

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 704 Session of
2009

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

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF REPRESENTATIVES, AS AMENDED, JULY 2, 2009

AN ACT

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

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

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

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

the following terms shall have the following meanings:

* * *

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

* * *

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

(i) Half-time prekindergarten and half-time kindergarten: 0.50.

(ii) Full-time prekindergarten, full-time kindergarten and prekindergarten or kindergarten level totaling full-time through multiple placements: 1.00.

(iii) Elementary and secondary: 1.00.

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

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

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

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

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

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

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

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

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

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

(36) "Performance Indicators." Measurable annual objectives established by the Department of Education pursuant to section 612(a)(15) of the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1412(a)(15)), to assess progress toward achieving State goals for the performance of eligible students.

(37) "Public Notice." Full and timely release of information and documents for public access at a minimum through publication

1 by the Department of Education:

2 (i) in the Pennsylvania Bulletin;

3 (ii) on its publicly accessible Internet website for no less
4 than a duration of twelve (12) months; and

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

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

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

13 (40) "Special Education Plan." A comprehensive plan as well
14 as revisions, updates and amendments for all special education
15 personnel, programs, services and supports provided by each
16 school district for eligible students, filed by each district
17 with the Department of Education under this act and other
18 applicable Federal and State law, including 22 Pa. Code 14.104
19 (relating to special education plans).

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

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

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

calculating the sum of the following:

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

(i) the base cost per student;

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

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

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

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

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

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

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

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

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

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

(i) either providing instruction within the regular classroom at least eighty percent (80%) of the school day for at

1 least sixty-five percent (65%) of eligible students, as averaged
2 for the two (2) most recent school years for which data is
3 available, or increasing the number of eligible students
4 receiving instruction within the regular classroom by at least
5 fifteen percent (15%) in the most recent school year for which
6 data is available; and

7 (ii) in the most recent school year for which data is
8 available, performance by eligible students on State academic
9 assessments in reading and math, averaged for the entire
10 district, meeting State standards for adequate yearly progress
11 by any method approved by the Federal and State governments,
12 including, but not limited to, meeting the annual target, the
13 confidence interval, the safe harbor target, or by appeal.

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

21 (c) The Department of Education shall submit a report to the
22 Governor and General Assembly recommending increased standards
23 for the criteria in subsection (b) (4), and the General Assembly
24 shall consider legislation revising the criteria, in any year in
25 which seventy-five percent (75%) of all school districts meet
26 the criteria and qualify for the one and fifteen one-hundredths
27 (1.15) factor for funding.

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

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

(e) The Commonwealth shall pay to each school district a special education funding allocation for the 2009-2010 school year which shall consist of the sum of the following:

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

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

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

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

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

(g) (1) The Commonwealth shall appropriate additional funding in each year for the Special Education Contingency Fund,
which is hereby established as a special fund in the State
Treasury FOR EXTRAORDINARY SPECIAL EDUCATION PROGRAM EXPENSES
UNDER SECTION 2509.8. The appropriation for the fund shall be at one and fifty one-hundredths percent (1.50%) of the total of special education appropriations made pursuant to subsection (e) and shall be made in addition to such total.

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

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

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

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

(4) School districts OR CHARTER SCHOOLS may apply for resources through the fund pursuant to procedures established by

1 the Department of Education. The Department of Education shall
2 issue resources from the fund only in response to such
3 applications. The Department of Education shall give priority to
4 districts OR CHARTER SCHOOLS with a relatively high percentage ←
5 of students in poverty, annually setting these criteria and
6 granting a higher percentage of the resources requested by such
7 districts OR CHARTER SCHOOLS. ←

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

12 (6) As used in this subsection, "extraordinary special
13 education expenses" are expenses that result from needs and
14 circumstances of an eligible student with significant
15 disabilities which are not ordinarily present in a typical
16 special education service and program delivery system and which
17 have costs exceeding the school district funding for special
18 education, in order to provide the student with an appropriate
19 education in the least restrictive environment.

20 ~~Section 2509.14. Special Education Accountability to~~ ←
21 ~~Commonwealth Taxpayers. (a) (1) The Department of Education~~
22 ~~shall determine the form and manner in which school districts~~
23 ~~shall submit a special education plan and revisions, updates and~~
24 ~~amendments to the special education plan pursuant to this~~
25 ~~section. The special education plan shall be consistent with~~
26 ~~other existing plans and reports required by the Department of~~
27 ~~Education to the greatest extent possible, including those~~
28 ~~required under 22 Pa. Code § 14.104 (relating to special~~
29 ~~education plans). Special education plans shall be written in a~~
30 ~~manner that is easy to use and understand by parents and the~~

~~public, including a general summary.~~

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

~~(i) Shall review all special education plans and revisions, updates and amendments.~~

~~(ii) May provide recommendations to school districts.~~

~~(iii) Shall approve, disapprove or conditionally approve the special education plan for each district within ninety (90) calendar days of receipt.~~

~~(iv) Shall provide technical assistance to any school district for the development or implementation of a special education plan upon request by a district or when a special education plan is disapproved or conditionally approved, with extra assistance provided for smaller districts with more limited special education administrative staff.~~

~~(v) Shall provide a written explanation to the board of school directors of any school district whose special education plan is disapproved or conditionally approved.~~

~~(vi) Shall give public notice of the decisions and actions made pursuant to this section.~~

~~(3) A school district shall timely amend and resubmit its special education plan as necessary until approved by the Department of Education, if its plan has been:~~

~~(i) disapproved; or~~

~~(ii) conditionally approved and it has been so directed by the Department of Education.~~

~~(4) The Department of Education shall approve any school district special education plan and revisions, updates and amendments that, in its determination, does the following:~~

~~(i) Meets the requirements of this section, including subsections (b) (2) and (c) (2).~~

~~(ii) Describes and addresses, with reference to specific schools, grade levels and populations of students most in need in the district, the programs and strategies that are most likely to make progress in resolving student achievement challenges for eligible students and the challenges of placing eligible students in regular classrooms with supports as identified in the most recent measurements of student outcomes, school district performance and other performance indicators.~~

~~(iii) Establishes a reasonable budget, timeline and benchmarks for implementation, with the budget considered in evaluating the special education plan but not subject itself to approval by the Department of Education.~~

~~(iv) Documents progress made in addressing student needs and improving student outcomes since the district last submitted a special education plan, revision, update or amendment to the Department of Education.~~

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

~~(6) In addition to public notice provided under clause (2) (vi), the Department of Education shall also give public notice~~

~~annually of the names of the districts in which it is providing monitoring, support, intervention, technical assistance and fiscal penalties related to special education pursuant to this section and a detailed description of these Department of Education activities in each district.~~

~~(b) (1) Each school district shall submit to the Department of Education for approval pursuant to subsection (a) a comprehensive special education plan every three (3) years, annual revisions and updates to the special education plan and other amendments as needed. The special education plan and revisions and updates shall be submitted according to deadlines established in or pursuant to this section, and shall incorporate other existing plans and reports required by the Department of Education to the greatest extent possible. A full and accurate budget, timeline and benchmarks for implementation must accompany all special education plans and must be revised and updated as required and amended as needed.~~

~~(2) The special education plan shall address and measure how the needs of eligible students are being met based on all performance indicators as defined in this act and in Federal law.~~

~~(3) The Department of Education shall hold school districts accountable for the effective use of resources to meet student needs by:~~

~~(i) Reviewing and monitoring implementation of all special education plans.~~

~~(ii) Providing support, intervention, and technical assistance in districts failing to meet student needs based on performance indicators.~~

~~(iii) Identifying at any time and at least annually all~~

~~districts failing to adequately implement their special education plans or not making annual progress to meet student needs in accordance with this section.~~

~~(iv) Determining whether to withhold up to five percent (5%) of all Federal and State special education funding for districts identified pursuant to subclause (iii), while the identified problems remain unresolved. If the Department of Education determines that a district is making substantial progress toward resolving the identified problems, it shall restore no more than six (6) months of the withheld funding retroactively.~~

~~(c) (1) By August 15, 2009, and by April 15 of each year thereafter, each school district receiving an increase in its State special education funding allocation of more than the index shall update its special education plan based on overall circumstances, shall also revise the special education plan to show in detail how the increase above the index will be used and shall submit the updates and revisions to the Department of Education for approval pursuant to subsection (a). The special education plan, update or revision shall be accompanied by a budget, timeline and benchmarks for implementation and shall incorporate other existing plans and reports required by the Department of Education to the greatest extent possible.~~

~~(2) Any increased allocation above the index received in any given year shall be used by each district for one or more research-based programs and supports expressly benefiting eligible students, contributing to achievement of performance indicators, and approved by the Department of Education in guidelines issued by July 15, 2009, and by February 15 of each year thereafter. Research based programs and supports approved by the Department of Education based on these criteria shall~~

~~include or shall be related to:~~

~~(i) Adapting curricula and providing co-teaching in regular classrooms for the purpose of including eligible students.~~

~~(ii) Providing assistive technology and support services to meet eligible student needs.~~

~~(iii) Placing and serving eligible students in regular classrooms with supports.~~

~~(iv) Reducing caseloads for special education teachers and related services personnel for the purpose of including eligible students in regular classrooms.~~

~~(v) Reducing the teacher pupil ratio in regular classrooms for the purpose of including eligible students.~~

~~(vi) School wide positive behavior supports for the benefit of eligible students.~~

~~(vii) Supplementary aids and services to support including eligible students in regular classrooms.~~

~~(viii) Professional development to implement the strategies and programs approved through or listed in this clause.~~

~~(3) The special education plan, update or revision submitted pursuant to this subsection by each district shall document that:~~

~~(i) The increased allocation above the index is used for the purposes approved through or listed in clause (2) and is used to supplement and not supplant other resources.~~

~~(ii) The district is maintaining its effort for special education expenditures by showing that the aggregate special education expenditures within the district from local funds for the funding year will not be less than the corresponding amount for the fiscal year preceding the funding year. After written application by a district with public notice occurring both upon~~

~~application and upon the subsequent decision by the Secretary of Education, the secretary may waive only for one (1) fiscal year and up to the amount of expenditures directly related to the circumstances the maintenance of effort requirements of this subclause if the secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a decrease in eligible students or the lawful termination of special education obligations for a student with an exceptionally costly program.~~

~~(4) The Department of Education shall hold school districts accountable for the effective use of resources to meet student needs by:~~

~~(i) Upon disapproving a district's special education plan, update or revision submitted pursuant to this section, withholding the portion of the annual State increase in special education funding which exceeds the index until such a time as a special education plan, update or revision is approved or conditionally approved.~~

~~(ii) Reviewing and monitoring implementation of all special education plans, including district compliance with clause (3).~~

~~(iii) Providing support, intervention and technical assistance in districts failing to meet student needs based on performance indicators or failing to comply with clause (3).~~

~~(iv) Identifying at any time and at least annually all districts failing to adequately implement their special education plans, failing to comply with clause (3) or not making annual progress to meet student needs in accordance with this section.~~

~~(v) For districts identified pursuant to subclause (iv), determining whether to review the entire special education plan~~

~~and take accountability actions pursuant to subsection (b) (3).~~

~~(d) To discourage the inappropriate overidentification of children for special education, the Department of Education shall automatically conduct a thorough review of the special education plan in consultation with the school district and shall take appropriate remedial action, including withholding up to five percent (5%) of all Federal and State special education funding, for any district increasing the ratio of its special education average daily membership to its average daily membership for all students in the most recent school year for which data is available by more than ten percent (10%) over the previous year or for any district increasing this ratio by an average of more than five percent (5%) annually during the most recent five (5) year period, unless the increase is determined by the Department of Education after consultation with the district to be justified.~~

~~(e) The Department of Education may release special education funding to a school district in periodic payments in the current and subsequent years, upon finding that the district is failing to adequately develop and implement special education plans, is not making annual progress to meet student needs in accordance with this section, is found to be overidentifying children pursuant to subsection (d) or is failing to comply with subsection (c) (3).~~

~~(f) The Department of Education shall issue a comprehensive annual report on special education funding, special education plans and special education accountability issues to the Governor and all members of the General Assembly and shall give public notice about such annual report.~~

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

~~school district a notice specifying the Department of Education's decisions and actions pursuant to this section and the rationale for such decisions and actions. A school district may file a written complaint with the Secretary of Education about the Department of Education's decisions and actions regarding that district made pursuant to this section. The complaint must be submitted to the secretary's office within thirty (30) calendar days of the Department of Education's decision or action or within thirty (30) calendar days of receiving the notice, whichever is greater. The secretary shall consider the complaint, consult with the district and, within thirty (30) calendar days after receiving the complaint, issue a written complaint decision addressing the concerns and claims made in the complaint, explaining the judgment of the Department of Education in response to these concerns and claims and specifying the opportunity for a subsequent hearing under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure). If requested, the Department of Education shall then convene a hearing within thirty (30) calendar days after the receipt of a district's hearing request following its written complaint decision. The Department of Education shall render a written hearing decision within thirty (30) calendar days following the hearing.~~

~~(h) Nothing in this section shall supersede or preempt any provisions of a collective bargaining agreement between a school entity and an employe organization in effect on the effective date of this section.~~



SECTION 2509.14. SPECIAL EDUCATION ACCOUNTABILITY TO
COMMONWEALTH TAXPAYERS.-- (A) (1) THE DEPARTMENT OF EDUCATION
SHALL DETERMINE THE FORM AND MANNER IN WHICH SCHOOL DISTRICTS
SHALL SUBMIT A SPECIAL EDUCATION PLAN AND REVISIONS, UPDATES AND
AMENDMENTS TO THE SPECIAL EDUCATION PLAN PURSUANT TO THIS
SECTION. THE SPECIAL EDUCATION PLAN SHALL BE CONSISTENT WITH
OTHER EXISTING PLANS AND REPORTS REQUIRED BY THE DEPARTMENT OF
EDUCATION TO THE GREATEST EXTENT POSSIBLE, INCLUDING THOSE
REQUIRED UNDER 22 PA. CODE § 14.104 (RELATING TO SPECIAL
EDUCATION PLANS). SPECIAL EDUCATION PLANS SHALL BE WRITTEN IN A
MANNER THAT IS EASY TO USE AND UNDERSTAND BY PARENTS AND THE
PUBLIC, INCLUDING A GENERAL SUMMARY.

(2) THE DEPARTMENT OF EDUCATION SHALL:

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

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

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

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

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

(I) MEET THE REQUIREMENTS OF THIS SECTION;

(II) ADDRESS THE ACADEMIC AND DEVELOPMENTAL CHALLENGES FOR
ELIGIBLE STUDENTS IDENTIFIED IN THE SCHOOL DISTRICT'S MOST
RECENT STUDENT ACHIEVEMENT RESULTS AND PURSUANT TO PERFORMANCE
INDICATORS, WITH SPECIFIC FOCUS ON INDIVIDUAL SCHOOLS, GRADE
LEVELS AND POPULATIONS OF STUDENTS THAT DEMONSTRATE INADEQUATE
LEVELS OF STUDENT OUTCOMES; AND

1 (III) DESCRIBE PROGRAMS AND STRATEGIES THAT ARE MOST LIKELY
2 TO IMPROVE STUDENT OUTCOMES IN THE SCHOOL DISTRICT.

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

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

21 (B) (1) BY SEPTEMBER 15, 2009, AND BY APRIL 15 OF EACH YEAR
22 THEREAFTER, EACH SCHOOL DISTRICT RECEIVING AN INCREASE IN ITS
23 STATE SPECIAL EDUCATION FUNDING ALLOCATION OF MORE THAN THE
24 INDEX SHALL UPDATE ITS SPECIAL EDUCATION PLAN BASED ON OVERALL
25 CIRCUMSTANCES, SHALL ALSO REVISE THE SPECIAL EDUCATION PLAN TO
26 SHOW IN DETAIL HOW THE INCREASE ABOVE THE INDEX WILL BE USED AND
27 SHALL SUBMIT THE UPDATES AND REVISIONS TO THE DEPARTMENT OF
28 EDUCATION FOR APPROVAL PURSUANT TO SUBSECTION (A). UNLESS A
29 SCHOOL DISTRICT DECIDES TO AMEND ITS SPECIAL EDUCATION PLAN MORE
30 BROADLY TO REFLECT THE RECEIPT OF NEW FUNDING OR FOR OTHER

1 REASONS, THE GUIDELINES AND REGULATIONS DEVELOPED BY THE
2 DEPARTMENT OF EDUCATION PURSUANT TO THIS SECTION FOR PLAN
3 UPDATES OR REVISIONS SHALL ALLOW A DISTRICT TO MEET THE
4 REQUIREMENTS OF THIS SECTION BY ADDING THE MANDATED INFORMATION
5 AS AN APPENDIX TO THE EXISTING PLAN. THE SPECIAL EDUCATION PLAN,
6 UPDATE OR REVISION SHALL DOCUMENT THE CHALLENGES REMAINING AND
7 PROGRESS MADE IN ADDRESSING STUDENT NEEDS AND IMPROVING STUDENT
8 OUTCOMES, SHALL BE ACCOMPANIED BY A BUDGET, TIMELINE AND
9 BENCHMARKS FOR IMPLEMENTATION, AND SHALL INCORPORATE OTHER
10 EXISTING PLANS AND REPORTS REQUIRED BY THE DEPARTMENT OF
11 EDUCATION TO THE GREATEST EXTENT POSSIBLE. THE BUDGET REQUIRED
12 BY THIS SUBSECTION SHALL BE CONSIDERED BY THE DEPARTMENT OF
13 EDUCATION IN EVALUATING THE SPECIAL EDUCATION PLAN BUT IS NOT
14 ITSELF SUBJECT TO APPROVAL OR DISAPPROVAL BY THE DEPARTMENT.

15 (2) (I) EACH SCHOOL DISTRICT RECEIVING AN INCREASED
16 ALLOCATION ABOVE THE INDEX SHALL USE THESE FUNDS FOR ONE OR MORE
17 RESEARCH-BASED PROGRAMS AND SUPPORTS THAT MEET THE FOLLOWING
18 BASIC CRITERIA:

19 (A) EXPRESSLY BENEFIT ELIGIBLE STUDENTS EDUCATED IN THE
20 LEAST RESTRICTIVE ENVIRONMENT IN ACCORDANCE WITH FEDERAL AND
21 STATE LAW;

22 (B) CONTRIBUTE TO ACHIEVEMENT OF PERFORMANCE INDICATORS; AND

23 (C) ARE APPROVED BY THE DEPARTMENT OF EDUCATION IN
24 GUIDELINES ISSUED BY AUGUST 15, 2009, AND BY FEBRUARY 15 OF EACH
25 YEAR THEREAFTER.

26 (II) DEPARTMENT OF EDUCATION GUIDELINES FOR RESEARCH-BASED
27 PROGRAMS AND SUPPORTS MEETING THESE BASIC CRITERIA SHALL ADDRESS
28 AT LEAST THE FOLLOWING:

29 (A) CURRICULA ADAPTATION;

30 (B) CO-TEACHING;

1 (C) ASSISTIVE TECHNOLOGY;
2 (D) SCHOOL-WIDE POSITIVE BEHAVIOR SUPPORTS;
3 (E) SUPPLEMENTARY AIDS AND SERVICES;
4 (F) PROFESSIONAL DEVELOPMENT;
5 (G) READING SPECIALIST SERVICES AND SUPPORTS;
6 (H) REDUCING CASELOADS FOR SPECIAL EDUCATION TEACHERS AND
7 RELATED SERVICES PERSONNEL; AND
8 (I) PLACING AND SERVING ELIGIBLE STUDENTS IN REGULAR
9 CLASSROOMS WITH SUPPORTS IN ACCORDANCE WITH THE INDIVIDUALIZED
10 EDUCATION PROGRAM (IEP) DEVELOPED FOR EACH ELIGIBLE STUDENT.
11 (3) ACCORDING TO STANDARDS ESTABLISHED BY THE DEPARTMENT OF
12 EDUCATION, THE SPECIAL EDUCATION PLAN, UPDATE OR REVISION SHALL
13 DOCUMENT THAT THE INCREASED ALLOCATION ABOVE THE INDEX IS USED:
14 (I) FOR THE PURPOSES APPROVED UNDER CLAUSE (2);
15 (II) TO SUPPLEMENT AND NOT SUPPLANT OTHER RESOURCES; AND
16 (III) IN WAYS THAT ALLOW THE SCHOOL DISTRICT TO MAINTAIN ITS
17 EFFORT FOR SPECIAL EDUCATION EXPENDITURES.
18 (C) ACCOUNTABILITY FOR THE EFFECTIVE USE OF RESOURCES TO
19 MEET STUDENT NEEDS SHALL BE PROVIDED IN THE FOLLOWING WAYS:
20 (1) THE DEPARTMENT OF EDUCATION SHALL ISSUE TO THE GENERAL
21 ASSEMBLY A COMPREHENSIVE ANNUAL REPORT ON SPECIAL EDUCATION
22 FUNDING, SPECIAL EDUCATION PLANS, THE IMPLEMENTATION OF 22 PA.
23 CODE § 14.104 AND OTHER SPECIAL EDUCATION ACCOUNTABILITY ISSUES
24 FOR PUBLIC SCHOOL ENTITIES SERVING ELIGIBLE STUDENTS AND THIS
25 COMMONWEALTH.
26 (2) UPON DISAPPROVING A SCHOOL DISTRICT'S SPECIAL EDUCATION
27 PLAN, UPDATE OR REVISION, THE DEPARTMENT OF EDUCATION SHALL
28 WITHHOLD THE PORTION OF THE ANNUAL STATE INCREASE IN SPECIAL
29 EDUCATION FUNDING WHICH EXCEEDS THE INDEX UNTIL SUCH A TIME AS A
30 WRITTEN SPECIAL EDUCATION PLAN, UPDATE OR REVISION IS APPROVED

1 OR CONDITIONALLY APPROVED.

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

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

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

9 (C) IDENTIFY AT ANY TIME AND AT LEAST ANNUALLY ALL SCHOOL
10 DISTRICTS FAILING TO ADEQUATELY IMPLEMENT THEIR SPECIAL
11 EDUCATION PLANS IN COMPLIANCE WITH FEDERAL AND STATE LAW,
12 FAILING TO COMPLY WITH SUBSECTION (B) OR NOT MAKING ANNUAL
13 PROGRESS TO MEET STUDENT NEEDS BASED ON PERFORMANCE INDICATORS;
14 AND

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

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

24 (4) TO DISCOURAGE THE INAPPROPRIATE OVER-IDENTIFICATION OF
25 CHILDREN FOR SPECIAL EDUCATION, THE DEPARTMENT OF EDUCATION
26 SHALL AUTOMATICALLY CONDUCT A THOROUGH REVIEW OF THE SPECIAL
27 EDUCATION PLAN OF ANY SCHOOL DISTRICT WHERE THE RATIO OF ITS
28 SPECIAL EDUCATION AVERAGE DAILY MEMBERSHIP TO ITS AVERAGE DAILY
29 MEMBERSHIP FOR ALL STUDENTS IN THE MOST RECENT SCHOOL YEAR FOR
30 WHICH DATA IS AVAILABLE HAS INCREASED BY MORE THAN TEN PERCENT

1 (10%) OVER THE PREVIOUS YEAR OR OF ANY DISTRICT WHERE THE RATIO
2 HAS INCREASED BY AN ANNUAL AVERAGE OF MORE THAN FIVE PERCENT
3 (5%) DURING THE MOST RECENT FIVE (5) YEAR PERIOD. APPROPRIATE
4 REMEDIAL ACTION, INCLUDING WITHHOLDING UP TO FIVE PERCENT (5%)
5 OF ALL STATE SPECIAL EDUCATION FUNDING, MAY BE TAKEN, UNLESS THE
6 INCREASE IS DETERMINED TO BE JUSTIFIED BY THE DEPARTMENT OF
7 EDUCATION AFTER CONSULTATION WITH THE SCHOOL DISTRICT.

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

1 RECEIPT OF A SCHOOL DISTRICT'S HEARING REQUEST FOLLOWING ITS
2 WRITTEN COMPLAINT DECISION. THE DEPARTMENT OF EDUCATION SHALL
3 RENDER A WRITTEN HEARING DECISION WITHIN THIRTY (30) CALENDAR
4 DAYS FOLLOWING THE HEARING.

5 (E) THE DEPARTMENT OF EDUCATION SHALL GIVE PUBLIC NOTICE OF
6 THE DECISIONS, ACTIONS AND REPORTS MADE PURSUANT TO THIS
7 SECTION.

8 (F) NOTHING IN THIS SECTION SHALL SUPERSEDE OR PREEMPT ANY
9 PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN A SCHOOL
10 ENTITY AND AN EMPLOYEE ORGANIZATION IN EFFECT ON THE EFFECTIVE
11 DATE OF THIS SECTION.

12 Section 3. Within 60 calendar days following the effective
13 date of this act, OR WITHIN A DIFFERENT TIME PERIOD IF OTHERWISE
14 SPECIFIED IN THIS ACT, the Secretary of Education shall propose
15 regulations for promulgation by the State Board of Education
16 which implement this act.

17 Section 4. This act shall take effect immediately.

