

No. 2013-3

AN ACT

HB 2

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

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

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

Section 122. Special Education Funding Commission.—(a) There is hereby established a Special Education Funding Commission.

(b) The Special Education Funding Commission shall review and make recommendations related to special education funding as provided in this section.

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

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

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

(iii) The Secretary of Education or a designee.

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

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

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

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

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

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

(g) The General Assembly shall provide administrative support, meeting space and any other assistance required by the commission to carry out

its duties under this section in cooperation with the department. The department shall provide the commission with data, research and other information upon request by the commission.

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

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

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

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

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

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

(5) Issue a report of its findings and recommendations to the Governor, the President pro tempore of the Senate, the Majority Leader and Minority Leader of the Senate, the Education Committee of the Senate, the Speaker of the House of Representatives, the Majority Leader and Minority Leader of the House of Representatives, the Education Committee of the House of Representatives, the Secretary of Education and the State Board of Education not later than September 30, 2013.

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

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

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

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

(iv) Adjustments for any of the following:

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

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

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

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

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

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

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

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

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

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

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

(j) The special education formula developed by the commission shall not go into effect unless the formula is approved by an act of the General Assembly enacted after the effective date of this section.

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

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

(m) Notwithstanding any provision of law to the contrary, for the 2013-2014 school year and each school year thereafter, any State funding for special education in an amount that does not exceed the amount of State

funding for special education in the base year shall be allocated in the same manner as the State funding was allocated in the base year.

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

"Base year." Fiscal year 2010-2011.

"Commission." The Special Education Funding Commission established under this section.

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

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

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

* * *

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

- (i) *actual* special education *spending*;
- (ii) adult education;
- (iii) higher education;
- (iv) student transportation;
- (v) community services;
- (vi) scholarships and awards;
- (vii) facilities acquisition;
- (viii) construction and improvement services; *and*
- [(ix) other expenditures and financing uses; and]
- (x) tuition from patrons revenue.

* * *

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

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

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

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

- (i) *in the Pennsylvania Bulletin;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2509.15. Special Education Accountability.—(a) (1) *The Department of Education shall determine the form and manner in which school districts shall submit a special education plan and revisions, updates and amendments to the special education plan under this section. The special education plan shall be consistent with other existing plans and reports required by the Department of Education to the greatest extent possible. Special education plans shall be written in a manner that is easy*

to use and understand by parents and the public, including a general summary.

(2) The Department of Education shall:

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

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

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

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

(v) provide guidance related to plan resubmission.

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

(i) meet the requirements of this section;

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

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

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

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

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

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

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

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

- (i) curricula adaptation;*
- (ii) coteaching;*
- (iii) assistive technology;*
- (iv) school-wide positive behavior supports;*
- (v) supplementary aids and services;*
- (vi) professional development;*
- (vii) reading services and supports;*
- (viii) caseload management for special education teachers and related services personnel; and*
- (ix) placing and serving eligible students in regular classrooms with supports in accordance with the individualized education program developed for each eligible student.*

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

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

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

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

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

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

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

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

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

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

(4) (i) To discourage the inappropriate overidentification of children for special education, the Department of Education shall automatically conduct a thorough review of the special education plan of any school district with a substantially higher ratio of eligible students in the district to its average daily membership for all students than the State average, as established by the Department of Education, and of any district where the ratio of eligible students in the school district to its average daily membership for all students in the most recent school year for which data

is available has increased by more than ten percent (10%) over the previous year or of any district where the ratio has increased by an annual average of more than five percent (5%) during the most recent five-year period. The Department of Education may take remedial action, including withholding up to five percent (5%) of all State special education funding, if the Department of Education determines that a school district has overidentified children for special education.

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

(d) In rendering a decision or determining remedial action under this section, the Department of Education shall consider extraordinary circumstances which a school district subject to review is experiencing, including a substantial reduction in Federal or State funds or other factors beyond the control of the school district. The Department of Education shall issue to any affected school district a notice specifying the Department of Education's decisions and actions under this section and the rationale for the decisions and actions. A school district may file a written response to the Department of Education about the Department of Education's decisions and actions regarding the district made under this section. The written response must be submitted to the Department of Education within thirty (30) calendar days of the Department of Education's notice or within thirty (30) calendar days of receiving the notice, whichever is later. The Department of Education shall consider the written response, consult with the school district and, within thirty (30) calendar days after receiving the written response, issue a written decision addressing the concerns and claims made in the written response, explaining the judgment of the Department of Education in response to these concerns and claims and specifying the opportunity to appeal this matter to the Secretary of Education for a hearing under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action) and 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure). If requested, the Secretary of Education shall convene a hearing within thirty (30) calendar days after receipt of a school district's hearing request. The Secretary of Education shall render a written hearing decision within thirty (30) calendar days following the hearing.

(e) The Department of Education shall provide public access to the decisions, actions and reports made under this section.

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

(g) The requirements of this section shall be waived until the General Assembly appropriates special education funding above the amount of

special education funding in the base year, and on the effective date of the appropriation the requirements of this section shall apply for that school year and for each school year thereafter.

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

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

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

- (1) Section 122.
- (2) Section 2501(26), (31), (32), (33), (34), (35), (36), (37), (38) and (39).
- (3) Section 2509.13.
- (4) Section 2509.14.
- (5) Section 2509.15.
- (6) Section 2509.16.
- (7) Section 2509.17.

Section 5. This act shall take effect immediately.

APPROVED—The 25th day of April, A.D. 2013

TOM CORBETT