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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2615** Session of  
2002

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INTRODUCED BY RUBLEY, STEIL, GRUCELA, MELIO, ARMSTRONG, BASTIAN,  
BUNT, CAPPELLI, CIVERA, CORRIGAN, CREIGHTON, DAILEY, DALEY,  
DALLY, DIGIROLAMO, DIVEN, FEESE, FLICK, FREEMAN, GODSHALL,  
HANNA, HARHAI, HENNESSEY, HERMAN, HERSHEY, LEH, MARSICO,  
McCALL, McNAUGHTON, PALLONE, PIPPY, PISTELLA, READSHAW, ROSS,  
SAINATO, SCHRODER, SEMMEL, SHANER, B. SMITH, STEELMAN,  
R. STEVENSON, TANGRETTI, E. Z. TAYLOR, THOMAS, TIGUE, VANCE,  
WALKO, WATSON, M. WRIGHT, YOUNGBLOOD, YUDICHAK AND ZIMMERMAN,  
JUNE 20, 2002

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REFERRED TO COMMITTEE ON EDUCATION, JUNE 20, 2002

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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," further providing for the powers and  
6 duties of intermediate units, for the education of  
7 exceptional children and for payments relating to the  
8 education of exceptional children; and making editorial  
9 changes.

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

12 Section 1. Section 914-A(7) of the act of March 10, 1949  
13 (P.L.30, No.14), known as the Public School Code of 1949, added  
14 May 4, 1970 (P.L.311, No.102), is amended to read:

15 Section 914-A. Powers and Duties of the Intermediate Unit  
16 Board of Directors.--An intermediate unit board of directors  
17 shall have the power and its duty shall be:

18 \* \* \*

1 (7) To provide for and conduct programs of services  
2 authorized by the State Board of Education, including services  
3 performed under contract with component school districts. Except  
4 as otherwise provided by law, all powers and duties of county  
5 boards of school directors in regard to classes and schools for  
6 [exceptional children,] educational broadcasting, audio-visual  
7 libraries, instructional materials centers, area technical  
8 schools and area vocational-technical schools are hereby  
9 transferred to and conferred upon intermediate unit boards of  
10 directors. An intermediate unit may contract with school  
11 districts to provide services on behalf of the intermediate  
12 unit. An intermediate unit shall cooperate with the Department  
13 of Education in the provision of educational services for  
14 exceptional children with disabilities. An intermediate unit may  
15 cooperate with component school districts in the provision of  
16 educational services for exceptional children who are gifted.

17 \* \* \*

18 Section 2. Section 922.1-A(c) of the act, amended May 10,  
19 2000 (P.L.44, No.16), is amended to read:

20 Section 922.1-A. Auxiliary Services.--\* \* \*

21 (c) Program of Auxiliary Services. Students attending  
22 nonpublic schools shall be furnished a program of auxiliary  
23 services which are provided to public school students in the  
24 school district in which their nonpublic school is located. The  
25 program of auxiliary services shall be provided by the  
26 intermediate unit in which the nonpublic school is located, in  
27 accordance with standards of the Secretary of Education. Special  
28 education services for exceptional children who are gifted shall  
29 be provided by the intermediate unit. Special education services  
30 for exceptional children with disabilities shall be provided by

1 the Department of Education through the intermediate unit.  
2 Before an intermediate unit makes any decision that affects the  
3 opportunities for children attending nonpublic schools to  
4 participate in the auxiliary services provided under this  
5 section, the intermediate unit shall consult with such nonpublic  
6 schools to determine at a minimum: which general categories of  
7 children shall receive services; what services shall be  
8 provided; how and where the services shall be provided; and how  
9 the services shall be evaluated. Such services shall be provided  
10 directly to the nonpublic school students by the intermediate  
11 unit in the schools which the students attend, in mobile  
12 instructional units located on the grounds of such schools or in  
13 any alternative setting mutually agreed upon by the school and  
14 the intermediate unit, to the extent permitted by the  
15 Constitution of the United States and the Constitution of the  
16 Commonwealth of Pennsylvania.

17 [Such] (c.1) The auxiliary services shall be provided  
18 directly by the intermediate units [and no auxiliary services  
19 presently provided to public school students by the intermediate  
20 units and/or school districts by means of State or local  
21 revenues, during the school year 1974-1975, shall be  
22 eliminated]. No school districts shall be required, pursuant to  
23 any section of this act, to offer auxiliary services provided by  
24 any other school districts within such intermediate units.

25 \* \* \*

26 Section 3. Section 1309 of the act, amended June 30, 1995  
27 (P.L.220, No.26), is amended to read:

28 Section 1309. Cost of Tuition; How Fixed.--(a) The cost of  
29 tuition in such cases shall be fixed as is now provided by law  
30 for tuition costs in other cases, except in the following

1 circumstances:

2 (1) Where, for the accommodation of such children, it shall  
3 be necessary to provide a separate school or to erect additional  
4 school buildings, the charge for tuition for such children may  
5 include a proportionate cost of the operating expenses, rental,  
6 and interest on any investment required to be made in erecting  
7 such new school buildings.

8 (2) When a child who is an inmate of an institution is [a  
9 child with exceptionalities] an exceptional child who is gifted,  
10 the district in which the institution is located may charge the  
11 district of residence, and the district of residence shall pay a  
12 special education charge in addition to the applicable tuition  
13 charge. Such special education charge when combined with the  
14 applicable tuition charge shall not exceed the total net cost of  
15 the special education program provided. [In the case of a child  
16 with exceptionalities who is an inmate of an institution and who  
17 is served under section 2509.1(b), the district in which the  
18 institution is located may charge the district of residence an  
19 amount that does not exceed the total cost of the special  
20 education program provided minus the amount received per child  
21 from the Commonwealth under section 2509.1(b).]

22 (3) When a child who is an inmate of an institution is an  
23 exceptional child with disabilities, the district in which the  
24 institution is located shall charge the district of residence,  
25 and the district of residence shall pay the applicable tuition  
26 charge. The Commonwealth shall be responsible for the payment of  
27 all special education charges.

28 (b) The tuition herein provided for shall be paid annually  
29 by the [Secretary of Education] the Commonwealth, the district  
30 of residence or the institution as the case may be.

1 Section 4. Section 1327(d) of the act, added December 21,  
2 1988 (P.L.1321, No.169), is amended to read:

3 Section 1327. Compulsory School Attendance.--\* \* \*

4 (d) Instruction to children of compulsory school age  
5 provided in a home education program, as provided for in section  
6 1327.1 of this act, shall be considered as complying with the  
7 provisions of this section, except that any student who has been  
8 identified pursuant to the provisions of the Education of the  
9 Handicapped Act (Public Law 91-230, 20 U.S.C. § 1401 et seq.) as  
10 needing special education services, excluding those students  
11 identified as gifted and/or talented, shall be in compliance  
12 with the requirements of compulsory attendance by participating  
13 in a home education program, as defined in section 1327.1, when  
14 the program addresses the specific needs of the exceptional  
15 student and is approved by a teacher with a valid certificate  
16 from the Commonwealth to teach special education or a licensed  
17 clinical or certified school psychologist, and written  
18 notification of such approval is submitted with the notarized  
19 affidavit required under section 1327.1(b) to the Department of  
20 Education. The supervisor of a home education program may  
21 request that the [school district or] Department of Education  
22 through the intermediate unit of residence provide services that  
23 address the specific needs of the exceptional student in the  
24 home education program. When the provision of services is agreed  
25 to by both the supervisor and the [school district or  
26 intermediate unit] Department of Education, all services shall  
27 be provided in the public schools or in a private school  
28 licensed to provide such programs and services.

29 Section 5. Section 1371 of the act, amended June 30, 1995  
30 (P.L.220, No.26), is reenacted and amended to read:

1 Section 1371. Definition of Children with Exceptionalities[;  
2 Reports; Examination.--(1)] and Reports.--(a) The term  
3 "children with exceptionalities" shall mean children of school  
4 age who have a disability or who are gifted and who, by reason  
5 thereof, need specially designed instruction.

6 [(2)] (b) It shall be the duty of the district  
7 superintendent, in every school district in accordance with  
8 rules of procedure prescribed by the Secretary of Education, to  
9 secure information and report to the Department of Education and  
10 the intermediate unit serving that school district, on or before  
11 the fifteenth day of October of each year, and thereafter as  
12 cases arise, every child with exceptionalities within said  
13 district.

14 (c) A report shall be made to the Department of Education of  
15 all children determined to need special education services or  
16 programs consistent with [chapter 14 of] regulations of the  
17 State Board of Education Regulations[, as well as chapter 342 of  
18 Department Standards] set forth in 22 Pa. Code Ch. 14 (relating  
19 to special education services and programs).

20 Section 6. Section 1372 of the act, amended or added January  
21 14, 1970 (1969 P.L.468, No.192), August 24, 1977 (P.L.199,  
22 No.59), July 8, 1989 (P.L.253, No.43) and May 10, 2000 (P.L.44,  
23 No.16), is amended to read:

24 Section 1372. Exceptional Children; Education and  
25 Training.--[(1) Standards for Proper Education and Training of  
26 Exceptional Children.](a) The State Board of Education shall  
27 adopt and prescribe standards and regulations for the proper  
28 education and training of all exceptional children by the  
29 Department of Education, intermediate units or school districts  
30 [or counties singly or jointly].

1       (b) There is hereby established within the administrative  
2 structure of the Department of Education an Office of Special  
3 Education which shall be under the supervision and direction of  
4 the Deputy Secretary for Special Education. The Office of  
5 Special Education shall have the following powers and duties:

6       (1) To oversee all special education services and programs  
7 provided within this Commonwealth.

8       (2) To provide for the school year 2003-2004, and each  
9 school year thereafter, the education for all exceptional  
10 students with disabilities. In carrying out this responsibility,  
11 the office shall cooperate with and utilize intermediate units.  
12 The office may also use approved private schools and private  
13 contractors to provide the necessary education. In all cases,  
14 the office shall strive to provide the best possible educational  
15 experience for the exceptional student with the least disruption  
16 to the current education plan and experience.

17       (3) To examine all exceptional students with disabilities to  
18 determine whether or not such students meet the necessary  
19 standards and qualifications of the State Board of Education to  
20 qualify as an exceptional student with a disability. Any  
21 determination under this paragraph is an administrative  
22 determination under 2 Pa.C.S. (relating to administrative law  
23 and procedure) and subject to review by the Commonwealth Court.

24       (4) In cooperation with the public and private providers, to  
25 develop individual education plans for each exceptional student  
26 with a disability.

27       (5) To pay all costs associated with the education of  
28 exceptional students with disabilities.

29       (c) The Department of [Public Instruction] Education shall  
30 have power, and it shall be its duty, to determine the [counties

1 which shall be joined for the purpose of providing] proper  
2 education and training of exceptional children who have any  
3 disabilities. Standards and regulations shall recognize such  
4 factors as [number of exceptional children, types of handicaps,  
5 facility of transportation, adequacy of existing provisions for  
6 exceptional children, and availability of school plant  
7 facilities.]:

8 (1) The number of exceptional children with disabilities.

9 (2) The types of handicaps.

10 (3) The facility of transportation.

11 (4) The adequacy of existing provisions for exceptional  
12 children with disabilities.

13 (5) The current Federal and State statutory and decisional  
14 law affecting the education of exceptional children with  
15 disabilities.

16 (6) The need to place exceptional children in the least  
17 restrictive setting necessary to provide education.

18 (7) The necessity to minimize and, if possible, eliminate  
19 any disruption to the educational program for any exceptional  
20 children with disabilities.

21 (8) The availability of adequate plant facilities.

22 [(1.1) Revision of Standards for Education and Training of  
23 Exceptional Children. During the school year 1989-1990 the  
24 following provisions shall apply to the State Board of  
25 Education:

26 (i) Not later than March 1, 1990, the State Board of  
27 Education shall adopt revised Chapter 13 Special Education  
28 regulations and approve revised 22 Pa. Code Ch. 341 department  
29 standards for the education and training of exceptional  
30 children, and such revised regulations and standards shall be



1 effective beginning with the school year and fiscal year 1990-  
2 1991. Such revised regulations and standards shall, at a  
3 minimum, provide measures as may be necessary to assure fiscal  
4 accountability, prudent management, appropriate education  
5 support services and special classes to meet the needs of  
6 pupils, and assurance of continued service to children receiving  
7 special education instruction and services on the effective date  
8 of such revised regulations and standards, including a  
9 requirement that no changes in such instruction or service be  
10 made unless through changes in the child's Individualized  
11 Education Program.

12 (ii) Due to the urgent need for an expedited but public  
13 regulatory process, the State Board of Education, in adopting  
14 such revised regulations and approving such revised department  
15 standards, shall follow the procedures set forth in this  
16 subsection.

17 (A) The State Board of Education shall conduct such public  
18 hearings and receive such testimony as it deems appropriate,  
19 provided, however, that the State Board of Education conduct at  
20 least three public hearings prior to the final adoption of such  
21 revised regulations and approval of such revised department  
22 standards. Not later than November 10, 1989, at the time the  
23 State Board of Education announces its intention to adopt such  
24 revised regulations and to approve such revised department  
25 standards, it shall announce its intention pursuant to the  
26 provisions of the act of July 31, 1968 (P.L.769, No.240),  
27 referred to as the Commonwealth Documents Law, and shall  
28 transmit copies of such proposed regulations and standards to  
29 the chairmen of the standing Committees on Education of the  
30 Senate and House of Representatives to permit those committees

1 thirty (30) days to review and comment upon such proposed  
2 regulations and standards. At the time the State Board finally  
3 adopts such final form regulations and approves such revised  
4 department standards, it shall transmit copies of such  
5 regulations and standards to the chairmen of the standing  
6 Committees on Education of the Senate and House of  
7 Representatives and the Independent Regulatory Review  
8 Commission. The final form regulations and revised department  
9 standards shall be subject to review in accordance with the  
10 procedures set forth in the act of June 25, 1982 (P.L.633,  
11 No.181), known as the "Regulatory Review Act," for proposed  
12 final regulations. Other than as herein provided, regulations  
13 adopted pursuant to this paragraph shall not be subject to  
14 review under the "Regulatory Review Act."

15 (B) The State Board of Education may transmit to the  
16 Governor and the Secretary of Education recommendations, if any,  
17 for changes in statutes.

18 (iii) The Department of Education shall require the  
19 submission of appropriate program and fiscal data from the  
20 school districts and intermediate units in order to assist in  
21 the development of regulations and proposed program standards.  
22 Each school district and intermediate unit shall provide such  
23 data at such time and in such form as the department may  
24 require.

25 (2) Plans for Education and Training Exceptional Children.  
26 Each]

27 (d) (1) For the school year 2002-2003, each intermediate  
28 unit, cooperatively with other intermediate units and with  
29 school districts shall prepare and submit to the [Superintendent  
30 of Public Instruction, on or before the first day of August, one

1 thousand nine hundred seventy for his] Department of Education  
2 for approval or disapproval, plans for the proper education and  
3 training of all exceptional children in accordance with the  
4 standards and regulations adopted by the State Board of  
5 Education. Plans as provided for in this section shall be  
6 subject to revision from time to time as conditions warrant,  
7 subject to the approval of the [Superintendent of Public  
8 Instruction.] Department of Education.

9 (2) For the 2003-2004 school year and each school year  
10 thereafter, the Department of Education shall have the sole  
11 power and duty to provide for the education of exceptional  
12 students with disabilities. The department, in cooperation with  
13 each intermediate unit shall prepare and submit plans for the  
14 proper education and training of all exceptional children with  
15 disabilities in accordance with the standards and regulations of  
16 the State Board of Education. Plans under this paragraph shall  
17 be subject to periodic revisions as conditions warrant.

18 (3) For the 2003-2004 school year and each school year  
19 thereafter, each school district shall prepare and submit to the  
20 department plans for the proper education and training of all  
21 exceptional children who are gifted in accordance with the  
22 standards and regulations of the State Board of Education. Plans  
23 under this paragraph shall be subject to periodic revisions as  
24 conditions warrant.

25 [(3) Special Classes or Schools Established and Maintained  
26 by School Districts.]

27 (e) (1) Except as herein otherwise provided, it shall be  
28 the duty of the board of school directors of every school  
29 district to provide and maintain, or to jointly provide and  
30 maintain with neighboring districts, special classes or schools

1 in accordance with the approved plan[.] for exceptional children  
2 who are gifted.

3 (2) Except as otherwise provided, it shall be the duty of  
4 the Department of Education in cooperation with the various  
5 intermediate units either alone or jointly to provide and  
6 maintain classes or schools for exceptional children who have  
7 disabilities. In providing these classes or schools, the  
8 department may use intermediate units, school districts, in-  
9 house staff or private contractors to provide the education.

10 (3) The Secretary of Education shall superintend the  
11 organization of such special classes and such other arrangements  
12 for special education and shall enforce the provisions of this  
13 act relating thereto. If the approved plan indicates that it is  
14 not feasible to form a special class in any district or  
15 intermediate unit or to provide such education for any such  
16 child in the public schools of the district or the intermediate  
17 unit, the [board of school directors of the district] department  
18 shall secure such proper education and training outside the  
19 public schools [of the district] or in special institutions, or  
20 by providing for teaching the child in his home, in accordance  
21 with rules and regulations prescribed by the [Department of]  
22 State Board of Education, on terms and conditions not  
23 inconsistent with the terms of this act or of any other act then  
24 in force applicable to such children. [However, the institution  
25 of special classes and programs at the secondary level for  
26 exceptional children who are gifted and talented students may be  
27 deferred until September 1978 at the discretion of the board of  
28 the school directors of any school district.]

29 (f) In addition to the [above] requirements of subsections  
30 (b), (c) and (d) and in accordance with rules and regulations

1 prescribed by the Department of Education, homebound instruction  
2 shall be provided for children confined in detention homes as  
3 provided in section 7, act of June 2, 1933 (P.L.1433, No.311),  
4 as amended, for the period of their confinement, if their  
5 confinement exceeds or is expected to exceed ten days, even  
6 though such children are not exceptional.

7 [(4) Classes for Exceptional Children. The] (g) The  
8 department, in cooperation with the intermediate unit shall have  
9 power, and it shall be its duty, to provide, maintain,  
10 administer, supervise and operate such [additional] classes or  
11 schools as are necessary or to otherwise provide for the proper  
12 education and training for all exceptional children who [are not  
13 enrolled in classes or schools maintained and operated by school  
14 districts or who are not otherwise provided for] have  
15 disabilities.

16 [(5) Day-Care Training Centers, Classes and Schools for the  
17 Proper Education and Training of Exceptional Children.] (h)  
18 Where in the judgment of the [Superintendent of Public  
19 Instruction] Secretary of Education, the provisions of this act  
20 relating to the proper education and training of exceptional  
21 children with disabilities have not been complied with or the  
22 needs of exceptional children with disabilities are not being  
23 adequately served, the Department of [Public Instruction]  
24 Education is hereby authorized to provide, including the payment  
25 of rental when necessary, maintain, administer, supervise and  
26 operate classes and schools for the proper education and  
27 training of exceptional children with disabilities. Pupil  
28 eligibility for enrollment in classes for exceptional children  
29 shall be determined according to standards and regulations  
30 promulgated by the State Board of Education. For each child

1 enrolled in any special class or school for exceptional children  
2 [operated by the Department of Public Instruction, the school  
3 district in which the child is resident shall pay to the  
4 Commonwealth, a sum equal to the "tuition charge per elementary  
5 pupil" or the "tuition charge per high school pupil" as  
6 determined for the schools operated by the district or by a  
7 joint board of which the district is a member, based upon the  
8 costs of the preceding school term as provided for in section  
9 two thousand five hundred sixty-one of the act to which this is  
10 an amendment plus a sum equal to ten (10) per centum of such  
11 tuition charges. In the event that any school district has not  
12 established such "tuition charge per elementary pupil" or  
13 "tuition charge per high school pupil," the Superintendent of  
14 Public Instruction shall fix a reasonable charge for such  
15 district for the year in question. In order to facilitate such  
16 payments by the several school districts, the Superintendent of  
17 Public Instruction shall withhold from any moneys due to such  
18 district out of any State appropriation, except from  
19 reimbursement due on account of rentals as provided in section  
20 two thousand five hundred eleven point one of the act to which  
21 this is an amendment, the amounts due by such school districts  
22 to the Commonwealth. All amounts so withheld are hereby  
23 specifically appropriated to the Department of Public  
24 Instruction for the maintenance and administration of centers  
25 and classes for exceptional children] with disabilities the  
26 Department of Education shall be responsible for all costs.

27 [(6) Pupils Credited to District of Residence. The average  
28 daily membership of pupils enrolled in classes and schools for  
29 exceptional children, operated by an intermediate unit or by the  
30 Department of Public Instruction, shall be credited to the

1 school district of residence for the purpose of determining the  
2 district's "teaching units" to be used in calculating the  
3 district's reimbursement fractions or weighted average daily  
4 membership to be used in calculating a district's aid ratio and  
5 in determining payments to the district on account of  
6 instruction as provided in section two thousand five hundred two  
7 of the act to which this is an amendment.

8 (8) Reporting of Expenditures Relating to Exceptional  
9 Students.] (i) By December 31, 2000, and each year thereafter,  
10 each school district and each intermediate unit shall compile  
11 information listing the number of students with disabilities for  
12 which expenditures are between twenty-five thousand dollars  
13 (\$25,000) and fifty thousand dollars (\$50,000), between fifty  
14 thousand dollars (\$50,000) and seventy-five thousand dollars  
15 (\$75,000) and over seventy-five thousand dollars (\$75,000) for  
16 the prior school year. The information shall be submitted to the  
17 department in a form prescribed by the department. By February  
18 1, 2001, and each year thereafter, the department shall submit  
19 to the chairman and minority chairman of the Education and  
20 Appropriations Committees of the Senate and the chairman and  
21 minority chairman of the Education and Appropriations Committees  
22 of the House of Representatives a report listing this  
23 information by school district and intermediate unit.

24 Section 7. Section 1373 of the act, amended October 21, 1965  
25 (P.L.601, No.312), is amended to read:

26 Section 1373. State Reimbursement; Reports.--(a) School  
27 districts maintaining special classes in the public schools or  
28 special public schools or providing special education, as  
29 specified in this subdivision of this article, shall receive  
30 reimbursement up to and through the school year 2002-2003, as

1 provided by this act, so long as such classes, such schools, and  
2 such special education are approved by the Department of [Public  
3 Instruction] Education as to location, constitution and size of  
4 classes, conditions of admission and discharge of pupils,  
5 equipment, courses of study, methods of instruction and  
6 qualification of teachers. Beginning with the school year 2003-  
7 2004, and each school year thereafter, the Commonwealth shall  
8 have the duty through the intermediate units to provide for the  
9 education of all exceptional children with disabilities. All  
10 costs shall be paid by the Commonwealth.

11 (b) On or before the first day of November of each year, the  
12 secretary of the board of school directors in each district in  
13 which special education for exceptional children is provided  
14 shall make such reports as may be required by the Department of  
15 [Public Instruction] Education, in regard to such special  
16 education being maintained for the current school year for which  
17 approval is desired.

18 Section 8. Section 1376 of the act, amended June 7, 1993  
19 (P.L.49, No.16), June 30, 1995 (P.L.220, No.26) and June 22,  
20 2001 (P.L.530, No.35), is amended to read:

21 Section 1376. Cost of Tuition and Maintenance of Certain  
22 Exceptional Children in Approved Institutions.--(a) When any  
23 child between school entry age and twenty-one (21) years of age  
24 and resident in this Commonwealth, who is blind or deaf, or has  
25 cerebral palsy and/or neurological impairment and/or muscular  
26 dystrophy and/or is mentally retarded and/or has a serious  
27 emotional disturbance and/or has autism/pervasive developmental  
28 disorder and is enrolled, with the approval of the Department of  
29 Education, as a pupil in an approved private school approved by  
30 the Department of Education, in accordance with standards and



1 regulations promulgated by the State Board of Education, the  
2 [school district in which such child is resident or, for  
3 students placed by a charter school, the charter school in which  
4 the student was enrolled shall pay the greater of either twenty  
5 per centum (20%) of the actual audited cost of tuition and  
6 maintenance of such child in such school, as determined by the  
7 Department of Education, or its "tuition charge per elementary  
8 pupil" or its "tuition charge per high school pupil," as  
9 calculated pursuant to section 2561, and the] Commonwealth shall  
10 pay, out of funds appropriated to the department for special  
11 education, the [balance due for the costs of such child's  
12 tuition and maintenance, as determined by the department. For  
13 the school years 1989-1990, 1990-1991 and 1991-1992, the school  
14 district payment shall be no greater than forty percent (40%) of  
15 the actual audited costs of tuition and maintenance of such  
16 child in such school. For the 1992-1993 school year and each  
17 school year thereafter, the school district or charter school  
18 payment shall be the greater of forty percent (40%) of the  
19 actual audited costs of tuition and maintenance of such child in  
20 such school, as determined by the Department of Education, or  
21 its "tuition charge per elementary pupil" or its "tuition charge  
22 per high school pupil," as calculated pursuant to section 2561,  
23 and the Commonwealth shall pay, out of funds appropriated to the  
24 department for approved private schools, the balance due for the  
25 costs of such child's tuition and maintenance, as determined by  
26 the department. The department will credit the district of  
27 residence with average daily membership for such child  
28 consistent with the rules of procedure developed in accordance  
29 with section 2501. If the residence of such child in a  
30 particular school district cannot be determined, the

1 Commonwealth shall pay, out of moneys appropriated to the  
2 department for special education, the] whole cost of tuition and  
3 maintenance of such child. The Department of Education shall be  
4 provided with such financial data from approved private schools  
5 as may be necessary to determine the reasonableness of costs for  
6 tuition and room and board concerning Pennsylvania resident  
7 approved reimbursed students. The Department of Education shall  
8 evaluate such data and shall disallow any cost deemed  
9 unreasonable. Any costs deemed unreasonable by the Department of  
10 Education for disallowance shall be considered an adjudication  
11 within the meaning of Title 2 of the Pa.C.S. (relating to  
12 administrative law and procedure) and regulations promulgated  
13 thereunder.

14 (b) When any person less than school entry age or more than  
15 twenty-one (21) years of age and resident in this Commonwealth,  
16 who is blind or deaf, or has cerebral palsy and/or has  
17 neurological impairment and/or has muscular dystrophy, or has  
18 autism/pervasive developmental delay, and is enrolled, with the  
19 approval of the Department of Education, as a pupil in an  
20 approved private school approved by the Department of Education,  
21 the Commonwealth shall pay to such school, out of moneys  
22 appropriated to the department for special education, the actual  
23 audited cost of tuition and maintenance of such person, as  
24 determined by the Department of Education, subject to review and  
25 approval in accordance with standards and regulations  
26 promulgated by the State Board of Education, and in addition, in  
27 the case of any child less than school entry age, who is blind,  
28 the cost, as determined by the Department of Education of  
29 instructing the parent of such blind child in caring for such  
30 child.

1 (c) Each approved private school, prior to the start of the  
2 school year, shall submit to the department such information as  
3 the department may require in order to establish an estimate of  
4 reimbursable costs. Based upon this information, any other data  
5 deemed necessary by the department and in accordance with  
6 department standards, the department shall develop for each  
7 approved private school an estimate of reimbursable costs. Based  
8 upon such estimate, the department shall provide each approved  
9 private school with monthly payments in advance of department  
10 audit. The department may withhold a portion of such payments  
11 not exceeding five percent (5%) of such payment, pending final  
12 audit. In no event shall either the advance payments or final  
13 reimbursement made by the department following audit exceed the  
14 appropriation available for approved private schools.

15 (c.1) Any funds remaining from the appropriation line items  
16 "for special education - approved private schools" or for  
17 Pennsylvania Charter Schools for the Deaf and Blind from the  
18 general appropriations acts for fiscal years 1978-1979 and each  
19 fiscal year thereafter shall be transferred by the State  
20 Treasurer into a restricted account (continuing appropriation)  
21 for audit resolution which is hereby established. The Department  
22 of Education shall also deposit into this restricted account any  
23 funds returned to or recovered by the department from approved  
24 private schools or chartered schools for overpayments during  
25 fiscal years 1978-1979 and each fiscal year thereafter. The  
26 funds in the restricted account are hereby appropriated upon  
27 approval of the Governor to the Department of Education for  
28 payments to approved private schools for audit resolutions for  
29 fiscal years 1978-1979 and each fiscal year thereafter. Funds in  
30 this restricted account shall not be subject to the limitations

1 in subsection (c) which prohibit advance payments and final  
2 reimbursement from exceeding the appropriation available for  
3 approved private schools. During the 1995-1996 fiscal year and  
4 during each fiscal year thereafter, the Department of Education  
5 shall review the activity in the restricted account and may  
6 recommend that the Governor authorize the lapsing into the  
7 General Fund of any funds that are estimated not to be needed  
8 for audit resolution.

9 (d) No private institution receiving payment in accordance  
10 with this section shall impose any charge on the student and/or  
11 parents who are Pennsylvania approved reimbursable residents for  
12 a program of individualized instruction and maintenance  
13 appropriate to the child's needs; except that charges for  
14 services not part of such program may be made if agreed to by  
15 the parents.

16 [(e) (1) The Education Committees of the Senate and House  
17 of Representatives are directed to jointly examine the issues of  
18 the funding of approved private schools and special education  
19 students' access to approved private schools as part of the full  
20 continuum of special education placements. The committees'  
21 examination should address, at a minimum, the following issues:

22 (i) The funding methodology which supports the school  
23 district's responsibility for individualized, appropriate  
24 educational services to special education students through  
25 access to the most comprehensive continuum of educational  
26 options and settings.

27 (ii) The role of the approved private school in the mandated  
28 continuum of special education services available to students in  
29 Pennsylvania.

30 (iii) The relative roles of the Department of Education and

1 school districts to ensure free appropriate public education  
2 (FAPE) through adequate funding and appropriate distribution of  
3 comprehensive services.

4 (iv) The provisions of the Individuals with Disabilities  
5 Education Act (IDEA) (P.L.101-476), the Cordero Court Orders,  
6 this act and 22 Pa. Code Chs. 14 and 342 as they relate to the  
7 provision of programs and services to special education students  
8 should be carefully reviewed as they pertain to approved private  
9 schools, continuum of placement options, funding, FAPE and other  
10 pertinent issues.

11 (2) The committees shall report back to the General Assembly  
12 by November 15, 1993, with legislative and/or administrative  
13 recommendations. The committees may hold such meetings and  
14 hearings as they deem appropriate to accomplish the provisions  
15 of this subsection.]

16 Section 9. Section 1376.1 of the act, amended June 7, 1993  
17 (P.L.49, No.16), is amended to read:

18 Section 1376.1. Actual Cost of Tuition and Maintenance of  
19 Certain Exceptional Children in the Four Chartered Schools for  
20 Education of the Deaf and the Blind.--(a) The following term,  
21 whenever used or referred to in this section, shall have the  
22 following meaning. "Chartered school" shall mean any of the four  
23 (4) chartered schools for the education of the deaf or the  
24 blind: the Pennsylvania School for the Deaf; the Overbrook  
25 School for the Blind; the Western Pennsylvania School for Blind  
26 Children; and the Western Pennsylvania School for the Deaf.

27 (b) When any child of school age resident in this  
28 Commonwealth, who is blind or deaf, is enrolled with the  
29 approval of the Department of Education as a pupil in any of the  
30 four (4) chartered schools in accordance with standards and

1 regulations promulgated by the State Board of Education, the  
2 [school district in which such child is resident shall pay the  
3 greater of either twenty percent (20%) of the actual cost of  
4 tuition and maintenance of such child in such institution, as  
5 determined by the Department of Education; or its "tuition  
6 charge per elementary pupil" or its "tuition charge per high  
7 school pupil," and the Commonwealth shall pay, out of funds  
8 appropriated to the department for special education, the  
9 balance due for the costs of such child's tuition and  
10 maintenance, as determined by the department. For the school  
11 years 1989-90, 1990-91 and 1991-92, the school district payment  
12 shall be no greater than forty percent (40%) of the actual  
13 audited costs of tuition and maintenance of such child in such  
14 school. For the 1992-1993 school year and each school year  
15 thereafter, the school district payment shall be the greater of  
16 forty percent (40%) of the actual audited costs of tuition and  
17 maintenance of such child in such school, as determined by the  
18 Department of Education, or its "tuition charge per elementary  
19 pupil" or its "tuition charge per high school pupil," and the  
20 Commonwealth shall pay out of funds appropriated to the  
21 department for chartered schools the balance due for the costs  
22 of such child's tuition and maintenance, as determined by the  
23 department. The department will credit the district of residence  
24 with average daily membership for such child consistent with the  
25 rules of procedure developed in accordance with section 2501. If  
26 the residence of such child in a particular school district  
27 cannot be determined, the] Commonwealth shall pay, out of moneys  
28 appropriated to the department for special education, the whole  
29 cost of tuition and maintenance of such child. The Department of  
30 Education shall be provided with such financial data from each

1 of the chartered schools as may be necessary to determine the  
2 reasonableness of charges for tuition and room and board of each  
3 of the chartered schools made on Pennsylvania resident approved  
4 students. The Department of Education shall evaluate such data  
5 and shall disallow any charges deemed unreasonable. Any charge  
6 deemed unreasonable by the Department of Education for  
7 disallowance shall be considered an adjudication within the  
8 meaning of Title 2 of the Pa.C.S. (relating to administrative  
9 law and procedure) and regulations promulgated thereunder.

10 (c) When any person less than school age resident in this  
11 Commonwealth who is blind or deaf is enrolled, with the approval  
12 of the Department of Education, as a residential pupil in any of  
13 the four (4) chartered schools, the Commonwealth shall pay to  
14 the school, out of moneys appropriated to the department for  
15 special education, the actual cost of tuition and maintenance of  
16 such person, as determined by the Department of Education,  
17 subject to review and approval in accordance with standards and  
18 regulations promulgated by the State Board of Education, and in  
19 addition, in the case of any child less than school age, who is  
20 blind, the cost, as determined by the Department of Education of  
21 instructing the parent of such blind child in caring for such  
22 child.

23 (d) None of the chartered schools receiving payment in  
24 accordance with this section shall impose any charge on the  
25 student and/or parents who are approved reimbursable residents  
26 for a program of instruction and maintenance appropriate to the  
27 child's needs; except that charges for programs not part of the  
28 normal school year may be made.

29 Section 10. Section 1377 of the act, amended or added May  
30 31, 1979 (P.L.33, No.11), December 17, 1982 (P.L.1378, No.316)

1 and July 8, 1989 (P.L.253, No.43), is amended to read:

2 Section 1377. Payment of Cost of Tuition and Maintenance of  
3 Certain Exceptional Children.--(a) [To facilitate payments by  
4 the several school districts to the schools or institutions in  
5 which deaf or blind, or cerebral palsied and/or brain damaged  
6 and/or muscular dystrophied, or socially and emotionally  
7 disturbed or mentally retarded children are enrolled, of amounts  
8 due by such districts for their proportion of the cost of  
9 tuition and maintenance of such children, the Secretary of  
10 Education shall withhold from any moneys due to such districts  
11 out of any State appropriation for the assistance as  
12 reimbursement of school districts, the amounts due by such  
13 districts to such schools or institutions for the blind or the  
14 deaf, or the cerebral palsied and/or brain damaged and/or  
15 muscular dystrophied or the socially and emotionally disturbed  
16 and/or mentally retarded. Amounts so withheld shall be  
17 specifically appropriated to the Department of Education.] The  
18 Commonwealth shall pay the whole cost of tuition and maintenance  
19 of any child subject to the provisions of sections 1376 and  
20 1376.1.

21 (b) Payments of the Commonwealth's [proportion of the] cost  
22 of tuition and maintenance of blind or deaf, or cerebral palsied  
23 and/or brain damaged and/or muscular dystrophied, or socially  
24 and emotionally disturbed and/or mentally retarded pupils  
25 enrolled in schools or institutions for the blind or for the  
26 deaf, or for the cerebral palsied and/or brain damaged and/or  
27 muscular dystrophied, or for the socially and emotionally  
28 disturbed and of the cost of instruction of parents of blind  
29 pupils less than school entry age, as hereinbefore provided,  
30 shall be made quarterly, out of moneys appropriated to the



1 Department of Education for special education. Except for the  
2 provisions of section 1376.1 providing for the actual cost of  
3 tuition and maintenance of certain exceptional children in the  
4 four chartered schools for education of the deaf and of the  
5 blind, in no event shall the total payment for the cost of  
6 tuition and maintenance of any such child exceed the rates per  
7 year allowed under section 1376. The maximum amount payable for  
8 the cost of tuition and maintenance of such children shall be  
9 subject to review at least once every two years for the purpose  
10 of recommending an adjustment thereof.

11 (c) For the purpose of enabling the Department of Education  
12 to determine from time to time what amounts are due to schools  
13 for the blind or for the deaf or for the cerebral palsied and/or  
14 brain damaged and/or muscular dystrophied or for the socially  
15 and emotionally disturbed and/or mentally retarded hereunder,  
16 such schools shall forward to the department, at such times and  
17 in such form as the department shall prescribe, sworn statements  
18 setting forth the names, ages, and residences of all pupils  
19 enrolled hereunder, specifying the school districts [liable for  
20 a part of the cost of tuition and maintenance] of any such  
21 pupils, the per capita cost of and maintenance of pupils, and  
22 such other information as the department shall require.

23 (c.1) For the purpose of providing adequate administration  
24 of the program and to carry out the preaudit functions  
25 authorized in section 1376(a), one-half of one percent (.50%) of  
26 the total appropriations for approved private schools from all  
27 funds shall be allocated to the Department of Education.

28 [(d) When, during the course of the 1982-1983 school year,  
29 programs for exceptional children are caused to be transferred  
30 from schools or institutions for the blind or deaf, or cerebral

1 palsied or brain damaged or muscular dystrophied or mentally  
2 retarded, or socially and emotionally disturbed, as provided for  
3 in sections 1376 and 1376.1, to school districts or intermediate  
4 units, as provided for in sections 2509 and 2509.1, under  
5 unanticipated or emergency circumstances, and when such  
6 transfers necessitate the transfer of funds from the  
7 appropriation to the Department of Education for special  
8 education for approved private schools to the appropriation to  
9 the Department of Education for payments on account of special  
10 education of exceptional children in public schools, the  
11 Secretary of Education shall be empowered so to transfer such  
12 funds, upon approval of the Secretary of the Budget and written  
13 notification to the State Treasurer and the chairmen of the  
14 House and Senate Appropriations and Education Committees.]

15 Section 11. Section 1725-A(a) of the act, added June 19,  
16 1997 (P.L.225, No.22), is amended to read:

17 Section 1725-A. Funding for Charter Schools.--(a) Funding  
18 for a charter school shall be provided in the following manner:

19 (1) There shall be no tuition charge for a resident or  
20 nonresident student attending a charter school.

21 (2) For non-special education students, the charter school  
22 shall receive for each student enrolled no less than the  
23 budgeted total expenditure per average daily membership of the  
24 prior school year, as defined in section 2501(20), minus the  
25 budgeted expenditures of the district of residence for nonpublic  
26 school programs; adult education programs; community/junior  
27 college programs; student transportation services; for special  
28 education programs; facilities acquisition, construction and  
29 improvement services; and other financing uses, including debt  
30 service and fund transfers as provided in the Manual of

1 Accounting and Related Financial Procedures for Pennsylvania  
2 School Systems established by the department. This amount shall  
3 be paid by the district of residence of each student.

4 (3) For special education students without disabilities, the  
5 charter school shall receive for each student enrolled the same  
6 funding as for each non-special education student as provided in  
7 clause (2), plus an additional amount determined by dividing the  
8 district of residence's total special education expenditure for  
9 students without disabilities by the product of multiplying the  
10 combined percentage of section 2509.5(k) times the district of  
11 residence's total average daily membership for the prior school  
12 year. This amount shall be paid by the district of residence of  
13 each special education student without disabilities.

14 (3.1) For special education students with disabilities who  
15 are required to be educated by the Department of Education and  
16 the department agrees in writing that the charter school may  
17 provide the education, the charter school shall receive for each  
18 student enrolled the same funding as provided to other providers  
19 or contractors by the Commonwealth.

20 (4) A charter school may request the intermediate unit in  
21 which the charter school is located to provide services to  
22 assist the charter school to address the specific needs of  
23 exceptional students. The intermediate unit shall assist the  
24 charter school and bill the charter school for the services. The  
25 intermediate unit may not charge the charter school more for any  
26 service than it charges the constituent districts of the  
27 intermediate unit.

28 (5) Payments shall be made to the charter school in twelve  
29 (12) equal monthly payments, by the fifth day of each month,  
30 within the operating school year. A student enrolled in a

1 charter school shall be included in the average daily membership  
2 of the student's district of residence for the purpose of  
3 providing basic education funding payments and special education  
4 funding pursuant to Article XXV. If a school district fails to  
5 make a payment to a charter school as prescribed in this clause,  
6 the secretary shall deduct the amount, as documented by the  
7 charter school, from any and all State payments made to the  
8 district after receipt of documentation from the charter school.

9 \* \* \*

10 Section 12. Section 2509 of the act is amended by adding a  
11 subsection to read:

12 Section 2509. Payments on Account of Courses for Exceptional  
13 Children.--\* \* \*

14 (g) (1) Except as provided in clause (2), the last school  
15 year for payments to school districts under this section for  
16 exceptional children with disabilities shall be for the school  
17 year 2002-2003. Thereafter payments for the education of  
18 exceptional children with disabilities shall be made to  
19 intermediate units by the Commonwealth.

20 (2) Payments under this section shall continue to be made to  
21 school districts for the education of exceptional children  
22 without disabilities.

23 Section 13. Section 2509.1(g) of the act, amended June 30,  
24 1998 (P.L.220, No.260), is amended to read:

25 Section 2509.1. Payments to Intermediate Units.--\* \* \*

26 (g) (1) For the 1991-1992 school year and each school year  
27 thereafter, for each child enrolled in an intermediate unit  
28 class for institutionalized children, the school district in  
29 which the child is resident shall pay to the Commonwealth a sum  
30 equal to the "tuition charge per elementary pupil" or the

1 "tuition charge per high school pupil," as determined for the  
2 schools operated by the district or by a joint board of which  
3 the district is a member, for the same year in which the class  
4 or school is operated, as provided for in section 2561. In the  
5 event that any school district has not established such "tuition  
6 charge per elementary pupil" or "tuition charge per high school  
7 pupil," the Secretary of Education shall fix a reasonable charge  
8 for such district for the year in question.

9 (2) In addition, the district shall pay to the Commonwealth  
10 on account of transportation by the intermediate unit of pupils  
11 to and from classes and schools for exceptional children who are  
12 gifted and of eligible young children to and from early  
13 intervention programs, whether or not conducted by the  
14 intermediate unit, an amount to be determined by subtracting  
15 from the cost of transportation per pupil the reimbursement due  
16 the district on account of such transportation. The Commonwealth  
17 shall pay all costs associated with the transportation of  
18 exceptional children with disabilities.

19 (3) In order to facilitate such payments by the several  
20 school districts, the Secretary of Education shall withhold from  
21 any moneys due to such districts out of a State appropriation,  
22 except from reimbursements due on account of rentals, the  
23 amounts due by such school districts to the Commonwealth. All  
24 amounts so withheld are hereby specifically appropriated to the  
25 Department of Education for the support of public schools.

26 Section 14. Section 2509.4 of the act, added July 8, 1989  
27 (P.L.253, No.43), is amended to read:

28 [Section 2509.4. Payments on Account of Special Education  
29 Services.--(a) For the school year 1989-1990, the following  
30 provisions shall apply to the Commonwealth's payments of funds

1 to school districts and intermediate units for the provisions of  
2 special education services.

3 (1) On or before the first day of August, the Commonwealth  
4 shall pay to school districts and intermediate units an amount  
5 which represents fifty percent (50%) of the total State funds  
6 available for such programs operated in the school year 1989-  
7 1990.

8 (2) On January 1, 1990, a second payment shall be made to  
9 school districts and intermediate units consisting of one-fourth  
10 (1/4) of the total State funds available for such programs  
11 operated in the school year 1989-1990.

12 (3) If, by March 1, 1990, the State Board of Education has  
13 adopted revisions to Chapter 13 Special Education regulations  
14 and/or the 22 Pa. Code Ch. 341 standards, the final payment  
15 shall consist of the remaining State funds available for such  
16 programs operated in the school year 1989-1990. If, on March 1,  
17 1990, the State Board of Education has not adopted revisions to  
18 Chapter 13 Special Education regulations and/or 22 Pa. Code Ch.  
19 341 standards, but the Secretary of the Budget determines that  
20 sufficient progress has been made, a one-time waiver in order to  
21 make an additional payment of no more than one-eighth (1/8) of  
22 the total State funds available for such programs operated in  
23 the school year 1989-1990 may be made.

24 (b) From the funds appropriated in the 1989-1990 fiscal year  
25 and notwithstanding the provisions of subsection (a)(1), (2) and  
26 (3), fifty million dollars (\$50,000,000) shall be paid on August  
27 1, 1989, to school districts for programs operated in school  
28 year 1988-1989 with the additional payment of forty-nine million  
29 dollars (\$49,000,000) of the funds due the school districts for  
30 the programs operated in school year 1988-1989 to be paid on or

1 before December 1, 1989. Any adjustments to these payments may  
2 be made in June 1990 on the basis of actual data.]

3 Section 15. Section 2509.5 of the act is amended by adding a  
4 subsection to read:

5 Section 2509.5. Special Education Payments to School  
6 Districts.--\* \* \*

7 (gg) (1) Except as provided in clause (2), the last school  
8 year for payments to school districts under this section for  
9 exceptional children with disabilities shall be for the school  
10 year 2002-2003. Thereafter payments for the education of  
11 exceptional children with disabilities shall be made to  
12 intermediate units by the Commonwealth.

13 (2) Payments under this section shall continue to be made to  
14 school districts for the education of exceptional children  
15 without disabilities.

16 Section 16. Section 2509.6 of the act, amended July 9, 1992  
17 (P.L.392, No.85), is amended to read:

18 [Section 2509.6. Average Cost Guarantee.--(a) For the 1991-  
19 1992 school year, the dollars available to school districts for  
20 operating and administering classes for exceptional children  
21 shall be guaranteed at eight thousand five hundred five dollars  
22 (\$8,505) per average daily membership for special education  
23 programs and services offered by school districts during the  
24 1990-1991 school year and ten thousand two hundred ninety  
25 dollars (\$10,290) per average daily membership for special  
26 education programs and services offered by the intermediate unit  
27 during the 1990-1991 school year.

28 (b) The dollars available to school districts for operating  
29 and administering classes for exceptional children shall be the  
30 sum of the following: total average daily membership for

1 students receiving special education multiplied by the tuition  
2 charge pursuant to section 2561, plus the amount calculated  
3 pursuant to sections 2509(f) and 2509.5(b) and three times the  
4 district's payment to the Commonwealth for noninstitutionalized  
5 children's programs pursuant to section 2509.1(f).

6 (c) If the actual dollars available to a school district, as  
7 calculated pursuant to subsection (b), are less than the total  
8 guaranteed dollars available to a school district pursuant to  
9 subsection (a), then the Commonwealth shall pay to such school  
10 district funds equal to the amount of the difference between the  
11 total guaranteed dollars available pursuant to subsection (a)  
12 and the actual dollars available pursuant to subsection (b).]

13 Section 17. Section 2509.7 of the act, added August 5, 1991  
14 (P.L.219, No.25), is amended to read:

15 [Section 2509.7. Minimum Guarantee.--For the 1991-1992  
16 school year, each intermediate unit, in the aggregate, including  
17 the intermediate unit and its member school districts, shall  
18 receive at least a three and five-tenths percent (3.5%) increase  
19 in the aggregate revenue for special education over the  
20 aggregate cash amount available from the Commonwealth for  
21 special education during the 1990-1991 school year. The  
22 intermediate unit shall meet with its constituent school  
23 districts to develop a plan for the expenditure or distribution  
24 of the funds provided by this section for the purpose of the  
25 provision of special education programs and services. These  
26 funds may not be expended or distributed by the intermediate  
27 unit until a majority of the boards of directors of the  
28 constituent school districts have approved such expenditures or  
29 distribution. If the amount received under the provisions of  
30 this section is less than ten thousand dollars (\$10,000), such



1 amount may be retained by the intermediate unit for the purpose  
2 of providing special education programs or services without the  
3 approval of its constituent school districts. For the purpose of  
4 computing the revenue available for the guarantee in this  
5 section, the Commonwealth shall include funds allocated pursuant  
6 to sections 2509(f) and 2509.5(b), plus an amount equal to three  
7 times the school district payment to the Commonwealth pursuant  
8 to section 2509.1(b) and the funds allocated pursuant to  
9 sections 2509.1(c), (d) and (f) and 2509.6.]

10 Section 18. This act shall take effect July 1, 2003.