

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 CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 22,
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) "Eligible Student." A student who has been identified
24 as a student with a disability who is in need of special
25 education under Federal and State law.

26 (33) "Performance Indicators." Measurable annual objectives
27 established by the Department of Education pursuant to section
28 612(a)(15) of the Individuals with Disabilities Education Act
29 (Public Law 91-230, 20 U.S.C. § 1412(a)(15)) to assess progress
30 toward achieving State goals for the performance of eligible

1 students.

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

5 (i) in the Pennsylvania Bulletin;

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

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

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

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

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

22 (38) "Commission." The Legislative Commission on Special
23 Education Funding.

24 (39) "Base Year." Fiscal year 2010-2011 or another year
25 designated by statute.

26 (40) "Special Education Allocation." The amount of special
27 education funding received by a school district from the
28 Commonwealth.

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

30 Section 2509.13. Special Education Funding for Student

1 Achievement and Instruction of Eligible Students.--(a) The
2 General Assembly shall, through the annual appropriations
3 process, determine the level of State funding for special
4 education and the amount of any change in funding. The special
5 education formula developed under this section shall determine
6 only the distribution of any increase in special education
7 funding among the school districts of this Commonwealth above
8 the amount of special education funding in the base year and
9 shall not be used for any other purpose.

10 (b) Notwithstanding any provision of law to the contrary,
11 for the 2012-2013 school year and each school year thereafter,
12 any State funding for special education in an amount that does
13 not exceed the amount of State funding for special education in
14 the base year shall be allocated in the same manner as the State
15 funding was allocated in the base year.

16 (c) The Department of Education shall distribute special
17 education funding according to the calculations under
18 subsections (a) and (b).

19 (d) The Legislative Commission on Special Education Funding
20 is established and shall develop a special education formula
21 that will be used to determine the distribution of any change in
22 special education funding among the school districts of this
23 Commonwealth. The formula shall include all of the following:

24 (1) Three (3) cost categories of eligible students,
25 established such that students with disabilities typically
26 requiring the least intensive range of services shall comprise
27 category 1, students with disabilities typically requiring a
28 middle range of services shall comprise category 2 and students
29 with disabilities typically requiring the most intensive range
30 of services shall comprise category 3. The commission shall

1 determine a description of and parameters for each of the three
2 (3) categories.

3 (2) A student count for each school district averaged for
4 the three (3) most recent years for each category of eligible
5 students to be calculated as follows:

6 (i) For category 3, calculate the number of eligible
7 students residing or enrolled in the school district and
8 classified in category 3, except that the number of eligible
9 students included in this calculation who are placed by the
10 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. THE REFERENCE IN THIS PARAGRAPH TO ←
19 THE TARGET ESTABLISHED IN THE PART B STATE ANNUAL PERFORMANCE
20 PLAN SHALL BE USED SOLELY FOR THE PURPOSE OF DETERMINING THE
21 STUDENT COUNT FOR CATEGORY 3, WITHOUT LIMITING THE USE OF THIS
22 TARGET FOR OTHER PURPOSES PURSUANT TO THE PART B STATE ANNUAL
23 PERFORMANCE PLAN. ELIGIBLE STUDENTS EXCEEDING THIS TARGET SHALL
24 BE PART OF THE OTHER COST CATEGORIES WITHIN THE SPECIAL
25 EDUCATION FORMULA. NEITHER THE REFERENCE TO THE TARGET NOR ANY
26 OTHER PROVISION OF THIS ACT SHALL BE CONSTRUED TO ALTER FEDERAL
27 OR STATE LAW REGARDING THE PROTECTIONS PROVIDED TO AN ELIGIBLE
28 STUDENT FOR RECEIVING EDUCATION IN THE LEAST RESTRICTIVE
29 ENVIRONMENT OR ALTER THE LEGAL AUTHORITY OF INDIVIDUALIZED
30 EDUCATION PROGRAM TEAMS TO MAKE APPROPRIATE PROGRAM AND

1 PLACEMENT DECISIONS FOR ELIGIBLE STUDENTS IN ACCORDANCE WITH THE
2 INDIVIDUALIZED EDUCATION PROGRAM DEVELOPED FOR EACH ELIGIBLE
3 STUDENT.

4 (ii) For category 2, calculate the number of eligible
5 students classified in category 2 determined by taking the
6 product of:

7 (A) the number of eligible students in the school district;
8 and

9 (B) the Statewide percentage of eligible students classified
10 in category 2.

11 (iii) For category 1, calculate the number of eligible
12 students classified in category 1 determined by taking the
13 product of:

14 (A) the school district's modified average daily membership;
15 and

16 (B) the Statewide percentage of modified average daily
17 membership classified in category 1.

18 (iv) The two (2) Statewide percentages of modified average
19 daily membership which shall be designated as category 1 and of
20 eligible students which shall be designated as category 2 shall
21 not exceed the actual proportion of students in this
22 Commonwealth classified in categories 1 and 2 in the most recent
23 year for which data is available.

24 (3) A weighting factor that differs for each of the three

25 (3) categories of students with disabilities and that accurately ←

26 reflects the costs of educating students in each category BASED ←

27 ON THE TYPICAL RANGE OF SERVICES FOR EACH CATEGORY.

28 (4) Adjustments for:

29 (i) The market value/personal income aid ratio averaged for
30 the three (3) most recent years for each school district.

1 (ii) The equalized millage rate averaged for the three (3)
2 most recent years for each school district.

3 (iii) Geographic price differences identified for each
4 school district.

5 ~~(5) A distribution ratio based on the factors listed in~~ ←
6 ~~paragraphs (1), (2), (3) and (4), in which the calculated total~~
7 ~~for each school district is divided by the aggregation of~~
8 ~~calculated totals for all school districts in this Commonwealth.~~

9 ~~(6) A calculation of the change in special education funding~~
10 ~~to be provided for each school district, in which the~~
11 ~~distribution ratio under paragraph (5) is multiplied by the~~
12 ~~Statewide total change in special education funding.~~

13 (5) A PROPORTIONAL SYSTEM FOR DISTRIBUTING THE CHANGE IN ←
14 SPECIAL EDUCATION FUNDING AMONG THE SCHOOL DISTRICTS, BASED ON
15 THE FACTORS LISTED IN PARAGRAPHS (1), (2), (3) AND (4).

16 ~~(7) (6) Other factors related to an accurate distribution of~~ ←
17 ~~special education funding.~~

18 (e) Prior to development of the special education formula
19 required under subsection (d), the commission shall:

20 (1) Consider nationally accepted accounting and budgeting
21 standards.

22 (2) In a timely manner, hold no fewer than three (3) public
23 hearings in different regions of this Commonwealth to receive
24 input and testimony from interested parties, which may include
25 the Secretary of Education and other individuals representing
26 the Department of Education, parents of eligible students,
27 teachers, school administrators, school board members, higher
28 education faculty and existing State committees, advisory panels
29 and task forces established under Federal or State law,
30 regulations or court orders.

1 (f) (1) Membership of the commission shall include twelve
2 (12) members, consisting of the chairman and minority chairman
3 of the Education Committee of the Senate, the chairman and
4 minority chairman of the Education Committee of the House of
5 Representatives and two (2) legislators from each of the four
6 (4) legislative caucuses, to be determined by the leadership of
7 each caucus and to be replaced at the discretion of the
8 leadership of each caucus. The commission may perform its duties
9 regardless of whether all four (4) legislative caucuses have
10 actually appointed members to the commission. The commission
11 shall choose a chairperson and utilize legislative staff for
12 assistance in developing the special education formula. The
13 Department of Education shall provide the commission with data,
14 research and other relevant information, upon request by the
15 commission.

16 (2) Members of the commission shall be appointed within
17 forty-five (45) days of the effective date of this section. The
18 commission shall hold its first meeting within ninety (90) days
19 of the effective date of this section. The commission shall
20 develop the special education formula required under subsection
21 (d) within one hundred twenty (120) days of the effective date
22 of this section, and shall issue a report of its findings to the
23 Governor, the President pro tempore of the Senate and Minority
24 Leader of the Senate, the Speaker of the House of
25 Representatives and the Minority Leader of the House of
26 Representatives, the Education Committee of the Senate and the
27 Education Committee of the House of Representatives, the
28 Secretary of Education and the State Board of Education.

29 (g) Upon completion of the commission's report, the State
30 Board of Education shall draft proposed regulations to implement

1 the special education funding provisions of this section using,
2 without alteration, the special education formula as developed
3 by the commission. If the commission does not issue the required
4 report within the required time period or if the commission's
5 report does not designate the special education formula required
6 under subsection (d), the State Board of Education shall in a
7 timely manner promulgate proposed regulations to designate the
8 special education formula through the regulatory review process.

9 (G.1) IN DEVELOPING THE SPECIAL EDUCATION FORMULA REQUIRED ←
10 UNDER SUBSECTION (D) AND IN ISSUING THE REPORT REQUIRED UNDER
11 SUBSECTION (F), THE COMMISSION SHALL ADDRESS THE DISTRIBUTION OF
12 ANY CHANGE IN SPECIAL EDUCATION FUNDING AMONG THE SCHOOL
13 DISTRICTS BUT SHALL NOT RECOMMEND THE ANNUAL LEVEL OF STATE
14 FUNDING WHICH, UNDER SUBSECTION (A), SHALL BE DETERMINED BY THE
15 GENERAL ASSEMBLY THROUGH THE ANNUAL APPROPRIATIONS PROCESS.

16 (h) In every fifth year subsequent to the initial
17 promulgation of the regulations implementing the special
18 education formula, the commission shall be reconstituted
19 pursuant to subsection (f) (1), shall meet and hold public
20 hearings to review the operation of the special education
21 funding provisions of this section, shall make a further report
22 and shall issue the report to the bodies and individuals listed
23 under subsection (f) (2). When in receipt of a further report
24 recommending changes to the special education formula, the State
25 Board of Education shall promulgate proposed regulations through
26 the regulatory review process to implement, without alteration,
27 any changes developed by the commission in the special education
28 formula.

29 (i) The commission shall receive input FROM INTERESTED ←
30 PARTIES, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, CHARTER AND

1 CYBER CHARTER SCHOOL OPERATORS, and gather information on THE ←
2 IDENTIFICATION OF CHILDREN AS ELIGIBLE STUDENTS BY CHARTER AND
3 CYBER CHARTER SCHOOLS. THE COMMISSION SHALL ALSO RECEIVE INPUT
4 AND GATHER INFORMATION ON charter and cyber CHARTER school ←
5 funding reimbursements regarding ~~special education~~ ELIGIBLE ←
6 students. The commission shall draft proposed regulations and
7 proposed legislation based on their findings.

8 (J) THE COMMISSION SHALL CONSIDER THE DEVELOPMENT, BY THE ←
9 DEPARTMENT OF EDUCATION, OF IMPROVED SYSTEMS FOR DOCUMENTING
10 STUDENT ENROLLMENT IN PUBLIC SCHOOLS, INCLUDING NEW METHODS FOR
11 DOCUMENTING AVERAGE DAILY MEMBERSHIP. THE COMMISSION, EITHER
12 INITIALLY OR WHEN RECONSTITUTED IN EVERY FIFTH YEAR, SHALL DRAFT
13 PROPOSED LEGISLATION BASED ON ITS CONSIDERATION OF THESE ISSUES
14 TO UPDATE THE SPECIAL EDUCATION FORMULA AS NEEDED TO MAINTAIN
15 ACCURATE STUDENT COUNTS FOR ELIGIBLE STUDENTS.

16 ~~(j)~~ (K) (1) The Department of Education shall set aside one ←
17 percent (1%) of the total State special education appropriation
18 in each year for extraordinary special education program
19 expenses under section 2509.8. The department shall utilize the
20 funds under section 2509.8(e) in order to meet, to the extent
21 that funds are available, extraordinary special education
22 expenses not anticipated through the special education funding
23 formula. School districts and charter AND CYBER CHARTER schools ←
24 may apply for resources through the fund under procedures
25 established by the department. The department shall make
26 payments from the fund in response to the applications.

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

30 (3) As used in this subsection, "extraordinary special

1 education expenses" shall mean expenses that result from needs
2 and circumstances of an eligible student with significant
3 disabilities which are not ordinarily present in a typical
4 special education service and program delivery system and which
5 have costs exceeding the school district or charter OR CYBER ←
6 CHARTER school funding for special education, in order to
7 provide the student with an appropriate education in the least
8 restrictive environment.

9 ~~(k)~~ (L) (1) To the extent that ~~funds are~~ SPECIAL EDUCATION ←
10 FUNDING IS appropriated IN THE 2013-2014 SCHOOL YEAR AND ANY ←
11 SUBSEQUENT SCHOOL YEAR by the General Assembly ABOVE THE AMOUNT ←
12 OF SPECIAL EDUCATION FUNDING IN THE BASE YEAR, the Department of
13 Education shall establish AND IMPLEMENT a competitive grant ←
14 program for school districts ~~or~~ AND charter schools meeting the ←
15 following criteria:

16 (i) Providing instruction within the regular classroom at
17 least eighty percent (80%) of the school day for at least sixty-
18 five percent (65%) of eligible students, as averaged for the two
19 (2) most recent school years for which data are available or
20 increasing the number of eligible students receiving instruction
21 within the regular classroom by at least fifteen percent (15%)
22 in the most recent school year for which data are available.

23 (ii) In the most recent school year for which data are
24 available, performance by eligible students on State academic
25 assessments in reading and math, averaged for the entire
26 district, meeting State standards for adequate yearly progress
27 by any method approved by the Federal and State governments,
28 such as meeting the annual target, the confidence interval, the
29 safe harbor target or by appeal.

30 (iii) Implementing programs or services that serve as a

1 model of excellence for meeting high standards for inclusion and
2 student achievement through quality special education.

3 (2) The Department of Education shall develop guidelines for
4 the administration of the grant program established under this
5 subsection, which shall be allocated to school districts AND ←
6 CHARTER SCHOOLS on a competitive basis.

7 (3) The Department of Education shall issue an annual report
8 to the General Assembly documenting use of the grants issued
9 under paragraph (1) and shall give public notice about the
10 report.

11 (4) Nothing under paragraph (1) or any other provision of
12 this act shall alter Federal or State law regarding the
13 protections provided to an eligible student for receiving
14 education in the least restrictive environment or shall alter
15 the legal authority of individualized education program teams to
16 make appropriate program and placement decisions for eligible
17 students in accordance with the individualized education program
18 developed for each eligible student.

19 Section 2509.14. Special Education Funding for Eligible
20 Students with Disabilities in Category 3.--(a) For the
21 2014-2015 school year and each school year thereafter, the
22 Department of Education shall set aside an amount equal to one
23 percent (1%) of the State special education appropriation above
24 the level of the appropriation in the base year. The Department
25 of Education shall distribute this amount as provided in
26 subsection (b).

27 (b) For the 2014-2015 school year and each school year
28 thereafter, each school district in this Commonwealth shall
29 receive a pro rata share of the amount set aside under
30 subsection (a) based upon the number of eligible students

1 residing or enrolled in each school district and classified in
2 category 3 during the immediately preceding school year.

3 (c) The funding provided under this section shall be
4 accounted for as part of actual special education spending and
5 as part of the special education allocation received by a school
6 district, according to the definitions in section 2501. School
7 districts shall also account for the funding provided under this
8 section and the resulting services and supports for eligible
9 students through the special education plans, revisions, updates
10 and amendments required by section 2509.15.

11 (D) AMOUNTS SET ASIDE BY THE DEPARTMENT OF EDUCATION FROM
12 THE STATE SPECIAL EDUCATION APPROPRIATION SHALL NOT EXCEED THE
13 FOLLOWING:

14 (1) ONE PERCENT (1%) OF THE TOTAL STATE SPECIAL EDUCATION
15 APPROPRIATION FOR EXTRAORDINARY SPECIAL EDUCATION PROGRAM
16 EXPENSES PURSUANT TO SECTIONS 2509.8 AND 2509.13(K) (1); AND

17 (2) ONE PERCENT (1%) OF THE STATE SPECIAL EDUCATION
18 APPROPRIATION ABOVE THE LEVEL OF APPROPRIATION IN THE BASE YEAR
19 PURSUANT TO SUBSECTION (A).

20 Section 2509.15. Special Education Accountability.--(a) (1)
21 The Department of Education shall determine the form and manner
22 in which school districts shall submit a special education plan
23 and revisions, updates and amendments to the special education
24 plan under this section. The special education plan shall be
25 consistent with other existing plans and reports required by the
26 department to the greatest extent possible. Special education
27 plans shall be written in a manner that is easy to use and
28 understand by parents and the public, including a general
29 summary.

30 (2) The Department of Education shall:

- 1 (i) review the special education plans and revisions,
2 updates and amendments;
3 (ii) provide recommendations and technical assistance to
4 school districts;
5 (iii) approve or disapprove the plan within ninety (90)
6 calendar days of receipt; and
7 (iv) provide a written explanation when disapproving a plan.

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

11 (i) meet the requirements of this section;

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

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

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

30 (v) describe policies of the school district to ensure that

1 a student identified as having a disability is no longer
2 identified as such if the student no longer qualifies under 22
3 Pa. Code Ch. 14 (relating to special education services and
4 programs), or any successor regulation.

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

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

23 (b) (1) By April 15, 2012 2013, and by April 15 of each ←
24 year thereafter, each school district receiving an increase in
25 its State special education funding allocation of more than the
26 index shall update its special education plan based on overall
27 circumstances, shall also revise the special education plan to
28 show in detail how the increase above the index will be used and
29 shall submit the updates and revisions to the Department of
30 Education for approval under subsection (a). Unless a school

1 district decides to amend its special education plan more
2 broadly to reflect the receipt of new funding, the department
3 shall allow a district to meet the requirements of this section
4 by adding the mandated information as an appendix to the
5 existing plan.

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

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

16 (i) curricula adaptation;

17 (ii) coteaching;

18 (iii) assistive technology;

19 (iv) school-wide positive behavior supports;

20 (v) supplementary aids and services;

21 (vi) professional development;

22 (vii) reading specialist services and supports;

23 (viii) reducing caseloads for special education teachers and
24 related services personnel; and

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

28 (4) Nothing under this subsection shall be construed to
29 require school districts to implement only the programs and
30 supports included in the guidelines issued by the Department of

1 Education.

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

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

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

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

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

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

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

28 (D) determine whether to withhold up to five percent (5%) of
29 all State special education funding for school districts
30 identified under this clause while the identified problems

1 remain unresolved.

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

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

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

25 (II) NOTHING IN THIS PARAGRAPH OR ANY OTHER PROVISION OF ←
26 THIS ACT SHALL BE CONSTRUED TO ALTER FEDERAL OR STATE LAW
27 REGARDING THE PROTECTIONS PROVIDED TO AN ELIGIBLE STUDENT FOR
28 RECEIVING EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT OR
29 ALTER THE LEGAL AUTHORITY OF INDIVIDUALIZED EDUCATION PROGRAM
30 TEAMS TO MAKE APPROPRIATE PROGRAM AND PLACEMENT DECISIONS FOR

1 ELIGIBLE STUDENTS IN ACCORDANCE WITH THE INDIVIDUALIZED
2 EDUCATION PROGRAM DEVELOPED FOR EACH ELIGIBLE STUDENT.

3 (d) IN RENDERING A DECISION OR DETERMINING REMEDIAL ACTION ←
4 UNDER THIS SECTION, THE DEPARTMENT OF EDUCATION SHALL CONSIDER
5 EXTRAORDINARY CIRCUMSTANCES WHICH A SCHOOL DISTRICT SUBJECT TO
6 REVIEW IS EXPERIENCING, INCLUDING A SUBSTANTIAL REDUCTION IN
7 FEDERAL OR STATE FUNDS OR OTHER FACTORS BEYOND THE CONTROL OF
8 THE SCHOOL DISTRICT. The Department of Education shall issue to
9 any affected school district a notice specifying the
10 department's decisions and actions under this section and the
11 rationale for the decisions and actions. A school district may
12 file a written response to the department about the department's
13 decisions and actions regarding the district made under this
14 section. The written response must be submitted to the
15 department within thirty (30) calendar days of the department's
16 notice or within thirty (30) calendar days of receiving the
17 notice, whichever is greater. The department shall consider the
18 written response, consult with the school district and, within
19 thirty (30) calendar days after receiving the written response,
20 issue a written decision addressing the concerns and claims made
21 in the written response, explaining the judgment of the
22 department in response to these concerns and claims, and
23 specifying the opportunity to appeal this matter to the
24 Secretary of Education for a hearing under 2 Pa.C.S. Chs. 5
25 Subch. A (relating to practice and procedure of Commonwealth
26 agencies) and 7 Subch. A (relating to judicial review of
27 Commonwealth agency action) and 1 Pa. Code Pt. II (relating to
28 general rules of administrative practice and procedure). If
29 requested, the Secretary of Education shall convene a hearing
30 within thirty (30) calendar days after receipt of a school

1 district's hearing request. The Secretary of Education shall
2 render a written hearing decision within thirty (30) calendar
3 days following the hearing.

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

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

10 (g) Notwithstanding any other provision of this section, ~~if~~ ←
11 ~~insufficient funds are appropriated for purposes of section~~
12 ~~2509.13 for the 2011-2012 school year, the requirements of this~~
13 section shall be waived UNTIL THE GENERAL ASSEMBLY APPROPRIATES ←
14 SPECIAL EDUCATION FUNDING ABOVE THE AMOUNT OF SPECIAL EDUCATION
15 FUNDING IN THE BASE YEAR AND ON THE EFFECTIVE DATE OF THE
16 APPROPRIATION THE REQUIREMENTS OF THIS SECTION SHALL APPLY FOR
17 THAT SCHOOL YEAR AND FOR EACH SCHOOL YEAR THEREAFTER.

18 Section 2509.16. Data Collection.--Using existing resources
19 and data systems as well as nationally accepted accounting and
20 modeling standards, the Department of Education shall collect
21 data necessary for accurate functioning of the special education
22 formula developed under section 2509.13, including, but not
23 limited to, data necessary for the calculations related to
24 category 1, category 2 and category 3 as part of the formula
25 developed by the commission. The Department of Education shall
26 begin collecting such data upon the effective date of this
27 section.

28 Section 2509.17. Restructuring.--(a) The commission shall
29 study whether and the manner in which State and regional
30 administration of special education programs and services may be

1 restructured to reduce the cost of administering special
2 education programs and services by at least ten percent (10%) of
3 the cost of administering special education programs and
4 services in the base year and shall report its findings and
5 recommendations, including recommended legislation and options
6 to redirect administrative cost savings to school districts
7 through the formula developed under section 2509.13(d), to the
8 Governor and the General Assembly in the report required under
9 section 2509.13(f)(2).

10 (b) Nothing under subsection (a) or any other provision of
11 this act shall alter Federal or State law regarding the
12 protections provided to an eligible student for receiving
13 education in the least restrictive environment or shall alter
14 the legal authority of individualized education program teams to
15 make appropriate program and placement decisions for eligible
16 students in accordance with the individualized education program
17 developed for each eligible student.

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

21 Section 4. This act shall take effect immediately.