15 of each year thereafter.~~

~~(ii) Department of Education guidelines for research-based programs and supports meeting these basic criteria shall address at least the following:~~

~~(A) curricula adaptation;~~

~~(B) co-teaching;~~

~~(C) assistive technology;~~

~~(D) school wide positive behavior supports;~~

~~(E) supplementary aids and services;~~

~~(F) professional development;~~

~~(G) reading specialist services and supports;~~

~~(H) reducing caseloads for special education teachers and related services personnel; and~~

~~(I) placing and serving eligible students in regular~~

~~classrooms with supports in accordance with the Individualized Education Program (IEP) developed for each eligible student.~~

~~(3) According to standards established by the Department of Education, the special education plan, update or revision shall document that the increased allocation above the index is used:~~

~~(i) for the purposes approved under clause (2);~~
~~(ii) to supplement and not supplant other resources; and~~
~~(iii) in ways that allow the school district to maintain its effort for special education expenditures.~~

~~(c) Accountability for the effective use of resources to meet student needs shall 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 and other special education accountability issues for public school entities serving eligible students and this Commonwealth.~~

~~(2) Upon disapproving a school district's special education plan, update or revision, the Department of Education shall withhold the portion of the annual State increase in special education funding which exceeds the index until such a time as a written special education plan, update or revision is approved or conditionally approved.~~

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

~~(A) review and monitor implementation of all special education plans, including, but not limited to, compliance with subsection (b) and 22 Pa. Code § 14.104;~~

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

~~(C) identify at any time and at least annually all school districts failing to adequately implement their special education plans in compliance with Federal and State law, failing to comply with subsection (b) or not making annual progress to meet student needs based on performance indicators; and~~

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

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

~~(4) To discourage the inappropriate over identification of children for special education, the Department of Education shall automatically conduct a thorough review of the special education plan of any school district where the ratio of its special education average daily membership 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 (5) year period. Appropriate remedial action, including withholding up to five percent (5%) of all State special education funding, may be taken, unless the increase is determined to be justified by the Department of Education after consultation with the school district.~~

~~(d) The Department of Education shall issue to any affected~~

~~school district a notice specifying the department's decisions and actions pursuant to this section and the rationale for such decisions and actions. A school district may file a written complaint with the Secretary of Education about the Department of Education's decisions and actions regarding that district made pursuant to this section. The complaint must be submitted to the Secretary of Education's office within thirty (30) calendar days of the Department of Education's decision or action or within thirty (30) calendar days of receiving the notice, whichever is greater. The Secretary of Education shall consider the complaint, consult with the school district and, within thirty (30) calendar days after receiving the complaint, issue a written decision addressing the concerns and claims made in the complaint, explaining the judgment of the Department of Education in response to these concerns and claims, and specifying the opportunity for a subsequent 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 Part II (relating to general rules of administrative practice and procedure). If requested, the Department of Education shall then convene a hearing within thirty (30) calendar days after the receipt of a school district's hearing request following its written complaint decision. The Department of Education shall render a written hearing decision within thirty (30) calendar days following the hearing.~~

~~(c) The Department of Education shall give public notice of the decisions, actions and reports made pursuant to this section.~~

~~(f) Nothing in this section shall supersede or preempt any~~

~~provisions of a collective bargaining agreement between a school entity and an employee organization in effect on the effective date of this section.~~

~~(g) Notwithstanding any other provision of this section, if insufficient funds are appropriated for purposes of section 2509.13 for the 2010-2011 school year, the requirements of this section are waived.~~

~~Section 3. Within 60 calendar days following the effective date of this act, or within a different time period if otherwise specified in this act, the Secretary of Education shall propose regulations for promulgation by the State Board of Education which implement this act.~~

~~Section 4. This act shall take effect immediately.~~

SECTION 1. SECTION 2501 OF THE ACT OF MARCH 10, 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL CODE OF 1949, IS AMENDED BY ADDING CLAUSES TO READ:

SECTION 2501. DEFINITIONS.--FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

* * *

(31) "ACTUAL SPECIAL EDUCATION SPENDING." AN AMOUNT EQUAL TO A SCHOOL DISTRICT'S TOTAL ANNUAL EXPENDITURES FOR SPECIAL EDUCATION AS ESTABLISHED BY THE DEPARTMENT OF EDUCATION AND DESIGNATED IN THE MANUAL OF ACCOUNTING AND RELATED FINANCIAL PROCEDURES FOR PENNSYLVANIA SCHOOL SYSTEMS.

(32) "BASE COST PER STUDENT." AS DETERMINED UNDER SECTION 2502.48.

(33) "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.

(34) "PERFORMANCE INDICATORS." MEASURABLE ANNUAL OBJECTIVES

1 ESTABLISHED BY THE DEPARTMENT OF EDUCATION PURSUANT TO SECTION
2 612(A)(15) OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT
3 (PUBLIC LAW 91-230, 20 U.S.C. § 1412(A)(15)), TO ASSESS PROGRESS
4 TOWARD ACHIEVING STATE GOALS FOR THE PERFORMANCE OF ELIGIBLE
5 STUDENTS.

6 (35) "PUBLIC NOTICE." FULL AND TIMELY RELEASE OF INFORMATION
7 AND DOCUMENTS FOR PUBLIC ACCESS AT A MINIMUM THROUGH PUBLICATION
8 BY THE DEPARTMENT OF EDUCATION:

9 (I) IN THE PENNSYLVANIA BULLETIN;

10 (II) ON ITS PUBLICLY ACCESSIBLE INTERNET WEBSITE FOR NO LESS
11 THAN A DURATION OF TWELVE (12) MONTHS; AND

12 (III) THROUGH ITS TIMELY ISSUANCE OF A RELATED STATEWIDE
13 PRESS RELEASE.

14 (36) "REGULAR CLASSROOM." A CLASSROOM IN A REGULAR SCHOOL
15 OPERATED PRIMARILY FOR STUDENTS WHO HAVE NOT BEEN IDENTIFIED AS
16 STUDENTS WITH DISABILITIES WHO ARE IN NEED OF SPECIAL EDUCATION.

17 (37) "REGULAR SCHOOL." A NEIGHBORHOOD SCHOOL, MAGNET SCHOOL,
18 OR OTHER PUBLIC SCHOOL OPERATED FOR ALL STUDENTS, NOT SOLELY
19 ELIGIBLE STUDENTS, IN A SCHOOL DISTRICT.

20 (38) "SPECIAL EDUCATION PLAN." A COMPREHENSIVE PLAN AS WELL
21 AS REVISIONS, UPDATES AND AMENDMENTS FOR ALL SPECIAL EDUCATION
22 PERSONNEL, PROGRAMS, SERVICES AND SUPPORTS PROVIDED BY EACH
23 SCHOOL DISTRICT FOR ELIGIBLE STUDENTS, FILED BY EACH DISTRICT
24 WITH THE DEPARTMENT OF EDUCATION UNDER THIS ACT AND OTHER
25 APPLICABLE FEDERAL AND STATE LAW, INCLUDING 22 PA. CODE 14.104
26 (RELATING TO SPECIAL EDUCATION PLANS).

27 (39) "COMMISSION." THE LEGISLATIVE COMMISSION ON SPECIAL
28 EDUCATION FUNDING ESTABLISHED IN SECTION 2509.13(G).

29 (40) "BASE YEAR." FISCAL YEAR 2008-2009 OR ANOTHER YEAR
30 DESIGNATED BY STATE STATUTE.

1 (41) "SPECIAL EDUCATION ALLOCATION." THE AMOUNT OF SPECIAL
2 EDUCATION FUNDING RECEIVED BY A SCHOOL DISTRICT FROM THE STATE.

3 SECTION 2. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

4 SECTION 2509.13. SPECIAL EDUCATION FUNDING FOR STUDENT
5 ACHIEVEMENT AND INSTRUCTION OF ELIGIBLE STUDENTS.-- (A) THE
6 GENERAL ASSEMBLY SHALL, THROUGH THE ANNUAL APPROPRIATIONS
7 PROCESS, DETERMINE THE LEVEL OF STATE FUNDING FOR SPECIAL
8 EDUCATION AND THE AMOUNT OF ANY CHANGE IN FUNDING, IF ANY. THE
9 CALCULATIONS PURSUANT TO THIS SECTION SHALL DETERMINE ONLY THE
10 DISTRIBUTION OF ANY INCREASE IN THE FUNDING AMONG THE SCHOOL
11 DISTRICTS OF THE COMMONWEALTH AND SHALL NOT BE USED FOR ANY
12 OTHER PURPOSE.

13 (B) THE DEPARTMENT OF EDUCATION SHALL DETERMINE A SPECIAL
14 EDUCATION ALLOCATION FOR EACH SCHOOL DISTRICT IN THE YEAR FOR
15 WHICH FUNDS ARE BEING APPROPRIATED BY CALCULATING THE SUM OF THE
16 FOLLOWING:

17 (1) THE SPECIAL EDUCATION ALLOCATION IN THE BASE YEAR FOR
18 THE SCHOOL DISTRICT;

19 (2) THE ABSOLUTE VALUE OF THE DIFFERENCE BETWEEN THE SPECIAL
20 EDUCATION ALLOCATION IN THE BASE YEAR FOR THE SCHOOL DISTRICT
21 AND THE HIGHEST ANNUAL LEVEL OF THE SPECIAL EDUCATION ALLOCATION
22 FOR THE SCHOOL DISTRICT IN THE YEARS SUBSEQUENT TO THE BASE YEAR
23 EXCEPT FOR THE YEAR FOR WHICH FUNDS ARE BEING APPROPRIATED; AND

24 (3) THE SPECIAL EDUCATION INCREASE, IF ANY, IN THE YEAR FOR
25 WHICH FUNDS ARE BEING APPROPRIATED FOR THE SCHOOL DISTRICT AS
26 DETERMINED UNDER SUBSECTION (C).

27 (C) THE DEPARTMENT OF EDUCATION SHALL DETERMINE THE SPECIAL
28 EDUCATION INCREASE, IF ANY, IN THE YEAR FOR WHICH FUNDS ARE
29 BEING APPROPRIATED FOR EACH SCHOOL DISTRICT BY CALCULATING THE
30 PRODUCT OF:

1 (1) THE DIFFERENCE BETWEEN THE TOTAL STATE APPROPRIATION FOR
2 SPECIAL EDUCATION AGGREGATED FOR ALL SCHOOL DISTRICTS IN THE
3 YEAR FOR WHICH FUNDS ARE BEING APPROPRIATED AND THE TOTAL STATE
4 APPROPRIATION FOR SPECIAL EDUCATION AGGREGATED FOR ALL SCHOOL
5 DISTRICTS IN THE IMMEDIATELY PRECEDING YEAR, OR ZERO, WHICHEVER
6 IS GREATER; AND

7 (2) THE SPECIAL EDUCATION DISTRIBUTION FACTOR FOR THE SCHOOL
8 DISTRICT DETERMINED UNDER SUBSECTION (D).

9 (D) THE DEPARTMENT OF EDUCATION SHALL DETERMINE THE SPECIAL
10 EDUCATION DISTRIBUTION FACTOR FOR EACH SCHOOL DISTRICT BY
11 DIVIDING THE DISTRIBUTION SUBFACTOR FOR EACH SCHOOL DISTRICT
12 DETERMINED UNDER SUBSECTION (E) BY THE SUM OF DISTRIBUTION
13 SUBFACTORS FOR ALL SCHOOL DISTRICTS.

14 (E) THE DEPARTMENT OF EDUCATION SHALL DETERMINE THE
15 DISTRIBUTION SUBFACTOR FOR EACH SCHOOL DISTRICT BY CALCULATING
16 THE PRODUCT OF:

17 (1) THE DIFFERENCE BETWEEN THE SCHOOL DISTRICT'S SUBFACTOR
18 QUANTITY DETERMINED UNDER SUBSECTION (F) AND ITS ACTUAL SPECIAL
19 EDUCATION SPENDING AVERAGED FOR THE THREE (3) MOST RECENT YEARS,
20 OR ZERO, WHICHEVER IS GREATER;

21 (2) THE SCHOOL DISTRICT'S MARKET VALUE/PERSONAL INCOME AID
22 RATIO AVERAGED FOR THE THREE (3) MOST RECENT YEARS; AND

23 (3) THE LESSER OF ONE (1) AND THE SCHOOL DISTRICT'S
24 EQUALIZED MILLAGE AVERAGED FOR THE THREE (3) MOST RECENT YEARS
25 DIVIDED BY THE EQUALIZED MILLAGE THAT REPRESENTS THE SEVENTY-
26 FIFTH PERCENTILE OF THE EQUALIZED MILLAGE OF ALL SCHOOL
27 DISTRICTS AVERAGED FOR THE THREE (3) MOST RECENT YEARS.

28 (F) THE DEPARTMENT OF EDUCATION SHALL DETERMINE THE
29 SUBFACTOR QUANTITY FOR EACH SCHOOL DISTRICT BY CALCULATING THE
30 SUM OF:

1 (1) AN AMOUNT FOR STUDENT COST CATEGORIES DETERMINED BY
2 CALCULATING THE SUM OF:

3 (I) AN AMOUNT ON BEHALF OF ELIGIBLE STUDENTS WITH CATEGORY 3
4 DISABILITIES DETERMINED BY CALCULATING THE PRODUCT OF:

5 (A) THE NUMBER OF ELIGIBLE STUDENTS, AVERAGED FOR THE THREE
6 (3) MOST RECENT YEARS, RESIDING OR ENROLLED IN THE SCHOOL
7 DISTRICT CLASSIFIED AS HAVING CATEGORY 3 DISABILITIES AS
8 PROVIDED UNDER SUBSECTION (G), PROVIDED THAT THE NUMBER OF
9 ELIGIBLE STUDENTS INCLUDED IN THIS CALCULATION WHO ARE PLACED BY
10 THE SCHOOL DISTRICT AND SERVED IN PUBLIC OR PRIVATE SEPARATE
11 SCHOOLS, RESIDENTIAL PLACEMENTS OR HOMEBOUND OR HOSPITAL
12 PLACEMENTS SHALL NOT EXCEED THREE AND ONE-HALF PERCENT (3.5%) OF
13 ALL ELIGIBLE STUDENTS WITH INDIVIDUALIZED EDUCATION PROGRAMS
14 RESIDING OR ENROLLED IN THE SCHOOL DISTRICT OR THE TARGET
15 ESTABLISHED IN THE PART B STATE ANNUAL PERFORMANCE PLAN FILED BY
16 THE DEPARTMENT PURSUANT TO THE INDIVIDUALS WITH DISABILITIES
17 EDUCATION ACT (PUBLIC LAW 91-230, 20 U.S.C. § 1400 ET SEQ.),
18 WHICHEVER IS LESS;

19 (B) THE WEIGHTING FACTOR FOR STUDENTS WITH CATEGORY 3
20 DISABILITIES AS PROVIDED UNDER SUBSECTION (G); AND

21 (C) THE BASE COST PER STUDENT.

22 (II) AN AMOUNT ON BEHALF OF ELIGIBLE STUDENTS WITH CATEGORY
23 2 DISABILITIES DETERMINED BY CALCULATING THE PRODUCT OF:

24 (A) THE NUMBER OF ELIGIBLE STUDENTS IN THE SCHOOL DISTRICT,
25 AVERAGED FOR THE THREE (3) MOST RECENT YEARS;

26 (B) THE STATEWIDE PERCENTAGE OF MODIFIED AVERAGE DAILY
27 MEMBERSHIP DESIGNATED FOR CATEGORY 2 DISABILITIES AS PROVIDED
28 UNDER SUBSECTION (G);

29 (C) THE WEIGHTING FACTOR FOR ELIGIBLE STUDENTS WITH CATEGORY
30 2 DISABILITIES AS PROVIDED UNDER SUBSECTION (G); AND

1 (D) THE BASE COST PER STUDENT.

2 (III) AN AMOUNT ON BEHALF OF ELIGIBLE STUDENTS WITH CATEGORY

3 1 DISABILITIES DETERMINED BY CALCULATING THE PRODUCT OF:

4 (A) THE SCHOOL DISTRICT'S MODIFIED AVERAGE DAILY MEMBERSHIP,

5 AVERAGED FOR THE THREE (3) MOST RECENT YEARS;

6 (B) THE STATEWIDE PERCENTAGE OF MODIFIED AVERAGE DAILY

7 MEMBERSHIP DESIGNATED FOR CATEGORY 1 DISABILITIES AS PROVIDED

8 UNDER SUBSECTION (G);

9 (C) THE WEIGHTING FACTOR FOR ELIGIBLE STUDENTS WITH CATEGORY

10 1 DISABILITIES AS PROVIDED UNDER SUBSECTION (G); AND

11 (D) THE BASE COST PER STUDENT.

12 (2) AN ADJUSTMENT FOR GEOGRAPHIC PRICE DIFFERENCES

13 CALCULATED AS FOLLOWS:

14 (I) MULTIPLY THE AMOUNT UNDER CLAUSE (1) BY THE SCHOOL

15 DISTRICT'S LOCATION COST METRIC OR ONE (1), WHICHEVER IS

16 GREATER.

17 (II) SUBTRACT THE AMOUNT UNDER CLAUSE (1) FROM THE PRODUCT

18 UNDER SUBCLAUSE (I).

19 (G) THE LEGISLATIVE COMMISSION ON SPECIAL EDUCATION FUNDING

20 IS ESTABLISHED AND SHALL DEVELOP SPECIAL EDUCATION FORMULA

21 COMPONENTS AS FOLLOWS:

22 (1) THE STATEWIDE PERCENTAGES OF MODIFIED AVERAGE DAILY

23 MEMBERSHIP WHICH SHALL BE DESIGNATED AS CATEGORY 1 AND CATEGORY

24 2 FOR PURPOSES OF SUBSECTION (F) (1), PROVIDED THAT THE

25 DESIGNATED PERCENTAGE FOR EACH CATEGORY SHALL NOT EXCEED THE

26 ACTUAL PROPORTION OF STUDENTS IN THIS COMMONWEALTH CLASSIFIED AS

27 HAVING SUCH DISABILITIES IN THE MOST RECENT YEAR FOR WHICH DATA

28 IS AVAILABLE.

29 (2) THE WEIGHTING FACTORS FOR STUDENTS WITH CATEGORY 1,

30 CATEGORY 2 AND CATEGORY 3 DISABILITIES FOR PURPOSES OF

1 SUBSECTION (F) (1) .

2 (3) A DESCRIPTION OF AND PARAMETERS FOR CATEGORY 1, CATEGORY
3 2 AND CATEGORY 3 DISABILITIES FOR PURPOSES OF SUBSECTION (F) (1),
4 PROVIDED THAT THE CATEGORIES SHALL BE ESTABLISHED SUCH THAT
5 DISABILITIES TYPICALLY REQUIRING THE LEAST INTENSIVE RANGE OF
6 SERVICES BE CATEGORIZED IN CATEGORY 1 AND DISABILITIES TYPICALLY
7 REQUIRING THE MOST INTENSIVE RANGE OF SERVICES BE CATEGORIZED IN
8 CATEGORY 3.

9 (H) PRIOR TO THE DEVELOPMENT OF THE SPECIAL EDUCATION
10 FORMULA COMPONENTS SPECIFIED IN SUBSECTION (G) BY THE
11 COMMISSION:

12 (1) THE COMMISSION SHALL CONSIDER NATIONALLY ACCEPTED
13 ACCOUNTING AND COSTING-OUT STANDARDS IN DETERMINING THE SPECIAL
14 EDUCATION FORMULA COMPONENTS SPECIFIED IN SUBSECTION (G).

15 (2) THE COMMISSION SHALL, IN A TIMELY MANNER, HOLD NO FEWER
16 THAN THREE (3) PUBLIC HEARINGS IN DIFFERENT REGIONS OF THE STATE
17 TO RECEIVE INPUT AND TESTIMONY FROM STAKEHOLDERS, WHICH MAY
18 INCLUDE THE SECRETARY OF EDUCATION AND OTHER INDIVIDUALS
19 REPRESENTING THE DEPARTMENT OF EDUCATION, PARENTS OF ELIGIBLE
20 STUDENTS, TEACHERS, SCHOOL ADMINISTRATORS, SCHOOL BOARD MEMBERS,
21 HIGHER EDUCATION FACULTY AND EXISTING STATE COMMITTEES, ADVISORY
22 PANELS AND TASK FORCES ESTABLISHED UNDER FEDERAL OR STATE LAW,
23 REGULATIONS OR COURT ORDERS.

24 (3) MEMBERSHIP OF THE COMMISSION SHALL INCLUDE THREE (3)
25 LEGISLATORS FROM EACH OF THE FOUR (4) LEGISLATIVE CAUCUSES, TO
26 BE DETERMINED BY THE LEADERSHIP OF EACH CAUCUS AND TO BE
27 REPLACED AT THE DISCRETION OF THE LEADERSHIP OF EACH CAUCUS. THE
28 COMMISSION MAY PERFORM ITS DUTIES REGARDLESS OF WHETHER ALL FOUR
29 (4) LEGISLATIVE CAUCUSES HAVE ACTUALLY APPOINTED MEMBERS TO THE
30 COMMISSION. THE COMMISSION SHALL CHOOSE A CHAIRPERSON AND

1 UTILIZE LEGISLATIVE STAFF FOR ASSISTANCE IN DEVELOPING SPECIAL
2 EDUCATION FORMULA COMPONENTS. THE DEPARTMENT OF EDUCATION SHALL
3 PROVIDE THE COMMISSION WITH DATA, RESEARCH AND OTHER RELEVANT
4 INFORMATION, UPON REQUEST BY THE COMMISSION.

5 (4) MEMBERS OF THE COMMISSION SHALL BE APPOINTED WITHIN
6 FORTY-FIVE (45) DAYS OF THE EFFECTIVE DATE OF THIS SECTION. THE
7 COMMISSION SHALL HOLD ITS FIRST MEETING WITHIN NINETY (90) DAYS
8 OF THE EFFECTIVE DATE OF THIS SECTION. THE COMMISSION SHALL
9 DEVELOP THE SPECIAL EDUCATION FORMULA COMPONENTS SPECIFIED IN
10 SUBSECTION (G) WITHIN TWO HUNDRED AND FORTY (240) DAYS OF THE
11 EFFECTIVE DATE OF THIS SECTION, AND SHALL ISSUE A REPORT OF ITS
12 FINDINGS TO THE GOVERNOR, THE PRESIDENT PRO TEMPORE OF THE
13 SENATE AND MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE
14 HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF
15 REPRESENTATIVES, THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
16 EDUCATION COMMITTEE OF THE SENATE AND THE CHAIRMAN AND MINORITY
17 CHAIRMAN OF THE EDUCATION COMMITTEE OF THE HOUSE OF
18 REPRESENTATIVES, AND THE STATE BOARD OF EDUCATION.

19 (5) UPON COMPLETION OF THE COMMISSION'S REPORT, THE STATE
20 BOARD OF EDUCATION SHALL DRAFT PROPOSED REGULATIONS TO IMPLEMENT
21 THE SPECIAL EDUCATION FUNDING PROVISIONS OF THIS SECTION USING
22 WITHOUT ALTERATION TO THE SPECIAL EDUCATION FORMULA COMPONENTS
23 SPECIFIED IN SUBSECTION (G) AS DEVELOPED BY THE COMMISSION. IF
24 THE COMMISSION DOES NOT ISSUE THE REQUIRED REPORT WITHIN THE
25 REQUIRED TIME PERIOD OR IF THE COMMISSION'S REPORT DOES NOT
26 DESIGNATE THE SPECIAL EDUCATION FORMULA COMPONENTS SPECIFIED IN
27 SUBSECTION (G), THEN THE STATE BOARD OF EDUCATION SHALL IN A
28 TIMELY MANNER PROMULGATE PROPOSED REGULATIONS TO DESIGNATE THE
29 SPECIAL EDUCATION FORMULA COMPONENTS SPECIFIED IN SUBSECTION (G)
30 THROUGH THE REGULATORY REVIEW PROCESS.

1 (6) IN EVERY FIFTH YEAR SUBSEQUENT TO THE INITIAL
2 PROMULGATION OF THE REGULATIONS IMPLEMENTING THE FORMULA
3 COMPONENTS, THE COMMISSION SHALL MEET AND HOLD PUBLIC HEARINGS
4 TO REVIEW THE OPERATION OF THE SPECIAL EDUCATION FUNDING
5 PROVISIONS OF THIS SECTION, SHALL MAKE A FURTHER REPORT AND
6 SHALL ISSUE SUCH REPORT TO THE BODIES AND INDIVIDUALS LISTED IN
7 CLAUSE (4). WHEN IN RECEIPT OF A FURTHER REPORT RECOMMENDING
8 CHANGES TO THE SPECIAL EDUCATION FORMULA COMPONENTS SPECIFIED IN
9 SUBSECTION (G), THE STATE BOARD OF EDUCATION SHALL PROMULGATE
10 PROPOSED REGULATIONS THROUGH THE REGULATORY REVIEW PROCESS TO
11 IMPLEMENT WITHOUT ALTERATION ANY CHANGES DEVELOPED BY THE
12 COMMISSION IN THE SPECIAL EDUCATION FORMULA COMPONENTS SPECIFIED
13 IN SUBSECTION (G).

14 (I) THE PROVISIONS OF THIS SECTION REPRESENT THE GENERAL
15 ASSEMBLY'S COMMITMENT TO PROVIDE ADEQUATE SPECIAL EDUCATION
16 FUNDING THAT WILL ENSURE EQUITABLE FEDERAL, STATE AND LOCAL
17 INVESTMENTS IN SPECIAL EDUCATION IN PUBLIC SCHOOLS IN ORDER TO
18 ENABLE ELIGIBLE STUDENTS TO ATTAIN APPLICABLE FEDERAL AND STATE
19 ACADEMIC STANDARDS.

20 (J) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IF
21 INSUFFICIENT FUNDS ARE APPROPRIATED FOR PURPOSES OF THIS SECTION
22 FOR THE 2010-2011 SCHOOL YEAR, EACH SCHOOL DISTRICT SHALL BE
23 PAID THE AMOUNT IT RECEIVED DURING THE 2008-2009 SCHOOL YEAR
24 UNDER SECTION 2509.5(ZZ).

25 (K) (1) THE DEPARTMENT OF EDUCATION SHALL SET ASIDE ONE
26 PERCENT (1%) OF THE TOTAL STATE SPECIAL EDUCATION APPROPRIATION
27 IN EACH YEAR FOR EXTRAORDINARY SPECIAL EDUCATION PROGRAM
28 EXPENSES UNDER SECTION 2509.8. THE DEPARTMENT OF EDUCATION SHALL
29 UTILIZE THE FUNDS PURSUANT TO SECTION 2509.8(E) IN ORDER TO
30 MEET, TO THE EXTENT THAT FUNDS ARE AVAILABLE, EXTRAORDINARY

SPECIAL EDUCATION EXPENSES NOT ANTICIPATED THROUGH THE SPECIAL
EDUCATION FUNDING FORMULA. SCHOOL DISTRICTS AND CHARTER SCHOOLS
MAY APPLY FOR RESOURCES THROUGH THE FUND PURSUANT TO PROCEDURES
ESTABLISHED BY THE DEPARTMENT OF EDUCATION. THE DEPARTMENT OF
EDUCATION SHALL MAKE PAYMENTS FROM THE FUND IN RESPONSE TO SUCH
APPLICATIONS.

(2) THE DEPARTMENT OF EDUCATION SHALL ISSUE A COMPREHENSIVE
ANNUAL REPORT DOCUMENTING USE OF THE FUND TO THE GENERAL
ASSEMBLY AND SHALL GIVE PUBLIC NOTICE ABOUT SUCH REPORT.

(3) AS USED IN THIS SUBSECTION, "EXTRAORDINARY SPECIAL
EDUCATION EXPENSES" ARE 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 SCHOOL
FUNDING FOR SPECIAL EDUCATION, IN ORDER TO PROVIDE THE STUDENT
WITH AN APPROPRIATE EDUCATION IN THE LEAST RESTRICTIVE
ENVIRONMENT.

(L) TO THE EXTENT THAT FUNDS ARE APPROPRIATED BY THE GENERAL
ASSEMBLY, THE DEPARTMENT OF EDUCATION SHALL ESTABLISH A
COMPETITIVE GRANT PROGRAM FOR SCHOOL DISTRICTS OR CHARTER
SCHOOLS MEETING THE FOLLOWING CRITERIA:

(1) 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.

(2) IN THE MOST RECENT SCHOOL YEAR FOR WHICH DATA ARE

1 AVAILABLE, PERFORMANCE BY ELIGIBLE STUDENTS ON STATE ACADEMIC
2 ASSESSMENTS IN READING AND MATH, AVERAGED FOR THE ENTIRE
3 DISTRICT, MEETING STATE STANDARDS FOR ADEQUATE YEARLY PROGRESS
4 BY ANY METHOD APPROVED BY THE FEDERAL AND STATE GOVERNMENTS,
5 INCLUDING, BUT NOT LIMITED TO, MEETING THE ANNUAL TARGET, THE
6 CONFIDENCE INTERVAL, THE SAFE HARBOR TARGET OR BY APPEAL.

7 (3) IMPLEMENTING PROGRAMS OR SERVICES THAT SERVE AS A MODEL
8 OF EXCELLENCE FOR MEETING HIGH STANDARDS FOR INCLUSION AND
9 STUDENT ACHIEVEMENT THROUGH QUALITY SPECIAL EDUCATION.

10 (M) THE DEPARTMENT OF EDUCATION SHALL DEVELOP GUIDELINES FOR
11 THE ADMINISTRATION OF THE GRANT PROGRAM, WHICH SHALL BE
12 ALLOCATED TO SCHOOL DISTRICTS ON A COMPETITIVE BASIS.

13 (N) THE DEPARTMENT OF EDUCATION SHALL ISSUE AN ANNUAL REPORT
14 TO THE GENERAL ASSEMBLY DOCUMENTING USE OF THE GRANTS ISSUED
15 PURSUANT TO SUBSECTION (L), AND SHALL GIVE PUBLIC NOTICE ABOUT
16 THE REPORT.

17 (O) NOTHING IN SUBSECTION (L) OR ANY OTHER PROVISION OF THIS
18 ACT ALTERS FEDERAL OR STATE LAW REGARDING THE RIGHT OF AN
19 ELIGIBLE STUDENT TO RECEIVE EDUCATION IN THE LEAST RESTRICTIVE
20 ENVIRONMENT OR ALTERS THE LEGAL AUTHORITY OF INDIVIDUALIZED
21 EDUCATION PROGRAM (IEP) TEAMS TO MAKE APPROPRIATE PROGRAM AND
22 PLACEMENT DECISIONS FOR ELIGIBLE STUDENTS IN ACCORDANCE WITH THE
23 IEP DEVELOPED FOR EACH ELIGIBLE STUDENT.

24 SECTION 2509.14. SPECIAL EDUCATION ACCOUNTABILITY TO
25 COMMONWEALTH TAXPAYERS.--(A) (1) THE DEPARTMENT OF EDUCATION
26 SHALL DETERMINE THE FORM AND MANNER IN WHICH SCHOOL DISTRICTS
27 SHALL SUBMIT A SPECIAL EDUCATION PLAN AND REVISIONS, UPDATES AND
28 AMENDMENTS TO THE SPECIAL EDUCATION PLAN PURSUANT TO THIS
29 SECTION. THE SPECIAL EDUCATION PLAN SHALL BE CONSISTENT WITH
30 OTHER EXISTING PLANS AND REPORTS REQUIRED BY THE DEPARTMENT OF

1 EDUCATION TO THE GREATEST EXTENT POSSIBLE, INCLUDING THOSE
2 REQUIRED UNDER 22 PA. CODE § 14.104 (RELATING TO SPECIAL
3 EDUCATION PLANS). SPECIAL EDUCATION PLANS SHALL BE WRITTEN IN A
4 MANNER THAT IS EASY TO USE AND UNDERSTAND BY PARENTS AND THE
5 PUBLIC, INCLUDING A GENERAL SUMMARY.

6 (2) THE DEPARTMENT OF EDUCATION SHALL:

7 (I) REVIEW THE SPECIAL EDUCATION PLANS AND REVISIONS,
8 UPDATES AND AMENDMENTS;

9 (II) PROVIDE RECOMMENDATIONS AND TECHNICAL ASSISTANCE TO
10 SCHOOL DISTRICTS;

11 (III) APPROVE OR DISAPPROVE THE PLAN WITHIN NINETY (90)
12 CALENDAR DAYS OF RECEIPT; AND

13 (IV) PROVIDE A WRITTEN EXPLANATION WHEN DISAPPROVING A PLAN.

14 (3) THE DEPARTMENT OF EDUCATION SHALL APPROVE A SPECIAL
15 EDUCATION PLAN AND REVISIONS, UPDATES AND AMENDMENTS THAT IN THE
16 DETERMINATION OF THE DEPARTMENT:

17 (I) MEET THE REQUIREMENTS OF THIS SECTION;

18 (II) ADDRESS THE ACADEMIC AND DEVELOPMENTAL CHALLENGES FOR
19 ELIGIBLE STUDENTS IDENTIFIED IN THE SCHOOL DISTRICT'S MOST
20 RECENT STUDENT ACHIEVEMENT RESULTS AND PURSUANT TO PERFORMANCE
21 INDICATORS, WITH SPECIFIC FOCUS ON INDIVIDUAL SCHOOLS, GRADE
22 LEVELS AND POPULATIONS OF STUDENTS THAT DEMONSTRATE INADEQUATE
23 LEVELS OF STUDENT OUTCOMES AND WITH STUDENT ACHIEVEMENT FOR
24 ELIGIBLE STUDENTS AS MEASURED BY ACADEMIC PERFORMANCE WHENEVER
25 POSSIBLE IN THE GENERAL EDUCATION CURRICULUM, ACQUISITION OF
26 KNOWLEDGE AND SKILLS, PROGRESS TOWARD GRADUATION, ACCOMPLISHMENT
27 OF INDIVIDUALIZED EDUCATION PROGRAM GOALS, INCLUDING APPROPRIATE
28 FUNCTIONAL SKILLS, AND OTHER FACTORS;

29 (III) DESCRIBE PROGRAMS AND STRATEGIES THAT ARE MOST LIKELY
30 TO IMPROVE STUDENT OUTCOMES IN THE SCHOOL DISTRICT;

1 (IV) DESCRIBE ANY PROGRAMS OFFERED BY THE SCHOOL DISTRICT
2 AND STRATEGIES OF THE SCHOOL DISTRICT FOR CHILDREN FROM BIRTH
3 THROUGH FIVE (5) YEARS OF AGE AND FIVE (5) YEARS OF AGE THROUGH
4 SEVEN (7) YEARS OF AGE DESIGNED TO REDUCE THE NEED FOR SPECIAL
5 EDUCATION SERVICES; AND

6 (V) DESCRIBE POLICIES OF THE SCHOOL DISTRICT TO ENSURE THAT
7 A STUDENT IDENTIFIED AS HAVING A DISABILITY IS NO LONGER
8 IDENTIFIED AS SUCH IF THE STUDENT NO LONGER QUALIFIES UNDER THE
9 PROVISIONS OF 22 PA. CODE CH. 14 (RELATING TO SPECIAL EDUCATION
10 SERVICES AND PROGRAMS), OR ANY SUCCESSOR REGULATION.

11 (4) UPON DISAPPROVING A SCHOOL DISTRICT'S SPECIAL EDUCATION
12 PLAN, UPDATE OR REVISION SUBMITTED PURSUANT TO THIS SECTION, THE
13 DEPARTMENT OF EDUCATION SHALL WITHHOLD THE PORTION OF THE ANNUAL
14 STATE INCREASE IN SPECIAL EDUCATION FUNDING WHICH EXCEEDS THE
15 INDEX UNTIL SUCH A TIME AS A WRITTEN SPECIAL EDUCATION PLAN,
16 UPDATE OR REVISION IS APPROVED.

17 (5) THE SECRETARY OF EDUCATION SHALL INVOLVE AS APPROPRIATE
18 IN SPECIAL EDUCATION MONITORING, SUPPORT, INTERVENTION,
19 TECHNICAL ASSISTANCE AND SPECIAL EDUCATION PLAN REVIEW BY THE
20 DEPARTMENT OF EDUCATION, THE STAFF IN RELEVANT OFFICES, BUREAUS
21 AND DIVISIONS OF THE DEPARTMENT, AS WELL AS STAFF IN
22 INTERMEDIATE UNITS AND CONSULTANTS, AND SHALL NEITHER DELEGATE
23 NOR LIMIT THESE FUNCTIONS SOLELY TO THE BUREAU OF SPECIAL
24 EDUCATION. THE SECRETARY OF EDUCATION SHALL HAVE THE AUTHORITY
25 TO CONTRACT FOR ADDITIONAL ASSISTANCE WITH INTERMEDIATE UNITS
26 AND CONSULTANTS FOR THESE PURPOSES, SO LONG AS SUCH CONTRACTS DO
27 NOT CREATE A CONFLICT OF INTEREST OR SUPPLANT EXISTING SERVICE
28 OR PROGRAM OBLIGATIONS.

29 (B) (1) BY APRIL 15, 2011, AND BY APRIL 15 OF EACH YEAR
30 THEREAFTER, EACH SCHOOL DISTRICT RECEIVING AN INCREASE IN ITS

1 STATE SPECIAL EDUCATION FUNDING ALLOCATION OF MORE THAN THE
2 INDEX SHALL UPDATE ITS SPECIAL EDUCATION PLAN BASED ON OVERALL
3 CIRCUMSTANCES, SHALL ALSO REVISE THE SPECIAL EDUCATION PLAN TO
4 SHOW IN DETAIL HOW THE INCREASE ABOVE THE INDEX WILL BE USED AND
5 SHALL SUBMIT THE UPDATES AND REVISIONS TO THE DEPARTMENT OF
6 EDUCATION FOR APPROVAL PURSUANT TO SUBSECTION (A). UNLESS A
7 SCHOOL DISTRICT DECIDES TO AMEND ITS SPECIAL EDUCATION PLAN MORE
8 BROADLY TO REFLECT THE RECEIPT OF NEW FUNDING, THE DEPARTMENT OF
9 EDUCATION SHALL ALLOW A DISTRICT TO MEET THE REQUIREMENTS OF
10 THIS SECTION BY ADDING THE MANDATED INFORMATION AS AN APPENDIX
11 TO THE EXISTING PLAN.

12 (2) SCHOOL DISTRICTS SHALL USE STATE FUNDS FOR PROGRAMS AND
13 SUPPORTS THAT EXPRESSLY BENEFIT ELIGIBLE STUDENTS EDUCATED IN
14 THE LEAST RESTRICTIVE ENVIRONMENT IN ACCORDANCE WITH FEDERAL AND
15 STATE LAW AND CONTRIBUTE TO ACHIEVEMENT OF PERFORMANCE
16 INDICATORS.

17 (3) THE DEPARTMENT OF EDUCATION SHALL ISSUE GUIDELINES FOR
18 THE SUGGESTED USE OF STATE FUNDS FOR PROGRAMS AND SUPPORTS THAT
19 BENEFIT ELIGIBLE STUDENTS AND CONTRIBUTE TO ACHIEVEMENT OF
20 PERFORMANCE INDICATORS AND ADDRESS THE FOLLOWING AREAS OR
21 RELATED AREAS:

22 (I) CURRICULA ADAPTATION;
23 (II) CO-TEACHING;
24 (III) ASSISTIVE TECHNOLOGY;
25 (IV) SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORTS;
26 (V) SUPPLEMENTARY AIDS AND SERVICES;
27 (VI) PROFESSIONAL DEVELOPMENT;
28 (VII) READING SPECIALIST SERVICES AND SUPPORTS;
29 (VIII) REDUCING CASELOADS FOR SPECIAL EDUCATION TEACHERS AND
30 RELATED SERVICES PERSONNEL; AND

1 (IX) PLACING AND SERVING ELIGIBLE STUDENTS IN REGULAR
2 CLASSROOMS WITH SUPPORTS IN ACCORDANCE WITH THE INDIVIDUALIZED
3 EDUCATION PROGRAM (IEP) DEVELOPED FOR EACH ELIGIBLE STUDENT.

4 (4) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO REQUIRE
5 SCHOOL DISTRICTS TO IMPLEMENT ONLY THE PROGRAMS AND SUPPORTS
6 INCLUDED IN THE GUIDELINES ISSUED BY THE DEPARTMENT OF
7 EDUCATION.

8 (C) ACCOUNTABILITY FOR THE EFFECTIVE USE OF RESOURCES TO
9 MEET STUDENT NEEDS SHALL ALSO BE PROVIDED IN THE FOLLOWING WAYS:

10 (1) THE DEPARTMENT OF EDUCATION SHALL ISSUE TO THE GENERAL
11 ASSEMBLY A COMPREHENSIVE ANNUAL REPORT ON SPECIAL EDUCATION
12 FUNDING, SPECIAL EDUCATION PLANS, THE IMPLEMENTATION OF 22 PA.
13 CODE § 14.104 AND OTHER SPECIAL EDUCATION ACCOUNTABILITY ISSUES
14 FOR PUBLIC SCHOOL ENTITIES SERVING ELIGIBLE STUDENTS AND THIS
15 COMMONWEALTH.

16 (2) UPON DISAPPROVING A SCHOOL DISTRICT'S SPECIAL EDUCATION
17 PLAN, UPDATE OR REVISION, THE DEPARTMENT OF EDUCATION SHALL
18 WITHHOLD THE PORTION OF THE ANNUAL STATE INCREASE IN SPECIAL
19 EDUCATION FUNDING WHICH EXCEEDS THE INDEX UNTIL SUCH A TIME AS A
20 WRITTEN SPECIAL EDUCATION PLAN, UPDATE OR REVISION IS APPROVED.

21 (3) (I) THE DEPARTMENT OF EDUCATION SHALL:

22 (A) REVIEW AND MONITOR IMPLEMENTATION OF ALL SPECIAL
23 EDUCATION PLANS, INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH
24 SUBSECTION (B) AND 22 PA. CODE § 14.104;

25 (B) PROVIDE SUPPORT, INTERVENTION AND TECHNICAL ASSISTANCE
26 IN SCHOOL DISTRICTS FAILING TO MEET STUDENT NEEDS BASED ON
27 PERFORMANCE INDICATORS OR FAILING TO COMPLY WITH SUBSECTION (B);

28 (C) IDENTIFY AT ANY TIME AND AT LEAST ANNUALLY ALL SCHOOL
29 DISTRICTS FAILING TO ADEQUATELY IMPLEMENT THEIR SPECIAL
30 EDUCATION PLANS IN COMPLIANCE WITH FEDERAL AND STATE LAW,

FAILING TO COMPLY WITH SUBSECTION (B) OR NOT MAKING ANNUAL
PROGRESS TO MEET STUDENT NEEDS BASED ON PERFORMANCE INDICATORS;
AND

(D) DETERMINE WHETHER TO WITHHOLD UP TO FIVE PERCENT (5%) OF
ALL STATE SPECIAL EDUCATION FUNDING FOR SCHOOL DISTRICTS
IDENTIFIED PURSUANT TO THIS CLAUSE WHILE THE IDENTIFIED PROBLEMS
REMAIN UNRESOLVED.

(II) IF THE DEPARTMENT OF EDUCATION DETERMINES THAT A SCHOOL
DISTRICT IS MAKING SUBSTANTIAL PROGRESS TOWARD RESOLVING THE
IDENTIFIED PROBLEMS, IT SHALL RESTORE THE WITHHELD FUNDING
RETROACTIVELY AND CONTINUE TO MONITOR THE DISTRICT FOR AN
ADDITIONAL TWO (2) YEARS.

(4) TO DISCOURAGE THE INAPPROPRIATE OVER-IDENTIFICATION OF
CHILDREN FOR SPECIAL EDUCATION, THE DEPARTMENT OF EDUCATION
SHALL AUTOMATICALLY CONDUCT A THOROUGH REVIEW OF THE SPECIAL
EDUCATION PLAN OF ANY SCHOOL DISTRICT WITH A SUBSTANTIALLY
HIGHER RATIO OF ELIGIBLE STUDENTS IN THE DISTRICT TO ITS AVERAGE
DAILY MEMBERSHIP FOR ALL STUDENTS THAN THE STATE AVERAGE, AS
ESTABLISHED BY THE DEPARTMENT, 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 (5) YEAR PERIOD.
APPROPRIATE REMEDIAL ACTION, INCLUDING WITHHOLDING UP TO FIVE
PERCENT (5%) OF ALL STATE SPECIAL EDUCATION FUNDING, MAY BE
TAKEN, UNLESS THE RATIO OR INCREASE IS DETERMINED TO BE
JUSTIFIED BY THE DEPARTMENT OF EDUCATION AFTER CONSULTATION WITH
THE SCHOOL DISTRICT.

1 (D) THE DEPARTMENT OF EDUCATION SHALL ISSUE TO ANY AFFECTED
2 SCHOOL DISTRICT A NOTICE SPECIFYING THE DEPARTMENT'S DECISIONS
3 AND ACTIONS PURSUANT TO THIS SECTION AND THE RATIONALE FOR SUCH
4 DECISIONS AND ACTIONS. A SCHOOL DISTRICT MAY FILE A WRITTEN
5 RESPONSE TO THE DEPARTMENT ABOUT THE DEPARTMENT'S DECISIONS AND
6 ACTIONS REGARDING THAT DISTRICT MADE PURSUANT TO THIS SECTION.
7 THE WRITTEN RESPONSE MUST BE SUBMITTED TO THE DEPARTMENT WITHIN
8 THIRTY (30) CALENDAR DAYS OF THE DEPARTMENT'S NOTICE OR WITHIN
9 THIRTY (30) CALENDAR DAYS OF RECEIVING THE NOTICE, WHICHEVER IS
10 GREATER. THE DEPARTMENT SHALL CONSIDER THE WRITTEN RESPONSE,
11 CONSULT WITH THE SCHOOL DISTRICT AND, WITHIN THIRTY (30)
12 CALENDAR DAYS AFTER RECEIVING THE WRITTEN RESPONSE, ISSUE A
13 WRITTEN DECISION ADDRESSING THE CONCERNS AND CLAIMS MADE IN THE
14 WRITTEN RESPONSE, EXPLAINING THE JUDGMENT OF THE DEPARTMENT IN
15 RESPONSE TO THESE CONCERNS AND CLAIMS, AND SPECIFYING THE
16 OPPORTUNITY TO APPEAL THIS MATTER TO THE SECRETARY OF EDUCATION
17 FOR A HEARING UNDER 2 PA.C.S. CHS. 5 SUBCH. A (RELATING TO
18 PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND 7 SUBCH. A
19 (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION) AND
20 1 PA. CODE PART II (RELATING TO GENERAL RULES OF ADMINISTRATIVE
21 PRACTICE AND PROCEDURE). IF REQUESTED, THE SECRETARY SHALL
22 CONVENE A HEARING WITHIN THIRTY (30) CALENDAR DAYS AFTER RECEIPT
23 OF A SCHOOL DISTRICT'S HEARING REQUEST. THE SECRETARY SHALL
24 RENDER A WRITTEN HEARING DECISION WITHIN THIRTY (30) CALENDAR
25 DAYS FOLLOWING THE HEARING.

26 (E) THE DEPARTMENT OF EDUCATION SHALL GIVE PUBLIC NOTICE OF
27 THE DECISIONS, ACTIONS AND REPORTS MADE PURSUANT TO THIS
28 SECTION.

29 (F) NOTHING IN THIS SECTION SHALL SUPERSEDE OR PREEMPT ANY
30 PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN A SCHOOL

1 ENTITY AND AN EMPLOYEE ORGANIZATION IN EFFECT ON THE EFFECTIVE
2 DATE OF THIS SECTION.

3 (G) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IF
4 INSUFFICIENT FUNDS ARE APPROPRIATED FOR PURPOSES OF SECTION
5 2509.13 FOR THE 2010-2011 SCHOOL YEAR, THE REQUIREMENTS OF THIS
6 SECTION ARE WAIVED.

7 SECTION 3. THE SECRETARY OF EDUCATION SHALL PROPOSE
8 REGULATIONS FOR PROMULGATION BY THE STATE BOARD OF EDUCATION
9 WHICH IMPLEMENT THIS ACT.

10 SECTION 4. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.