

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 40

Session of
2003

INTRODUCED BY RUBLEY, GRUCELA, MELIO, STEIL, BASTIAN, CAPPELLI, CLYMER, CORRIGAN, COSTA, CREIGHTON, CRUZ, DALEY, FEESE, FLICK, FREEMAN, GODSHALL, HARHAI, HENNESSEY, HERMAN, HERSHEY, HORSEY, LEH, MARSICO, McNAUGHTON, PIPPY, ROSS, SAYLOR, B. SMITH, SOLOBAY, R. STEVENSON, TANGRETTI, E. Z. TAYLOR, THOMAS, TIGUE, VANCE, WALKO, WATSON, WILT, WRIGHT, YOUNGBLOOD AND YUDICHAK, FEBRUARY 25, 2003

REFERRED TO COMMITTEE ON EDUCATION, FEBRUARY 25, 2003

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 * * *

19 (7) To provide for and conduct programs of services

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

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

30 (i) For the school year 2003-2004, twenty (20) per centum of

1 the additional cost from the 2002-2003 school year.

2 (ii) For the school year 2004-2005, forty (40) per centum of
3 the additional cost from the 2003-2004 school year.

4 (iii) For the school year 2005-2006, sixty (60) per centum
5 of the additional cost from the 2004-2005 school year.

6 (iv) For the school year 2006-2007, eighty (80) per centum
7 of the additional cost from the 2005-2006 school year.

8 (v) For the school year 2007-2008 and each school year
9 thereafter, the entire cost for the education of exceptional
10 children with disabilities.

11 (c) The Department of [Public Instruction] Education shall
12 have power, and it shall be its duty, to determine the [counties
13 which shall be joined for the purpose of providing] proper
14 education and training of exceptional children who have any
15 disabilities. Standards and regulations shall recognize such
16 factors as [number of exceptional children, types of handicaps,
17 facility of transportation, adequacy of existing provisions for
18 exceptional children, and availability of school plant
19 facilities.]:

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

21 (2) The types of handicaps.

22 (3) The facility of transportation.

23 (4) The adequacy of existing provisions for exceptional
24 children with disabilities.

25 (5) The current Federal and State statutory and decisional
26 law affecting the education of exceptional children with
27 disabilities.

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

30 (7) The necessity to minimize and, if possible, eliminate

1 any disruption to the educational program for any exceptional
2 children with disabilities.

3 (8) The availability of adequate plant facilities.

4 [(1.1) Revision of Standards for Education and Training of
5 Exceptional Children. During the school year 1989-1990 the
6 following provisions shall apply to the State Board of
7 Education:

8 (i) Not later than March 1, 1990, the State Board of
9 Education shall adopt revised Chapter 13 Special Education
10 regulations and approve revised 22 Pa. Code Ch. 341 department
11 standards for the education and training of exceptional
12 children, and such revised regulations and standards shall be
13 effective beginning with the school year and fiscal year 1990-
14 1991. Such revised regulations and standards shall, at a
15 minimum, provide measures as may be necessary to assure fiscal
16 accountability, prudent management, appropriate education
17 support services and special classes to meet the needs of
18 pupils, and assurance of continued service to children receiving
19 special education instruction and services on the effective date
20 of such revised regulations and standards, including a
21 requirement that no changes in such instruction or service be
22 made unless through changes in the child's Individualized
23 Education Program.

24 (ii) Due to the urgent need for an expedited but public
25 regulatory process, the State Board of Education, in adopting
26 such revised regulations and approving such revised department
27 standards, shall follow the procedures set forth in this
28 subsection.

29 (A) The State Board of Education shall conduct such public
30 hearings and receive such testimony as it deems appropriate,

1 provided, however, that the State Board of Education conduct at
2 least three public hearings prior to the final adoption of such
3 revised regulations and approval of such revised department
4 standards. Not later than November 10, 1989, at the time the
5 State Board of Education announces its intention to adopt such
6 revised regulations and to approve such revised department
7 standards, it shall announce its intention pursuant to the
8 provisions of the act of July 31, 1968 (P.L.769, No.240),
9 referred to as the Commonwealth Documents Law, and shall
10 transmit copies of such proposed regulations and standards to
11 the chairmen of the standing Committees on Education of the
12 Senate and House of Representatives to permit those committees
13 thirty (30) days to review and comment upon such proposed
14 regulations and standards. At the time the State Board finally
15 adopts such final form regulations and approves such revised
16 department standards, it shall transmit copies of such
17 regulations and standards to the chairmen of the standing
18 Committees on Education of the Senate and House of
19 Representatives and the Independent Regulatory Review
20 Commission. The final form regulations and revised department
21 standards shall be subject to review in accordance with the
22 procedures set forth in the act of June 25, 1982 (P.L.633,
23 No.181), known as the "Regulatory Review Act," for proposed
24 final regulations. Other than as herein provided, regulations
25 adopted pursuant to this paragraph shall not be subject to
26 review under the "Regulatory Review Act."

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

30 (iii) The Department of Education shall require the

1 submission of appropriate program and fiscal data from the
2 school districts and intermediate units in order to assist in
3 the development of regulations and proposed program standards.
4 Each school district and intermediate unit shall provide such
5 data at such time and in such form as the department may
6 require.

7 (2) Plans for Education and Training Exceptional Children.
8 Each]

9 (d) (1) For the school year 2002-2003, each intermediate
10 unit, cooperatively with other intermediate units and with
11 school districts shall prepare and submit to the [Superintendent
12 of Public Instruction, on or before the first day of August, one
13 thousand nine hundred seventy for his] Department of Education
14 for approval or disapproval, plans for the proper education and
15 training of all exceptional children in accordance with the
16 standards and regulations adopted by the State Board of
17 Education. Plans as provided for in this section shall be
18 subject to revision from time to time as conditions warrant,
19 subject to the approval of the [Superintendent of Public
20 Instruction.] Department of Education.

21 (2) For the 2003-2004 school year and each school year
22 thereafter, the Department of Education shall have the sole
23 power and duty to provide for the education of exceptional
24 students with disabilities. The department, in cooperation with
25 each intermediate unit shall prepare and submit plans for the
26 proper education and training of all exceptional children with
27 disabilities in accordance with the standards and regulations of
28 the State Board of Education. Plans under this paragraph shall
29 be subject to periodic revisions as conditions warrant.

30 (3) For the 2003-2004 school year and each school year

1 thereafter, each school district shall prepare and submit to the
2 department plans for the proper education and training of all
3 exceptional children who are gifted in accordance with the
4 standards and regulations of the State Board of Education. Plans
5 under this paragraph shall be subject to periodic revisions as
6 conditions warrant.

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

9 (e) (1) Except as herein otherwise provided, it shall be
10 the duty of the board of school directors of every school
11 district to provide and maintain, or to jointly provide and
12 maintain with neighboring districts, special classes or schools
13 in accordance with the approved plan[.] for exceptional children
14 who are gifted.

15 (2) Except as otherwise provided, it shall be the duty of
16 the Department of Education in cooperation with the various
17 intermediate units either alone or jointly to provide and
18 maintain classes or schools for exceptional children who have
19 disabilities. In providing these classes or schools, the
20 department may use intermediate units, school districts, in-
21 house staff or private contractors to provide the education.

22 (3) The Secretary of Education shall superintend the
23 organization of such special classes and such other arrangements
24 for special education and shall enforce the provisions of this
25 act relating thereto. If the approved plan indicates that it is
26 not feasible to form a special class in any district or
27 intermediate unit or to provide such education for any such
28 child in the public schools of the district or the intermediate
29 unit, the [board of school directors of the district] department
30 shall secure such proper education and training outside the

1 public schools [of the district] or in special institutions, or
2 by providing for teaching the child in his home, in accordance
3 with rules and regulations prescribed by the [Department of]
4 State Board of Education, on terms and conditions not
5 inconsistent with the terms of this act or of any other act then
6 in force applicable to such children. [However, the institution
7 of special classes and programs at the secondary level for
8 exceptional children who are gifted and talented students may be
9 deferred until September 1978 at the discretion of the board of
10 the school directors of any school district.]

11 (f) In addition to the [above] requirements of subsections
12 (b), (c) and (d) and in accordance with rules and regulations
13 prescribed by the Department of Education, homebound instruction
14 shall be provided for children confined in detention homes as
15 provided in section 7, act of June 2, 1933 (P.L.1433, No.311),
16 as amended, for the period of their confinement, if their
17 confinement exceeds or is expected to exceed ten days, even
18 though such children are not exceptional.

19 [(4) Classes for Exceptional Children. The] (g) The
20 department, in cooperation with the intermediate unit shall have
21 power, and it shall be its duty, to provide, maintain,
22 administer, supervise and operate such [additional] classes or
23 schools as are necessary or to otherwise provide for the proper
24 education and training for all exceptional children who [are not
25 enrolled in classes or schools maintained and operated by school
26 districts or who are not otherwise provided for] have
27 disabilities.

28 [(5) Day-Care Training Centers, Classes and Schools for the
29 Proper Education and Training of Exceptional Children.] (h)
30 Where in the judgment of the [Superintendent of Public

1 Instruction] Secretary of Education, the provisions of this act
2 relating to the proper education and training of exceptional
3 children with disabilities have not been complied with or the
4 needs of exceptional children with disabilities are not being
5 adequately served, the Department of [Public Instruction]
6 Education is hereby authorized to provide, including the payment
7 of rental when necessary, maintain, administer, supervise and
8 operate classes and schools for the proper education and
9 training of exceptional children with disabilities. Pupil
10 eligibility for enrollment in classes for exceptional children
11 shall be determined according to standards and regulations
12 promulgated by the State Board of Education. For each child
13 enrolled in any special class or school for exceptional children
14 [operated by the Department of Public Instruction, the school
15 district in which the child is resident shall pay to the
16 Commonwealth, a sum equal to the "tuition charge per elementary
17 pupil" or the "tuition charge per high school pupil" as
18 determined for the schools operated by the district or by a
19 joint board of which the district is a member, based upon the
20 costs of the preceding school term as provided for in section
21 two thousand five hundred sixty-one of the act to which this is
22 an amendment plus a sum equal to ten (10) per centum of such
23 tuition charges. In the event that any school district has not
24 established such "tuition charge per elementary pupil" or
25 "tuition charge per high school pupil," the Superintendent of
26 Public Instruction shall fix a reasonable charge for such
27 district for the year in question. In order to facilitate such
28 payments by the several school districts, the Superintendent of
29 Public Instruction shall withhold from any moneys due to such
30 district out of any State appropriation, except from

1 reimbursement due on account of rentals as provided in section
2 two thousand five hundred eleven point one of the act to which
3 this is an amendment, the amounts due by such school districts
4 to the Commonwealth. All amounts so withheld are hereby
5 specifically appropriated to the Department of Public
6 Instruction for the maintenance and administration of centers
7 and classes for exceptional children] with disabilities the
8 Department of Education shall be responsible for all costs as
9 provided in section 1372(b)(5).

10 [(6) Pupils Credited to District of Residence. The average
11 daily membership of pupils enrolled in classes and schools for
12 exceptional children, operated by an intermediate unit or by the
13 Department of Public Instruction, shall be credited to the
14 school district of residence for the purpose of determining the
15 district's "teaching units" to be used in calculating the
16 district's reimbursement fractions or weighted average daily
17 membership to be used in calculating a district's aid ratio and
18 in determining payments to the district on account of
19 instruction as provided in section two thousand five hundred two
20 of the act to which this is an amendment.

21 (8) Reporting of Expenditures Relating to Exceptional
22 Students.] (i) By December 31, 2000, and each year thereafter,
23 each school district and each intermediate unit shall compile
24 information listing the number of students with disabilities for
25 which expenditures are between twenty-five thousand dollars
26 (\$25,000) and fifty thousand dollars (\$50,000), between fifty
27 thousand dollars (\$50,000) and seventy-five thousand dollars
28 (\$75,000) and over seventy-five thousand dollars (\$75,000) for
29 the prior school year. The information shall be submitted to the
30 department in a form prescribed by the department. By February

1 1, 2001, and each year thereafter, the department shall submit
2 to the chairman and minority chairman of the Education and
3 Appropriations Committees of the Senate and the chairman and
4 minority chairman of the Education and Appropriations Committees
5 of the House of Representatives a report listing this
6 information by school district and intermediate unit.

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

9 Section 1373. State Reimbursement; Reports.--(a) School
10 districts maintaining special classes in the public schools or
11 special public schools or providing special education, as
12 specified in this subdivision of this article, shall receive
13 reimbursement up to and through the school year 2002-2003, as
14 provided by this act, so long as such classes, such schools, and
15 such special education are approved by the Department of [Public
16 Instruction] Education as to location, constitution and size of
17 classes, conditions of admission and discharge of pupils,
18 equipment, courses of study, methods of instruction and
19 qualification of teachers. Beginning with the school year 2003-
20 2004, and each school year thereafter, the Commonwealth shall
21 have the duty through the intermediate units to provide for the
22 education of all exceptional children with disabilities. All
23 costs shall be paid by the Commonwealth as provided in section
24 1372(b)(5).

25 (b) On or before the first day of November of each year, the
26 secretary of the board of school directors in each district in
27 which special education for exceptional children is provided
28 shall make such reports as may be required by the Department of
29 [Public Instruction] Education, in regard to such special
30 education being maintained for the current school year for which

1 approval is desired.

2 Section 8. Section 1376 of the act, amended June 7, 1993
3 (P.L.49, No.16), June 30, 1995 (P.L.220, No.26) and June 22,
4 2001 (P.L.530, No.35), is amended to read:

5 Section 1376. Cost of Tuition and Maintenance of Certain
6 Exceptional Children in Approved Institutions.--(a) When any
7 child between school entry age and twenty-one (21) years of age
8 and resident in this Commonwealth, who is blind or deaf, or has
9 cerebral palsy and/or neurological impairment and/or muscular
10 dystrophy and/or is mentally retarded and/or has a serious
11 emotional disturbance and/or has autism/pervasive developmental
12 disorder and is enrolled, with the approval of the Department of
13 Education, as a pupil in an approved private school approved by
14 the Department of Education, in accordance with standards and
15 regulations promulgated by the State Board of Education, the
16 [school district in which such child is resident or, for
17 students placed by a charter school, the charter school in which
18 the student was enrolled shall pay the greater of either twenty
19 per centum (20%) of the actual audited cost of tuition and
20 maintenance of such child in such school, as determined by the
21 Department of Education, or its "tuition charge per elementary
22 pupil" or its "tuition charge per high school pupil," as
23 calculated pursuant to section 2561, and the] Commonwealth shall
24 pay, out of funds appropriated to the department for special
25 education, the [balance due for the costs of such child's
26 tuition and maintenance, as determined by the department. For
27 the school years 1989-1990, 1990-1991 and 1991-1992, the school
28 district payment shall be no greater than forty percent (40%) of
29 the actual audited costs of tuition and maintenance of such
30 child in such school. For the 1992-1993 school year and each

1 school year thereafter, the school district or charter school
2 payment shall be the greater of forty percent (40%) of the
3 actual audited costs of tuition and maintenance of such child in
4 such school, as determined by the Department of Education, or
5 its "tuition charge per elementary pupil" or its "tuition charge
6 per high school pupil," as calculated pursuant to section 2561,
7 and the Commonwealth shall pay, out of funds appropriated to the
8 department for approved private schools, the balance due for the
9 costs of such child's tuition and maintenance, as determined by
10 the department. The department will credit the district of
11 residence with average daily membership for such child
12 consistent with the rules of procedure developed in accordance
13 with section 2501. If the residence of such child in a
14 particular school district cannot be determined, the
15 Commonwealth shall pay, out of moneys appropriated to the
16 department for special education, the] whole cost of tuition and
17 maintenance of such child. The Department of Education shall be
18 provided with such financial data from approved private schools
19 as may be necessary to determine the reasonableness of costs for
20 tuition and room and board concerning Pennsylvania resident
21 approved reimbursed students. The Department of Education shall
22 evaluate such data and shall disallow any cost deemed
23 unreasonable. Any costs deemed unreasonable by the Department of
24 Education for disallowance shall be considered an adjudication
25 within the meaning of Title 2 of the Pa.C.S. (relating to
26 administrative law and procedure) and regulations promulgated
27 thereunder.

28 (b) When any person less than school entry age or more than
29 twenty-one (21) years of age and resident in this Commonwealth,
30 who is blind or deaf, or has cerebral palsy and/or has

1 neurological impairment and/or has muscular dystrophy, or has
2 autism/pervasive developmental delay, and is enrolled, with the
3 approval of the Department of Education, as a pupil in an
4 approved private school approved by the Department of Education,
5 the Commonwealth shall pay to such school, out of moneys
6 appropriated to the department for special education, the actual
7 audited cost of tuition and maintenance of such person, as
8 determined by the Department of Education, subject to review and
9 approval in accordance with standards and regulations
10 promulgated by the State Board of Education, and in addition, in
11 the case of any child less than school entry age, who is blind,
12 the cost, as determined by the Department of Education of
13 instructing the parent of such blind child in caring for such
14 child.

15 (c) Each approved private school, prior to the start of the
16 school year, shall submit to the department such information as
17 the department may require in order to establish an estimate of
18 reimbursable costs. Based upon this information, any other data
19 deemed necessary by the department and in accordance with
20 department standards, the department shall develop for each
21 approved private school an estimate of reimbursable costs. Based
22 upon such estimate, the department shall provide each approved
23 private school with monthly payments in advance of department
24 audit. The department may withhold a portion of such payments
25 not exceeding five percent (5%) of such payment, pending final
26 audit. In no event shall either the advance payments or final
27 reimbursement made by the department following audit exceed the
28 appropriation available for approved private schools.

29 (c.1) Any funds remaining from the appropriation line items
30 "for special education - approved private schools" or for

1 Pennsylvania Charter Schools for the Deaf and Blind from the
2 general appropriations acts for fiscal years 1978-1979 and each
3 fiscal year thereafter shall be transferred by the State
4 Treasurer into a restricted account (continuing appropriation)
5 for audit resolution which is hereby established. The Department
6 of Education shall also deposit into this restricted account any
7 funds returned to or recovered by the department from approved
8 private schools or chartered schools for overpayments during
9 fiscal years 1978-1979 and each fiscal year thereafter. The
10 funds in the restricted account are hereby appropriated upon
11 approval of the Governor to the Department of Education for
12 payments to approved private schools for audit resolutions for
13 fiscal years 1978-1979 and each fiscal year thereafter. Funds in
14 this restricted account shall not be subject to the limitations
15 in subsection (c) which prohibit advance payments and final
16 reimbursement from exceeding the appropriation available for
17 approved private schools. During the 1995-1996 fiscal year and
18 during each fiscal year thereafter, the Department of Education
19 shall review the activity in the restricted account and may
20 recommend that the Governor authorize the lapsing into the
21 General Fund of any funds that are estimated not to be needed
22 for audit resolution.

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

30 [(e) (1) The Education Committees of the Senate and House

1 of Representatives are directed to jointly examine the issues of
2 the funding of approved private schools and special education
3 students' access to approved private schools as part of the full
4 continuum of special education placements. The committees'
5 examination should address, at a minimum, the following issues:

6 (i) The funding methodology which supports the school
7 district's responsibility for individualized, appropriate
8 educational services to special education students through
9 access to the most comprehensive continuum of educational
10 options and settings.

11 (ii) The role of the approved private school in the mandated
12 continuum of special education services available to students in
13 Pennsylvania.

14 (iii) The relative roles of the Department of Education and
15 school districts to ensure free appropriate public education
16 (FAPE) through adequate funding and appropriate distribution of
17 comprehensive services.

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

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

30 Section 9. Section 1376.1 of the act, amended June 7, 1993

1 (P.L.49, No.16), is amended to read:

2 Section 1376.1. Actual Cost of Tuition and Maintenance of
3 Certain Exceptional Children in the Four Chartered Schools for
4 Education of the Deaf and the Blind.--(a) The following term,
5 whenever used or referred to in this section, shall have the
6 following meaning. "Chartered school" shall mean any of the four
7 (4) chartered schools for the education of the deaf or the
8 blind: the Pennsylvania School for the Deaf; the Overbrook
9 School for the Blind; the Western Pennsylvania School for Blind
10 Children; and the Western Pennsylvania School for the Deaf.

11 (b) When any child of school age resident in this
12 Commonwealth, who is blind or deaf, is enrolled with the
13 approval of the Department of Education as a pupil in any of the
14 four (4) chartered schools in accordance with standards and
15 regulations promulgated by the State Board of Education, the
16 [school district in which such child is resident shall pay the
17 greater of either twenty percent (20%) of the actual cost of
18 tuition and maintenance of such child in such institution, as
19 determined by the Department of Education; or its "tuition
20 charge per elementary pupil" or its "tuition charge per high
21 school pupil," and the Commonwealth shall pay, out of funds
22 appropriated to the department for special education, the
23 balance due for the costs of such child's tuition and
24 maintenance, as determined by the department. For the school
25 years 1989-90, 1990-91 and 1991-92, the school district payment
26 shall be no greater than forty percent (40%) of the actual
27 audited costs of tuition and maintenance of such child in such
28 school. For the 1992-1993 school year and each school year
29 thereafter, the school district payment shall be the greater of
30 forty percent (40%) of the actual audited costs of tuition and

1 maintenance of such child in such school, as determined by the
2 Department of Education, or its "tuition charge per elementary
3 pupil" or its "tuition charge per high school pupil," and the
4 Commonwealth shall pay out of funds appropriated to the
5 department for chartered schools the balance due for the costs
6 of such child's tuition and maintenance, as determined by the
7 department. The department will credit the district of residence
8 with average daily membership for such child consistent with the
9 rules of procedure developed in accordance with section 2501. If
10 the residence of such child in a particular school district
11 cannot be determined, the] Commonwealth shall pay, out of moneys
12 appropriated to the department for special education, the whole
13 cost of tuition and maintenance of such child. The Department of
14 Education shall be provided with such financial data from each
15 of the chartered schools as may be necessary to determine the
16 reasonableness of charges for tuition and room and board of each
17 of the chartered schools made on Pennsylvania resident approved
18 students. The Department of Education shall evaluate such data
19 and shall disallow any charges deemed unreasonable. Any charge
20 deemed unreasonable by the Department of Education for
21 disallowance shall be considered an adjudication within the
22 meaning of Title 2 of the Pa.C.S. (relating to administrative
23 law and procedure) and regulations promulgated thereunder.

24 (c) When any person less than school age resident in this
25 Commonwealth who is blind or deaf is enrolled, with the approval
26 of the Department of Education, as a residential pupil in any of
27 the four (4) chartered schools, the Commonwealth shall pay to
28 the school, out of moneys appropriated to the department for
29 special education, the actual cost of tuition and maintenance of
30 such person, as determined by the Department of Education,

1 subject to review and approval in accordance with standards and
2 regulations promulgated by the State Board of Education, and in
3 addition, in the case of any child less than school age, who is
4 blind, the cost, as determined by the Department of Education of
5 instructing the parent of such blind child in caring for such
6 child.

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

13 Section 10. Section 1377 of the act, amended or added May
14 31, 1979 (P.L.33, No.11), December 17, 1982 (P.L.1378, No.316)
15 and July 8, 1989 (P.L.253, No.43), is amended to read:

16 Section 1377. Payment of Cost of Tuition and Maintenance of
17 Certain Exceptional Children.--(a) [To facilitate payments by
18 the several school districts to the schools or institutions in
19 which deaf or blind, or cerebral palsied and/or brain damaged
20 and/or muscular dystrophied, or socially and emotionally
21 disturbed or mentally retarded children are enrolled, of amounts
22 due by such districts for their proportion of the cost of
23 tuition and maintenance of such children, the Secretary of
24 Education shall withhold from any moneys due to such districts
25 out of any State appropriation for the assistance as
26 reimbursement of school districts, the amounts due by such
27 districts to such schools or institutions for the blind or the
28 deaf, or the cerebral palsied and/or brain damaged and/or
29 muscular dystrophied or the socially and emotionally disturbed
30 and/or mentally retarded. Amounts so withheld shall be

1 specifically appropriated to the Department of Education.] The
2 Commonwealth shall pay the whole cost of tuition and maintenance
3 of any child subject to the provisions of sections 1376 and
4 1376.1.

5 (b) Payments of the Commonwealth's [proportion of the] cost
6 of tuition and maintenance of blind or deaf, or cerebral palsied
7 and/or brain damaged and/or muscular dystrophied, or socially
8 and emotionally disturbed and/or mentally retarded pupils
9 enrolled in schools or institutions for the blind or for the
10 deaf, or for the cerebral palsied and/or brain damaged and/or
11 muscular dystrophied, or for the socially and emotionally
12 disturbed and of the cost of instruction of parents of blind
13 pupils less than school entry age, as hereinbefore provided,
14 shall be made quarterly, out of moneys appropriated to the
15 Department of Education for special education. Except for the
16 provisions of section 1376.1 providing for the actual cost of
17 tuition and maintenance of certain exceptional children in the
18 four chartered schools for education of the deaf and of the
19 blind, in no event shall the total payment for the cost of
20 tuition and maintenance of any such child exceed the rates per
21 year allowed under section 1376. The maximum amount payable for
22 the cost of tuition and maintenance of such children shall be
23 subject to review at least once every two years for the purpose
24 of recommending an adjustment thereof.

25 (c) For the purpose of enabling the Department of Education
26 to determine from time to time what amounts are due to schools
27 for the blind or for the deaf or for the cerebral palsied and/or
28 brain damaged and/or muscular dystrophied or for the socially
29 and emotionally disturbed and/or mentally retarded hereunder,
30 such schools shall forward to the department, at such times and

1 in such form as the department shall prescribe, sworn statements
2 setting forth the names, ages, and residences of all pupils
3 enrolled hereunder, specifying the school districts [liable for
4 a part of the cost of tuition and maintenance] of any such
5 pupils, the per capita cost of and maintenance of pupils, and
6 such other information as the department shall require.

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

12 [(d) When, during the course of the 1982-1983 school year,
13 programs for exceptional children are caused to be transferred
14 from schools or institutions for the blind or deaf, or cerebral
15 palsied or brain damaged or muscular dystrophied or mentally
16 retarded, or socially and emotionally disturbed, as provided for
17 in sections 1376 and 1376.1, to school districts or intermediate
18 units, as provided for in sections 2509 and 2509.1, under
19 unanticipated or emergency circumstances, and when such
20 transfers necessitate the transfer of funds from the
21 appropriation to the Department of Education for special
22 education for approved private schools to the appropriation to
23 the Department of Education for payments on account of special
24 education of exceptional children in public schools, the
25 Secretary of Education shall be empowered so to transfer such
26 funds, upon approval of the Secretary of the Budget and written
27 notification to the State Treasurer and the chairmen of the
28 House and Senate Appropriations and Education Committees.]

29 Section 11. Section 1725-A(a) of the act, amended June 29,
30 2002 (P.L.524, No.88), is amended to read:

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

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

5 (2) For non-special education students, the charter school
6 shall receive for each student enrolled no less than the
7 budgeted total expenditure per average daily membership of the
8 prior school year, as defined in section 2501(20), minus the
9 budgeted expenditures of the district of residence for nonpublic
10 school programs; adult education programs; community/junior
11 college programs; student transportation services; for special
12 education programs; facilities acquisition, construction and
13 improvement services; and other financing uses, including debt
14 service and fund transfers as provided in the Manual of
15 Accounting and Related Financial Procedures for Pennsylvania
16 School Systems established by the department. This amount shall
17 be paid by the district of residence of each student.

18 (3) For special education students without disabilities, the
19 charter school shall receive for each student enrolled the same
20 funding as for each non-special education student as provided in
21 clause (2), plus an additional amount determined by dividing the
22 district of residence's total special education expenditure for
23 students without disabilities by the product of multiplying the
24 combined percentage of section 2509.5(k) times the district of
25 residence's total average daily membership for the prior school
26 year. This amount shall be paid by the district of residence of
27 each special education student without disabilities.

28 (3.1) For special education students with disabilities who
29 are required to be educated by the Department of Education and
30 the department agrees in writing that the charter school may

1 provide the education, the charter school shall receive for each
2 student enrolled the same funding as provided to other providers
3 or contractors by the Commonwealth under section 1372(b)(5).

4 (4) A charter school may request the intermediate unit in
5 which the charter school is located to provide services to
6 assist the charter school to address the specific needs of
7 exceptional students. The intermediate unit shall assist the
8 charter school and bill the charter school for the services. The
9 intermediate unit may not charge the charter school more for any
10 service than it charges the constituent districts of the
11 intermediate unit.

12 (5) Payments shall be made to the charter school in twelve
13 (12) equal monthly payments, by the fifth day of each month,
14 within the operating school year. A student enrolled in a
15 charter school shall be included in the average daily membership
16 of the student's district of residence for the purpose of
17 providing basic education funding payments and special education
18 funding pursuant to Article XXV. If a school district fails to
19 make a payment to a charter school as prescribed in this clause,
20 the secretary shall deduct the amount, as documented by the
21 charter school, from any and all State payments made to the
22 district after receipt of documentation from the charter school.

23 (6) Within thirty (30) days after the secretary makes the
24 deduction described in clause (5), a school district may notify
25 the secretary that the deduction made from State payments to the
26 district under this subsection is inaccurate. The secretary
27 shall provide the school district with an opportunity to be
28 heard concerning whether the charter school documented that its
29 students were enrolled in the charter school, the period of time
30 during which each student was enrolled, the school district of

1 residence of each student and whether the amounts deducted from
2 the school district were accurate.

3 * * *

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

6 Section 2509. Payments on Account of Courses for Exceptional
7 Children.--* * *

8 (g) (1) Except as provided in clause (2), the last school
9 year for payments to school districts under this section for
10 exceptional children with disabilities shall be for the school
11 year 2002-2003. Thereafter payments for the education of
12 exceptional children with disabilities shall be made to
13 intermediate units by the Commonwealth as provided in section
14 1372(b)(5).

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

18 Section 13. Section 2509.1(g) of the act, amended June 30,
19 1995 (P.L.220, No.26), is amended to read:

20 Section 2509.1. Payments to Intermediate Units.--* * *

21 (g) (1) For the 1991-1992 school year and each school year
22 thereafter, for each child enrolled in an intermediate unit
23 class for institutionalized children, the school district in
24 which the child is resident shall pay to the Commonwealth a sum
25 equal to the "tuition charge per elementary pupil" or the
26 "tuition charge per high school pupil," as determined for the
27 schools operated by the district or by a joint board of which
28 the district is a member, for the same year in which the class
29 or school is operated, as provided for in section 2561. In the
30 event that any school district has not established such "tuition

1 charge per elementary pupil" or "tuition charge per high school
2 pupil," the Secretary of Education shall fix a reasonable charge
3 for such district for the year in question.

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

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

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

23 [Section 2509.4. Payments on Account of Special Education
24 Services.--(a) For the school year 1989-1990, the following
25 provisions shall apply to the Commonwealth's payments of funds
26 to school districts and intermediate units for the provisions of
27 special education services.

28 (1) On or before the first day of August, the Commonwealth
29 shall pay to school districts and intermediate units an amount
30 which represents fifty percent (50%) of the total State funds

1 available for such programs operated in the school year 1989-
2 1990.

3 (2) On January 1, 1990, a second payment shall be made to
4 school districts and intermediate units consisting of one-fourth
5 (1/4) of the total State funds available for such programs
6 operated in the school year 1989-1990.

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

19 (b) From the funds appropriated in the 1989-1990 fiscal year
20 and notwithstanding the provisions of subsection (a)(1), (2) and
21 (3), fifty million dollars (\$50,000,000) shall be paid on August
22 1, 1989, to school districts for programs operated in school
23 year 1988-1989 with the additional payment of forty-nine million
24 dollars (\$49,000,000) of the funds due the school districts for
25 the programs operated in school year 1988-1989 to be paid on or
26 before December 1, 1989. Any adjustments to these payments may
27 be made in June 1990 on the basis of actual data.]

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

30 Section 2509.5. Special Education Payments to School

1 Districts.--* * *

2 (1) Except as provided in clause (2), the last school
3 year for payments to school districts under this section for
4 exceptional children with disabilities shall be for the school
5 year 2002-2003. Thereafter payments for the education of
6 exceptional children with disabilities shall be made to
7 intermediate units by the Commonwealth as provided in section
8 1372(b)(5).

9 (2) Payments under this section shall continue to be made to
10 school districts for the education of exceptional children
11 without disabilities.

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

14 [Section 2509.6. Average Cost Guarantee.--(a) For the 1991-
15 1992 school year, the dollars available to school districts for
16 operating and administering classes for exceptional children
17 shall be guaranteed at eight thousand five hundred five dollars
18 (\$8,505) per average daily membership for special education
19 programs and services offered by school districts during the
20 1990-1991 school year and ten thousand two hundred ninety
21 dollars (\$10,290) per average daily membership for special
22 education programs and services offered by the intermediate unit
23 during the 1990-1991 school year.

24 (b) The dollars available to school districts for operating
25 and administering classes for exceptional children shall be the
26 sum of the following: total average daily membership for
27 students receiving special education multiplied by the tuition
28 charge pursuant to section 2561, plus the amount calculated
29 pursuant to sections 2509(f) and 2509.5(b) and three times the
30 district's payment to the Commonwealth for noninstitutionalized

1 children's programs pursuant to section 2509.1(f).

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

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

11 [Section 2509.7. Minimum Guarantee.--For the 1991-1992
12 school year, each intermediate unit, in the aggregate, including
13 the intermediate unit and its member school districts, shall
14 receive at least a three and five-tenths percent (3.5%) increase
15 in the aggregate revenue for special education over the
16 aggregate cash amount available from the Commonwealth for
17 special education during the 1990-1991 school year. The
18 intermediate unit shall meet with its constituent school
19 districts to develop a plan for the expenditure or distribution
20 of the funds provided by this section for the purpose of the
21 provision of special education programs and services. These
22 funds may not be expended or distributed by the intermediate
23 unit until a majority of the boards of directors of the
24 constituent school districts have approved such expenditures or
25 distribution. If the amount received under the provisions of
26 this section is less than ten thousand dollars (\$10,000), such
27 amount may be retained by the intermediate unit for the purpose
28 of providing special education programs or services without the
29 approval of its constituent school districts. For the purpose of
30 computing the revenue available for the guarantee in this

1 section, the Commonwealth shall include funds allocated pursuant
2 to sections 2509(f) and 2509.5(b), plus an amount equal to three
3 times the school district payment to the Commonwealth pursuant
4 to section 2509.1(b) and the funds allocated pursuant to
5 sections 2509.1(c), (d) and (f) and 2509.6.]

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