

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1115 Session of 2011

INTRODUCED BY BROWNE, DINNIMAN, WASHINGTON, STACK, ERICKSON,
 RAFFERTY, SOLOBAY, COSTA, FERLO, VANCE, BRUBAKER, WAUGH,
 YUDICHAK, KASUNIC, HUGHES, SCHWANK, FARNESE, WILLIAMS, PIPPY,
 LEACH, FONTANA, GREENLEAF, ARGALL, SMUCKER, MENSCH, BOSCOLA,
 TOMLINSON AND TARTAGLIONE, JUNE 16, 2011

REFERRED TO EDUCATION, JUNE 16, 2011

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 definitions;
 6 and providing for the distribution of special education
 7 funding for student achievement and instruction of eligible
 8 students and for special education accountability.

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

11 Section 1. Section 2501(26) of the act of March 10, 1949
 12 (P.L.30, No.14), known as the Public School Code of 1949, added
 13 July 9, 2008 (P.L.846, No.61), is amended and the section is
 14 amended by adding clauses to read:

15 Section 2501. Definitions.--For the purposes of this article
 16 the following terms shall have the following meanings:

17 * * *

18 (26) "Actual Spending." An amount equal to a school
 19 district's total expenditures to include General Fund

1 expenditures in all functional classifications, as designated in
2 the Manual of Accounting and Related Financial Procedures for
3 Pennsylvania School Systems, except for:

- 4 (i) actual special education spending;
- 5 (ii) adult education;
- 6 (iii) higher education;
- 7 (iv) student transportation;
- 8 (v) community services;
- 9 (vi) scholarships and awards;
- 10 (vii) facilities acquisition;
- 11 (viii) construction and improvement services; and
- 12 [(ix) other expenditures and financing uses; and]
- 13 (x) tuition from patrons revenue.

14 * * *

15 (31) "Actual Special Education Spending." An amount equal to
16 a school district's total annual expenditures for special
17 education as established by the Department of Education and
18 designated in the Manual of Accounting and Related Financial
19 Procedures for Pennsylvania School Systems. The amount shall not
20 include expenditures that are exclusively for gifted students
21 who do not receive special education pursuant to an
22 individualized education program.

23 (32) "Base Cost Per Student." As determined under section
24 2502.48.

25 (33) "Eligible Student." A student who has been identified
26 as a student with a disability who is in need of special
27 education under Federal and State law.

28 (34) "Performance Indicators." Measurable annual objectives
29 established by the Department of Education pursuant to section
30 612(a)(15) of the Individuals with Disabilities Education Act

1 (Public Law 91-230, 20 U.S.C. § 1412(a)(15)) to assess progress
2 toward achieving State goals for the performance of eligible
3 students.

4 (35) "Public Notice." Full and timely release of information
5 and documents for public access at a minimum through publication
6 by the Department of Education:

7 (i) in the Pennsylvania Bulletin;

8 (ii) on the department's publicly accessible Internet
9 website for no less than a duration of twelve (12) months; and

10 (iii) through the department's timely issuance of a related
11 Statewide press release.

12 (36) "Regular Classroom." A classroom in a regular school
13 operated primarily for students who have not been identified as
14 students with disabilities who are in need of special education.

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

18 (38) "Special Education Plan." A comprehensive plan as well
19 as revisions, updates and amendments for all special education
20 personnel, programs, services and supports provided by each
21 school district for eligible students, filed by each district
22 with the Department of Education under this act and other
23 applicable Federal and State law.

24 (39) "Commission." The Legislative Commission on Special
25 Education Funding.

26 (40) "Base Year." Fiscal year 2008-2009 or another year
27 designated by statute.

28 (41) "Special Education Allocation." The amount of special
29 education funding received by a school district from the
30 Commonwealth.

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

2 Section 2509.13. Special Education Funding for Student
3 Achievement and Instruction of Eligible Students.--(a) The
4 General Assembly shall, through the annual appropriations
5 process, determine the level of State funding for special
6 education and the amount of any change in funding. The
7 calculations under this section shall determine only the
8 distribution of any increase in the funding among the school
9 districts of this Commonwealth and shall not be used for any
10 other purpose.

11 (b) The Department of Education shall determine a special
12 education allocation for each school district in the year for
13 which funds are being appropriated by calculating the sum of the
14 following:

15 (1) the special education allocation in the base year for
16 the school district;

17 (2) the absolute value of the difference between the special
18 education allocation in the base year for the school district
19 and the highest annual level of the special education allocation
20 for the school district in the years subsequent to the base year
21 except for the year for which funds are being appropriated; and

22 (3) the special education increase in the year for which
23 funds are being appropriated for the school district as
24 determined under subsection (c).

25 (c) The Department of Education shall determine the special
26 education increase in the year for which funds are being
27 appropriated for each school district by calculating the product
28 of:

29 (1) the difference between the total State appropriation for
30 special education aggregated for all school districts in the

1 year for which funds are being appropriated and the total State
2 appropriation for special education aggregated for all school
3 districts in the immediately preceding year, or zero, whichever
4 is greater; and

5 (2) the special education distribution factor for the school
6 district determined under subsection (d).

7 (d) The Department of Education shall determine the special
8 education distribution factor for each school district by
9 dividing the distribution subfactor for each school district
10 determined under subsection (e) by the sum of distribution
11 subfactors for all school districts.

12 (e) The Department of Education shall determine the
13 distribution subfactor for each school district by calculating
14 the product of:

15 (1) the difference between the school district's subfactor
16 quantity determined under subsection (f) and its actual special
17 education spending averaged for the three (3) most recent years,
18 or zero, whichever is greater;

19 (2) the school district's market value/personal income aid
20 ratio averaged for the three (3) most recent years; and

21 (3) the lesser of one (1) and the school district's
22 equalized millage averaged for the three (3) most recent years
23 divided by the equalized millage that represents the seventy-
24 fifth percentile of the equalized millage of all school
25 districts averaged for the three (3) most recent years.

26 (f) The Department of Education shall determine the
27 subfactor quantity for each school district by calculating the
28 sum of:

29 (1) An amount for student cost categories determined by
30 calculating the sum of:

1 (i) An amount on behalf of eligible students with category 3
2 disabilities determined by calculating the product of:
3 (A) the number of eligible students, averaged for the three
4 (3) most recent years, residing or enrolled in the school
5 district classified as having category 3 disabilities as
6 provided under subsection (g), except that the number of
7 eligible students included in this calculation who are placed by
8 the school district and served in public or private separate
9 schools, residential placements or homebound or hospital
10 placements shall not exceed three and one-half percent (3.5%) of
11 all eligible students with individualized education programs
12 residing or enrolled in the school district or the target
13 established in the Part B State Annual Performance Plan filed by
14 the Department of Education under the Individuals with
15 Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400
16 et seq.), whichever is less;
17 (B) the weighting factor for students with category 3
18 disabilities as provided under subsection (g); and
19 (C) the base cost per student.
20 (ii) An amount on behalf of eligible students with category
21 2 disabilities determined by calculating the product of:
22 (A) the number of eligible students in the school district,
23 averaged for the three (3) most recent years;
24 (B) the Statewide percentage of eligible students designated
25 for category 2 disabilities as provided under subsection (g);
26 (C) the weighting factor for eligible students with category
27 2 disabilities as provided under subsection (g); and
28 (D) the base cost per student.
29 (iii) An amount on behalf of eligible students with category
30 1 disabilities determined by calculating the product of:

1 (A) the school district's modified average daily membership,
2 averaged for the three (3) most recent years;
3 (B) the Statewide percentage of modified average daily
4 membership designated for category 1 disabilities as provided
5 under subsection (g);
6 (C) the weighting factor for eligible students with category
7 1 disabilities as provided under subsection (g); and
8 (D) the base cost per student.
9 (2) An adjustment for geographic price differences
10 calculated as follows:
11 (i) Multiply the amount under clause (1) by the school
12 district's location cost metric or one (1), whichever is
13 greater.
14 (ii) Subtract the amount under clause (1) from the product
15 under subclause (i).
16 (g) The Legislative Commission on Special Education Funding
17 is established and shall develop special education formula
18 components as follows:
19 (1) The Statewide percentages of modified average daily
20 membership which shall be designated as category 1 and of
21 eligible students which shall be designated as category 2 for
22 purposes of subsection (f) (1), except that the designated
23 percentage for each category shall not exceed the actual
24 proportion of students in this Commonwealth classified as having
25 such disabilities in the most recent year for which data is
26 available.
27 (2) The weighting factors for students with category 1,
28 category 2 and category 3 disabilities for purposes of
29 subsection (f) (1).
30 (3) A description of and parameters for category 1, category

1 2 and category 3 disabilities for purposes of subsection (f) (1),
2 except that the categories shall be established such that
3 disabilities typically requiring the least intensive range of
4 services be categorized in category 1 and disabilities typically
5 requiring the most intensive range of services be categorized in
6 category 3.

7 (h) Prior to the development of the special education
8 formula components specified under subsection (g) by the
9 commission:

10 (1) The commission shall consider nationally accepted
11 accounting and budgeting standards in determining the special
12 education formula components specified under subsection (g).

13 (2) The commission shall, in a timely manner, hold no fewer
14 than three (3) public hearings in different regions of this
15 Commonwealth to receive input and testimony from stakeholders,
16 which may include the Secretary of Education and other
17 individuals representing the Department of Education, parents of
18 eligible students, teachers, school administrators, school board
19 members, higher education faculty and existing State committees,
20 advisory panels and task forces established under Federal or
21 State law, regulations or court orders.

22 (3) Membership of the commission shall include three (3)
23 legislators from each of the four (4) legislative caucuses, to
24 be determined by the leadership of each caucus and to be
25 replaced at the discretion of the leadership of each caucus. The
26 commission may perform its duties regardless of whether all four
27 (4) legislative caucuses have actually appointed members to the
28 commission. The commission shall choose a chairperson and
29 utilize legislative staff for assistance in developing special
30 education formula components. The Department of Education shall

1 provide the commission with data, research and other relevant
2 information, upon request by the commission.

3 (4) Members of the commission shall be appointed within
4 forty-five (45) days of the effective date of this section. The
5 commission shall hold its first meeting within ninety (90) days
6 of the effective date of this section. The commission shall
7 develop the special education formula components specified under
8 subsection (g) within one hundred twenty (120) days of the
9 effective date of this section, and shall issue a report of its
10 findings to the Governor, the President pro tempore of the
11 Senate and Minority Leader of the Senate, the Speaker of the
12 House of Representatives and the Minority Leader of the House of
13 Representatives, the chairman and minority chairman of the
14 Education Committee of the Senate and the chairman and minority
15 chairman of the Education Committee of the House of
16 Representatives, the Secretary of Education and the State Board
17 of Education.

18 (5) Upon completion of the commission's report, the State
19 Board of Education shall draft proposed regulations to implement
20 the special education funding provisions of this section using,
21 without alteration, the special education formula components
22 specified under subsection (g) as developed by the commission.
23 If the commission does not issue the required report within the
24 required time period or if the commission's report does not
25 designate the special education formula components specified
26 under subsection (g), the State Board of Education shall in a
27 timely manner promulgate proposed regulations to designate the
28 special education formula components specified under subsection
29 (g) through the regulatory review process.

30 (6) In every fifth year subsequent to the initial

1 promulgation of the regulations implementing the formula
2 components, the commission shall meet and hold public hearings
3 to review the operation of the special education funding
4 provisions of this section, shall make a further report and
5 shall issue the report to the bodies and individuals listed
6 under clause (4). When in receipt of a further report
7 recommending changes to the special education formula components
8 specified under subsection (g), the State Board of Education
9 shall promulgate proposed regulations through the regulatory
10 review process to implement, without alteration, any changes
11 developed by the commission in the special education formula
12 components specified under subsection (g).

13 (7) The commission shall receive input and gather
14 information on cyber school funding reimbursements regarding
15 special education students. The commission shall draft proposed
16 regulations and proposed legislation based on their findings.

17 (i) The provisions of this section represent the General
18 Assembly's commitment to provide adequate special education
19 funding that will ensure equitable Federal, State and local
20 investments in special education in public schools in order to
21 enable eligible students to attain applicable Federal and State
22 academic standards.

23 (j) Notwithstanding any other provision of this section, if
24 insufficient funds are appropriated for purposes of this section
25 for the 2011-2012 school year, each school district shall be
26 paid the amount it received during the 2008-2009 school year
27 under section 2509.5(zz).

28 (k) (1) The Department of Education shall set aside one
29 percent (1%) of the total State special education appropriation
30 in each year for extraordinary special education program

1 expenses under section 2509.8. The department shall utilize the
2 funds under section 2509.8(e) in order to meet, to the extent
3 that funds are available, extraordinary special education
4 expenses not anticipated through the special education funding
5 formula. School districts and charter schools may apply for
6 resources through the fund under procedures established by the
7 department. The department shall make payments from the fund in
8 response to the applications.

9 (2) The Department of Education shall issue a comprehensive
10 annual report documenting use of the fund to the General
11 Assembly and shall give public notice about the report.

12 (3) As used in this subsection, "extraordinary special
13 education expenses" shall mean expenses that result from needs
14 and 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 or charter school
18 funding for special education, in order to provide the student
19 with an appropriate education in the least restrictive
20 environment.

21 (1) To the extent that funds are appropriated by the General
22 Assembly, the Department of Education shall establish a
23 competitive grant program for school districts or charter
24 schools meeting the following criteria:

25 (1) Providing instruction within the regular classroom at
26 least eighty percent (80%) of the school day for at least sixty-
27 five percent (65%) of eligible students, as averaged for the two
28 (2) most recent school years for which data are available or
29 increasing the number of eligible students receiving instruction
30 within the regular classroom by at least fifteen percent (15%)

1 in the most recent school year for which data are available.

2 (2) In the most recent school year for which data are
3 available, performance by eligible students on State academic
4 assessments in reading and math, averaged for the entire
5 district, meeting State standards for adequate yearly progress
6 by any method approved by the Federal and State governments,
7 such as meeting the annual target, the confidence interval, the
8 safe harbor target or by appeal.

9 (3) Implementing programs or services that serve as a model
10 of excellence for meeting high standards for inclusion and
11 student achievement through quality special education.

12 (m) The Department of Education shall develop guidelines for
13 the administration of the grant program, which shall be
14 allocated to school districts on a competitive basis.

15 (n) The Department of Education shall issue an annual report
16 to the General Assembly documenting use of the grants issued
17 under subsection (l) and shall give public notice about the
18 report.

19 (o) Nothing under subsection (l) or any other provision of
20 this act shall alter Federal or State law regarding the right of
21 an eligible student to receive education in the least
22 restrictive environment or shall alter the legal authority of
23 individualized education program teams to make appropriate
24 program and placement decisions for eligible students in
25 accordance with the individualized education program developed
26 for each eligible student.

27 Section 2509.14. Special Education Accountability.--(a) (1)
28 The Department of Education shall determine the form and manner
29 in which school districts shall submit a special education plan
30 and revisions, updates and amendments to the special education

1 plan under this section. The special education plan shall be
2 consistent with other existing plans and reports required by the
3 department to the greatest extent possible. Special education
4 plans shall be written in a manner that is easy to use and
5 understand by parents and the public, including a general
6 summary.

7 (2) The Department of Education shall:

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

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

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

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

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

18 (i) meet the requirements of this section;

19 (ii) address the academic and developmental challenges for
20 eligible students identified in the school district's most
21 recent student achievement results and pursuant to performance
22 indicators, with specific focus on individual schools, grade
23 levels and populations of students that demonstrate inadequate
24 levels of student outcomes and with student achievement for
25 eligible students as measured by academic performance whenever
26 possible in the general education curriculum, acquisition of
27 knowledge and skills, progress toward graduation, accomplishment
28 of individualized education program goals, including appropriate
29 functional skills, and other factors;

30 (iii) describe programs and strategies that are most likely

1 to improve student outcomes in the school district;

2 (iv) describe any programs offered by the school district
3 and strategies of the school district for children from birth
4 through five (5) years of age and five (5) years of age through
5 seven (7) years of age designed to reduce the need for special
6 education services; and

7 (v) describe policies of the school district to ensure that
8 a student identified as having a disability is no longer
9 identified as such if the student no longer qualifies under 22
10 Pa. Code Ch. 14 (relating to special education services and
11 programs), or any successor regulation.

12 (4) Upon disapproving a school district's special education
13 plan, update or revision submitted under this section, the
14 Department of Education shall withhold the portion of the annual
15 State increase in special education funding which exceeds the
16 index until a written special education plan, update or revision
17 is approved.

18 (5) The Secretary of Education shall involve as appropriate
19 in special education monitoring, support, intervention,
20 technical assistance and special education plan review by the
21 Department of Education, the staff in relevant offices, bureaus
22 and divisions of the department, as well as staff in
23 intermediate units and consultants, and shall neither delegate
24 nor limit these functions solely to the Bureau of Special
25 Education. The Secretary of Education shall have the authority
26 to contract for additional assistance with intermediate units
27 and consultants for these purposes, if the contracts do not
28 create a conflict of interest or supplant existing service or
29 program obligations.

30 (b) (1) By April 15, 2012, and by April 15 of each year

1 thereafter, each school district receiving an increase in its
2 State special education funding allocation of more than the
3 index shall update its special education plan based on overall
4 circumstances, shall also revise the special education plan to
5 show in detail how the increase above the index will be used and
6 shall submit the updates and revisions to the Department of
7 Education for approval under subsection (a). Unless a school
8 district decides to amend its special education plan more
9 broadly to reflect the receipt of new funding, the department
10 shall allow a district to meet the requirements of this section
11 by adding the mandated information as an appendix to the
12 existing plan.

13 (2) School districts shall use State funds for programs and
14 supports that expressly benefit eligible students educated in
15 the least restrictive environment in accordance with Federal and
16 State law and contribute to achievement of performance
17 indicators.

18 (3) The Department of Education shall issue guidelines for
19 the suggested use of State funds for programs and supports that
20 benefit eligible students and contribute to achievement of
21 performance indicators and address the following areas or
22 related areas:

23 (i) curricula adaptation;

24 (ii) coteaching;

25 (iii) assistive technology;

26 (iv) school-wide positive behavior supports;

27 (v) supplementary aids and services;

28 (vi) professional development;

29 (vii) reading specialist services and supports;

30 (viii) reducing caseloads for special education teachers and

1 related services personnel; and

2 (ix) placing and serving eligible students in regular
3 classrooms with supports in accordance with the individualized
4 education program developed for each eligible student.

5 (4) Nothing under this subsection shall be construed to
6 require school districts to implement only the programs and
7 supports included in the guidelines issued by the Department of
8 Education.

9 (c) Accountability for the effective use of resources to
10 meet student needs shall also be provided in the following ways:

11 (1) The Department of Education shall issue to the General
12 Assembly a comprehensive annual report on special education
13 funding, special education plans, the implementation of 22 Pa.
14 Code § 14.104 (relating to special education plans) and other
15 special education accountability issues for public school
16 entities serving eligible students and this Commonwealth.

17 (2) Upon disapproving a school district's special education
18 plan, update or revision, the Department of Education shall
19 withhold the portion of the annual State increase in special
20 education funding which exceeds the index until a written
21 special education plan, update or revision is approved.

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

23 (A) review and monitor implementation of all special
24 education plans, such as compliance with subsection (b) and 22
25 Pa. Code § 14.104;

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

29 (C) identify at any time and at least annually all school
30 districts failing to adequately implement their special

1 education plans in compliance with Federal and State law,
2 failing to comply with subsection (b) or not making annual
3 progress to meet student needs based on performance indicators;
4 and

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

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

14 (4) To discourage the inappropriate over-identification of
15 children for special education, the Department of Education
16 shall automatically conduct a thorough review of the special
17 education plan of any school district with a substantially
18 higher ratio of eligible students in the district to its average
19 daily membership for all students than the State average, as
20 established by the department and of any district where the
21 ratio of eligible students in the school district to its average
22 daily membership for all students in the most recent school year
23 for which data is available has increased by more than ten
24 percent (10%) over the previous year or of any district where
25 the ratio has increased by an annual average of more than five
26 percent (5%) during the most recent five-year period.
27 Appropriate remedial action, including withholding up to five
28 percent (5%) of all State special education funding, may be
29 taken, unless the ratio or increase is determined to be
30 justified by the department after consultation with the school

1 district.

2 (d) The Department of Education shall issue to any affected
3 school district a notice specifying the department's decisions
4 and actions under this section and the rationale for the
5 decisions and actions. A school district may file a written
6 response to the department about the department's decisions and
7 actions regarding the district made under this section. The
8 written response must be submitted to the department within
9 thirty (30) calendar days of the department's notice or within
10 thirty (30) calendar days of receiving the notice, whichever is
11 greater. The department shall consider the written response,
12 consult with the school district and, within thirty (30)
13 calendar days after receiving the written response, issue a
14 written decision addressing the concerns and claims made in the
15 written response, explaining the judgment of the department in
16 response to these concerns and claims, and specifying the
17 opportunity to appeal this matter to the Secretary of Education
18 for a hearing under 2 Pa.C.S. Chs. 5 Subch. A (relating to
19 practice and procedure of Commonwealth agencies) and 7 Subch. A
20 (relating to judicial review of Commonwealth agency action) and
21 1 Pa. Code Pt. II (relating to general rules of administrative
22 practice and procedure). If requested, the Secretary of
23 Education shall convene a hearing within thirty (30) calendar
24 days after receipt of a school district's hearing request. The
25 Secretary of Education shall render a written hearing decision
26 within thirty (30) calendar days following the hearing.

27 (e) The Department of Education shall give public notice of
28 the decisions, actions and reports made under this section.

29 (f) Nothing under this section shall supersede or preempt
30 any provisions of a collective bargaining agreement between a

1 school entity and an employe organization in effect on the
2 effective date of this section.

3 (g) Notwithstanding any other provision of this section, if
4 insufficient funds are appropriated for purposes of section
5 2509.13 for the 2011-2012 school year, the requirements of this
6 section shall be waived.

7 Section 3. The Secretary of Education shall propose
8 regulations for promulgation by the State Board of Education
9 which implement this act.

10 Section 4. This act shall take effect immediately.