

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 686 Session of  
2005

INTRODUCED BY ERICKSON, COSTA, THOMPSON, PILEGGI, C. WILLIAMS,  
HUGHES, FUMO, RHOADES, EARLL, FERLO, PICCOLA, PIPPY,  
RAFFERTY, STACK, VANCE, WENGER, WONDERLING AND CONTI,  
MAY 9, 2005

REFERRED TO EDUCATION, MAY 9, 2005

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," repealing provisions relating to cost  
6 of tuition and maintenance of certain exceptional children in  
7 approved institutions and in chartered schools for the  
8 education of the deaf and the blind; and providing for cost  
9 of tuition and maintenance of certain children in approved  
10 private schools and in chartered schools.

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

13 Section 1. Sections 1376 and 1376.1 of the act of March 10,  
14 1949 (P.L.30, No.14), known as the Public School Code of 1949,  
15 are repealed.

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

17 Section 1376.2. Cost of Tuition and Maintenance of Eligible  
18 Children in Approved Private Schools.--(a) (1) When an  
19 eligible child is enrolled, with the approval of the department,  
20 as a pupil in a private school approved by the department, the  
21 school district in which the eligible child is a resident or,

for a student placed by a charter school, the charter school in which the student is enrolled shall pay the greater of:

(i) forty percent (40%) of the approved tuition rate as established pursuant to subsection (f) or (h); or

(ii) the school district's or charter school's tuition charges per elementary pupil or tuition charges per secondary pupil as calculated under section 2561.

(2) The Commonwealth shall pay, out of funds appropriated to the department for approved private schools, the balance of the approved tuition rate due for the cost of the eligible child's tuition and maintenance. The department shall credit the district of residence with average daily membership for the eligible child consistent with the rules of procedure developed in accordance with section 2501. If the residence of an eligible child in a particular school district cannot be determined, the Commonwealth shall pay the whole cost of tuition and maintenance of the eligible child under subsection (f) or (h).

(b) For the 2004-2005 school year, the following shall apply:

(1) Except as otherwise provided under paragraph (2), the department shall determine the payment amount for each approved private school for all students enrolled in an approved private school for the 2003-2004 school year based on the average of the following: Provided, That the calculation under this paragraph shall not include any adjustments for offsetting income:

(i) The preliminary budget submitted to the department by the approved private school for the 2004-2005 school year, excluding any adjustments for questioned costs.

(ii) The midyear budget submitted to the department by the approved private school for the 2003-2004 school year.

1     (iii) The audit issued by the Governor's Office of the  
2 Budget for the 2002-2003 school year, excluding any adjustments  
3 for questionable costs.

4     (2) (i) Where the 2002-2003 audit is not available, the  
5 department shall use the claim form submitted to it by the  
6 approved private school for the 2002-2003 school year. In the  
7 event that an approved private school has not submitted a claim  
8 form for the 2002-2003 school year, the department shall use the  
9 audit or, where the audit is unavailable, the claim form for the  
10 2001-2002 school year.

11     (ii) For the purposes of determining the payment under  
12 paragraph (1) for an approved private school that was not in  
13 operation for the 2002-2003 school year, the department shall  
14 utilize the approved private school's preliminary budget for the  
15 2004-2005 school year instead of the audit identified under  
16 paragraph (1)(iii): Provided, That the calculation under this  
17 subparagraph shall not include any net deductions for offsetting  
18 income.

19     (3) No later than August 10, 2004, the department shall  
20 notify each school district of residence or charter school of an  
21 eligible child enrolled in an approved private school of its  
22 payment amount under subsection (a).

23     (4) The department shall pay each approved private school  
24 the total amount calculated pursuant to this subsection divided  
25 into twelve (12) equal monthly payments, which shall not include  
26 any adjustments for offsetting income. The department shall  
27 withhold the school district or charter school payment amount  
28 calculated under subsection (a) from the amount of any and all  
29 State payments made to the school district or charter school. In  
30 no event shall the sum of the Commonwealth's share of payments

to approved private schools under this subsection exceed the appropriation for approved private schools.

(c) (1) For the 2005-2006 school year and each school year thereafter, the department shall determine the payment amount for each approved private school for all students enrolled in the approved private school for the immediately preceding school year as follows:

(i) Multiply the payment determined for the immediately preceding school year by one hundred twenty-five percent (125%) of the percentage increase in the appropriation for special education for the fiscal year prior to the fiscal year in which payments under this subsection are made.

(ii) Add the product from subparagraph (i) to the payment determined for the immediately preceding school year.

(2) No later than May 10 of each year, the department shall notify each school district of residence or charter school of an eligible child enrolled in an approved private school of the school district's or charter school's payment amount under subsection (a).

(3) The department shall pay each approved private school the total amount calculated pursuant to this subsection divided into twelve (12) equal monthly payments, which shall not include any adjustments for offsetting income. The department shall withhold the school district or charter school payment amount calculated under subsection (a) from the amount of any and all State payments made to the school district or charter school. In no event shall the sum of the Commonwealth's share of payments to approved private schools under this subsection exceed the appropriation for approved private schools.

(d) When any person less than school entry age or more than

twenty-one (21) years of age and resident in this Commonwealth who is blind or deaf, or has cerebral palsy and/or has neurological impairment and/or has muscular dystrophy, or has autism/pervasive developmental delay, and is enrolled, with the approval of the department as a pupil in an approved private school approved by the department, the Commonwealth shall pay to the school:

(1) the approved tuition rate for the child's tuition and maintenance; and

(2) in the case of any child less than school entry age who is blind, the cost, as determined by the department, of instructing the parent of the child in caring for the child.

(e) (1) Beginning with the 2004-2005 school year and each school year thereafter, each approved private school shall submit a completed claim form for the immediately preceding fiscal year to the department no later than August 1 of each year. Each approved private school shall submit a separate audit report prepared by an independent certified public accountant selected by the approved private school. Such audit report shall be prepared in accordance with generally accepted auditing standards and generally accepted accounting principles. The approved private school shall submit the audit report to the department by November 1, 2005, and no later than November 1 of each year thereafter.

(2) Audits of cost reports submitted by approved private schools for school years prior to the 2004-2005 school year which have not been completed by the department as of the effective date of this section shall be completed by an independent certified public accountant selected by the approved private school and shall be conducted in accordance with

generally accepted auditing standards and generally accepted accounting principles as set forth in this subsection.

(3) Upon receipt of an audit report submitted pursuant to this subsection, the department shall have no more than three (3) months to review the audit report and settle any outstanding payments due to or from the approved private school.

(f) For payments made during the 2004-2005 school year, the department shall establish an approved tuition rate for each approved private school by dividing the amount calculated under subsection (b) by the full-time equivalent enrollment for the approved private school for the 2003-2004 school year. This calculation shall be adjusted for residential and nonresidential students. The approved tuition rate multiplied by the full-time equivalent enrollment shall not exceed the amount calculated under subsection (b).

(g) No later than August 15 of each year, each approved private school shall provide the department its proposed tuition rate or rates and projected full-time equivalent enrollment for the current year. An approved private school may submit separate proposed tuition rates for up to three levels of services and for day and residential students.

(h) (1) For payments made during the 2005-2006 school year and each school year thereafter, no later than January 15 of each year, the department shall establish an approved tuition rate or rates and full-time equivalent enrollment for each approved private school for the current school year.

(2) Where an approved private school has submitted one tuition rate, the approved tuition rate shall be determined by dividing the amount calculated under subsection (c) by the full-time equivalent enrollment for the approved private school for

1 the immediately preceding school year.

2 (3) Where an approved private school has submitted more than  
3 one tuition rate, the sum of the products of each approved  
4 tuition rate and corresponding full-time equivalent enrollment  
5 for the approved private school for the immediately preceding  
6 school year shall equal the amount calculated under subsection  
7 (c).

8 (4) An approved private school may enroll students in excess  
9 of the approved full-time equivalent enrollment. When an  
10 approved private school enrolls students in excess of the  
11 approved full-time equivalent enrollment, it shall show a  
12 corresponding decrease in its approved tuition rate for those  
13 students.

14 (i) No later than May 1 of each school year, the department  
15 shall annually publish a report on the department's publicly  
16 accessible Internet website that shall include, but not be  
17 limited to:

18 (1) The approved tuition rate or rates for each approved  
19 private school for the current school year.

20 (2) A description of the exceptionalities each approved  
21 private school is approved to serve.

22 (3) A description of all programs and services offered by  
23 each approved private school.

24 (j) (1) Except as otherwise provided under paragraph (2),  
25 no private institution receiving payment in accordance with this  
26 section may impose any charge on a student or parent who is a  
27 Pennsylvania-approved reimbursable resident for a program of  
28 individualized instruction and maintenance appropriate to the  
29 child's needs.

30 (2) Charges for services not part of the program may be made

1 if agreed to by the parent.

2 (k) The State Board of Education shall promulgate final-  
3 omitted regulations, under the act of June 25, 1982 (P.L.633,  
4 No.181), known as the Regulatory Review Act, where such  
5 regulations are necessary to further define "eligible child" and  
6 "allowable administrative expenditures," which expenditures  
7 shall not exceed ten percent (10%) of each chartered school's  
8 budget, to implement subsections (a), (d), (f) and (h).

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

12 "Approved full-time equivalent enrollment" means the full-  
13 time equivalent enrollment set by the Department of Education  
14 under the provisions of subsection (f) or (h).

15 "Approved tuition rate" means the final tuition rate set by  
16 the Department of Education under the provisions of subsection  
17 (f) or (h).

18 "Audit," for the purpose of subsection (b), means the fiscal  
19 audit issued by the Governor's Office of the Budget, excluding  
20 questioned costs.

21 "Claim form," for the purpose of subsection (b), means the  
22 form that an approved private school submitted following the end  
23 of a fiscal year showing the final costs claimed for the fiscal  
24 year.

25 "Current school year" means the school year in which payment  
26 is being made.

27 "Department" means the Department of Education of the  
28 Commonwealth.

29 "Eligible child" means a child between school entry age and  
30 twenty-one (21) years of age and is a resident in this



Commonwealth who is blind or deaf, or has cerebral palsy and/or neurological impairment and/or muscular dystrophy and/or is mentally retarded and/or has a serious emotional disturbance and/or has autism/pervasive developmental disorder.

"Full-time equivalent enrollment" means the number of eligible children enrolled in an approved private school under subsection (a) or (d).

"Immediately preceding school year" means the year for which payment is made during the current year.

"Independent certified public accountant" means a member of the American Institute of Certified Public Accountants that has a minimum of five (5) years' verifiable experience in performing audits of government funds for nonprofit organizations with a comparable or larger annual budget.

"Midyear budget," for the purpose of subsection (b), means the adjusted budget for the 2003-2004 school year submitted by an approved private school in January 2004.

"Preliminary budget," for the purpose of subsection (b), means the budget for the 2004-2005 school year submitted by an approved private school in June 2004.

"Proposed tuition rate" means the amount submitted by an approved private school to the Department of Education to be used in establishing the cost that the approved private school incurred to provide instructional and residential services for each full-time equivalent student. An approved private school may submit information to establish costs for up to three (3) levels of services and for day and residential students.

Section 1376.3. Cost of Tuition and Maintenance of Eligible Children in Chartered Schools.--(a) (1) When any child of school age resident in this Commonwealth, who is blind or deaf,

1 is enrolled with the approval of the department of Education as  
2 a pupil in a charter school in accordance with standards and  
3 regulations promulgated by the State Board of Education, the  
4 school district or chartered school payment shall be the greater  
5 of:

6 (i) forty percent (40%) of the approved tuition rate  
7 established in subsection (f.1) or (f.3); or

8 (ii) the school district's or charter school's "tuition  
9 charges per elementary pupil" or "tuition charges per secondary  
10 pupil" as calculated under section 2561.

11 (2) The Commonwealth shall pay out of funds appropriated to  
12 the department for chartered schools the balance of the approved  
13 tuition rate due for such child's tuition and maintenance. The  
14 department shall credit the district of residence with average  
15 daily membership for the eligible child consistent with the  
16 rules of procedure developed in accordance with section 2501. If  
17 the residence of the eligible child in a particular school  
18 district cannot be determined, the Commonwealth shall pay the  
19 whole cost of tuition and maintenance of the eligible child as  
20 established under subsection (f.1) or (f.3).

21 (b) For the 2004-2005 school year, the following shall  
22 apply:

23 (1) Except as otherwise provided under paragraph (2), the  
24 department shall determine the payment amount for each chartered  
25 school for all students enrolled in a chartered school for the  
26 2003-2004 school year based on the average of the following:  
27 Provided, That the calculation under this paragraph shall not  
28 include any adjustments for offsetting income:

29 (i) The preliminary budget submitted to the department by  
30 the chartered school for the 2004-2005 school year.

1     (ii) The midyear budget submitted to the department by the  
2 chartered school for the 2003-2004 school year.

3     (iii) The audit issued by the Governor's Office of the  
4 Budget for the 2002-2003 school year, excluding any adjustments  
5 for questioned costs.

6     (2) (i) Where the 2002-2003 audit is not available, the  
7 department shall use the claim form submitted to it by the  
8 chartered school for the 2002-2003 school year. In the event  
9 that a chartered school has not submitted a claim form for the  
10 2002-2003 school year, the department shall use the audit or,  
11 where the audit is unavailable, the claim form for the 2001-2002  
12 school year.

13     (ii) For the purposes of determining the payment under  
14 paragraph (1) for a chartered school that was not in operation  
15 for the 2002-2003 school year, the department shall utilize the  
16 chartered school's preliminary budget for the 2004-2005 school  
17 year instead of the audit identified under paragraph (1)(iii):  
18 Provided, That the calculation under this subparagraph shall not  
19 include any net deductions for offsetting income.

20     (3) No later than August 10, 2004, the department shall  
21 notify each school district of residence or charter school of an  
22 eligible child enrolled in a chartered school of its payment  
23 amount under subsection (a).

24     (4) The department shall pay each approved private school  
25 the total amount calculated pursuant to this subsection divided  
26 into twelve (12) equal monthly payments, which shall not include  
27 any adjustments for offsetting income. The department shall  
28 withhold the school district or charter school payment amount  
29 calculated under subsection (a) from the amount of any and all  
30 State payments made to the school district or charter school. In

no event shall the sum of the Commonwealth's share of payments to chartered schools under this subsection exceed the appropriation for chartered schools.

(c) (1) For the 2005-2006 school year and each school year thereafter, the department shall determine the payment amount for each chartered school for all students enrolled in the chartered school for the immediately preceding school year as follows:

(i) Multiply the payment determined for the immediately preceding school year by one hundred twenty-five percent (125%) of the percentage increase in the appropriation for special education for the fiscal year prior to the fiscal year in which payments under this subsection are made.

(ii) Add the product from subparagraph (i) to the payment determined for the immediately preceding school year.

(2) No later than May 10 of each year, the department shall notify each school district of residence or charter school of an eligible child enrolled in a chartered school of the school district's or charter school's payment amount under subsection (a).

(3) The department shall pay each chartered school the total amount calculated pursuant to this subsection divided into twelve (12) equal monthly payments, which shall not include any adjustments for offsetting income. The department shall withhold the school district or charter school payment amount calculated under subsection (a) from the amount of any and all State payments made to the school district or charter school. In no event shall the sum of the Commonwealth's share of payments to chartered schools under this subsection exceed the appropriation for chartered schools.

1     (d) When any person less than school entry age or more than  
2 twenty-one (21) years of age and resident in this Commonwealth  
3 who is blind or deaf, or has cerebral palsy and/or has  
4 neurological impairment and/or has muscular dystrophy, or has  
5 autism/pervasive developmental delay, and is enrolled, with the  
6 approval of the department as a pupil in a chartered school  
7 approved by the department, the Commonwealth shall pay to the  
8 school:

9     (1) the approved tuition rate for the child's tuition and  
10 maintenance; and

11     (2) in the case of any child less than school entry age who  
12 is blind, the cost, as determined by the department, of  
13 instructing the parent of the child in caring for the child.

14     (e) (1) Beginning with the 2004-2005 school year and each  
15 school year thereafter, each chartered school shall submit a  
16 completed claim form for the immediately preceding fiscal year  
17 to the department no later than August 1 of each year. Each  
18 chartered school shall submit a separate audit report prepared  
19 by an independent certified public accountant selected by the  
20 chartered school. Such audit report shall be prepared in  
21 accordance with generally accepted auditing standards and  
22 generally accepted auditing principles. The chartered school  
23 shall submit the audit report to the department by November 1,  
24 2005, and no later than November 1 of each year thereafter.

25     (2) Audits of cost reports submitted by chartered schools  
26 for school years prior to the 2004-2005 school year which have  
27 not been completed by the department as of the effective date of  
28 this section shall be completed by an independent certified  
29 public accountant selected by the chartered school and shall be  
30 conducted in accordance with generally accepted auditing

standards and generally accepted auditing principles as set forth in this subsection.

(3) Upon receipt of an audit report submitted pursuant to this subsection, the department shall have no more than three (3) months to review the audit report and settle any outstanding payments due to or from the chartered school.

(f) For payments made during the 2004-2005 school year, the department shall establish an approved tuition rate for each chartered school by dividing the amount calculated under subsection (b) by the full-time equivalent enrollment for the chartered school for the 2003-2004 school year. This calculation shall be adjusted for residential and nonresidential students. The approved tuition rate multiplied by the full-time equivalent enrollment shall not exceed the amount calculated under subsection (b).

(g) No later than August 15 of each year, each chartered school shall provide the department its proposed tuition rate or rates and projected full-time equivalent enrollment for the current year. A chartered school may submit separate proposed tuition rates for up to three levels of services and for day and residential students.

(h) (1) For payments made during the 2005-2006 school year and each school year thereafter, no later than January 15 of each year, the department shall establish an approved tuition rate or rates and full-time equivalent enrollment for each chartered school for the current school year.

(2) Where a chartered school has submitted one tuition rate, the approved tuition rate shall be determined by dividing the amount calculated under subsection (c) by the full-time equivalent enrollment for the chartered school for the

immediately preceding school year.

(3) Where a chartered school has submitted more than one tuition rate, the sum of the products of each approved tuition rate and corresponding full-time equivalent enrollment for the chartered school for the immediately preceding school year shall equal the amount calculated under subsection (c).

(4) A chartered school may enroll students in excess of the approved full-time equivalent enrollment. When a chartered school enrolls students in excess of the approved full-time equivalent enrollment, it shall show a corresponding decrease in its approved tuition rate for those students.

(i) No later than May 1 of each school year, the department shall annually publish a report on the department's publicly accessible Internet website that shall include, but not be limited to:

(1) The approved tuition rate or rates for each chartered school for the current school year.

(2) A description of the exceptionalities each chartered school is approved to serve.

(3) A description of all programs and services offered by each chartered school.

(j) (1) Except as otherwise provided under paragraph (2), no private institution receiving payment in accordance with this section may impose any charge on a student or parent who is a Pennsylvania-approved reimbursable resident for a program of individualized instruction and maintenance appropriate to the child's needs.

(2) Charges for services not part of the program may be made if agreed to by the parent.

(k) The State Board of Education shall promulgate final-

1 omitted regulations, under the act of June 25, 1982 (P.L.633,  
2 No.181), known as the Regulatory Review Act, where such  
3 regulations are necessary to further define "eligible child" and  
4 "allowable administrative expenditures", which expenditures  
5 shall not exceed ten percent (10%) of each chartered school's  
6 budget, to implement subsections (a), (d), (f) and (h).

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

10 "Approved full-time equivalent enrollment" means the full-  
11 time equivalent enrollment set by the Department of Education  
12 under the provisions of subsection (f) or (h).

13 "Approved tuition rate" means the final tuition rate set by  
14 the Department of Education under the provisions of subsection  
15 (f) or (h).

16 "Audit," for the purpose of subsection (b), means the fiscal  
17 audit issued by the Governor's Office of the Budget, excluding  
18 questioned costs.

19 "Chartered school" means any of the following chartered  
20 schools for the education of the deaf or the blind:

21 (1) The Pennsylvania School for the Deaf.

22 (2) The Overbrook School for the Blind.

23 (3) The Western Pennsylvania School for Blind Children.

24 (4) The Western Pennsylvania School for the Deaf.

25 "Claim form," for the purpose of subsection (b), means the  
26 form that a chartered school submitted following the end of a  
27 fiscal year showing the final costs claimed for the fiscal year.

28 "Current school year" means the school year in which payment  
29 is being made.

30 "Department" means the Department of Education of the



1 Commonwealth.

2 "Eligible child" means a child between school entry age and  
3 twenty-one (21) years of age and is a resident in this  
4 Commonwealth who is blind or deaf, or has cerebral palsy and/or  
5 neurological impairment and/or muscular dystrophy and/or is  
6 mentally retarded and/or has a serious emotional disturbance  
7 and/or has autism/pervasive developmental disorder.

8 "Full-time equivalent enrollment" means the number of  
9 eligible children enrolled in a chartered school under  
10 subsection (a) or (d).

11 "Immediately preceding school year" means the year for which  
12 payment is made during the current year.

13 "Independent certified public accountant" means a member of  
14 the American Institute of Certified Public Accountants that has  
15 a minimum of five (5) years' verifiable experience in performing  
16 audits of government funds for nonprofit organizations with a  
17 comparable or larger annual budget.

18 "Midyear budget," for the purpose of subsection (b), means  
19 the adjusted budget for the 2003-2004 school year submitted by a  
20 chartered school in January 2004.

21 "Preliminary budget," for the purpose of subsection (b),  
22 means the budget for the 2004-2005 school year submitted by a  
23 chartered school in June 2004.

24 "Proposed tuition rate" means the amount submitted by a  
25 chartered school to the Department of Education to be used in  
26 establishing the cost that the chartered school incurred to  
27 provide instructional and residential services for each full-  
28 time equivalent student. A chartered school may submit  
29 information to establish costs for up to three (3) levels of  
30 services and for day and residential students.

1       Section 3. This act shall take effect July 1, 2004, or  
2 immediately, whichever is sooner.