

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, TARTAGLIONE, BAKER AND BLAKE, JUNE 16, 2011

SENATOR PICCOLA, EDUCATION, AS AMENDED, MARCH 6, 2012

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)~~ (32) "Eligible Student." A student who has been ←
26 identified as a student with a disability who is in need of
27 special education under Federal and State law.

28 ~~(34)~~ (33) "Performance Indicators." Measurable annual ←
29 objectives established by the Department of Education pursuant
30 to section 612(a)(15) of the Individuals with Disabilities

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

4 ~~(35)~~ (34) "Public Notice." Full and timely release of ←
5 information and documents for public access at a minimum through
6 publication 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)~~ (35) "Regular Classroom." A classroom in a regular ←
13 school operated primarily for students who have not been
14 identified as students with disabilities who are in need of
15 special education.

16 ~~(37)~~ (36) "Regular School." A neighborhood school, magnet ←
17 school or other public school operated for all students, not
18 solely eligible students, in a school district.

19 ~~(38)~~ (37) "Special Education Plan." A comprehensive plan as ←
20 well as revisions, updates and amendments for all special
21 education personnel, programs, services and supports provided by
22 each school district for eligible students, filed by each
23 district with the Department of Education under this act and
24 other applicable Federal and State law.

25 ~~(39)~~ (38) "Commission." The Legislative Commission on ←
26 Special Education Funding.

27 ~~(40)~~ (39) "Base Year." Fiscal year 2008-2009 2010-2011 or ←
28 another year designated by statute.

29 ~~(41)~~ (40) "Special Education Allocation." The amount of ←
30 special education funding received by a school district from the

1 Commonwealth.

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

3 Section 2509.13. Special Education Funding for Student

4 Achievement and Instruction of Eligible Students.--(a) The

5 General Assembly shall, through the annual appropriations

6 process, determine the level of State funding for special

7 education and the amount of any change in funding. The

8 calculations SPECIAL EDUCATION FORMULA DEVELOPED under this ←

9 section shall determine only the distribution of any increase in

10 the SPECIAL EDUCATION funding among the school districts of this ←

11 Commonwealth ABOVE THE AMOUNT OF SPECIAL EDUCATION FUNDING IN ←

12 THE BASE YEAR and shall not be used for any other purpose.

13 (b) The Department of Education shall determine a special ←

14 education allocation for each school district in the year for

15 which funds are being appropriated by calculating the sum of the

16 following:

17 (1) the special education allocation in the base year for

18 the school district;

19 (2) the absolute value of the difference between the special

20 education allocation in the base year for the school district

21 and the highest annual level of the special education allocation

22 for the school district in the years subsequent to the base year

23 except for the year for which funds are being appropriated; and

24 (3) the special education increase in the year for which

25 funds are being appropriated for the school district as

26 determined under subsection (c).

27 (c) The Department of Education shall determine the special

28 education increase in the year for which funds are being

29 appropriated for each school district by calculating the product

30 of:

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

7 ~~(2) the special education distribution factor for the school~~
8 ~~district determined under subsection (d).~~

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

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

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

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

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

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

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

3 ~~(i) An amount on behalf of eligible students with category 3~~
4 ~~disabilities determined by calculating the product of:~~

5 ~~(A) the number of eligible students, averaged for the three~~
6 ~~(3) most recent years, residing or enrolled in the school~~
7 ~~district classified as having category 3 disabilities as~~
8 ~~provided under subsection (g), except that the number of~~
9 ~~eligible students included in this calculation who are placed by~~
10 ~~the school district and served in public or private separate~~
11 ~~schools, residential placements or homebound or hospital~~
12 ~~placements shall not exceed three and one half percent (3.5%) of~~
13 ~~all eligible students with individualized education programs~~
14 ~~residing or enrolled in the school district or the target~~
15 ~~established in the Part B State Annual Performance Plan filed by~~
16 ~~the Department of Education under the Individuals with~~
17 ~~Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400~~
18 ~~et seq.), whichever is less;~~

19 ~~(B) the weighting factor for students with category 3~~
20 ~~disabilities as provided under subsection (g); and~~

21 ~~(C) the base cost per student.~~

22 ~~(ii) An amount on behalf of eligible students with category~~
23 ~~2 disabilities determined by calculating the product of:~~

24 ~~(A) the number of eligible students in the school district,~~
25 ~~averaged for the three (3) most recent years;~~

26 ~~(B) the Statewide percentage of eligible students designated~~
27 ~~for category 2 disabilities as provided under subsection (g);~~

28 ~~(C) the weighting factor for eligible students with category~~
29 ~~2 disabilities as provided under subsection (g); and~~

30 ~~(D) the base cost per student.~~

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

1 ~~subsection (f)(1).~~

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

9 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ←
10 FOR THE 2012-2013 SCHOOL YEAR AND EACH SCHOOL YEAR THEREAFTER,
11 ANY STATE FUNDING FOR SPECIAL EDUCATION IN AN AMOUNT THAT DOES
12 NOT EXCEED THE AMOUNT OF STATE FUNDING FOR SPECIAL EDUCATION IN
13 THE BASE YEAR SHALL BE ALLOCATED IN THE SAME MANNER AS THE STATE
14 FUNDING WAS ALLOCATED IN THE BASE YEAR.

15 (C) THE DEPARTMENT OF EDUCATION SHALL DISTRIBUTE SPECIAL
16 EDUCATION FUNDING ACCORDING TO THE CALCULATIONS UNDER
17 SUBSECTIONS (A) AND (B).

18 (D) THE LEGISLATIVE COMMISSION ON SPECIAL EDUCATION FUNDING
19 IS ESTABLISHED AND SHALL DEVELOP A SPECIAL EDUCATION FORMULA
20 THAT WILL BE USED TO DETERMINE THE DISTRIBUTION OF ANY CHANGE IN
21 SPECIAL EDUCATION FUNDING AMONG THE SCHOOL DISTRICTS OF THIS
22 COMMONWEALTH. THE FORMULA SHALL INCLUDE ALL OF THE FOLLOWING:

23 (1) THREE (3) COST CATEGORIES OF ELIGIBLE STUDENTS,
24 ESTABLISHED SUCH THAT STUDENTS WITH DISABILITIES TYPICALLY
25 REQUIRING THE LEAST INTENSIVE RANGE OF SERVICES SHALL COMPRISE
26 CATEGORY 1, STUDENTS WITH DISABILITIES TYPICALLY REQUIRING A
27 MIDDLE RANGE OF SERVICES SHALL COMPRISE CATEGORY 2 AND STUDENTS
28 WITH DISABILITIES TYPICALLY REQUIRING THE MOST INTENSIVE RANGE
29 OF SERVICES SHALL COMPRISE CATEGORY 3. THE COMMISSION SHALL
30 DETERMINE A DESCRIPTION OF AND PARAMETERS FOR EACH OF THE THREE

1 (3) CATEGORIES.

2 (2) A STUDENT COUNT FOR EACH SCHOOL DISTRICT AVERAGED FOR
3 THE THREE (3) MOST RECENT YEARS FOR EACH CATEGORY OF ELIGIBLE
4 STUDENTS TO BE CALCULATED AS FOLLOWS:

5 (I) FOR CATEGORY 3, CALCULATE THE NUMBER OF ELIGIBLE
6 STUDENTS RESIDING OR ENROLLED IN THE SCHOOL DISTRICT AND
7 CLASSIFIED IN CATEGORY 3, EXCEPT THAT THE NUMBER OF ELIGIBLE
8 STUDENTS INCLUDED IN THIS CALCULATION WHO ARE PLACED BY THE
9 SCHOOL DISTRICT AND SERVED IN PUBLIC OR PRIVATE SEPARATE
10 SCHOOLS, RESIDENTIAL PLACEMENTS OR HOMEBOUND OR HOSPITAL
11 PLACEMENTS SHALL NOT EXCEED THREE AND ONE-HALF PERCENT (3.5%) OF
12 ALL ELIGIBLE STUDENTS WITH INDIVIDUALIZED EDUCATION PROGRAMS
13 RESIDING OR ENROLLED IN THE SCHOOL DISTRICT OR THE TARGET
14 ESTABLISHED IN THE PART B STATE ANNUAL PERFORMANCE PLAN FILED BY
15 THE DEPARTMENT OF EDUCATION UNDER THE INDIVIDUALS WITH
16 DISABILITIES EDUCATION ACT (PUBLIC LAW 91-230, 20 U.S.C. § 1400
17 ET SEQ.), WHICHEVER IS LESS.

18 (II) FOR CATEGORY 2, CALCULATE THE NUMBER OF ELIGIBLE
19 STUDENTS CLASSIFIED IN CATEGORY 2 DETERMINED BY TAKING THE
20 PRODUCT OF:

21 (A) THE NUMBER OF ELIGIBLE STUDENTS IN THE SCHOOL DISTRICT;
22 AND

23 (B) THE STATEWIDE PERCENTAGE OF ELIGIBLE STUDENTS CLASSIFIED
24 IN CATEGORY 2.

25 (III) FOR CATEGORY 1, CALCULATE THE NUMBER OF ELIGIBLE
26 STUDENTS CLASSIFIED IN CATEGORY 1 DETERMINED BY TAKING THE
27 PRODUCT OF:

28 (A) THE SCHOOL DISTRICT'S MODIFIED AVERAGE DAILY MEMBERSHIP;
29 AND

30 (B) THE STATEWIDE PERCENTAGE OF MODIFIED AVERAGE DAILY

1 MEMBERSHIP CLASSIFIED IN CATEGORY 1.

2 (IV) THE TWO (2) STATEWIDE PERCENTAGES OF MODIFIED AVERAGE
3 DAILY MEMBERSHIP WHICH SHALL BE DESIGNATED AS CATEGORY 1 AND OF
4 ELIGIBLE STUDENTS WHICH SHALL BE DESIGNATED AS CATEGORY 2 SHALL
5 NOT EXCEED THE ACTUAL PROPORTION OF STUDENTS IN THIS
6 COMMONWEALTH CLASSIFIED IN CATEGORIES 1 AND 2 IN THE MOST RECENT
7 YEAR FOR WHICH DATA IS AVAILABLE.

8 (3) A WEIGHTING FACTOR THAT DIFFERS FOR EACH OF THE THREE
9 (3) CATEGORIES OF STUDENTS WITH DISABILITIES AND THAT ACCURATELY
10 REFLECTS THE COSTS OF EDUCATING STUDENTS IN EACH CATEGORY.

11 (4) ADJUSTMENTS FOR:

12 (I) THE MARKET VALUE/PERSONAL INCOME AID RATIO AVERAGED FOR
13 THE THREE (3) MOST RECENT YEARS FOR EACH SCHOOL DISTRICT.

14 (II) THE EQUALIZED MILLAGE RATE AVERAGED FOR THE THREE (3)
15 MOST RECENT YEARS FOR EACH SCHOOL DISTRICT.

16 (III) GEOGRAPHIC PRICE DIFFERENCES IDENTIFIED FOR EACH
17 SCHOOL DISTRICT.

18 (5) A DISTRIBUTION RATIO BASED ON THE FACTORS LISTED IN
19 PARAGRAPHS (1), (2), (3) AND (4), IN WHICH THE CALCULATED TOTAL
20 FOR EACH SCHOOL DISTRICT IS DIVIDED BY THE AGGREGATION OF
21 CALCULATED TOTALS FOR ALL SCHOOL DISTRICTS IN THIS COMMONWEALTH.

22 (6) A CALCULATION OF THE CHANGE IN SPECIAL EDUCATION FUNDING
23 TO BE PROVIDED FOR EACH SCHOOL DISTRICT, IN WHICH THE
24 DISTRIBUTION RATIO UNDER PARAGRAPH (5) IS MULTIPLIED BY THE
25 STATEWIDE TOTAL CHANGE IN SPECIAL EDUCATION FUNDING.

26 (7) OTHER FACTORS RELATED TO AN ACCURATE DISTRIBUTION OF
27 SPECIAL EDUCATION FUNDING.

28 ~~(h)~~ (E) Prior to the development of the special education
29 formula components specified REQUIRED under subsection (g) by
30 (D), the commission SHALL:



1 ~~(1) The commission shall consider~~ CONSIDER nationally ←
2 ~~accepted accounting and budgeting standards in determining the~~ ←
3 ~~special education formula components specified under subsection~~
4 ~~(g).~~

5 ~~(2) The commission shall, in~~ IN a timely manner, hold no ←
6 fewer than three ~~(3) public hearings in different regions of~~
7 ~~this Commonwealth to receive input and testimony from~~
8 ~~stakeholders~~ INTERESTED PARTIES, which may include the Secretary ←
9 of Education and other individuals representing the Department
10 of Education, parents of eligible students, teachers, school
11 administrators, school board members, higher education faculty
12 and existing State committees, advisory panels and task forces
13 established under Federal or State law, regulations or court
14 orders.

15 ~~(3)~~ (F) (1) Membership of the commission shall include ←
16 ~~three (3)~~ TWELVE (12) MEMBERS, CONSISTING OF THE CHAIRMAN AND ←
17 MINORITY CHAIRMAN OF THE EDUCATION COMMITTEE OF THE SENATE, THE
18 CHAIRMAN AND MINORITY CHAIRMAN OF THE EDUCATION COMMITTEE OF THE
19 HOUSE OF REPRESENTATIVES AND TWO (2) legislators from each of
20 the four (4) legislative caucuses, to be determined by the
21 leadership of each caucus and to be replaced at the discretion
22 of the leadership of each caucus. The commission may perform its
23 duties regardless of whether all four (4) legislative caucuses
24 have actually appointed members to the commission. The
25 commission shall choose a chairperson and utilize legislative
26 staff for assistance in developing THE special education formula ←
27 components. The Department of Education shall provide the ←
28 commission with data, research and other relevant information,
29 upon request by the commission.

30 ~~(4)~~ (2) Members of the commission shall be appointed within ←

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

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

28 ~~(6)~~ (H) In every fifth year subsequent to the initial ←
29 promulgation of the regulations implementing the ~~formula~~ ←
30 ~~components~~ SPECIAL EDUCATION FORMULA, the commission SHALL BE ←

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

12 ~~(7)~~ (I) The commission shall receive input and gather ←
13 information on CHARTER AND cyber school funding reimbursements ←
14 regarding special education students. The commission shall draft
15 proposed regulations and proposed legislation based on their
16 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)~~ (J) (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)~~ (K) (1) To the extent that funds are appropriated by ←
22 the General Assembly, the Department of Education shall
23 establish a competitive grant program for school districts or
24 charter schools meeting the following criteria:

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

1 fifteen percent (15%) in the most recent school year for which
2 data are available.

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

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

13 ~~(m)~~ (2) The Department of Education shall develop guidelines ←
14 for the administration of the grant program ESTABLISHED UNDER ←
15 THIS SUBSECTION, which shall be allocated to school districts on
16 a competitive basis.

17 ~~(n)~~ (3) The Department of Education shall issue an annual ←
18 report to the General Assembly documenting use of the grants
19 issued under subsection ~~(l)~~ PARAGRAPH (1) and shall give public ←
20 notice about the report.

21 ~~(o)~~ (4) Nothing under subsection ~~(l)~~ PARAGRAPH (1) or any ←
22 other provision of this act shall alter Federal or State law
23 regarding the right of an eligible student to receive ←
24 PROTECTIONS PROVIDED TO AN ELIGIBLE STUDENT FOR RECEIVING ←
25 education in the least restrictive environment or shall alter
26 the legal authority of individualized education program teams to
27 make appropriate program and placement decisions for eligible
28 students in accordance with the individualized education program
29 developed for each eligible student.

30 SECTION 2509.14. SPECIAL EDUCATION FUNDING FOR ELIGIBLE ←

1 STUDENTS WITH DISABILITIES IN CATEGORY 3.--(A) FOR THE
2 2014-2015 SCHOOL YEAR AND EACH SCHOOL YEAR THEREAFTER, THE
3 DEPARTMENT OF EDUCATION SHALL SET ASIDE AN AMOUNT EQUAL TO ONE
4 PERCENT (1%) OF THE STATE SPECIAL EDUCATION APPROPRIATION ABOVE
5 THE LEVEL OF THE APPROPRIATION IN THE BASE YEAR. THE DEPARTMENT
6 OF EDUCATION SHALL DISTRIBUTE THIS AMOUNT AS PROVIDED IN
7 SUBSECTION (B).

8 (B) FOR THE 2014-2015 SCHOOL YEAR AND EACH SCHOOL YEAR
9 THEREAFTER, EACH SCHOOL DISTRICT IN THIS COMMONWEALTH SHALL
10 RECEIVE A PRO RATA SHARE OF THE AMOUNT SET ASIDE UNDER
11 SUBSECTION (A) BASED UPON THE NUMBER OF ELIGIBLE STUDENTS
12 RESIDING OR ENROLLED IN EACH SCHOOL DISTRICT AND CLASSIFIED IN
13 CATEGORY 3 DURING THE IMMEDIATELY PRECEDING SCHOOL YEAR.

14 (C) THE FUNDING PROVIDED UNDER THIS SECTION SHALL BE
15 ACCOUNTED FOR AS PART OF ACTUAL SPECIAL EDUCATION SPENDING AND
16 AS PART OF THE SPECIAL EDUCATION ALLOCATION RECEIVED BY A SCHOOL
17 DISTRICT, ACCORDING TO THE DEFINITIONS IN SECTION 2501. SCHOOL
18 DISTRICTS SHALL ALSO ACCOUNT FOR THE FUNDING PROVIDED UNDER THIS
19 SECTION AND THE RESULTING SERVICES AND SUPPORTS FOR ELIGIBLE
20 STUDENTS THROUGH THE SPECIAL EDUCATION PLANS, REVISIONS, UPDATES
21 AND AMENDMENTS REQUIRED BY SECTION 2509.15.

22 Section 2509.14 2509.15. Special Education Accountability.-- ←

23 (a) (1) The Department of Education shall determine the form
24 and manner in which school districts shall submit a special
25 education plan and revisions, updates and amendments to the
26 special education plan under this section. The special education
27 plan shall be consistent with other existing plans and reports
28 required by the department to the greatest extent possible.
29 Special education plans shall be written in a manner that is
30 easy to use and understand by parents and the public, including

1 a general summary.

2 (2) The Department of Education shall:

3 (i) review the special education plans and revisions,
4 updates and amendments;

5 (ii) provide recommendations and technical assistance to
6 school districts;

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

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

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

13 (i) meet the requirements of this section;

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

25 (iii) describe programs and strategies that are most likely
26 to improve student outcomes in the school district;

27 (iv) describe any programs offered by the school district
28 and strategies of the school district for children from birth
29 through five (5) years of age and five (5) years of age through
30 seven (7) years of age designed to reduce the need for special

1 education services; and

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

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

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

25 (b) (1) By April 15, 2012, and by April 15 of each year
26 thereafter, each school district receiving an increase in its
27 State special education funding allocation of more than the
28 index shall update its special education plan based on overall
29 circumstances, shall also revise the special education plan to
30 show in detail how the increase above the index will be used and

1 shall submit the updates and revisions to the Department of
2 Education for approval under subsection (a). Unless a school
3 district decides to amend its special education plan more
4 broadly to reflect the receipt of new funding, the department
5 shall allow a district to meet the requirements of this section
6 by adding the mandated information as an appendix to the
7 existing plan.

8 (2) School districts shall use State funds for programs and
9 supports that expressly benefit eligible students educated in
10 the least restrictive environment in accordance with Federal and
11 State law and contribute to achievement of performance
12 indicators.

13 (3) The Department of Education shall issue guidelines for
14 the suggested use of State funds for programs and supports that
15 benefit eligible students and contribute to achievement of
16 performance indicators and address the following areas or
17 related areas:

18 (i) curricula adaptation;

19 (ii) coteaching;

20 (iii) assistive technology;

21 (iv) school-wide positive behavior supports;

22 (v) supplementary aids and services;

23 (vi) professional development;

24 (vii) reading specialist services and supports;

25 (viii) reducing caseloads for special education teachers and
26 related services personnel; and

27 (ix) placing and serving eligible students in regular
28 classrooms with supports in accordance with the individualized
29 education program developed for each eligible student.

30 (4) Nothing under this subsection shall be construed to

1 require school districts to implement only the programs and
2 supports included in the guidelines issued by the Department of
3 Education.

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

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

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

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

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

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

24 (C) identify at any time and at least annually all school
25 districts failing to adequately implement their special
26 education plans in compliance with Federal and State law,
27 failing to comply with subsection (b) or not making annual
28 progress to meet student needs based on performance indicators;
29 and

30 (D) determine whether to withhold up to five percent (5%) of

1 all State special education funding for school districts
2 identified under this clause while the identified problems
3 remain unresolved.

4 (ii) If the Department of Education determines that a school
5 district is making substantial progress toward resolving the
6 identified problems, it shall restore the withheld funding
7 retroactively and continue to monitor the district for an
8 additional two (2) years.

9 (4) To discourage the inappropriate over-identification of
10 children for special education, the Department of Education
11 shall automatically conduct a thorough review of the special
12 education plan of any school district with a substantially
13 higher ratio of eligible students in the district to its average
14 daily membership for all students than the State average, as
15 established by the department and of any district where the
16 ratio of eligible students in the school district to its average
17 daily membership for all students in the most recent school year
18 for which data is available has increased by more than ten
19 percent (10%) over the previous year or of any district where
20 the ratio has increased by an annual average of more than five
21 percent (5%) during the most recent five-year period.

22 Appropriate remedial action, including withholding up to five
23 percent (5%) of all State special education funding, may be
24 taken, unless the ratio or increase is determined to be
25 justified by the department after consultation with the school
26 district.

27 (d) The Department of Education shall issue to any affected
28 school district a notice specifying the department's decisions
29 and actions under this section and the rationale for the
30 decisions and actions. A school district may file a written

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

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

24 (f) Nothing under this section shall supersede or preempt
25 any provisions of a collective bargaining agreement between a
26 school entity and an employe organization in effect on the
27 effective date of this section.

28 (g) Notwithstanding any other provision of this section, if
29 insufficient funds are appropriated for purposes of section
30 2509.13 for the 2011-2012 school year, the requirements of this

1 section shall be waived.

2 SECTION 2509.16. DATA COLLECTION.--USING EXISTING RESOURCES ←
3 AND DATA SYSTEMS AS WELL AS NATIONALLY ACCEPTED ACCOUNTING AND
4 MODELING STANDARDS, THE DEPARTMENT OF EDUCATION SHALL COLLECT
5 DATA NECESSARY FOR ACCURATE FUNCTIONING OF THE SPECIAL EDUCATION
6 FORMULA DEVELOPED UNDER SECTION 2509.13, INCLUDING, BUT NOT
7 LIMITED TO, DATA NECESSARY FOR THE CALCULATIONS RELATED TO
8 CATEGORY 1, CATEGORY 2 AND CATEGORY 3 AS PART OF THE FORMULA
9 DEVELOPED BY THE COMMISSION. THE DEPARTMENT OF EDUCATION SHALL
10 BEGIN COLLECTING SUCH DATA UPON THE EFFECTIVE DATE OF THIS
11 SECTION.

12 SECTION 2509.17. RESTRUCTURING.--(A) THE COMMISSION SHALL
13 STUDY WHETHER AND THE MANNER IN WHICH STATE AND REGIONAL
14 ADMINISTRATION OF SPECIAL EDUCATION PROGRAMS AND SERVICES MAY BE
15 RESTRUCTURED TO REDUCE THE COST OF ADMINISTERING SPECIAL
16 EDUCATION PROGRAMS AND SERVICES BY AT LEAST TEN PERCENT (10%) OF
17 THE COST OF ADMINISTERING SPECIAL EDUCATION PROGRAMS AND
18 SERVICES IN THE BASE YEAR AND SHALL REPORT ITS FINDINGS AND
19 RECOMMENDATIONS, INCLUDING RECOMMENDED LEGISLATION AND OPTIONS
20 TO REDIRECT ADMINISTRATIVE COST SAVINGS TO SCHOOL DISTRICTS
21 THROUGH THE FORMULA DEVELOPED UNDER SECTION 2509.13(D), TO THE
22 GOVERNOR AND THE GENERAL ASSEMBLY IN THE REPORT REQUIRED UNDER
23 SECTION 2509.13(F)(2).

24 (B) NOTHING UNDER SUBSECTION (A) OR ANY OTHER PROVISION OF
25 THIS ACT SHALL ALTER FEDERAL OR STATE LAW REGARDING THE
26 PROTECTIONS PROVIDED TO AN ELIGIBLE STUDENT FOR RECEIVING
27 EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT OR SHALL ALTER
28 THE LEGAL AUTHORITY OF INDIVIDUALIZED EDUCATION PROGRAM TEAMS TO
29 MAKE APPROPRIATE PROGRAM AND PLACEMENT DECISIONS FOR ELIGIBLE
30 STUDENTS IN ACCORDANCE WITH THE INDIVIDUALIZED EDUCATION PROGRAM

1 DEVELOPED FOR EACH ELIGIBLE STUDENT.

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

5 Section 4. This act shall take effect immediately.