

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 470 Session of 2013

INTRODUCED BY BROWNE, DINNIMAN, FOLMER, PILEGGI, TOMLINSON, VANCE, GREENLEAF, BOSCOLA, WAUGH, STACK, TEPLITZ, BAKER, YUDICHAK, SMUCKER, BLAKE, BREWSTER, ERICKSON, FARNESE, FONTANA, HUGHES, RAFFERTY, YAW, ARGALL, WASHINGTON, FERLO, EICHELBERGER, SOLOBAY AND BRUBAKER, FEBRUARY 8, 2013

REFERRED TO EDUCATION, FEBRUARY 8, 2013

AN ACT

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

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

14 Section 1. The act of March 10, 1949 (P.L.30, No.14), known  
 15 as the Public School Code of 1949, is amended by adding a  
 16 section to read:

17 Section 122. Special Education Funding Commission.--(a)  
 18 There is hereby established a Special Education Funding  
 19 Commission.

20 (b) The Special Education Funding Commission shall review  
 21 and make recommendations related to special education funding as

1 provided in this section.

2 (c) (1) The commission shall consist of the following  
3 members:

4 (i) The chair and minority chair of the Education Committee  
5 of the Senate and the chair and minority chair of the Education  
6 Committee of the House of Representatives, or their designees.

7 (ii) Two (2) legislators from each of the four (4)  
8 legislative caucuses, to be appointed by the President pro  
9 tempore of the Senate and the Speaker of the House of  
10 Representatives, in consultation with the Majority and Minority  
11 Leaders of the Senate and the Majority and Minority Leaders of  
12 the House of Representatives.

13 (iii) The Secretary of Education, or a designee.

14 (iv) The Secretary of the Budget, or a designee.

15 (v) The Deputy Secretary for Elementary and Secondary  
16 Education, or a designee.

17 (2) The commission shall appoint a member to serve as chair  
18 of the commission.

19 (d) The commission shall hold its first meeting within  
20 thirty (30) days of the effective date of this section,  
21 regardless of whether the Governor or all legislative caucuses  
22 have actually approved members to the commission.

23 (e) The commission shall hold meetings at the call of the  
24 chair.

25 (f) The members may not receive compensation for their  
26 services, but shall be reimbursed for all necessary travel and  
27 other reasonable expenses incurred in connection with the  
28 performance of their duties as members of the commission.

29 (g) The General Assembly shall provide administrative  
30 support, meeting space and any other assistance required by the

1 commission to carry out its duties under this section in  
2 cooperation with the department. The department shall provide  
3 the commission with data, research and other information upon  
4 request by the commission.

5 (h) The commission shall develop a special education formula  
6 and identify factors that may be used to determine the  
7 distribution of a change in special education funding among the  
8 school districts in this Commonwealth.

9 (i) The commission shall have all of the following powers  
10 and duties:

11 (1) Review and make findings and recommendations related to  
12 special education funding in this Commonwealth.

13 (2) Consult with and utilize experts to assist in carrying  
14 out the duties under this subsection.

15 (3) Receive input from interested parties, including, but  
16 not limited to, charter and cyber charter school operators, and  
17 gather information on the identification of children as eligible  
18 students by charter and cyber charter schools. The commission  
19 shall also receive input and gather information on charter and  
20 cyber charter school funding reimbursements regarding eligible  
21 students. The commission shall draft proposed regulations and  
22 proposed legislation based on its findings.

23 (4) Hold public hearings in different regions of this  
24 Commonwealth.

25 (5) Issue a report of its findings and recommendations to  
26 the Governor, the President pro tempore of the Senate, the  
27 Majority Leader and Minority Leader of the Senate, the Education  
28 Committee of the Senate, the Speaker of the House of  
29 Representatives, the Majority Leader and Minority Leader of the  
30 House of Representatives, the Education Committee of the House

1 of Representatives, the Secretary of Education and the State  
2 Board of Education not later than September 30, 2013.

3 (6) Determine the factors under this paragraph that may  
4 include all of the following:

5 (i) Three (3) cost categories of eligible students,  
6 established so that students with disabilities typically  
7 requiring the least-intensive range of services would comprise  
8 Cost Category 1, students with disabilities typically requiring  
9 a middle range of services would comprise Cost Category 2 and  
10 students with disabilities typically requiring the most  
11 intensive range of services would comprise Cost Category 3. The  
12 commission shall determine a description of and parameters for  
13 each of the three (3) cost categories.

14 (ii) A student count for each school district averaged for  
15 each of the three (3) most recent years for each cost category  
16 of eligible students. For Cost Category 3, the number of  
17 eligible students residing or enrolled in the school district  
18 and classified in Cost Category 3 shall be calculated in a  
19 manner that limits the potential incentive for school districts  
20 to overidentify, except for the number of eligible students who  
21 are placed by the school district and served in public or  
22 private separate schools, residential placements or homebound or  
23 hospital placements.

24 (iii) A weighting factor that differs for each of the three  
25 (3) cost categories of students with disabilities based on the  
26 typical range of services for each cost category.

27 (iv) Adjustments for any of the following:

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

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

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

5 (v) A proportional system for distributing the changes in  
6 special education funding among the school districts, based on  
7 factors listed in this section.

8 (vi) Development and implementation by the department of  
9 improved systems for collecting and documenting student  
10 enrollment and membership in public schools, including revised  
11 methods for calculating average daily membership.

12 (vii) Other factors related to the distribution of special  
13 education funding.

14 (7) Review and consider special education funding factors  
15 utilized throughout the United States.

16 (8) In developing the special education funding factors  
17 under subsection (h) and in completing the report required under  
18 this subsection, consider the impact these factors may have on  
19 the distribution of special education funding among the school  
20 districts.

21 (9) Review the administration of State and regional special  
22 education programs and services to determine if cost savings may  
23 be achieved and make recommendations to implement the savings.

24 (10) Consult with and utilize experts to assist the  
25 commission in carrying out the duties under this subsection.

26 (11) Prior to recommending a special education formula under  
27 this section, consider nationally accepted accounting and  
28 budgeting standards.

29 (j) The special education formula developed by the  
30 commission shall not go into effect unless the formula is

1 approved by an act of the General Assembly enacted after the  
2 effective date of this section.

3 (k) Every five years the commission shall be reconstituted  
4 in accordance with subsection (c) and shall meet and hold public  
5 hearings to review the operation of the special education  
6 funding provisions of this section, shall make a further report  
7 and shall issue the report to the recipients listed in  
8 subsection (i) (5). When in receipt of a further report  
9 recommending changes to the special education funding formula,  
10 the General Assembly shall consider and take action to enact the  
11 formula into law in accordance with subsection (j).

12 (l) The General Assembly shall, through the annual  
13 appropriations process, determine the level of State funding for  
14 special education and the amount of any change in funding. The  
15 special education formula developed under this section shall  
16 determine only the distribution of any increase in special  
17 education funding among the school districts of this  
18 Commonwealth above the amount of special education funding in  
19 the base year and shall not be used for any other purpose.

20 (m) Notwithstanding any provision of law to the contrary,  
21 for the 2013-2014 school year and each school year thereafter,  
22 any State funding for special education in an amount that does  
23 not exceed the amount of State funding for special education in  
24 the base year shall be allocated in the same manner as the State  
25 funding was allocated in the base year.

26 (n) As used in this section, the following words and phrases  
27 shall have the meanings given to them in this subsection unless  
28 the context clearly indicates otherwise:

29 "Base year." Fiscal year 2010-2011.

30 "Commission." The Special Education Funding Commission

1 established under this section.

2 "Department." The Department of Education of the  
3 Commonwealth.

4 Section 2. Section 2501(26) of the act, added July 9, 2008  
5 (P.L.846, No.61), is amended and the section is amended by  
6 adding clauses to read:

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

9 \* \* \*

10 (26) "Actual Spending." An amount equal to a school  
11 district's total expenditures to include General Fund  
12 expenditures in all functional classifications, as designated in  
13 the Manual of Accounting and Related Financial Procedures for  
14 Pennsylvania School Systems, except for:

- 15 (i) actual special education spending;
- 16 (ii) adult education;
- 17 (iii) higher education;
- 18 (iv) student transportation;
- 19 (v) community services;
- 20 (vi) scholarships and awards;
- 21 (vii) facilities acquisition;
- 22 (viii) construction and improvement services; and
- 23 [(ix) other expenditures and financing uses; and]
- 24 (x) tuition from patrons revenue.

25 \* \* \*

26 (31) "Actual Special Education Spending." An amount equal to  
27 a school district's total annual expenditures for special  
28 education as established by the Department of Education and  
29 designated in the Manual of Accounting and Related Financial  
30 Procedures for Pennsylvania School Systems. The amount shall not

1 include expenditures that are exclusively for gifted students  
2 who do not receive special education pursuant to an  
3 individualized education program.

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

7 (33) "Performance Indicators." Measurable annual objectives  
8 established by the Department of Education pursuant to section  
9 612(a)(15) of the Individuals with Disabilities Education Act  
10 (Public Law 91-230, 20 U.S.C. § 1412(a)(15)) to assess progress  
11 toward achieving State goals for the performance of eligible  
12 students.

13 (34) "Public Access." Full and timely release of information  
14 and documents for public access at a minimum through publication  
15 by the Department of Education:

16 (i) in the Pennsylvania Bulletin;

17 (ii) on the Department of Education's publicly accessible  
18 Internet website for no less than a duration of twelve (12)  
19 months; and

20 (iii) through the Department of Education's timely issuance  
21 of a related Statewide press release.

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

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

28 (37) "Special Education Plan." A comprehensive plan as well  
29 as revisions, updates and amendments for all special education  
30 personnel, programs, services and supports provided by each



1 school district for eligible students, filed by each district  
2 with the Department of Education under this act and other  
3 applicable Federal and State law.

4 (38) "Base Year." Fiscal year 2010-2011 or another year  
5 designated by statute.

6 (39) "Special Education Allocation." The amount of special  
7 education funding received by a school district from the  
8 Commonwealth.

9 Section 3. The act is amended by adding sections to read:

10 Section 2509.13. Special Education Funding for Student  
11 Achievement and Instruction of Eligible Students.--(a) (1) The  
12 Department of Education shall utilize the funds under section  
13 2509.8(e) in order to meet, to the extent that funds are  
14 available, extraordinary special education expenses not  
15 anticipated through the special education funding formula.  
16 School districts and charter and cyber charter schools may apply  
17 for resources through the fund under procedures established by  
18 the Department of Education. The Department of Education shall  
19 make payments from the fund in response to the applications.

20 (2) The Department of Education shall issue a comprehensive  
21 annual report documenting use of the fund to the General  
22 Assembly and shall provide public access to the report.

23 (3) As used in this subsection, "extraordinary special  
24 education expenses" shall mean expenses that result from needs  
25 and circumstances of an eligible student with significant  
26 disabilities which are not ordinarily present in a typical  
27 special education service and program delivery system and which  
28 have costs exceeding the school district or charter or cyber  
29 charter school funding for special education, in order to  
30 provide the student with an appropriate education in the least

1 restrictive environment.

2 (b) (1) To the extent that funds are appropriated any year  
3 by the General Assembly, the Department of Education shall  
4 establish and implement a competitive grant program for school  
5 districts and charter schools meeting the following criteria:

6 (i) Providing instruction within the regular classroom at  
7 least eighty percent (80%) of the school day for at least sixty-  
8 five percent (65%) of eligible students, as averaged for the two

9 (2) most recent school years for which data are available or  
10 increasing the number of eligible students receiving instruction  
11 within the regular classroom by at least fifteen percent (15%)  
12 in the most recent school year for which data are available.

13 (ii) In the most recent school year for which data are  
14 available, performance by eligible students on State academic  
15 assessments in reading and math, averaged for the entire  
16 district, meeting State standards for adequate yearly progress  
17 by any method approved by the Federal and State governments,  
18 such as by meeting the annual target, the confidence interval or  
19 the safe harbor target or by appeal.

20 (iii) Implementing programs or services that serve as a  
21 model of excellence for meeting high standards for inclusion and  
22 student achievement through quality special education.

23 (2) The Department of Education shall develop guidelines for  
24 the administration of the grant program established under this  
25 subsection, which shall be allocated to school districts and  
26 charter schools on a competitive basis.

27 (3) The Department of Education shall issue an annual report  
28 to the General Assembly documenting use of the grants issued  
29 under paragraph (1) and shall provide public access to the  
30 report.

1 (4) Nothing under paragraph (1) or any other provision of  
2 this act shall alter Federal or State law regarding the  
3 protections provided to an eligible student for receiving  
4 education in the least restrictive environment or shall alter  
5 the legal authority of individualized education program teams to  
6 make appropriate program and placement decisions for eligible  
7 students in accordance with the individualized education program  
8 developed for each eligible student.

9 Section 2509.14. Special Education Funding for Eligible  
10 Students with Disabilities in Cost Category 3.--(a) For the  
11 2014-2015 school year and each school year thereafter, the  
12 Department of Education shall set aside an amount not less than  
13 one percent (1%) of the State special education appropriation  
14 above the level of the appropriation in the base year. The  
15 Department of Education shall distribute this amount as provided  
16 in subsection (b).

17 (b) For the 2014-2015 school year and each school year  
18 thereafter, each school district in this Commonwealth shall  
19 receive a pro rata share of the amount set aside under  
20 subsection (a) based upon the number of eligible students  
21 residing or enrolled in each school district and classified in  
22 Cost Category 3 during the immediately preceding school year.

23 (c) The funding provided under this section shall be  
24 accounted for as part of actual special education spending and  
25 as part of the special education allocation received by a school  
26 district, according to the definitions in section 2501. School  
27 districts shall also account for the funding provided under this  
28 section and the resulting services and supports for eligible  
29 students through the special education plans, revisions, updates  
30 and amendments required by section 2509.15.

1 Section 2509.15. Special Education Accountability.--(a) (1)  
2 The Department of Education shall determine the form and manner  
3 in which school districts shall submit a special education plan  
4 and revisions, updates and amendments to the special education  
5 plan under this section. The special education plan shall be  
6 consistent with other existing plans and reports required by the  
7 Department of Education to the greatest extent possible. Special  
8 education plans shall be written in a manner that is easy to use  
9 and understand by parents and the public, including a general  
10 summary.

11 (2) The Department of Education shall:

12 (i) review the special education plans and revisions,  
13 updates and amendments;

14 (ii) provide recommendations and technical assistance to  
15 school districts;

16 (iii) approve or disapprove the plan within ninety (90)  
17 calendar days of receipt;

18 (iv) provide a written explanation when disapproving a plan;  
19 and

20 (v) provide guidance related to plan resubmission.

21 (3) The Department of Education shall approve a special  
22 education plan and revisions, updates and amendments that in the  
23 determination of the Department of Education:

24 (i) meet the requirements of this section;

25 (ii) address the academic and developmental challenges for  
26 eligible students identified in the school district's most  
27 recent student achievement results and pursuant to performance  
28 indicators;

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

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

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

12 (5) The Secretary of Education shall involve as appropriate  
13 in special education monitoring, support, intervention,  
14 technical assistance and special education plan review by the  
15 Department of Education, the staff in relevant offices, bureaus  
16 and divisions of the Department of Education, as well as any  
17 other resources as appropriate.

18 (b) (1) Pursuant to the timetable set forth in section 218,  
19 each school district receiving an increase in its State special  
20 education funding allocation of more than the index shall update  
21 its special education plan by attaching the district's special  
22 education expenditures as reported on the annual financial  
23 reports and shall submit the updates and revisions to the  
24 Department of Education for approval under subsection (a). The  
25 Department of Education shall allow a district to meet the  
26 requirements of this section by adding the information as an  
27 appendix to the existing plan.

28 (2) School districts shall use State funds for programs and  
29 supports that expressly benefit eligible students educated in  
30 the least restrictive environment in accordance with Federal and

1 State law and contribute to achievement of performance  
2 indicators.

3 (3) The Department of Education shall identify resources for  
4 programs and supports that benefit eligible students and  
5 contribute to achievement of performance indicators and address  
6 the following areas or related areas:

7 (i) curricula adaptation;

8 (ii) coteaching;

9 (iii) assistive technology;

10 (iv) school-wide positive behavior supports;

11 (v) supplementary aids and services;

12 (vi) professional development;

13 (vii) reading services and supports;

14 (viii) caseload management for special education teachers  
15 and related services personnel; and

16 (ix) placing and serving eligible students in regular  
17 classrooms with supports in accordance with the individualized  
18 education program developed for each eligible student.

19 (4) The Department of Education shall make the resources  
20 identified in paragraph (3) available to all educational  
21 entities in this Commonwealth.

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

24 (1) The Department of Education shall issue to the General  
25 Assembly a comprehensive annual report on special education  
26 funding, special education plans, the implementation of 22 Pa.  
27 Code § 14.104 (relating to special education plans) and other  
28 special education accountability issues for public school  
29 entities serving eligible students and this Commonwealth.

30 (2) Upon disapproving a school district's special education

1 plan, update or revision, the Department of Education may  
2 withhold the portion of the annual State increase in special  
3 education funding which exceeds the index until a written  
4 special education plan, update or revision is approved.

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

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

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

12 (C) post on its Internet website each school district's  
13 progress on meeting student needs based on performance  
14 indicators; and

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

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

24 (4) (i) To discourage the inappropriate overidentification  
25 of children for special education, the Department of Education  
26 shall automatically conduct a thorough review of the special  
27 education plan of any school district with a substantially  
28 higher ratio of eligible students in the district to its average  
29 daily membership for all students than the State average, as  
30 established by the Department of Education, and of any district

1 where the ratio of eligible students in the school district to  
2 its average daily membership for all students in the most recent  
3 school year for which data is available has increased by more  
4 than ten percent (10%) over the previous year or of any district  
5 where the ratio has increased by an annual average of more than  
6 five percent (5%) during the most recent five-year period. The  
7 Department of Education may take remedial action, including  
8 withholding up to five percent (5%) of all State special  
9 education funding, if the Department of Education determines  
10 that a school district has overidentified children for special  
11 education.

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

20 (d) In rendering a decision or determining remedial action  
21 under this section, the Department of Education shall consider  
22 extraordinary circumstances which a school district subject to  
23 review is experiencing, including a substantial reduction in  
24 Federal or State funds or other factors beyond the control of  
25 the school district. The Department of Education shall issue to  
26 any affected school district a notice specifying the Department  
27 of Education's decisions and actions under this section and the  
28 rationale for the decisions and actions. A school district may  
29 file a written response to the Department of Education about the  
30 Department of Education's decisions and actions regarding the



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

22 (e) The Department of Education shall provide public access  
23 to 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) The requirements of this section shall be waived until  
29 the General Assembly appropriates special education funding  
30 above the amount of special education funding in the base year

1 and on the effective date of the appropriation the requirements  
2 of this section shall apply for that school year and for each  
3 school year thereafter.

4 Section 2509.16. Data Collection.--Using existing resources  
5 and data systems as well as nationally accepted accounting and  
6 modeling standards, the Department of Education shall collect  
7 data necessary for accurate functioning of a special education  
8 formula developed under section 122, including, but not limited  
9 to, data necessary for the calculations related to Cost Category  
10 1, Cost Category 2 and Cost Category 3 as part of the formula  
11 developed by the commission. The Department of Education shall  
12 begin collecting such data upon the effective date of this  
13 section.

14 Section 2509.17. Protections.--Nothing under the provisions  
15 of this act shall alter Federal or State law regarding the  
16 protections provided to an eligible student for receiving  
17 education in the least restrictive environment or shall alter  
18 the legal authority of individualized education program teams to  
19 make appropriate program and placement decisions for eligible  
20 students in accordance with the individualized education program  
21 developed for each eligible student.

22 Section 4. The Secretary of Education shall propose  
23 regulations for promulgation by the State Board of Education  
24 which implement the amendment or addition of the following  
25 provisions of the act:

- 26 (1) Section 122.  
27 (2) Section 2501(26), (31), (32), (33), (34), (35),  
28 (36), (37), (38) and (39).  
29 (3) Section 2509.13.  
30 (4) Section 2509.14.

1 (5) Section 2509.15.

2 (6) Section 2509.16.

3 (7) Section 2509.17.

4 Section 5. This act shall take effect immediately.