

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION**

IN RE: APPOINTMENT OF A           :           CIVIL DIVISION  
RECEIVER FOR THE CHESTER       :           NO. 12-9781  
UPLAND SCHOOL DISTRICT         :

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2015, upon consideration of the  
Petition to Amend Chester Upland School District's Financial Recovery Plan filed  
by the District and the Pennsylvania Department of Education it is HEREBY  
ORDERED that the petition is GRANTED.

It is further ORDERED that the Receiver shall proceed with the initiatives  
set forth in the Amended Financial Recovery Plan that the Receiver filed with the  
Petition.

BY THE COURT:

\_\_\_\_\_  
J.

FILED  
2015 AUG 18 AM 11:37  
OFFICE OF  
JUDICIAL SUPPORT  
DELAWARE COUNTY

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION**

IN RE: APPOINTMENT OF A : CIVIL DIVISION  
RECEIVER FOR THE CHESTER : NO. 12-9781  
UPLAND SCHOOL DISTRICT :

**THE CHESTER UPLAND SCHOOL DISTRICT AND  
THE PENNSYLVANIA DEPARTMENT OF EDUCATION'S  
JOINT PETITION TO AMEND THE FINANCIAL RECOVERY PLAN**

Chester Upland School District (“District”) stands on a financial precipice because it does not have sufficient funds to operate for the 2015-16 school year. Bold action must be taken to address the enormous structural deficit facing the District.

The Receiver and the Secretary of Education<sup>1</sup> therefore submit this petition to amend the District’s financial recovery plan. Once approved by the Court, the amended plan will offer a first step toward long-term and sustainable financial stability and will allow the District to focus on providing access to high-quality education for all students in Chester Upland.

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<sup>1</sup> Given the commitments made by the Pennsylvania Department of Education described in the amended financial recovery plan, the Secretary joins in the submission of this petition.

## **I. Background**

### *a. Procedural History*

1. On August 14, 2012, then-Secretary of Education Ronald J. Tomalis issued a Declaration that the District is in financial recovery status as defined by section 621-A of the School Code, 24 P.S. § 6-621-A.

2. Pursuant to section 663-A(c)(2) of the School Code, 24 P.S. § 6-663-A(c)(2), and as a result of the District's Board of School Directors' vote to disapprove the Financial Recovery Plan, Secretary Tomalis filed a petition for appointment of a receiver under sections 663-A(c) and 671-A of the School Code. 24 P.S. §§ 6-663-A(c) and 6-671-A.

3. On December 13, 2012, the Court of Common Pleas of Delaware County granted Secretary Tomalis's petition for appointment of a receiver and named Joseph Watkins as Receiver for the District.

4. On January 8, 2015, then-Acting Secretary of Education Carolyn Dumaresq appointed Dr. Francis Barnes as Chief Recovery Officer ("CRO").

5. On June 22, 2015, Mr. Watkins submitted his resignation as Receiver to this Honorable Court. His resignation became effective on July 10, 2015.

6. On July 10, 2015, this Honorable Court appointed Dr. Barnes as Interim Receiver for the Chester Upland School District effective on July 10, 2015.

*b. The District's Bleak Financial Picture*

7. The District ended the 2014-15 school year with an accumulated deficit of \$23,785,830.

8. The District will end the 2015-16 school year with an accumulated deficit of \$46,306,669, if the District continues operating under the status quo.

9. According to PDE, the District has received \$74.25 million from the Commonwealth in extraordinary state aid over the past five years. It is PDE's contention that these extraordinary payments cannot continue to be made.

10. Based upon the District's dire financial state, immediate changes are needed to the District's Financial Recovery Plan to ensure that the District can operate for the full 2015-16 school year.

*c. The Receiver's Power to Amend the Financial Recovery Plan*

11. The Receiver is empowered with the authority to "[m]odify the financial recovery plan as necessary to restore the school district to financial stability by submitting a petition to the court of common pleas." 24 P.S. § 6-672-A(b)(5)(emphasis added).

12. Within seven days of the filing of a petition to modify the financial recovery plan, the court of common pleas shall issue a decision approving or disapproving the petition. 24 P.S. § 6-672-A(b)(5).

13. The petition to modify the recovery plan shall be approved, unless the court finds by clear and convincing evidence that the modification is arbitrary, capricious or wholly inadequate to restore the school district to financial stability. 24 P.S. § 6-672-A(b)(5).

## **II. Initiatives in the Amended Financial Recovery Plan**

14. The Receiver presents the proposed Amended Financial Recovery Plan, which is attached as Exhibit A.

15. The initiatives in the Amended Financial Recovery Plan will eliminate the District's structural deficit in the current year and beyond and put in place processes to reduce the District's accumulated debt and identify potential cost savings going forward.

16. The actions outlined in the Amended Financial Recovery Plan are needed now to ensure the District's viability for the entire 2015-16 school year.

17. These actions will allow the District to do things it has been unable to do for years, such as accessing capital markets, and engaging in long-term strategic debt planning.

### *a. Charter School Tuition Rates*

18. In order to restore the District to financial stability, the structural deficit must be addressed.

19. The District's entire structural deficit can be directly attributed to the tuition rates paid by the District for special education students in charter schools and students in cyber charter schools.

20. As discussed more fully in the accompanying memorandum of law and the Amended Financial Recovery Plan itself, these tuition rates—particularly for special education—are disproportionately higher for the District than any other school district sending students to the same schools. This is patently inequitable.

21. Aligning the special education tuition rates to the recommendations of the Special Education Funding Commission, and aligning the cyber charter tuition rates to the recommended rates charged by high-quality intermediate unit programs, wipes out the District's 2015-16 structural deficit.

22. The recommendations of the Special Education Funding Commission are set forth in their report, which is attached as Exhibit B.

23. The School District Financial Recovery Act, Act 141 of 2012, empowers the Receiver to modify legal obligations of the school district if ordered to do so by a court of competent jurisdiction or as provided in section 642-A(a)(3) (related to impairment of certain contractual obligations). *See* 24 P.S. § 6-672-A(c)(3).

24. Modifying charter school and cyber charter tuition rates will restore financial stability to the District.

25. It is necessary to employ this extraordinary power given the District's severe financial recovery status. 24 P.S. § 6-661-A.

*b. Forensic Audit and Ongoing Monitoring*

26. In order to reassure stakeholders that the District's funds have been expended properly, the District must undergo a forensic audit.

27. The forensic audit may also show whether District resources have been used efficiently and effectively.

28. The Receiver has the power to employ forensic auditors to conduct such an audit. *See* 24 P.S. §§ 6-641-A(4)(ii)(d); 642-A(a)(16); 672-A(b)(6).

29. The Pennsylvania Department of Education will fund the forensic audit, which is expected to conclude in approximately five months.

30. Public Financial Management is needed to continue to monitor the District's expenditures, cash flows, and payment processing to identify future cost savings.

*c. Financial Turnaround Specialist*

31. A financial turnaround specialist is needed to assist the Receiver in renegotiating contracts and payments for the 2015-16 fiscal year and mitigating accumulated debt from prior years.

32. A financial turnaround specialist may also assist the Receiver in addressing outstanding payables and seeking additional sources of funding.

33. The Receiver will develop goals for the financial turnaround specialist to ensure that school services and programs are not only maintained, but enhanced.

34. The Receiver has the power to employ a financial turnaround specialist to assist him in achieving greater financial savings for the District. See 24 P.S. §§ 6-641-A(h); 642-A(a)(16); 672-A(b)(6).

*d. Partial Forgiveness of PDE Transition Loan*

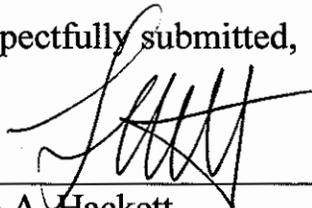
35. In the 2012-13 fiscal year, the District received a \$10,000,000 interest-free transitional loan from PDE pursuant to section 681-A of the School Code. 24 P.S. § 6-681-A.

36. The first repayment is due to PDE this fiscal year, in the amount of \$1,000,000.

37. To assist the District, the Receiver and PDE will work together to amend the loan agreement to reflect the repayment terms so the first payment is not due this fiscal year.

WHEREFORE, Receiver Dr. Francis V. Barnes and Secretary of Education Pedro A. Rivera respectfully request that this Honorable Court grant the Joint Petition to Amend Chester Upland School District's Financial Recovery Plan.

Respectfully submitted,

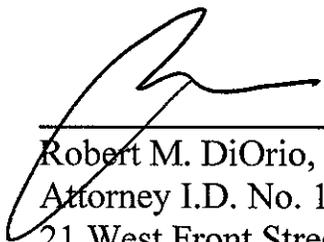


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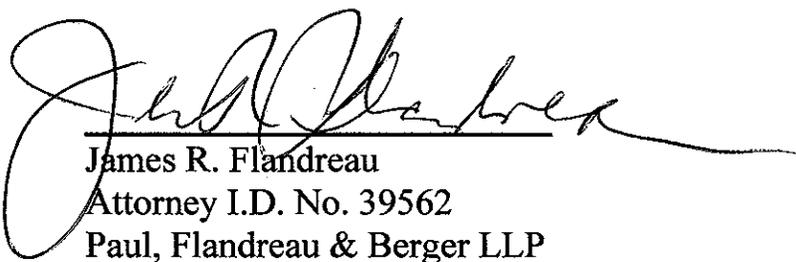
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*Counsel for Pennsylvania Department  
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Education Pedro Rivera*

Date: August 18, 2015

# Exhibit A

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# School District Financial Recovery Act

## Amended Recovery Plan

Chester Upland School District  
Delaware County, Pennsylvania  
Dr. Francis V. Barnes, Receiver

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August 18, 2015

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Introduction



# Introduction

## Overview

The Chester Upland School District (“CUSD” or “the District”) is financially unstable and academically distressed. It stands on a financial precipice, given an accumulated deficit caused by the failure to limit District expenditures, rising charter costs beyond the District’s control, and an over-reliance on 25 years of one-time cash infusions from the state, provided in addition to its share of formula-driven state subsidies. Since 2010-2011, the District has received \$74.25 million in state funding from these one-time infusions.

The District’s students deserve a quality education that cannot be provided under the constraints imposed by the District’s chronically poor financial situation. The Receiver therefore submits this bold emergency amended financial recovery plan, which will ensure greater accountability for the dollars spent by the District, equity in the way the District handles its limited resources, and is the first step in ensuring equal access for all District students to quality and meaningful education. Without the adoption of this plan to right size the District’s expenditures, the District will cease to exist.

As a first step, CUSD must hold itself accountable to its local and state community. Therefore, the Receiver seeks to conduct a thorough forensic audit of CUSD’s finances, eliminate the recurring annual structural deficit, and reduce existing payables. The Receiver will engage financial turnaround experts to assist the District in reorganizing its obligations, both existing and prospective. The audit and turnaround work will help the District regain its financial footing and put the District on a path towards living within the constraints of its operating revenue.

Currently, the District expends more in payments to charter schools than its total annual basic education subsidy. This tremendous expense is primarily attributable to inequitable formulas for determining charter school payments – particularly special education rates – which bear little relation to the actual costs to educate students. The District has a recurring and growing annual structural deficit that it cannot fix absent drastic action to address funds paid to charter schools. By paying charter schools inflated amounts for tuition, the students remaining in the District are left without the resources needed for a quality education. Allowing the status quo to continue would only reinforce the inequity.

Given the extraordinary and exigent circumstances CUSD now faces, the Receiver seeks to reduce the rates paid by the District to charter schools to better reflect the actual expenditures at those schools. The District can no longer afford to pay charter schools more than twice the amount it expends on its own students with special education needs. The formula is unfair and keeps the District in a perpetual state of deficit. Indeed, the District pays more to the charter schools for special education than any other surrounding school district that sends students to the same charter schools for special education. The average amount paid for a special education student at a charter school in the District is an astonishing \$40,315.42. This is the epitome of unfairness and inequity.

The District's fiscal troubles hamper its ability to provide consistent and high-quality education to students who reside within its borders. These students deserve equal access to quality education regardless of whether they choose to attend District or charter schools. The District must establish and maintain financial stability so that it can continue to exist. The Receiver is developing an educational recovery plan for submission to the court in the coming months. That plan and future academic success hinges on the ability of the Receiver to implement this emergency amended financial recovery plan and the ability of the District to make steady progress on its goals.

## Historical Perspective

For over two decades, the District has been subject to a succession of control boards under various commonwealth statutes. These boards were all appointed by the Commonwealth and each was charged with developing and implementing a corrective action plan.

Statutes governing distressed school districts have changed over time. In the 1990s, the statutes focused solely on fiscal distress. Subsequently, revisions to the statutes turned their focus to schools in academic distress. The District has repeatedly met the criteria for troubled finances and poor academic performance.

In 1994, for the first time, the District was certified as financially distressed when it amassed deficits in the two previous years of \$1.6 million and \$3.8 million. The District's problems stemmed from poor fiscal practices and management by the school board. A special board of control took over management in place of the elected school board and a financial turnaround was anticipated in two years.

In 1996, the then chairman of the State Board of Control predicted that "[t]he state can't fix the Chester schools. Chester has to fix itself. If Chester can't fix itself, then it probably won't be a school district."<sup>1</sup>

After a federal lawsuit was brought against the District in 1996, a federal master overseeing improvements in the District requested that the judge withhold \$2.7 million in state money and \$400,000 in federal money until progress was made to increase accountability and academics in the District. The judge denied that request siding with the superintendent who agreed to develop items that the District would focus on to comply with the federal order.

By 1997, community leaders were calling for the elected school board to retain control. The District's financial picture had temporarily improved, but a financial consultant warned that problems would persist without implementing drastic cost-cutting measures.

Under the Education Empowerment Act of 2000, the District was certified as an Education Empowerment District, thereby replacing the Board of Control established in 1994 with a three-

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<sup>1</sup> Langland, Connie and Dan Hardy. December 6, 1996. "District is Given a Bleak Review the Troubled Chester-Upland School District isn't Improving, A Judge was Told. Politics May Be Making Things Worse." *Philadelphia Inquirer*. [http://articles.philly.com/1996-12-06/news/25641573\\_1\\_state-education-officials-chester-upland-school-district-federal-court](http://articles.philly.com/1996-12-06/news/25641573_1_state-education-officials-chester-upland-school-district-federal-court)

member Empowerment Board of Control. This board appointed an eleven-member team to develop a plan to improve the academic performance of the District.

At this point, the District's outstanding long-term debt approached \$15 million; by 2001, this figure reached approximately \$40 million. The District's outstanding long-term debt more than doubled again to approximately \$85 million by 2005.

In 2006, the court appointed the then Secretary of Education as a Receiver to provide financial oversight of the District after the Commonwealth sued the District arguing that the control board had failed to provide an adequate education for children and good fiscal management for the District. As Receiver, the Secretary had the ability to veto most spending and broad authority to monitor district affairs.

By 2008, charter costs were significantly impacting District finances as approximately half of the students in the district attended a charter school. Charter finances were also called into question. Specifically, the Department asked Chester Community Charter School to provide information on its finances, including how much of their budget was spent on administration versus teaching.

In 2010, the elected school board took over control after the Education Empowerment law expired. For the first time in 16 years, local officials were in charge of the District. Despite the renewed hope in local control, the Commonwealth was forced to provide \$5 million in extraordinary funding to the District. Even with that additional funding, the District's expenditures still exceeded its revenues by nearly \$19 million, eliminating almost \$6 million in available funding and ending the school year with a negative fund balance of over \$12 million.

In 2011-12, due to new financial challenges resulting from state funding cuts of more than \$20 million, the District was forced to lay off more than 40 percent of its staff to remain open. Despite these local efforts, by December 2011, the District announced that it would not be able to make payroll in January. Meanwhile, the Commonwealth contended that state law required them to send subsidies directly to charter schools, rather than to the District, leaving the District broke.

The District successfully brought legal action against the Commonwealth to compel payment directly to the District. In the meantime, teachers agreed to work without pay to ensure students still received an education. In a related action in federal court in 2012, the Commonwealth entered into a settlement agreement that required the expenditure of state funds to maintain appropriate services for special education students. By the close of 2011-12, the Commonwealth had infused nearly \$21.9 million in extraordinary funding into the District.

Act 141, the School District Financial Recovery Law, is the most current iteration of the Commonwealth's authority to intervene in distressed schools. In 2012, the then Secretary of Education issued a declaration placing the District in financial recovery status and a Chief Recovery Officer was appointed. The Chief Recovery Officer developed a multi-year plan for recovery, which proposed to cut costs to balance the budget. When the elected school board rejected the plan, the Delaware County Court of Common Pleas appointed Joseph Watkins as Receiver. The Receiver appointed a new superintendent and focused on academic recovery.

In 2012-13, the Commonwealth provided an additional \$16.5 million in extraordinary funding to the District. As a result, the District accumulated nearly \$5 million in their fund balance. By the following year, that fund balance would be gone.

In 2013-14, the Commonwealth gave the District \$8.5 million in extraordinary revenue. Despite these additional funds, the District ended the fiscal year with a \$14 million deficit. Even with the available balance from the previous year to offset expenditures, the District ended the school year with a negative fund balance of nearly \$9 million.

In 2014-15, the Commonwealth provided almost \$19 million in extraordinary funding to the District, but again expenditures exceeded revenues, this year in an estimated amount of nearly \$15 million. The District ended the school year with an estimated negative fund balance of almost \$24 million.

Joseph Watkins resigned as Receiver in 2015, and the court appointed Dr. Francis Barnes to the position. In the 2015-16 school year, even assuming the state funding restorations proposed in the Governor’s budget, the District will end the year with an estimated negative fund balance in excess of \$46 million, unless significant changes are made.

Despite over \$74.25 million in extraordinary funding above and beyond the traditional education subsidies provided by the Commonwealth since 2010-11, the District continues to be in serious financial despair.

## Financial Highlights

	2012-13 Actual	2013-14 Actual	2014-15 Forecast	2015-16 Budget
Ordinary Revenues	\$100,019,672	\$101,726,872	\$102,895,741	\$112,611,832
Extraordinary Funding	\$6,500,000	\$8,503,540	\$13,954,143	\$3,712,266
State Transitional Loan Proceeds	\$10,000,000		\$4,665,000	
<b>Total Revenues</b>	<b>\$116,519,672</b>	<b>\$110,230,412</b>	<b>\$121,514,884</b>	<b>\$116,324,098</b>
<b>Total Expenditures</b>	<b>\$116,753,700</b>	<b>\$124,283,994</b>	<b>\$136,489,316</b>	<b>\$139,094,937</b>
<b>Annual Structural Deficit</b>	<b>(\$234,028)</b>	<b>(\$14,053,582)</b>	<b>(\$14,974,432)</b>	<b>(\$22,770,839)</b>
<b>Net Other Financing Uses</b>	<b>\$2,996,952</b>	<b>\$422,612</b>		<b>\$250,000</b>
<b>Ending Fund Balance</b>	<b>\$4,819,572</b>	<b>(\$8,811,398)</b>	<b>(\$23,785,830)</b>	<b>(\$46,306,669)</b>

*Source: Pennsylvania Department of Education in consultation with the Chester Upland School District*

### Definitions of Terms

In order to understand the District’s complex finances, it is helpful to have common terminology. The following phrases are described so that readers have common understanding of how they are used in this Plan. The usage here may differ slightly from other financial documents.

*Accumulated Deficit* - The cumulative total of the deficit of the District including current and prior operating years. Accumulated deficit is synonymous with negative fund balance.

*Annual Structural Deficit* - The annual difference between current year revenue and current year expenditures of the District that is expected to recur in subsequent years. Does not include one-time events. Does not include either positive or negative balances from prior years. Could also be called recurring deficit.

*Ending Fund Balance* - Current year revenues minus expenditures plus net other financing uses plus ending fund balance from the prior year.

*Extraordinary Funding* –Funding from the Commonwealth that has been provided to the Chester Upland School District or to charter schools with CUSD students on a non-recurring basis, in excess of its formula-driven state subsidies. This funding has included additional one-time state subsidies, settlement monies and transitional loans.

### **Recovery Plan Initiatives:**

- Eliminate the recurring structural deficit.
- Reduce the accumulated deficit.
- Adjust the tuition rate for regular and special education students in cyber charter schools.
- Adjust the tuition rate for special education students in all charter schools.
- Conduct a forensic audit.
- Delay and restructure payment terms of Transitional Loan.
- Ensure timely implementation of the plan through ongoing monitoring of District operations.



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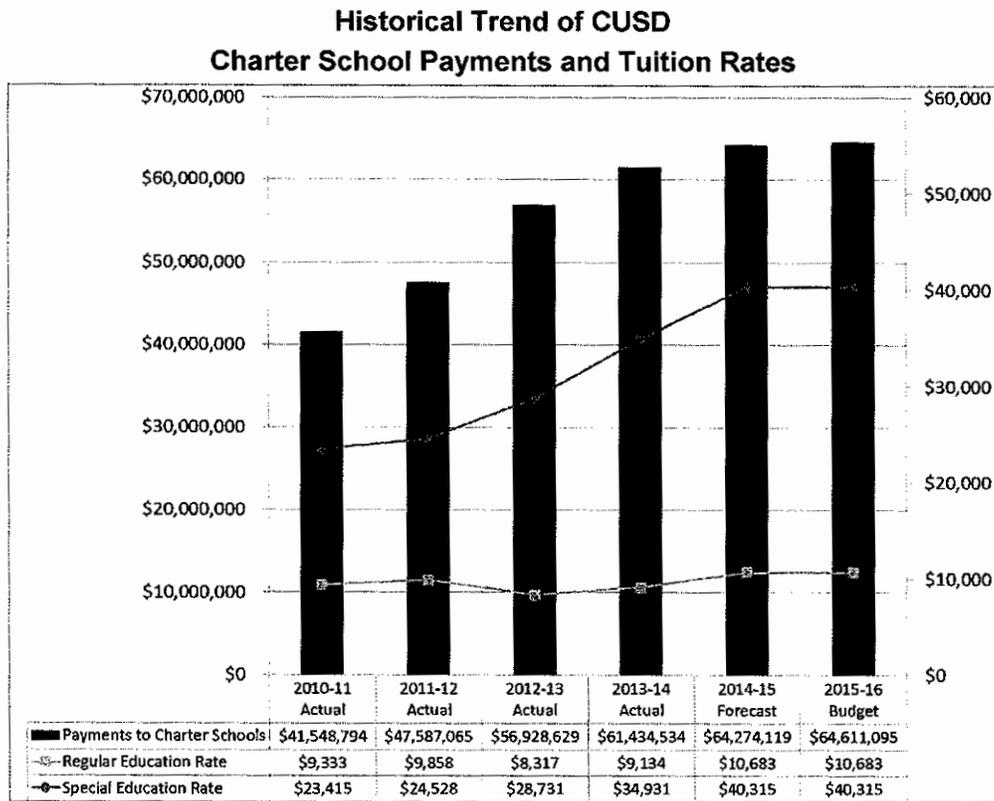
## Charter School Funding Reforms

# Charter School Funding Reforms

A significant ongoing problem for CUSD has been the growth and development of charter schools. The development of charters has not only caused fiscal chaos, but also created difficulties in planning and managing the District in areas ranging from estimated class size to transportation.

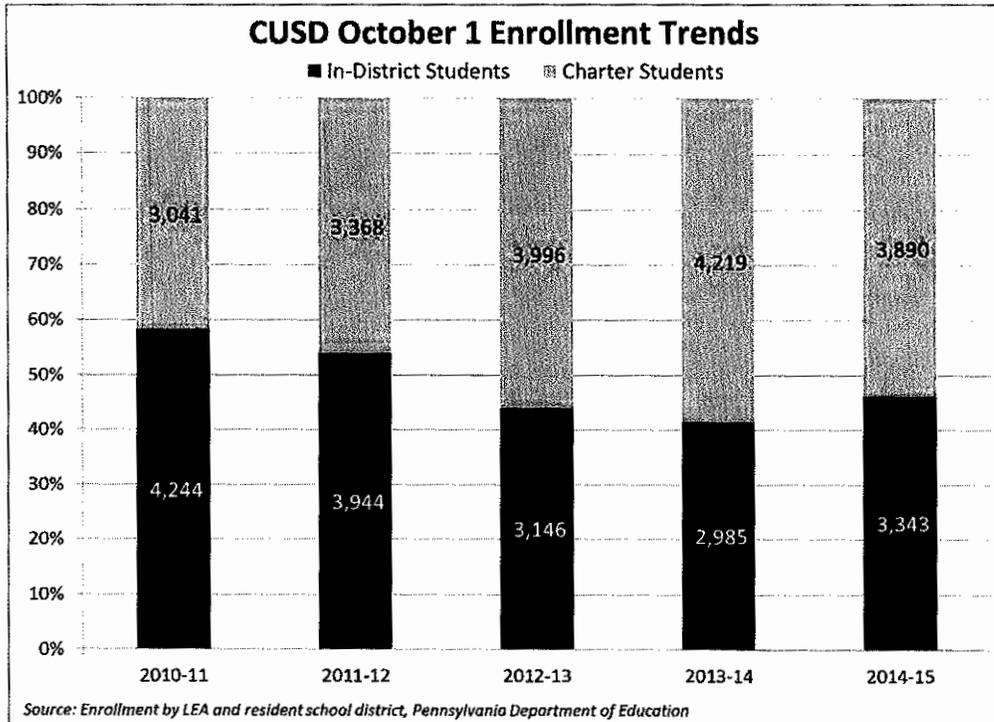
## Financial Impact of Charter Schools on the District

A major factor in the District’s accelerated financial deterioration is the increasing payments to charter schools. The table below reflects the total payments to charter schools and the growth of the charter school tuition rates.



*Source: Pennsylvania Department of Education*

Even though tuition rates have been increasing, they are not the sole reason that payments to charter schools have increased so dramatically. The other driving force is growing charter enrollment in the District. The number of charter students increased by 28 percent from 2010-11 to 2014-15.



## Initiatives

CR01.	Special Education Rate for Brick-and-Mortar Charter Schools	
	Target outcome:	Implement special education rate calculations proposed by the Special Education Funding Commission for special education students in brick-and-mortar charter schools to better reflect the charter schools' actual expenses and student counts, and realize an estimated cost savings to the District of \$20.7 million in 2015-16
	Responsible party:	Receiver, Pennsylvania Department of Education

The largest obstacle to the District's efforts to achieve financial stability is the disproportionate funding of special education students required to be paid by the District to charter schools. This payment is consistently above the cost of services provided by charter schools to special education students. It is also significantly more than any other district pays to the same charter schools for special education students. The unfair and excessive special education payments to charter schools are bankrupting the District.

Currently, this special education tuition rate is required to be based on the District's special education expenditures, excluding federal expenditures, divided by 16 percent of the District's Average Daily Membership (ADM).<sup>2</sup> Sixteen percent represents the average number of students

<sup>2</sup> The amount paid to charter schools for special education students equals the amount paid for regular education students plus an additional amount calculated as follows: [special education instruction expenditures minus federally-funded special education instruction expenditures]

with disabilities and students in gifted programs statewide in 1994-95. Arguably, the special education tuition rate formula was designed to measure a school district's own effort related to special education expenditures per student, thereby ensuring the same amount would be contributed by districts with students enrolled in charter schools. However, in this case, the formula distorts the District's effort by assuming the percentage of special education students in a school district is the statewide average of 16 percent. In reality, the District's percentage of special education students is approximately 24 percent.

The District's add-on rate for special education students in a charter school is more than any other district in the Commonwealth – \$29,632.13 per student – for a total special education rate per student of \$40,315.42. Even wealthier school districts with the same special education student population would be financially stressed if they had to pay this rate mandated by such an antiquated formula. The District cannot attain financial stability without addressing this critical issue.

The inequitable nature of this funding formula is clearly illustrated by a comparison of the special education rates paid to the charter schools in the District on behalf of students who are enrolled from other districts in the area. Each district pays a different rate based on its own average expenditures.

<b>Special Education Tuition Rates Paid to Charter Schools</b>		
<b>School District</b>	<b>2014-15 Special Ed Add-On Rate (based on state average of 16 percent)</b>	<b>2014-15 Special Ed Rate (regular ed tuition plus special ed add-on)</b>
Chester Upland SD	\$29,632.13	\$40,315.42
Great Valley SD	\$18,065.74	\$30,869.69
Chichester SD	\$18,015.77	\$30,435.49
Interboro SD	\$14,643.86	\$26,000.08
Penn-Delco SD	\$11,812.80	\$21,631.41
Ridley SD	\$13,490.90	\$25,104.79
Southeast Delco SD	\$14,999.21	\$24,068.72
Springfield SD	\$14,592.74	\$25,302.12
Upper Darby SD	\$14,985.67	\$23,437.90
Wallingford-Swarthmore SD	\$17,167.11	\$29,791.89
William Penn SD	\$18,011.01	\$28,154.63
Philadelphia City SD	\$15,300.92	\$23,293.32

*Source: Pennsylvania Department of Education*

It is worth noting that special education identifications at the District's charter schools are high compared to the state average, especially in the lowest cost disability category of Speech/Language Impairment for which the state average is 15 percent. The three charter schools in CUSD had rates of students identified for this disability at 28 percent for Chester Community Charter School ("CCCS"); 20.3 percent for Widener Partnership Charter School ("WPCS"); and 29.8 percent for Chester Charter School for the Arts ("CCSA"). While Speech/Language

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divided by 16% of the school districts total average daily membership.

Impairment requires the least amount of services – and least amount of cost – the District pays for that disability category at the same high rate.

CUSD is certainly not the only school district to be struggling under the burden of a law that requires payment of special education tuition to charter schools substantially unrelated to and in excess of their actual expenditures. However, the circumstances in CUSD make the District the first to experience a resulting structural deficit of this magnitude.

In 2013, the Pennsylvania General Assembly recognized the existence of significant issues regarding state funding to school districts in support of the costs of special education. Act 3 of 2013 established a bipartisan, bicameral Special Education Funding Commission. The commission was tasked to review Pennsylvania’s system related to special education funding and make recommendations for a formula including what are appropriate factors to be used in a new system of state funding for special education.

The commission issued its report in December 2013 and recommended that new state funding for special education be based on three levels of per student multipliers relative to the cost of services. The proposed weights were:

- 1.51 (Category 1) for students receiving services less than \$25,000 per year<sup>3</sup>;
- 3.77 (Category 2) for students receiving services equal to or greater than \$25,000 but less than \$50,000; and
- 7.46 (Category 3) for students receiving services equal to or greater than \$50,000.

The three tiers of multipliers for students who receive special education services have since been enacted into law to determine distribution of new state funding for special education. However, the funding formulas for charter schools, including reimbursement from school districts to charters for special education students, have not been changed. This disregards the commission’s recommendations for charter school funding:

Special education funding is currently paid on a per-student basis for charter schools and cyber charter schools, with funding transferred from the school district of residence for each eligible student. The existing funding process is flawed, using an assumed percentage of 16 percent of all children enrolled in the district of residence and paying the same rate regardless of student differences in educational need and cost.

**The Commission recommends applying the same principles for a new formula described above for all local education agencies, including school districts, charter schools, and cyber charter schools. The use of three cost categories will improve the accuracy and fairness of funding distribution for charter schools and cyber charter schools. [emphasis added]**<sup>4</sup>

<sup>3</sup> For Category 1 students the total amount paid by the District would be calculated by multiplying the regular education rate by 1.51: \$10,683.29 X 1.51 = \$16,131.77, instead of \$40,315.42.

<sup>4</sup> <http://www.senatorbrowne.com/files/2015/05/Special-Education-Funding-Commission-Report-121113.pdf>

Based on the special education rate calculations proposed by the Special Education Funding Commission, the CUSD tuition rate for Category 1 special education students would decrease from \$40,315.42 to \$16,131.77, better reflecting charter schools' actual expenses and student counts. These special education funding reforms will result in total savings to the District of \$20.7 million in 2015-16.

CR02.	Regular and Special Education Rates for Cyber Charter Schools	
	Target outcome:	Implement a tuition cap of \$5,950 per regular education student and the special education rate calculations proposed by the Special Education Funding Commission for special education students in cyber charter schools to better reflect actual costs and student counts, and realize an estimated cost savings of \$4.0 million in 2015-16
	Responsible party:	Receiver, Pennsylvania Department of Education

Cyber charter schools use technology in the delivery of curriculum and instruction through the internet, resulting in greater cost savings as compared to brick-and-mortar charter schools and District schools. In recognition of that fact, the Receiver recommends instituting a tuition cap of \$5,950 per regular education student at cyber charter schools to better reflect the costs of educating a student in this type of environment. The suggested rate is based upon costs of high-performing cyber education programs administered through Intermediate Units across the state.

Additionally, the Receiver recommends implementing the three tiered formula as promulgated by the Special Education Funding Commission for cyber charter schools.<sup>5</sup> Based on current enrollment projections, the District would realize cost savings of approximately \$4.0 million due to these reforms.

<sup>5</sup> For Category 1 students the total amount paid by the District would be calculated by multiplying the regular education rate by 1.51: \$5,950 X 1.51 = \$8,894.50, instead of \$40,315.42.



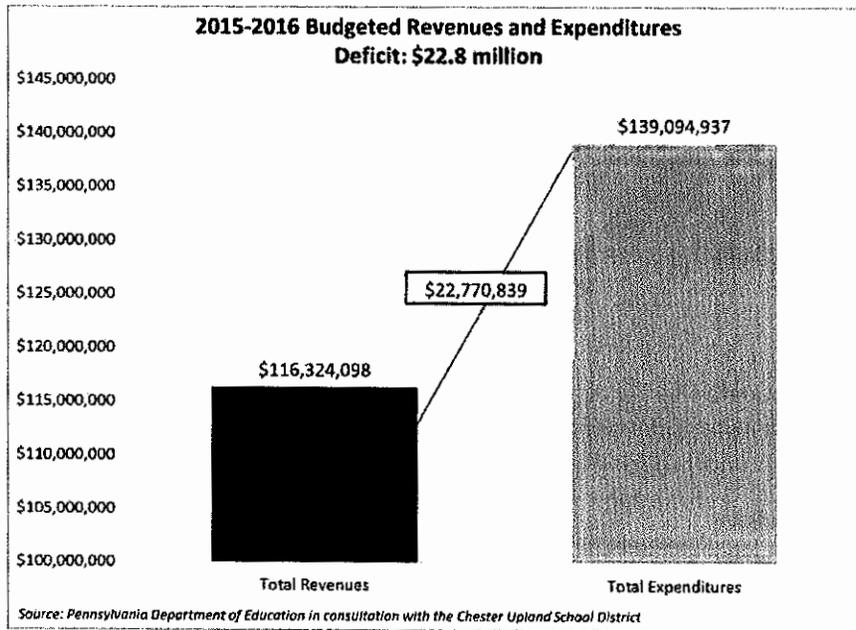
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**Budgeting and Financial Management**

# Budgeting and Financial Management

## Overview

The Chester Upland School District's 2015-16 adopted budget is not balanced, currently projecting a structural deficit of \$22.8 million. The District's recurring structural deficit reflects a weak tax base and high expenditures dominated by charter school tuition payments. The graph below shows the District's 2015-16 budgeted revenues and expenditures.

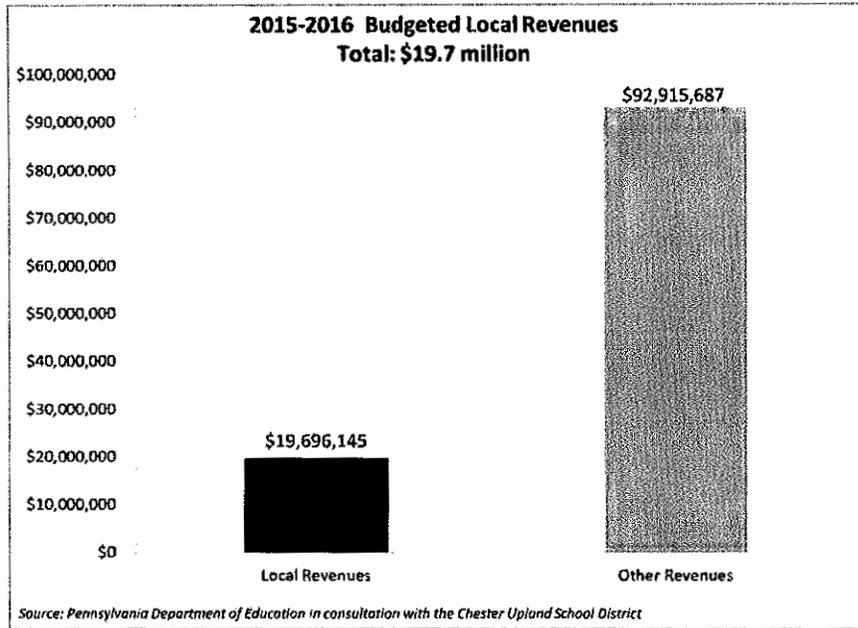


## Revenues

State funding accounts for the majority (\$88.3 million or 78 percent) of the District's ordinary revenues. This amount includes the \$9.6 million increase in the Governor's proposed budget (\$8.6 million in Basic Education Funding and \$1.0 million in Special Education Funding).

In contrast, the District receives just 17.5 percent of its ordinary revenues from local sources. Most local revenue is from real estate taxes. The District has a very low local tax collection rate (approximately 72 percent for Chester City and 88 percent for Chester Township/Upland Borough) and a fairly high local tax effort of 18.1 equalized mills. Pursuant to the 2012 Recovery Plan, the District has annually increased property taxes to the Act 1 State Index, adjusted by the required leveling of the rates.

The District's federal revenues make up only four percent of its total ordinary revenues.



## Expenditures

CUSD's 2015-16 budget expends \$139.1 million. The expenditures in CUSD are similar to the expenditures in other school districts, with the exception of charter school tuition payments.

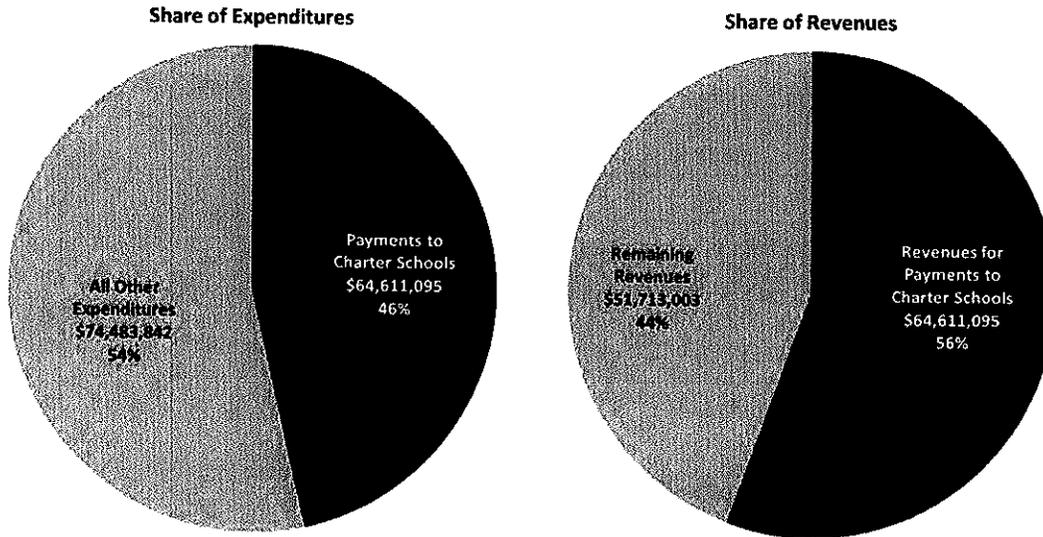
CUSD Expenditures		
Expenditure Category	2015-2016 Final Budget (June 23, 2015)	Percentage of Total Budget
Payments to Charter Schools (incl. grant payments from PDE)	\$64,611,095	46%
Salaries & Benefits	\$41,501,356	30%
Debt Payments	\$7,204,920	5%
Other	\$25,777,566	19%
<b>Total Expenditures</b>	<b>\$139,094,937</b>	<b>100%</b>

Source: Pennsylvania Department of Education in consultation with the Chester Upland School District

The District is unique in that charter school tuition payments comprise 46 percent of its expenditure budget and consume 56 percent of its total budgeted revenues. Under the current charter school tuition formula, even with no changes in enrollment, this figure will continue to grow annually.

## 2015-2016 Budgeted Payments to Charter Schools

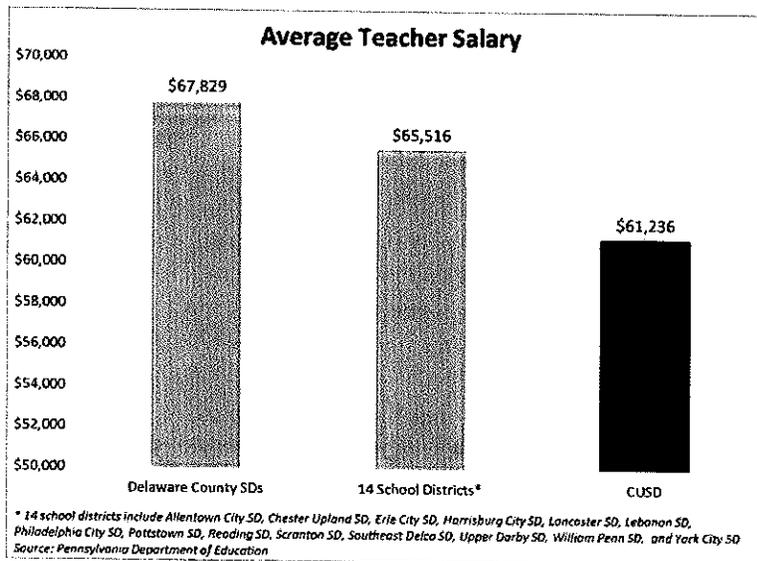
Total: \$64.6 million



*Department of Education in consultation with the Chester Upland School District*

On the retirement side, the District's growing PSERS contributions are partially reimbursed by the Commonwealth. However, the full reimbursement is included in the charter tuition formula. The rapid growth in PSERS contributions in recent years has significantly boosted the charter rate. This occurs even though this is not an expense incurred by charter schools in the District as most charter school employees do not participate in the state retirement plan.

The financial difficulties in the CUSD are not due to excessive salary costs and related expenditures. In 2014-15, CUSD had the lowest average salary for full-time teachers among Delaware County school districts. CUSD also had the lowest average salary as compared to a group of peer urban districts in the state.



## Initiatives

BU01.	Forensic Audit	
	Target outcome:	Reassure funds are being expended properly and identify potential cost savings for 2015-16
	Responsible party:	Pennsylvania Department of Education

As of 2014-15, the District had an estimated \$23.8 million accumulated deficit and will have a projected \$22.8 million structural deficit in 2015-16. It has also repeatedly adopted budgets that do not balance. The District's continuing financial difficulties have created concerns that its funds are being expended improperly. The District will undergo a forensic audit, funded by the Department of Education, to ensure that all expenditures are properly accounted for, appropriate, and legal.

The forensic audit will cover the period from 2010-11 through 2014-15. It will be divided into two phases, differentiated by the fiscal years reviewed. Phase I will include a review of 2013-14 and 2014-15 and the resulting written report will be completed by September 18, 2015. Phase II will include a review of 2010-11 through 2012-13 and will culminate in a comprehensive written report summarizing the results of the entire forensic audit, including both Phase I and Phase II. The report will include specific findings and recommendations, as appropriate, on:

- Potential cost savings due to ineffective management;
- Irregularities in the District's accounting practices;
- The effectiveness of the District's internal controls and any potential fraud risks; and
- Instances of improper expenditures or other actions.

The entire forensic audit will be completed within five months.

BU02.	Financial Turnaround Specialist	
	Target outcome:	Achieve savings in the 2015-16 fiscal year and to mitigate the District's existing payables by negotiating settlements with creditors
	Responsible party:	Receiver

By October 15, 2015, the District must engage a financial turnaround specialist for approximately one year to renegotiate its service contracts for 2015-16 going forward. Operational areas impacted could include special education, facilities, security, information technology, legal services, alternative education facilities and business operations. In addition, the turnaround specialist will work with District staff to identify additional cost savings for 2015-16 through a detailed review of expenditures.

The financial turnaround specialist will also address outstanding payables to reduce the

accumulated deficit. The specialist will identify opportunities to negotiate more favorable payment terms on prior goods and services. The specialist will explore the viability of other private, non-profit funding sources to meet the needs of the District.

The Receiver will develop goals for the specialist to ensure that school services and programs are not only maintained but enhanced. The potential outcome of such an initiative would be the expanded engagement of both students and adults in supporting community-wide educational endeavors.

BU03.	Ongoing Monitoring to Ensure Timely Implementation	
	Target outcome:	To achieve savings in the fiscal years beyond 2015-16
	Responsible party:	Pennsylvania Department of Education, Public Financial Management, Inc. (PFM)

While the financial turnaround specialist focuses on prior and future service efficiencies and improvements, the District will continue to operate. PDE, with the assistance of PFM, will set the overall direction of reform efforts using PDE senior administrators and specialists, as needed. Working with PDE and District staff, PFM will monitor cash flows and payment processing to ensure that the District not only can continue to operate but also implement the required and necessary reforms.

BU04.	Delay and Restructure Payment Terms of PDE Transitional Loan	
	Target outcome:	Delay first repayment of Transitional Loan due on June 30, 2016 and restructure payment terms
	Responsible party:	Receiver, Pennsylvania Department of Education

The Financial Recovery Transitional Loan Program provides loans from PDE to financial recovery school districts. These loans are interest-free and repayable according to a loan agreement. See 24 P.S. § 6-681-A.

At the request of then Receiver Joseph Watkins, the Court of Common Pleas of Delaware County approved a transitional loan in the amount of \$10,000,000 on May 9, 2013. The District and PDE entered into a loan agreement setting forth the repayment terms as follows:

1. June 30, 2016 - \$1,000,000
2. June 30, 2017 - \$1,000,000
3. June 30, 2018 - \$1,000,000
4. June 30, 2019 - \$1,000,000
5. June 30, 2020 - \$1,000,000
6. June 30, 2021 - \$1,000,000
7. June 30, 2022 - \$1,000,000
8. June 30, 2023 - \$1,000,000
9. June 30, 2024 - \$1,000,000
10. June 30, 2025 - \$1,000,000

The District's first repayment of the transitional loan is due in June 2016. Given the significant financial constraints the District continues to experience, the Receiver has secured PDE's agreement to delay the first repayment of the transitional loan. The District will also work with PDE to amend the loan agreement to restructure the payment terms.



---

**Conclusion**

## Conclusion

For the first time in over 20 years, this plan will allow the District to finally get its financial house in order. It is a sustainable financial plan to effectively operate the District with the necessary resources to fund District operations appropriately for all students. As demonstrated in the following chart, this plan will eliminate the recurring structural deficit for 2015-16 and reduce the accumulated deficit. The Financial Turnaround Specialist will be given the authority to reduce that debt further through negotiations with creditors and the identification of other cost savings initiatives.

### Chester Upland SD Revenues, Expenditures and Changes in Fund Balance

	2015-16 Budget	2015-16 After Initiatives CR01, CR02, & BU04
<b>Ordinary Revenues</b>		
Local Revenue	\$19,696,145	\$19,696,145
State Revenue	\$88,305,725 *	\$88,305,725 *
Federal Revenue	\$4,609,962	\$4,609,962
<b>Total Ordinary Revenues</b>	<b>\$112,611,832</b>	<b>\$112,611,832</b>
<b>Extraordinary Revenues</b>		
Additional Non-Guaranteed State Revenue	\$3,712,266 <sup>1</sup>	\$3,712,266 <sup>1</sup>
Payments to Charter Schools from Restricted Account		
State Transitional Loan Proceeds		
<b>Total Extraordinary Revenues</b>	<b>\$3,712,266</b>	<b>\$3,712,266</b>
<b>Total Revenues</b>	<b>\$116,324,098</b>	<b>\$116,324,098</b>
<b>Expenditures</b>		
Operating Expenditures	(\$62,566,656)	(\$62,566,656)
Payments to Charter Schools (incl. grant payments from PDE)	(\$64,611,095)	(\$39,853,388)
Debt Payments	(\$7,204,920)	(\$7,204,920)
Payment on Transitional Loan	(\$1,000,000)	\$0
HVAC Capital Project in Chester HS	(\$3,712,266)	(\$3,712,266)
<b>Total Expenditures</b>	<b>(\$139,094,937)</b>	<b>(\$113,337,230)</b>
<b>Surplus/(Deficit)</b>	<b>(\$22,770,839)</b>	<b>\$2,986,868</b>
Net Other Financing Uses	\$250,000	\$250,000
Beginning Fund Balance	(\$23,785,830)	(\$23,785,830)
<b>Ending Fund Balance</b>	<b>(\$46,306,669)</b>	<b>(\$20,548,962)</b>

1. \$3,712,266 paid from Empowerment for HVAC Capital Project in Chester HS.

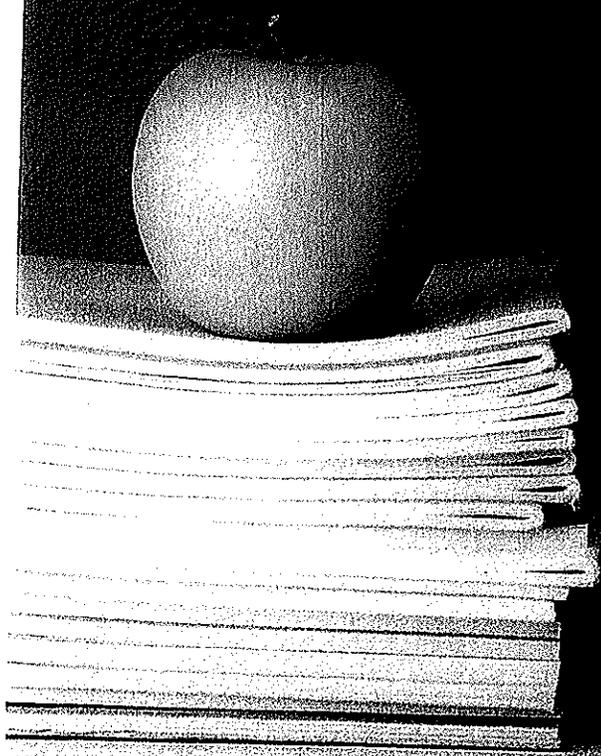
\*State Revenue estimates based on Governor's proposal for Basic Education Funding and Special Education Funding.

# Exhibit B



# SPECIAL EDUCATION FUNDING COMMISSION REPORT

December 11, 2013



Senator  
**Pat Browne**  
Co-Chair

Representative  
**Bernie O'Neill**  
Co-Chair

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## EXECUTIVE SUMMARY

The Commonwealth of Pennsylvania has a strong interest in improving education outcomes for students with disabilities. State support for special education in public schools is important for helping students to achieve academically and fulfill their individual potential.

The Special Education Funding Commission held public hearings throughout the state in 2013, receiving testimony about these issues from dozens of witnesses. Students, parents, educators, and national experts uniformly emphasized the long-term impact of the state funding system on the ability of schools to meet the needs of children with disabilities.

Special education involves a highly complex and costly set of supports and services. Local education agencies are responsible under state and federal law for performing detailed evaluations of student needs, accurately determining eligibility, designing an individualized education program, providing multiple interrelated supports to meet academic and behavioral needs, hiring a wide range of disability experts and service providers, ensuring progress in the general education curriculum and, ultimately, giving students a successful transition to higher education, employment, adult independent living, and community participation.

Nearly 270,000 children with disabilities – one out of every 6.5 students – receive special education services in Pennsylvania public schools. The range of disabilities comprises speech impairments, learning disabilities, orthopedic impairments, hearing or visual impairments, emotional disturbance, autism, intellectual disabilities, traumatic brain injuries, multiple disabilities and other health impairments. Most children are included in regular classrooms and receive all or much of their instruction alongside students who do not have disabilities. In schools with adequate resources, academic achievement for children with disabilities averages close to the results for all students.

Funding for special education in Pennsylvania's public schools comes primarily – over 60 percent – from property taxes and other local sources. Annual state funding is slightly less than \$1 billion, about 30 percent of the total, with federal funding adding a relatively small amount.

Prior to 1991, state funding for special education was distributed through an “excess cost” system that paid school districts for the difference between actual special education costs and regular education costs. When this system was perceived to result in rapidly increasing costs, the state switched to a “census formula”. The new system originally paid school districts a supplement based on calculations assuming that 15 percent of all students have mild disabilities and 1 percent have severe disabilities. Over the years, the census formula sometimes included other factors for community poverty and property tax levels. Since 2008-09, Pennsylvania has not increased special education funding and has effectively ended its use of a funding formula. Charter schools and cyber charter schools receive special education funding through a separate per-student payment process that also relies on the assumption that 16 percent of all students enrolled in all school districts are eligible for special education.

The Commission recommends that the General Assembly adopt a new formula for distributing state funding for special education in excess of 2010-11 levels. The main objective of the new funding system is to improve accuracy in distributing limited resources, balancing this goal with the need for ease of use and sustainability by not placing administrative reporting burdens on the state or local education agencies. The new formula will include factors reflecting student needs based on three cost categories – low, moderate, and high. The formula will also include factors reflecting community differences such as poverty, property tax levels, and rural and small district conditions. The new formula recommended by the Commission will be a great improvement over the census formula, benefiting children with disabilities and all students enrolled in Pennsylvania public schools. The special education funding system for charter schools and cyber charter schools

should receive similar reforms. Furthermore, in accordance with the resolution, the Special Education Funding Commission will continue its work by drafting legislation.

### **RECOMMENDED SPECIAL EDUCATION FUNDING FORMULA**

(1) Calculate the weighted student count for each school district as follows:

- Category 1 = 1.51 (students < \$25,000)
- Category 2 = 3.77 (students => \$25,000 and < \$50,000)
- Category 3 = 7.46 (students => \$50,000 and above)
- 

(2) Adjust weighted student count for rural and small school districts:

- Multiply the weighted student count in (1) by 50% of the adjusted sparsity/size ratio
  - The sparsity/size ratio = (60%\*size ratio) + (40%\*sparsity ratio)
    - Size Ratio = average daily membership (ADM) / statewide average ADM
    - Sparsity Ratio = ADM per square mile / state ADM per square mile
    - Adjust by percentage difference > 70<sup>th</sup> percentile (0.7416)
    - For school districts with a sparsity/size ratio < 70<sup>th</sup> percentile no adjustment

(3) Add the school district's weight in (1) and the adjustment in (2).

(4) Multiply the sum in (3) by the school district's market value/personal income aid ratio and its equalized millage multiplier.

- Equalized millage multiplier = the school district's equalized millage rate as a percentage of the 70<sup>th</sup> percentile (20.12 equalized mills)
- For school district with an equalized millage rate > 70<sup>th</sup> percentile the multiplier is 1

(5) Prorate funding.

- Multiply the product in (4) for each school district by the amount of funds to be distributed and divide by the sum of the products in (4) for all school districts.

## INTRODUCTION BY CO-CHAIRS OF THE COMMISSION

It has been our great honor to Co-chair the Special Education Funding Commission. The Commission was created with the passage of Act 3 of 2013, unanimously passed by both the Senate and House of Representatives and signed into law by the Governor on April 25, 2013. Such unanimous support is evidence of the state government's interest in reforming a system that has been in place for a long time but is often seen as not fairly and adequately serving the current needs in Pennsylvania for students with disabilities and their schools.

This Commonwealth has made it a goal for several decades to achieve equal access to special education programs. However, the ability to meet that goal has been undermined by a special education funding formula that currently does not effectively match the needs of our students with the cost of providing those services. The purpose of the Commission is simple but important – to develop a new formula that will correct these deficiencies so we can reach our goals of achievement and inclusion for Pennsylvania's children with disabilities.

Currently, state funding for special education is distributed based on an estimate that children with disabilities comprise 16 percent of the overall student population in each school district. This formula does not accurately allocate state funding because it fails to take into account the actual number of students needing special education services or the type and intensity of support they require to succeed in school.

Over the last six months, we have enjoyed working closely with our colleagues on the 15-member Commission, including dedicated members of the Senate, House of Representatives, and the Administration. The Commission members heard vital testimony from over 50 witnesses at seven public hearings held throughout the state. We greatly appreciate the mutually respectful deliberations held among the Commission members in considering the complex issues and options for addressing systemic problems related to special education funding. The Commission has accomplished a great deal in a compressed time frame.

The Commission is recommending the establishment of a new special education funding formula to ensure that state money is adequately and equitably distributed. This recommendation follows the parameters contained in Act 3 for distributing any increase in special education funding over 2010-11 levels. The proposed formula includes the use of three cost categories for students receiving special education services, ranging from least intensive to most intensive. In addition, the formula reflects community levels of poverty, property taxes, and other factors needed for a fair and accurate distribution of funds.

This report and the recommendations it contains reflect the thorough consideration of all Commission members. We now entrust this report to the General Assembly for further consideration and timely enactment of final reforms into law.

Special appreciation is due to our staff, the staff of Commission members, Appropriations Committee staff, without whom this work could not be performed. In addition, the expertise of the Independent Fiscal Office was critical to the Commission accomplishing its objectives. The Department of Education also provided invaluable assistance for the Commission's work.

Sincerely,



Senator Pat Browne

Sincerely,



Representative Bernie O'Neill

## ACT 3 AND THE CHARGE TO THE COMMISSION

Through Act 3 of 2013 (House Bill 2), the General Assembly established the Special Education Funding Commission and charged the Commission with the following tasks and responsibilities.

The Commission shall:

1. Review and make recommendations related to special education funding. *Section 122(b)*. Review and make findings and recommendations related to special education funding in this Commonwealth. *Section 122(i)(1)*.
2. Issue a report of its findings and recommendations. *Section 122(i)(5)*. Draft proposed regulations and proposed legislation based on its findings. *Section 122(i)(3)*.
3. Consider nationally accepted accounting and budgeting standards. *Section 122(i)(11)*.
4. 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. *Section 122(h)*. Review and consider special education funding factors utilized throughout the United States. *Section 122(i)(7)*. Consider the impact these factors may have on the distribution of special education funding among the school districts. *Section 122(i)(8)*. The factors may include all of the following (additional details required for each factor as contained in Act 3 are not listed here):
  - a. Three cost categories of eligible students and a description of and parameters for the categories. *Section 122(i)(6)(i)*.
  - b. A student count for each school district designed for each category. *Section 122(i)(6)(ii)*.
  - c. A weighting factor that differs for each of the three cost categories. *Section 122(i)(6)(iii)*.
  - d. Adjustments for each school district based on the market value/personal income aid ratio, the equalized millage rate, and geographic price differences. *Section 122(i)(6)(iv)*.
  - e. A proportional system for distributing the changes in special education funding among school districts based on the factors listed above. *Section 122(i)(6)(v)*.
  - f. Improved systems for collecting and documenting student enrollment and membership in public schools. *Section 122(i)(6)(vi)*.
  - g. Other factors related to the distribution of special education funding. *Section 122(i)(6)(vii)*.
5. Receive input and gather information on the identification of children as eligible students by charter and cyber charter schools and on charter and cyber charter school funding reimbursements regarding eligible students. *Section 122(i)(3)*.
6. Reconstitute the Commission every five years to meet, hold public hearings, review the operation of the special education funding provisions of this section, and make a further report to be considered and acted upon by the General Assembly. *Section 122(k)*.

Act 3 also placed limitations on the Commission's work:

- 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. *Section 122(j)*.
- 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 (2010-11) and shall not be used for any other purpose. *Section 122(l)*.
- For the 2013-14 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 (2010-11). *Section 122(m)*.
- Nothing in the provisions of this Act (Act 3) 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 2509.17*.

## MEMBERSHIP OF THE COMMISSION

Act 3 established requirements for the membership of the Special Education Funding Commission.

The Commission shall:

1. Consist of the following 15 members (or their designees): *Section 122(c)(1)*.
  - a. Chair and Minority Chair of the Education Committee of the Senate.
  - b. Chair and Minority Chair of the Education Committee of the House of Representatives.
  - c. Two legislators from each of the four legislative caucuses.
  - d. The Secretary of Education.
  - e. The Secretary of the Budget.
  - f. The Deputy Secretary for Elementary and Secondary Education.
2. Appoint a member to serve as chair of the Commission. *Section 122(c)(2)*.
3. Reimbursement of Members – The Commission 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. *Section 122(f)*.

Members of the Special Education Funding Commission include:

### Senate

Pat Browne (R-16)  
Co-Chair

James Brewster (D-45)

Andrew Dinniman (D-19)

Edwin Erickson (R-26)

Mike Folmer (R48)

Judith Schwank (D-11)

### House of Representatives

Bernie O'Neill (R-29)  
Co-Chair

Paul Clymer (R-145)

Mark Longietti (D-7)

Michael Peifer (R-139)

James Roebuck (D-188)

Mike Sturla (D-96)

### Administration

Charles Zogby, Secretary  
of the Budget

Carolyn Dumaresq, Acting  
Secretary of Education

Rita Perez, Acting Deputy  
Secretary for Elementary  
and Secondary Education

## HEARINGS OF THE COMMISSION

Act 3 established requirements for the hearings of the Special Education Funding Commission.

The Commission shall:

1. Hold its first meeting within 30 days of the effective date of this section. *Section 122(d)*.
2. Hold meetings at the call of the chair. *Section 122(e)*.
3. Hold public hearings in different regions of this Commonwealth. *Section 122(i)(4)*.
4. Consult with and utilize experts to assist the Commission in carrying out the duties under this subsection. *Section 122(i)(2) and Section 122(i)(10)*.
5. Receive input from interested parties, including but not limited to, charter and cyber charter school operators. *Section 122(i)(3)*.

Commission members were appointed during May 2013 and the Commission held the following hearings (see Appendix for additional details):

June 13, 2013	North Office Building, State Capitol, Harrisburg, PA
July 10, 2013	North Office Building, State Capitol, Harrisburg, PA
July 25, 2013	Bucks County Intermediate Unit #22, Doylestown, PA
August 7, 2013	University of Pittsburgh, Pittsburgh, PA
August 22, 2013	Allentown School District Administration Building, Allentown, PA
September 4, 2013	Nittany Lion Inn, State College, PA
September 26, 2013	Alvernia University, Reading, PA

## **TESTIMONY RECEIVED BY THE COMMISSION**

The following witnesses testified before the Commission at its public hearings:

- Dr. Jacayln Auris, Director of Student Services at Chester County IU 24 (July 25)
- Carl Blessing, Chief Financial Officer of Berks County IU (September 26)
- Randy L. Brown, PRSBA, Business Administrator, State College Area School District (September 4)
- Chris Celmer, Asst. Director of Business Services of Berks County IU (September 26)
- Dr. Malcolm Conner, Special Education Advisor, PA Department of Education, Bureau of Special Education (June 13)
- Kevin Corcoran, Assistant Head of School/Director of School Improvement, Agora Cyber Charter School (September 26)
- Laura E. Cowburn, PRSBA, RSBA, Assistant to the Superintendent for Business Services, Columbia Borough School District, for PA Association of School Business Officials (July 10)
- Michael Crossey, President, PA State Education Association (August 22)
- Tee Decker, Asst. Director of Special Programs & Services of Carbon Lehigh IU (September 26)
- Aimee Denton, Parent (September 26)
- Cindy Duch, Director of Parent Advising, Parent Education & Advocacy Leadership Center (PEAL Center) (September 4)
- Dr. Maria Edelberg, Assistant Executive Director at Delaware County IU 25 (July 25)
- Sandra Edling, PRSBA, Assistant Director Management Services, Montgomery County IU #23, for PA Association of School Business Officials (July 10)
- Louise Fick, Supervisor of Special Education, Parkland School District (June 13)
- Maurice "Reese" Flurie, Ed.D., CEO, Commonwealth Connections Academy (September 4)
- Amber Mintz Foote, Parent and Advocate (September 26)
- Dr. Barry Galasso, Executive Director of Bucks IU 22 (July 25)
- Dr. John George, Exec. Director of Berks County IU & Pres. PAIU (September 26)
- Susan Gobreski, Executive Director, Education Voters PA (September 26)
- Dr. Anthony Grieco, Executive Director of Luzerne IU 18 (July 25)
- Mike Griffith, School Finance Consultant, Education Commission of the States (July 10)
- Dr. Mary Beth Gustafson, Assistant Superintendent for Special Education, Pocono Mountain School District (June 13)
- Nicolyn Habecker, Parent and Advocate (September 26)
- Lawrence Jones, Jr., CEO, Richard Allen Preparatory Charter School, Inc. (September 4)
- Jennifer King, Parent and Inclusion Consultant, Include Me from the Start (June 13)
- David Lapp, Staff Attorney, Education Law Center (September 26)

Lisa Lightner, Parent and Advocate, Arc of Chester County (September 26)

Dennis McAndrews, Esq., Partner, McAndrews Law Office (June 13)

David W. Matyas, PRSBA, Business Administrator, Central Bucks School District (July 25)

Mark B. Miller, School Director in Centennial School District and Co-Chair of Keystone State Education Coalition (September 26)

Richard Moss, Chief, Central Division, PA Department of Education, Bureau of Special Education (August 7)

John Mozzochio, Director, Special Services, New Castle School District (August 7)

Robyn Oplinger, Parent and Advocate, Disability Rights Network (August 22)

Diane Perry, Parent and Coordinator, Special Kids Network (August 22)

Nan Porter, School Director, Martin Luther School (August 22)

David Ramsey, Coordinator of Student Services, Parkland School District (June 13)

Audrey Rasmusson, Esq., Parent (September 4)

Kimberly Resh, Parent and Advocate (August 22)

Karl A. Romberger, Jr., Esq., Sweet, Stevens, Katz, & Williams, New Britain, PA, Pennsylvania School Board Association (PSBA) (September 26)

John Sarandrea, Superintendent, New Castle Area School District (August 7)

Dale Scafuro, Director of Student Services, Central Bucks School District (July 25)

Nicole D. Snyder, Esq., Latsha Davis & Kenna, P.C., Pennsylvania Coalition of Public Charter Schools (PCPCS) (September 26)

Betsey Somerville, Director of Special Education, Canon-McMillian School District (June 13)

Larry Sperling, CEO, Philadelphia Academy Charter School (September 4)

Jane Stadnik, Parent (September 4)

Ira Weiss, Solicitor, Pittsburgh School District (August 7)

Colleen Tomko, Parent and Advocate (August 22)

Nick Torres, CEO, Education Plus Academy Charter School (September 26)

Deborah Verstegen, Ph.D., Professor of Education Leadership, University of Nevada, Reno (September 26)

Uldis Vilcins, Director of Transportation Services of Carbon Lehigh IU (September 26)

Dr. Ronald O. Wells, Special Education Adviser, PA Department of Education, Bureau of Special Education (August 7)

Lee Ann Wentzel, Superintendent, Ridley School District, for PA Association of School Administrators (July 10)

Arlene Wheat, Assistant Superintendent - Special Education & Pupil Services North Allegheny School District (August 7)

## **TECHNICAL ASSISTANCE RECEIVED BY THE COMMISSION**

Act 3 established requirements for the roles of the Department of Education and other bodies in the General Assembly to provide technical assistance to the Commission:

### **Role of the Department of Education**

- The Department shall provide the Commission with data, research and other information upon request by the Commission. *Section 122(g).*
- Using existing resources and data systems as well as nationally accepted accounting and modeling standards, the Department shall collect data necessary for accurate functioning of a special education formula developed under Section 122. The Department shall begin collecting such data upon the effective date of this section. *Section 2509.16.*

**Role of Other Bodies in the General Assembly** – 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. *Section 122(g).*

Since the Commission was formed in late April and May 2013, the Department has served its role as charged by Act 3. Many dedicated staff at the Department have provided invaluable assistance to the Commission.

The Independent Fiscal Office served as a vital source of technical expertise in working with large amounts of data.

The Independent Fiscal Office, the Pennsylvania Association of School Business Officials and the Department assisted the Commission in performing a survey of local education agencies to evaluate special education funding. The survey was conducted in September and October 2013. A randomly selected representative sample of school districts, charter schools, and cyber charter schools participated in the survey.<sup>1</sup> The survey results provided accurate data about the distribution of special education costs among students based on need. The Commission used this data to help determine the proper factors to include in the new special education formula.

Pathway Strategies LLC, also provided additional technical assistance to the Commission.

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<sup>1</sup> Surveys were sent to 65 randomly selected school districts and 35 randomly selected charter schools and cyber charter schools. Survey responses were returned by 54 districts and 17 charters and cyber charters.

## **FURTHER ACKNOWLEDGEMENTS**

The Commission wishes to further acknowledge the contributions to its work of the following individuals and organizations:

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Allentown School District Administration

Bucks County Intermediate Unit #22, Doylestown, PA and Tom Gluck

House of Representatives: Angela Fitterer, Connie McClure, Jeff Miller, Judy Smith, Debbie Reeves and Chris Wakeley

Independent Fiscal Office: Matthew Knittel, Stacey Knavel, Karen Maynard and Mark Ryan

Pennsylvania Association of School Business Officials – Jay Himes, Hannah Barrick and Jeff Ammerman

Pennsylvania Department of Education: Malcolm Connor, Lynn Dell, Ralph Girolamo, Jordan Gouker, Pat Hozella, Jodi Rissinger, Beth Runkle, Aaron Shenck, and David Volkman.

Pennsylvania State University and the Nittany Lion Inn

Senate: Elizabeth Craig, Lorre Cooper, William Evans, Lisa Felix, Russell Miller, Michael Murphy, Jen Smeltz, and Vicki Wilken, Esq.

University of Pittsburgh: Charlene Kumar, Charlie McLaughlin, and Paul Supowitz

## THE BASICS OF SPECIAL EDUCATION

*"Children with disabilities [shall] have available to them a free appropriate public education which is designed to enable the student to participate fully and independently in the community, including preparation for employment or higher education." 22 Pa. Code 14.102(a)(1)(i)*

*"Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S. Code 1400(c)(1)*

This section summarizes some of the most important aspects of how special education operates for students and schools.<sup>2</sup> As reflected in the two legal quotations above, special education for children with disabilities has the potential to significantly impact their lives, their ability to learn, and their future opportunities to participate in society.

### A Basis in Civil Rights

Dr. Malcolm Conner, Special Education Advisor, Pennsylvania Department of Education, testified at the Commission hearing on June 13, 2013, describing the two lawsuits that initially defined the rights of children with disabilities to special education.<sup>3</sup> Dr. Conner described how these court decisions led to the initial establishment of children's rights in statute. Over time, the principles and protections of special education have expanded through both state and federal laws.

### Individuals with Disabilities Education Act (IDEA)

IDEA is a federal law, first enacted in 1975 as the *Education for All Handicapped Children Act*.<sup>4</sup> Federal regulations also implement IDEA and cover school-aged children.<sup>5</sup>

Title 24 contains statutory provisions for special education, which implement and sometimes expand on the federal IDEA requirements.<sup>6</sup> Relevant Pennsylvania regulations exist for: special education; academic standards and testing for all children, including provisions designated for children with disabilities; and charter schools and cyber charter schools.<sup>7</sup> State regulations must comply with federal standards and may exceed these standards if determined by state law.

Kimberly Resh testified with her daughter Mikayla at the Commission hearing on August 22, 2013 saying that, nearly forty years after IDEA was enacted, not all students are afforded their

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<sup>2</sup> This section reflects information from state and federal law, from testimony received by the Commission, and from the publications of the Pennsylvania Training and Technical Assistance Network (<http://www.pattan.net/category/Resources/PaTTAN%20Publications>) and the Disability Rights Network of Pennsylvania (<http://www.drnpa.org/publications/>).

<sup>3</sup> *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. PA 1971)(resolved with a consent decree); *Mills v. Board of Education*, 348 F. Supp. 866 (D. DC 1972)(mirrored the PA decision).

<sup>4</sup> 20 United States Code (U.S.C.) Sections 1400 through 1482.

<sup>5</sup> 34 Code of Federal Regulations (C.F.R.) Part 300.

<sup>6</sup> 24 Purdon's Statutes (P.S.) Sections 13-1371 through 13-1377.

<sup>7</sup> 22 Pa. Code Chapter 14 (special education), Chapter 4 (academic standards and testing for all children, including provisions designated for children with disabilities), Chapter 711 (charter schools and cyber charters).

rights because of resource and funding issues. "To even the playing field," she testified, "funding needs to be proportionally distributed to school districts with greater needs."

### **Free Appropriate Public Education**

Federal and state law guarantee every eligible child with a disability the right to a free appropriate public education (FAPE).

A free appropriate public education is a planned program of education, supports, and services that takes account of the child's individual needs. An appropriate program allows the child to make meaningful progress and prepare for education goals, employment, and independent living. Each child's program must be provided without cost to the family.

Diane Perry, parent of David, testified at the Commission hearing on August 22, 2013 that the future lives of children with disabilities are shaped by FAPE and their educational experiences in school. Robyn Oplinger, Childrens Advocate, Disability Rights Network of Pennsylvania, testified at the Commission hearing on August 22, 2013 that FAPE allows children with disabilities to become independent adults and productive citizens within their communities.

Arlene Wheat, Assistant Superintendent for Special Education and Pupil Services, North Allegheny School District, testified at the Commission hearing on August 7, 2013 that schools should provide FAPE because children with disabilities "deserve it." Dr. Mary Beth Gustafson, Assistant Superintendent for Special Education, Pocono Mountain School District, testified at the Commission hearing on June 13, 2013 that a disability can be a barrier to success in the classroom and must be addressed by the school. Betsy Somerville, Director of Special Education, Canon-McMillan School District, testified at the Commission hearing on June 13, 2013 that each local education agency may have a different interpretation of FAPE, based in some ways on what they can afford with limited funding.

Several parents testified about the advocacy sometimes needed to push schools to provide appropriate services for their children with disabilities in compliance with FAPE.<sup>8</sup> Without such advocacy, parents feel that their children may fail to develop crucial academic, behavioral, and social skills. Schools often do not have the special education resources to effectively serve all students according to best practices and help them to fully succeed in school and prepare for adult life. Families that can afford it commonly pay for additional services to supplement the free special education program provided at school.

### **Special Education**

Special education<sup>9</sup> is defined as "specially designed instruction" and the "related services" needed by the child to benefit from that instruction. Dr. Gustafson testified that special education is not a place, but is a set of individualized supports and services to address the needs of the student.<sup>10</sup>

"Specially designed instruction" means that teachers must adapt the content (what is taught), methodology (the process used to teach), or delivery of the curriculum to take account of the child's learning needs and to ensure the child has access to the general curriculum provided to children without disabilities.

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<sup>8</sup> Testimony at the Commission hearing on September 4, 2013 by Cindy Duch, Director of Parent Advising, Parent Education & Advocacy Leadership Center; Audrey Rasmusson, Esq., Parent; and Jane Stadnik, Parent.

<sup>9</sup> Dr. Conner testified at the Commission hearing on June 13, 2013 that gifted education is not part of special education. Gifted students who do not have a disability may receive services under separate state regulations, Chapter 16. Such services are not funded through state or federal appropriations for special education.

<sup>10</sup> Testimony at Commission hearing on June 13, 2013.

Children eligible for special education have the right to stay in school through the school term in which they turn 21 or until they graduate (whichever comes first).

Dale Scafuro, Director of Student Services, Central Bucks School District, testified at the Commission hearing on July 25, 2013 that over the last 30 years there have been significant positive changes in special education. She said, "We know much more about how to educate children with disabilities and our students are meeting goals that years ago we could never have imagined."

### **Local Education Agency (LEA) Responsibility**

The school district where the parents live is responsible for making sure that each eligible child is identified, evaluated, and provided with a free appropriate public education. Children who live in foster care, group homes, residential treatment, or other facilities are entitled to receive their education from the school district in which the facility is located.

Charter schools and cyber charter schools are also responsible for providing free and appropriate special education services to eligible students.

Ms. Scafuro testified that local education agencies are required to conduct ongoing activities to identify students who may be in need of special education, as well as screening students receiving special education services to ensure they make progress on grade level standards.<sup>11</sup>

David Ramsey, Pupil Services Coordinator, Parkland School District, testified at the Commission hearing on June 13, 2013 that school districts sometimes cannot plan for unexpected special education costs arising when a student with significant disabilities moves into the community and must receive mandatory services. Mark B. Miller, School Director in Centennial School District and Co-Chair of Keystone State Education Coalition, testified at the Commission hearing on September 26, 2013 that families often move into his district in order to access the high quality of special education services provided, especially for students with complex needs.

Laura Cowburn, Assistant to the Superintendent for Business Services, Columbia Borough School District, testified at the Commission hearing on July 10, 2013 that communities with greater poverty and higher numbers of rental properties may experience significant student transience, making special education costs unpredictable and also increasing overall costs for mandated services to meet student needs. Dr. Gustafson testified that many children in foster care come to school with a disability and frequently transfer in and out of school during the year, creating large unexpected costs.<sup>12</sup>

Michael Crossey, President, Pennsylvania State Education Association, testified at the Commission hearing on August 22, 2013 that mandated special education services impose costs on local education agencies above the level of expenditures for students without disabilities. Ms. Resh testified that "school districts that take ownership of their most needy students by providing appropriate supports for their education need greater allocation of special education funding to do so."

### **Evaluations for Special Education**

An "initial evaluation" starts the process of determining whether a child needs special education. Children cannot get special education services until the evaluation is completed.

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<sup>11</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>12</sup> Testimony at the Commission hearing on June 13, 2013.

The initial evaluation determines (1) if the child has a disability and (2) needs special education as a result. The written evaluation report also makes recommendations about what special education and related services the child needs.

Either the school or a parent can initiate the evaluation process. Both must agree that the evaluation is needed before the evaluation takes place. In most cases, a certified school psychologist must be included as a member of the evaluation team.

The school must use a variety of testing tools and strategies to gather information on the child's developmental, academic, and functional levels. In most cases, the child must be evaluated using the child's native language (such as Spanish) or other way of communicating (such as sign language) in order to produce accurate information.

A child who is receiving special education must be reevaluated at least every three years, with some limited exceptions.

Dr. Gustafson and Mr. Ramsey both testified that the evaluation process often involves significant time and expense for the local education agency.<sup>13</sup> Ms. Scafuro testified that the evaluation process may involve a psychologist, guidance counselor, reading specialist, speech therapist, general classroom teacher, and other specialists as needed.<sup>14</sup>

### **Eligibility for Special Education**

The evaluation team first decides two things: (1) whether a child has a disability that makes it difficult to learn; and (2) if so, whether the child needs special education services and supports as a result of that disability. The child must meet both criteria to be eligible for special education.

The law lists different types of disabilities that qualify a child for special education services. To be eligible, the child must fit into at least one of the disability categories listed in special education law and the child must need special education (specially designed instruction) due to the disability. The disability types include:

Autism	Intellectual disability	Specific learning disability
Deaf-blindness	Multiple disabilities	Speech or language impairment
Emotional disturbance	Orthopedic impairment	Traumatic brain injury
Hearing impairment, including deafness	Other health impairment affecting strength, vitality, alertness	Visual impairment, including blindness

### **Service Options for Students with Disabilities Not Eligible for Special Education**

Students who are not eligible for special education may still receive services from the school to help them overcome learning challenges. Support services may include tutoring, counseling, and other helpful interventions.

Only some children who are not eligible for special education will have a direct legal right to support services. Children can seek legal protections through a "Section 504 Plan" or "ADA accommodations."

Some children can receive reasonable accommodations or other support services under a Service Agreement/Accommodations Plan pursuant to Section 504 of the Rehabilitation Act of

<sup>13</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>14</sup> Testimony at the Commission hearing on July 25, 2013.

1973 and PA Code Chapter 15. Section 504 rights and processes may apply for children who have a physical or mental disability that “substantially limits” a major life function such as learning, thinking, walking, breathing, seeing, or hearing.

The Americans with Disabilities Act (ADA) also requires schools to make reasonable accommodations for children with disabilities.

Dr. Conner testified that, unlike special education, the state and federal governments do not provide funding for the services and accommodations delivered by public schools through these other programs.<sup>15</sup>

### **Individualized Education Program (IEP)**

An IEP is a written plan that describes the unique needs of a child who is eligible for special education and explains the specific services and supports the child needs to make progress in school.

The IEP explains when the services will begin and the frequency and duration for providing each service. The IEP also describes measurable academic and functional goals, where the services are provided, what special training and equipment will be given to the school staff, and how much of the school day the child will spend with peers without disabilities.

All of the special education, related services, and other supports listed in the IEP must be provided to the child by the school. Michael Griffith, Senior Policy Analyst, Education Commission of the States, testified at the Commission hearing on July 10, 2013 that the local education agency is legally mandated to implement the IEP regardless of cost. Ms. Somerville testified that the IEP and associated costs are truly individualized for each student.<sup>16</sup> Ms. King, Mr. McAndrews, and Ms. Somerville testified about the importance of intensive and ongoing training for both regular education and special education teachers to adequately meet the individualized needs of students with a wide variety of disabilities, as well as the large cost of providing such training.<sup>17</sup> Ms. Cowburn testified about the significant paperwork and administrative costs associated with meeting IEP requirements and legal mandates for special education.<sup>18</sup>

### **IEP Team**

School staff and the parents meet as a team to write and review the IEP. Older students also may be included in the meeting. The law often requires attendance at Team meetings for the school staff assigned to the IEP Team for a given student.

The IEP Team must meet at least once every year to review and revise the IEP based on the child’s progress on annual goals, the child’s progress in the general education curriculum, any re-evaluations that have been done, and parent or teacher concerns.

Ms. Fick and Ms. Somerville testified that Team meetings are more effective when the local education agency invites the participation of social workers and case managers who may serve the child through other local and state agencies, but this practice requires time and imposes administrative costs on the LEA.<sup>19</sup>

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<sup>15</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>16</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>17</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>18</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>19</sup> Testimony at the Commission hearing on June 13, 2013.

## **Least Restrictive Environment**

The law presumes that children with disabilities should be taught in the “least restrictive environment” with children who do not have disabilities to the maximum extent appropriate.

If the child cannot be included in regular education classes for the whole school day, the IEP Team must consider what part of the child’s program (including academic classes, non-academic classes, lunch, recess, and extracurricular activities) the child can attend with children who do not have disabilities.

In most situations, the law gives children with disabilities a right to be educated in a regular classroom if they can make reasonable educational progress in that setting when they are given appropriate supports and services.

Ms. Resh testified that inclusion benefits both students with disabilities and all students, “teaching life lessons that are as important as academics – understanding, compassion, and acceptance.”<sup>20</sup> Ms. Perry testified about the benefits of inclusion for her son, such as improving his reading skills by exposing him to materials at higher grade levels and allowing him to develop life ambitions similar to his non-disabled peers.<sup>21</sup> Ms. Resh testified that schools are often unable to provide the supports needed to more fully include children with disabilities in the least restrictive environment because of resource and funding issues.<sup>22</sup> Lisa Lightner, Parent and Advocate, Arc of Chester County, testified at the Commission hearing on September 26, 2013 that the education profession now knows how to successfully include all students in typical classrooms but the lack of resources in some schools means that effective inclusion may not occur.

Ms. Wheat testified that the North Allegheny School District is proud of its high rate of inclusion of students with disabilities in the least restrictive environment, but this comes at a high cost.<sup>23</sup> Jennifer King, Inclusion Consultant, Include Me From the Start, testified at the Commission hearing on June 13, 2013 that inclusion rates vary widely between local education agencies, with Pennsylvania as a whole ranked about 28<sup>th</sup> in the nation. Ms. King testified that schools are often fearful to include students with significant disabilities in regular classrooms due to lack of training, technology, and support services. Ms. Somerville testified that some schools are not proactive in addressing student needs in inclusive settings because it is very costly to provide appropriate training and supports for classroom teachers.<sup>24</sup> Sandra Edling, Assistant Director of Management Services, Montgomery County Intermediate Unit, testified at the Commission hearing on July 10, 2013 that inclusive physical education programs sometimes require expenditures for specialized instructors and adaptive equipment.

In addition to inclusive practices, Ms. Edling testified that local education agencies must also provide separate and specialized classrooms for some students based on significant need, serving students with more severe autism, emotional disorder, or multiple disabilities. State law establishes limits on the size of these separate classes, often with high associated costs for very small student-teacher ratios as well as the need for one or more classroom aides.<sup>25</sup>

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<sup>20</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>21</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>22</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>23</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>24</sup> Testimony at the Commission hearing on June 13, 2013. Ms. Somerville testified that using effective inclusion practices such as co-teaching can annually cost more than \$30,000 just for one student in one classroom.

<sup>25</sup> Testimony at the Commission hearing on July 10, 2013.

## **Progress in the General Education Curriculum**

The IEP is designed so the student's needs are met and the child can make progress and be involved in the general education curriculum. "Progress" and "involvement" are broadly defined to meet IEP goals and do not require children with disabilities to do all of the same work at the same level and pace as other students.

The "general education curriculum" means the curriculum that the school follows for all students at the child's grade level. The law presumes that children with disabilities should be taught what all other children at their grade level are taught unless there is a good, disability-based reason why they should be taught at a different level. The school cannot refuse to include the child in the general curriculum solely because the curriculum would need to be modified for the child.

## **Support Options for Students Eligible for Special Education**

In general, supports can assist children to learn academic skills (learning support), to control behaviors (emotional support), or to acquire basic living skills (life skills). Students must receive appropriate supports in the least restrictive environment.

Levels of support are also defined by the amount of time in a typical day the child receives special education supports:

- "Itinerant support" (provided for 20% or less each day);
- "Supplemental support" (more than 20% of the day but less than 80% of the day); or
- "Full-time support" (provided for 80% or more of the day).

Lee Ann Wentzel, Superintendent, Ridley School District, testified at the Commission hearing on July 10, 2013 that there is a great disparity of cost and services within these levels of support, perhaps with overlapping costs between the levels for some students.

Examples of supports and related services include curriculum adaptation, therapies (speech, physical, occupational), school health services, assistive technology, transportation, behavior counseling, and training and assistance for teachers. Staffing needs include program administrators, teachers, classroom aides, inclusion specialists, psychologists, social workers, expert therapists, behavior specialists, technology experts, personal care assistants, health professionals, transition coordinators, specialized consultants, and private service providers.

Ms. Scafuro testified that provision of appropriate services and supports are important to help the student make progress in the general education curriculum in the least restrictive environment.<sup>26</sup> Decisions about services are made by local education agencies through the IEP process in collaboration with parents.

Colleen Tomko testified with her son, Shaun, at the Commission hearing on August 22, 2013 that adequate funding for special education allows schools to provide needed services in a timely and cost-efficient manner, instead of waiting until a crisis requires more expensive approaches. Ms. Oplinger testified that funding shortages and rising costs are currently forcing many local education agencies to cut back on services and supports, such as reading instruction for older students and professional development for teachers and other staff.<sup>27</sup>

Ms. Edling testified that many communities in Pennsylvania are experiencing a shortage of trained and certified service specialists, such as occupational therapists, creating competition to hire their services and raising costs for local education agencies.<sup>28</sup> She also testified that health

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<sup>26</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>27</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>28</sup> Testimony at the Commission hearing on June 13, 2013.

or medical services can be costly but are necessary to allow students to access their educational instruction.

Mr. Ramsey testified that assistive technology has become an increasingly essential component of special education with significant associated costs that all districts may not be able to afford.<sup>29</sup> Ms. Edling testified that assistive technology costs are often increased when substantial training is required for proper use of the equipment or when student needs are better identified or change over time.<sup>30</sup> Ms. Habecker testified about the importance of assistive technology for giving all students access to teaching and learning.<sup>31</sup>

Ms. Somerville testified that behavior support services and transportation for students with specialized transportation needs can also be very costly.<sup>32</sup> Ms. Cowburn testified that transportation costs can be especially high for small school districts needing to bus their students who receive special education services in neighboring districts or the intermediate unit.<sup>33</sup> David Matyas, Business Administrator, Central Bucks School District, testified at the Commission hearing on July 25, 2013 that large school districts also face challenges in coping with high transportation costs due to the large number and diversity of students. Mr. Matyas testified that most special education transportation costs for students with disabilities are not funded through the state budget line item for school transportation.<sup>34</sup> Dr. John George, Executive Director of Berks County Intermediate Unit, testified at the Commission hearing on September 26, 2013 that special education transportation costs are influenced by distance traveled to special service providers, additional personnel needed to help the students, specialized equipment such as wheelchair lifts, and uncompensated transportation required for early intervention services by non-district programs.

Dr. Maria Edelberg, Assistant Executive Director at Delaware County Intermediate Unit 25, testified at the Commission hearing on July 25, 2013 about examples of the wide variety of services and supports needed for students with disabilities, including wrap-around mental health and behavioral supports, one-on-one speech and language therapy to improve communication, adapting written materials for students with limited vision, and optimal positioning of students who use wheelchairs as well as providing some upright movement. Dr. Edelberg also testified about legal limitations on teacher-student ratios and age ranges allowed within specialized classrooms, resulting in significant costs for multiple small instructional settings.

### **Program Modifications and Specially Designed Instruction**

The IEP describes the specialized instruction, methods, and strategies that will be used by the school to help the child advance toward reaching the IEP goals, to be involved and make progress in the general education curriculum, and participate in extracurricular and nonacademic activities.

All supports and services must be “based on peer-reviewed research to the extent practicable” – research studies showing that the strategies are successful in helping children with similar needs to learn and make progress. Dennis McAndrews, Esq., Managing Partner, McAndrews Law Offices, testified at the Commission hearing on June 13, 2013 that many schools have not yet met this standard, meaning that more rigorous services may actually be needed for

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<sup>29</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>30</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>31</sup> Testimony at the Commission hearing on September 26, 2013.

<sup>32</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>33</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>34</sup> Testimony at the Commission hearing on July 25, 2013.

students. Dr. Gustafson testified that “research-based practices really work and how do you put a price tag on that?”<sup>35</sup>

Ms. Scafuro testified that the direct provision of specialized instruction and strategies for students are only one aspect of achieving successful results.<sup>36</sup> Equally important is the formal coordination of these strategies with all classroom teachers and the family, so that the child receives consistent support in all environments. Such coordination services can be time consuming and costly.

### **Extended School Year (ESY) Services**

All children with a disability must be considered for ESY. ESY services may be appropriate for a child who loses skills over the summer or other school breaks or for a student who needs the extra time to learn skills that are crucial to receive an appropriate education. Ms. Edling testified that ESY services incur costs for teachers and building operations during months when these expenses may not otherwise occur.<sup>37</sup>

### **Transition Planning**

For children age 14 and older, the IEP must include – and the school must provide – services and supports needed to help the student achieve post-high school goals for higher education, employment, independent living, and community participation.

Ms. Oplinger testified that the additional expense of providing transition services through a student’s twenty-first birthday allows the time and support they often need to make a successful transition to adult life, but that many schools lack the resources and funding needed to provide quality programs.<sup>38</sup> Dr. Jacayln Auris, Director of Student Services at Chester County Intermediate Unit 24, testified at the Commission hearing on July 25, 2013 that effective transition services often take place in natural environments outside of the traditional school building, requiring student supports that are not provided in regular school settings. She listed transition cost factors such as fees for learning how to use public services, rental of community-based life skills facilities, and behavior specialists and supports to facilitate acceptance into the community. Ms. Edling testified that the delivery of transition services sometimes involves costs for establishing job experience sites and coaches, as well as transportation during the school day.<sup>39</sup>

### **Written Notices and Dispute Resolution Processes**

Schools are required to give written notice to parents about most special education matters, providing explanations and offering opportunities to discuss the issues.

A variety of administrative processes exist to help schools and parents resolve disputes, including IEP team meetings, complaints to the Pennsylvania Department of Education’s Bureau of Special Education, mediation services through the Pennsylvania Office for Dispute Resolution (ODR), and due process/special education hearings (also offered through ODR).

Ms. Scafuro testified that litigation costs have increased over the years, due to disagreements with parents.<sup>40</sup> Many disputes involve parent requests for private placement in very expensive

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<sup>35</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>36</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>37</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>38</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>39</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>40</sup> Testimony at the Commission hearing on July 25, 2013.

settings outside of the school district. Dr. Gustafson testified that a local education agency can count on a minimum cost of \$30,000 for the legal expenses involved with even a simple due process hearing for a single student.<sup>41</sup> Mr. Weiss testified that schools often take defensive action by committing to provide costly services to a student in order to avoid litigation.<sup>42</sup>

### **Early Intervention**

Programs and services for children with disabilities or developmental delays from birth to age three are called "Early Intervention" (EI).

EI Preschool Services often continue supports for children from age three through their entry to kindergarten or first grade.

Nicolyn Habecker, Parent and Advocate, testified with her son Joshua at the Commission hearing on September 26, 2013 about the importance of funding to support the capacity of schools for sufficient communication and collaboration between families, EI providers, and LEAs at the time of transition between these programs.

### **Intermediate Units**

The 29 Intermediate Units (IUs) in Pennsylvania provide a wide variety of special education services in support of local education agencies. Dr. Barry Galasso, Executive Director, Bucks County Intermediate Unit 22, testified at the Commission hearing on July 25, 2013 that each IU offers a somewhat different mix of services, including administrative supports, direct student instruction, various therapies and student supports, assistive technology, professional development for teachers, consulting expertise, and many other services. Dr. Edelberg testified that IUs often serve students with significant disabilities and costly educational needs.<sup>43</sup>

Dr. Anthony Grieco, Executive Director of Luzerne Intermediate Unit 18, testified at the Commission hearing on July 25, 2013 about the zero-based budgeting method used by IUs to bill school districts for services provided to their students. This method incorporates all costs incurred by the IU for meeting the needs of each student, many with significant disabilities. When a particular school district experiences growth in related needs for students, IUs can help the district to bring these students back into the neighborhood school with appropriate services.

Dr. Auris testified that IUs provide services to charter schools and cyber charter schools, including on-line services for students and professional development for teachers in a central location.<sup>44</sup>

### **Approved Private Schools**

Nan Porter, School Director, Martin Luther School, testified at the Commission hearing on August 22, 2013 that approved private schools serve students with severe and complex disabilities who cannot have their needs met in local education agencies and who have otherwise struggled to stay successfully or safely in school.<sup>45</sup> 32 approved private schools operate in Pennsylvania, certified and licensed by the Commonwealth, serving over 3,500 students in day and residential programs. APS students represent the full range of disability types, but have the most complex needs within each disability type or have multiple disabilities.

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<sup>41</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>42</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>43</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>44</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>45</sup> The information in this section reflects the testimony of Ms. Porter as well as Pennsylvania statutes found at 24 P. S. §§ 13-1371, 13-1372, 13-1376 and 13-1377 and state regulations for APS found at 22 PA Code Chapter 171.

Approved private schools also work with local education agencies as appropriate to support education of students in their neighborhood school when the more restrictive APS environment is not needed. Placement at an APS is decided by the IEP Team for the student, including the child's family and the local education agency.

Local education agencies can apply to the Pennsylvania Department of Education for approval of funding for an APS placement. PDE sets a different tuition rate for each APS in consideration of factors including costs to meet the needs of students served at the APS. Upon approval of funding, the state covers 60 percent and the LEA covers 40 percent of the APS tuition. LEAs can also place a student at an APS through the IEP process without seeking funding from the state, thus paying the full tuition rate. The state appropriates funding for the APS system through the annual budget process, with state law mandating that this line item receives an annual increase at the rate of 125 percent of the increase in the special education line item. For students with state-approved tuition payments, the LEA's share of the APS tuition is not actually sent by the LEA to the APS, but is withheld by the state from LEA funding to balance out the funding level in the APS budget line item. Due to the flat state funding of special education in recent years, most approved private schools now have limited slots for students with state-approved tuition payments.

#### **Other Human Services Agencies**

Local human services agencies also sometimes provide related services for school-age students with disabilities. These services may include case management, behavioral health, and supports for parents and families. The level of funding for these agencies has an influence on the special education costs of local education agencies. Dr. Auris and Dr. Edelberg testified that LEAs must pick up the costs to allow the student to learn and make progress under state and federal laws, if the services are needed by the student and the local human services agencies are unable to offer or pay for such services.<sup>46</sup> Karl A. Romberger, Jr., Esq., Sweet, Stevens, Katz, & Williams, New Britain, PA (Pennsylvania School Board Association), testified at the Commission hearing on September 26, 2013 that this arrangement often makes the LEA the "provider of social and behavioral health support services by default." The collaboration between LEAs and local human services agencies are especially important for students age 14 and older in need of transition services, aiming to avoid gaps in services as students enter adulthood.

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<sup>46</sup> Testimony at the Commission hearing on July 25, 2013.

## SUMMARY OF PENNSYLVANIA DATA ABOUT SPECIAL EDUCATION

Special education for students with disabilities is an important aspect of public education in Pennsylvania.<sup>47</sup> The size and scope of special education are considerable, presenting one of the largest influences on teaching, learning, funding, and overall school operations.

### Statewide Enrollment

There are 268,466 students with disabilities receiving special education services in Pennsylvania public schools. This is 15.2 percent of the total 1.76 million public education students in the state. In other words, special education involves one out of every 6.5 students.

The composition of students eligible for special education by race and ethnicity is nearly the same as for all students in the state.

Race/Ethnicity	Special Education	All PA Public Education Students
American Indian / Alaskan Native	0.2%	0.2%
Asian	1.3%	3.3%
Black or African American	18.1%	15.4%
Hispanic	8.8%	8.7%
Multi-Racial	0.9%	1.9%
Native Hawaiian / Pacific Islander	0.0%	0.1%
White	70.7%	70.6%
<b>STATEWIDE ENROLLMENT TOTAL</b>	<i>268,466 or 15.2%</i>	<i>1.76 million</i>

Special education enrollment has grown and changed over the last 20 years. There have been significant shifts in the total number of students receiving special education as well as the percentage of all public education students in the state.

Pennsylvania Special Education Enrollment	1991-92	2001-02	2011-12
Special education students: Total Number	207,385	228,164	268,466
% of All Students	12.2%	12.9%	15.2%
Total number of all public education students	1.70 million	1.77 million	1.76 million

Dr. Conner testified that while enrollment has grown over time, many students also need more intensive services to meet their needs and additional supports for inclusion in regular

<sup>47</sup> The data in this section comes from the Pennsylvania Department of Education. All data is from 2011-12, the most recent year for which all categories of data are available, except where otherwise indicated. Data totals include all public education students in the state, unless otherwise indicated. See [http://www.education.state.pa.us/portal/server.pt/community/data\\_and\\_statistics/7202](http://www.education.state.pa.us/portal/server.pt/community/data_and_statistics/7202). Also see <http://penndata.hbg.psu.edu/>.

classrooms.<sup>48</sup> Dr. Gustafson agreed that student needs have intensified due to changes in diagnosis and eligibility for special education, including mental health and behavioral health needs.<sup>49</sup> Mr. McAndrews testified that the teaching profession knows much more today about the science of how children with disabilities learn to read, write, compute, socialize, and behave, compared to 1975.<sup>50</sup> He explained that research has helped schools to better identify and serve student needs, and federal law was amended in 2004 to require special education instruction and related services to be based on peer-reviewed research wherever practicable.

### **Educational Setting**

Most children with disabilities are included in regular classrooms and receive all or much of their academic instruction alongside students who do not have disabilities. Some children receive a portion of special education services in more intensive settings within their neighborhood school. Special education for a relatively small number of students is provided in separate day programs or residential schools dedicated to offering the most intensive services.

<b>Educational Setting</b>	<b>% of All Special Education Students in PA</b>
Inside regular classroom 80% or more of the day	62.2%
Between 80% and 40%	24.1%
Less than 40%	9.2%
In other settings	4.5%

Inclusion for students with disabilities has completely changed over the last 20 years. In 1991-92, only 1,119 students in Pennsylvania received special education services in a regular classroom for the entire school day. By 2001-02, 43 percent of students (totaling 98,241) were included in regular classes more than 80 percent of the day.

Ms. King testified that cost is often more closely associated with the kinds of support services needed by an individual student, rather than the educational setting itself.<sup>51</sup> Louise Fick, Supervisor of Special Education, Parkland School District, testified at the Commission hearing on June 13, 2013 that there is a wide variety of students with disabilities within different settings in each local education agency, which affects cost.

<sup>48</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>49</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>50</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>51</sup> Testimony at the Commission hearing on June 13, 2013.

## Student Disabilities

63 percent of all Pennsylvania students receiving special education services have either a speech-language impairment or a specific learning disability. 15 percent have an intellectual disability or autism.

Disabilities	Percent of all Special Education Students		
	1991-92	2001-02	2011-12
Autism	0.2%	1.3%	7.8%
Deaf-blindness	0.0%	0.01%	0.03%
Emotional disturbance	6.5%	7.0%	8.8%
Hearing impairment	1.4%	0.9%	1.0%
Intellectual disability (mental retardation)	11.5%	9.1%	7.1%
Multiple disabilities	0.2%	0.8%	1.1%
Orthopedic impairment	0.6%	0.4%	0.3%
Other health impairment (affecting strength, vitality, alertness)	0.0%	1.1%	10.2%
Specific learning disability	30.1%	41.8%	47.9%
Speech or language impairment	20.0%	11.9%	15.1%
Traumatic brain injury	0.6%	0.1%	0.3%
Visual impairment	0.5%	0.4%	0.4%

As science and health care have progressed over the years, students are being identified for different kinds of disabilities. Twenty years ago, more students were identified as having a speech-language impairment, but fewer with a specific learning disability. Far more students were identified in the past as having an intellectual disability, while autism was almost unknown.

Mr. Matyas testified that Central Bucks School District and other local education agencies have experienced a large shift in students from lower cost disabilities to higher cost disabilities, greatly raising educational expenses despite stable overall special education enrollment totals.<sup>52</sup>

Dr. Gustafson testified that one in fifty-five children are now identified with autism compared to one in ten thousand in the past.<sup>53</sup> Ms. Scafuro testified that many children with autism may have been misidentified in the past.<sup>54</sup> Ms. Edling testified that the number of students with autism in Montgomery County increased over 31 percent just between 2009 and 2012.<sup>55</sup>

## Academic Achievement

Because most students receiving special education have relatively "mild" disabilities and are included in regular classrooms for academic instruction, they are able to perform adequately on standardized tests. Of course, academic results require appropriate supports and services. Mr. McAndrews testified that this is demonstrated in school districts with more resources, where students with disabilities often have relatively strong test scores regardless of socio-economic

<sup>52</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>53</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>54</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>55</sup> Testimony at the Commission hearing on July 10, 2013.

factors.<sup>56</sup> In high-poverty school districts, students with disabilities generally have very low test scores. Statewide, students with disabilities demonstrate a large average achievement gap compared to students who do not have disabilities.

	Combined Average Reading And Math Passing Rate on PSSA	Market Value/Personal Income Aid Ratio (higher ratio indicates greater poverty)
50 poorest PA school districts	29% (special education students)	0.7796
50 wealthiest PA school districts	58% (special education students)	0.2135
Statewide Avg. – Special Ed	40%	NA
Statewide Avg. – All Students	74%	NA

### Differences between Local Education Agencies

Different conditions exist for special education among the hundreds of local education agencies in Pennsylvania. For example, school districts face different situations than charter schools and cyber charter schools, as well as vocational technical schools. Great variation occurs from district to district and school to school.

First, the percentage of special education students compared to all students varies widely among local education agencies. Some school districts have a total student population with less than 10 percent of children receiving special education services. Other districts have over 25 percent of all students who receive special education. A similar range exists for other kinds of local education agencies.

Percent of Total Student Enrollment that Receives Special Education Services	Number of School Districts in PA
Under 10%	18
10% to 11.9%	49
12% to 13.9%	82
14% to 15.9%	129
16% to 17.9%	117
18% to 19.9%	70
20% to 21.9%	24
22% to 25.9%	7
26% and higher	4
<i>Statewide Average = 15.2%</i>	

Second, there is a great range in the number of students within each local education agency receiving special education services. Some school districts enroll less than 100 special education students. Others enroll more than 3,000. With some exceptions, the smaller size of

<sup>56</sup> Testimony at the Commission hearing on June 13, 2013.

most charter schools, cyber charter schools, and vocational technical schools means they enroll a relatively small number of students receiving special education.

Total Number of Students in the School District Who Receive Special Education Services	Number of School Districts in PA
Under 100	17
100 to 199	113
200 to 299	97
300 to 399	75
400 to 499	49
500 to 599	39
600 to 699	19
700 to 799	26
800 to 899	10
900 to 999	8
1,000 to 1,199	15
1,200 to 1,499	14
1,500 to 1,999	9
2,000 to 2,999	6
3,000 and over	3
<i>Reading SD = 3,169. Pittsburgh = 4,890. Philadelphia = 20,784.</i>	
<i>Statewide Average = 506.</i>	

Third, local education agencies show great differences in the racial composition, inclusion rate, and type of disabilities among their special education student population. Larger local education agencies typically enroll a greater number of students with a wider variety of disabilities and needs. Smaller LEAs face a more limited range of student needs, but may not have systems and resources in place to meet the needs of individual students who present less common disabilities. Two additional complicating factors include local rates for property taxes and poverty, reflecting the community's ability to generate local revenue to support public schools. No two LEAs are the same, when these multiple factors are considered.

Ms. Cowburn testified that schools in many of Pennsylvania's urban areas face high poverty, low property values, and high numbers of students with disabilities, making it difficult for local taxpayers to provide the resources needed to adequately fund special education services.<sup>57</sup> Mr. Griffith testified that similar challenges are faced by public schools nationwide.<sup>58</sup>

<sup>57</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>58</sup> Testimony at the Commission hearing on July 10, 2013.

<i>Example of Special Education Differences between LEAs</i>	
<b>Eastern Lancaster School District</b>	<b>Lancaster School District</b>
355 special ed students (11.5% of all students)	1,995 special ed students (18.4% of all students)
Autism. Emotional disturbance. Intellectual disability. Other health impairment. Specific learning disability. Speech-language impairment.	Same disabilities as Eastern Lancaster, plus – Hearing impairment; Multiple disabilities
85% of special ed students are White. 5% Black; 5% Hispanic	20% of special ed students are White. 22% Black; 57% Hispanic
64% of special ed students are inside regular classes for 80% or more of the day	56% of special ed students are inside regular classes for 80% or more of the day
27% of all students are in poverty	78% of all students are in poverty
13.8 equalized millage rate (property taxes)	24.4 equalized millage rate (property taxes)
\$4,577 in state special ed funding per special ed student	\$4,368 in state special ed funding per special ed student
\$11,398 annual special ed expenditures per student, not including regular ed & other costs.	\$11,910 annual special ed expenditures per student, not including regular ed & other costs

### **Expenditures for Special Education**

Local education agencies spend different amounts on a per student basis for special education. Some school districts annually spend more than \$25,000 per student just for special education costs. Other districts spend less than \$7,000. These amounts do not include regular education costs incurred for children with disabilities. In addition, there are other expenses dedicated to meeting the needs of students receiving special education services. These additional expenses are not easily accounted for, but often involve accommodations for children included in regular classrooms, transportation costs, and other necessary costs.

<b>Range of PER STUDENT Special Ed. Expenditures Not including regular ed. and other needed costs</b>	<b>Number of School Districts in PA</b>
Under \$7,000	13
\$7,000 to \$7,999	34
\$8,000 to \$8,999	53
\$9,000 to \$9,999	82
\$10,000 to \$10,999	84
\$11,000 to \$11,999	67
\$12,000 to \$12,999	5
\$13,000 to \$13,999	33
\$14,000 to \$14,999	16
\$15,000 to \$15,999	23
\$16,000 to \$16,999	13
\$17,000 to \$17,999	12
\$18,000 to \$19,999	8
\$20,000 to \$24,999	8
\$25,000 and over	1
<i>Statewide Average = \$13,028</i>	

Ms. Cowburn testified that special education costs are the most rapidly growing part of the budget for local education agencies.<sup>59</sup> She explained that because of the strict legal mandates for special education services to meet the needs of students, local education agencies must often cut back on regular education spending to find resources in the budget for increasing special education costs. Amber Mintz Foote, Parent and Advocate, testified at the Commission hearing on September 26, 2013 that many LEAs also do not have the resources to provide needed special education services. Ms. Mintz said, "Schools are often in the uncomfortable position of having to say 'No' when they want to say 'Yes' because the money and staffing are just not there."

### **Revenue Sources for Special Education**

Mr. Griffith testified that federal funding for special education is appropriated through the Individuals with Disabilities Education Act (IDEA). In 2012-13, federal funding for all states was \$11.7 billion.<sup>60</sup> Each state receives funding either based on its level of IDEA dollars in 1999 (hold harmless) or through a formula weighted 85 percent for total student enrollment and 15 percent for a count of students who are living in poverty (34 CFR 300.703). IDEA does not mandate any particular mix of state and local funding to cover the remaining special education costs, but states are prohibited from reducing special education appropriations.

Ms. Cowburn testified that for the 2011-12 school year, local education agencies in Pennsylvania spent \$3.3 billion on special education instructional costs.<sup>61</sup> Total state funding was \$960 million and federal funding was \$340 million, meaning that local taxpayers provided \$2 billion of special education costs.<sup>62</sup>

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<sup>59</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>60</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>61</sup> These costs are reported as Category 1200 according to state accounting procedures, and do not include other related expenditures for special education.

<sup>62</sup> Testimony at the Commission hearing on July 10, 2013.

## SPECIAL EDUCATION FUNDING FORMULAS IN OTHER STATES

Many states face funding challenges for special education similar to the situation in Pennsylvania. While a variety of formulas are used in different states, several common factors can help inform the development of a state funding system for special education by the Pennsylvania General Assembly.<sup>63</sup>

### Challenges Facing the States (including Pennsylvania)

Federal law requires schools to provide the supports and services needed for all children with disabilities to receive a free appropriate public education. In support of these standards, the federal government provided a national total of \$11.9 billion in special education funding in 2010-11.<sup>64</sup> Pennsylvania received \$451 million in federal funding for special education in that year. This amount was less than 14% of total expenditures for special education in Pennsylvania public schools.

State appropriations for special education are vital to students and schools because federal resources are far from sufficient. This places significant scrutiny on the fairness of state formulas used to distribute state special education dollars among local education agencies.

State funding systems also face challenges due to increasing numbers of students identified with disabilities. Nationwide, as in Pennsylvania, the number of students receiving special education services has grown in recent years. Improvements in research, medical treatment, and educational practices have led to higher identification rates in most states.

United States Special Education Enrollment	1990-91	2000-01	2009-10
Special education students: Total Number	4.7 million	6.3 million	6.5 million
% of All Students	11.4%	13.3%	13.1%

*See similar data for Pennsylvania on page 25 above.*

Source: Natl. Center for Education Statistics at <http://nces.ed.gov/fastfacts/display.asp?id=64>.

In addition, all states now include students with disabilities in state academic assessment systems. Public release of standardized testing results places an emphasis on the educational needs and achievement gaps of students receiving special education services. This further increases the pressure on state funding systems.

### State Mechanisms for Funding Special Education

State mechanisms for funding special education programs and services commonly aim to support the overall objectives of state and federal standards for educating children with disabilities. These standards include providing a free and appropriate public education in the least restrictive environment for students with disabilities along the full range of need. Because state funding formulas have the potential to impact a wide range of special education decisions by local education agencies, many states design their formulas to avoid giving incentives for

<sup>63</sup> Background information for this section was provided in testimony at the Commission's public hearing on July 10, 2013 by Michael Griffith, Senior Policy Analyst, Education Commission of the States (ECS) and at the hearing on September 26 by Deborah A. Verstegen, PhD, Professor, Education Finance & Policy, College of Education, University of Nevada. Additional background information was utilized from other ECS publications found at <http://www.ecs.org/html/IssueSection.asp?issueid=112&subissueid=57&ssID=0&s=What+States+Are+Doing>.

<sup>64</sup> See *U.S. Education Appropriations*, National Center for Education Statistics, [http://nces.ed.gov/programs/digest/d12/tables/dt12\\_424.asp](http://nces.ed.gov/programs/digest/d12/tables/dt12_424.asp).

over-identifying students, classifying students into more severe disability categories, or moving students into more segregated settings based primarily on funding considerations.

States use one or more different mechanisms for special education funding. All of these approaches recognize that additional resources are needed to support the education of students with disabilities, above regular education expenditures. State funding is appropriated in some states:

1. *Through an independent state formula dedicated solely to special education, separate from the main school funding mechanism.*

Pennsylvania has long maintained an independent formula for special education. Thirty-one states follow this practice.

2. *By including special education students along with other cost drivers in the state's main funding formula.*

Pennsylvania has included students in poverty and English language learners within the main formula for Basic Education, but not students with disabilities. Eighteen states have "unified" formulas that include special education.

3. *Using additional budget line items to provide state funding for expensive programs or students with very high-cost special education needs.*

Pennsylvania operates the Contingency Fund for this purpose, as well as a separate line item in the budget for Approved Private Schools. Thirty-one states operate programs to provide additional funding for students with very high needs/costs or intensive programs such as extended school year services.

### **States with Independent Formulas for Special Education Funding**

States use three general types of funding formulas for special education – Cost Approach; Census Approach; and Combined Approach.<sup>65</sup> Each state employs a unique variation on these basic formula types, so that no two states are identical. In addition, states often change their special education formula over time based on educational, funding, and other considerations.

*The Cost Approach.* This type of formula assumes that the state should distribute funding to local education agencies (LEAs) based on the costs associated with educating students with disabilities. The state often funds part of the total cost, with the LEA paying for the remainder from local and federal sources. Many states also put a cap on the costs funded for any particular LEA or for the state as a whole.

Costs are measured in different ways. Some states provide a flat dollar amount for every student. Other states assign a cost weight to different students based on their disability, type of placement,<sup>66</sup> or the intensity of services they need. The number of weights varies, ranging from three or fewer weights in some state formulas to more than a dozen in others.

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<sup>65</sup> Studies use somewhat different ways to define special education formulas and to count the number of states using each formula type. A general estimate is that over 30 states use the Cost Approach, under 10 states use the Census Approach, and almost 20 states in total use a Combined Approach.

<sup>66</sup> States using placement-based formulas assign different relative costs for the education for students with disabilities in inclusive (regular) classroom settings and for education in separate (self-contained) settings. Some states estimate that inclusion costs more than separate settings or should receive greater fiscal incentives, while other states assume the opposite.

A few states use cost formulas measuring the total special education services provided by an LEA, rather than using a student basis for cost. Service cost or resource-based formulas usually measure student-teacher ratios or classroom units for different kinds of services.

Other states focus on actual expenditures, rather than direct costs. The formulas in these states provide "reimbursement" for a percentage of LEA expenditures for special education. States consider LEA expenditures that are approved by regulation or administrative review. Limits or caps are usually placed on the funding calculated by this approach.

*The Census Approach.* This type of formula provides funding based on the number of students receiving special education services in each LEA. Some states assume that all LEAs have the same percentage of students with disabilities. Pennsylvania has used the Census Approach for many years.

*The Combined Approach.* Many states combine the Cost and Census Approaches. A Combined Approach uses a formula or multiple appropriation line items that reflect both costs and student counts.

*Student Variables.* The number and type of student variables within independent special education formulas differ widely from state to state. Some states have twelve or more student variables, reflecting diverse categories of student cost, need, or enrollment. Other states have only one or two variables, meaning that several special education factors are aggregated into broader categories. States commonly set a weight for each variable and a base cost for the overall formula, although the values for these factors vary widely between the states. Some states balance these factors, setting higher weights to compensate for a relatively low base cost. Many states place a cap on each variable, providing funding based on actual student count or cost data for each local education agency up to a set level. Such caps protect against over-identification or excess costs. Because of the great variety in how states use and define student variables, there is little consistency between the variable weights utilized in different formulas.

### **States that Include Special Education within the Basic Education Formula**

Rather than appropriating state funding through an independent special education formula, some states incorporate students with disabilities into the main formula for public education. The main formula then includes variables that distribute funding based on cost or enrollment data for special education. In this way, the same formula concepts described above are utilized within the unified funding system. Most states with a unified formula also appropriate funding through separate programs for especially high-cost special education students or services.

### **Separate Funding Systems for High Cost Students or Services**

Many states recognize that no single formula can account for students with the most complex needs, far outside the range of average special education costs. A relatively small percentage of students have educational needs that require very expensive supports and services. Special education formulas are generally not designed to address these extraordinary situations.

States often establish separate mechanisms to provide funding for high-cost students. The definition of "high cost" varies from state to state, ranging from \$10,000 to over \$50,000 of total spending per student.

In addition, some states appropriate funding directed for special education services with extraordinary costs, such as extended year (summer) programs.

Most states limit the funding available for these high cost systems, using a percentage of the total cost, providing funding only over a set cost level, or capping the appropriations available in a given year. In these states, the claims by local education agencies usually exceed the funding available for distribution.

### **Trends in State Funding Formulas**

It is difficult to discern any universal trends in special education formulas. Each state tends to have a unique approach to funding education for students with disabilities.

However, many states have attempted to increase the accuracy of their formulas in recent years. States seek greater accuracy by using up-to-date, data-based formula variables, rather than treating all students and schools as if they have the same needs. Formulas with multiple variables are generally more accurate than single-variable formulas.

Some states have moved away from formulas with variables based on student disability labels, such as autism or speech impairment. Research shows that disability types are often not correlated with cost or need for services. For example, some students with autism may require expensive services while other autistic students do not. Ms. Scafuro testified that “the disability does not drive the cost, the needs drive the cost.”<sup>67</sup> Mr. Moss agreed, explaining that years ago the Pennsylvania Department of Education stopped using disability types to award resources from the Contingency Fund, because there was no relationship to actual cost or need.<sup>68</sup>

Similarly, formulas based on the type of student placement may lack accuracy. Students who are fully included in regular classrooms may have a wide range of costs. Costs also vary for students receiving most services in a separate special education classroom.

One method for improving accuracy is to use a formula that considers the ability to pay of each local education agency. Some communities are better able to generate local funding than others to support their schools.

For a variety of reasons, some states are moving their independent special education formula into the main basic education formula, along with other student groups with higher educational costs.

Mr. Crossey testified that an effective special education formula should take into consideration the range of student needs and the actual cost of providing services.<sup>69</sup> Dr. Galasso testified that formula accuracy is important to support costs incurred by local education agencies, but may be difficult to fully achieve.<sup>70</sup> Special education costs tend to be highly fluid, changing during the course of a given school year as student needs change and as some students with disabilities move in and out of the school. Dr. Auris and Dr. Edelberg added that some LEAs may be able to establish a level of stable fixed costs, but this often requires a sizable student population with similar needs and may vary based on geographic region in the state.<sup>71</sup> The cost of some special education services and staffing may be relatively consistent across the state, possibly aiding the accuracy of a state formula.

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<sup>67</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>68</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>69</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>70</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>71</sup> Testimony at the Commission hearing on July 25, 2013.

## **Balance Between Accuracy and Workability**

The experience in some states shows that there are practical limits on the accuracy of special education funding formulas. A formula with twenty variables may distribute funding more accurately than a formula using two variables. But utilizing a complicated formula year after year may be unsustainable and difficult to administer, primarily because of the burden placed on the state and local education agencies to produce updated data.

## **Neighboring States**

New Jersey uses an independent formula with a Census Approach.<sup>72</sup> The New Jersey formula provides funding based on an assumption that all school districts have about 15 percent of their students receiving special education services. The formula is also weighted by local wealth, so that high poverty communities receive more state funding. In addition, the state separately provides additional funding to partially meet the needs of very high cost students.

New York includes two special education student variables within its overall unified Foundation Aid formula.<sup>73</sup> The state also provides separate funding to partially meet the needs of very high cost students.

Ohio uses an independent special education formula with a Cost Approach.<sup>74</sup> The formula contains six categories based on disability labels, each with a different student count and weight. The formula also includes variables reflecting school district cost factors, measured as an overall district share percentage. In addition, the state separately provides additional funding to partially meet the needs of very high cost students and also for transportation.

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<sup>72</sup> See the *School Funding Reform Act* and the *Special Education Funding System Analysis* posted on the website of the New Jersey Department of Education at <http://www.nj.gov/education/finance/>.

<sup>73</sup> See the *State Aid Handbook* posted on the website of the New York State Education Department at <https://stateaid.nysed.gov/>.

<sup>74</sup> See *State Funds for Special Education* posted on the website of the Ohio Department of Education at <http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Procedures-and-Guidance/Federal-and-State-Funding>.

## SPECIAL EDUCATION FUNDING AND FORMULAS IN PENNSYLVANIA

Special education funding in Pennsylvania has experienced many changes over time. State funding levels have varied from year to year, along with the formulas used to distribute dollars to local education agencies. This section analyzes the trends in both funding and formulas for special education in Pennsylvania.

### Annual Education Budget Line Items for Students with Disabilities

There are several line items in the state's annual education budget that are dedicated for services to students with disabilities.<sup>75</sup> Charter schools and cyber charter schools receive funding for special education not through a particular line item in the state budget, but through the school district where each student resides.

*SPECIAL EDUCATION.* The main line item in the state budget is the Special Education Appropriation. This line item funds four programs: (1) special education for school districts; (2) core services from Intermediate Units; (3) Institutionalized Children's Program of the Intermediate Units; and (4) the Special Education Contingency Fund providing grants by application to local education agencies for students with extraordinary costs. Also included are set asides for the reimbursement of special education wards of state students, out of state students and students in PRRI's.

In the 2013-14 budget, the total amount for this line item was \$1.027 billion. Special Education funding component received 92 percent of the line item. The other three remaining programs received a total of \$75.7 million or about 8 percent of the line item.

*EARLY INTERVENTION.* The state budget provides funding for Early Intervention services for young children from birth through age five with developmental delays. The 2013-14 budget includes \$222 million for these services.

*SPECIAL SCHOOLS.* The state budget contains independent line items for Pennsylvania Charter Schools for the Deaf and Blind (\$42 million in 2013-14) and Approved Private Schools (\$98 million).

*OTHER LINE ITEMS.* Many other line items benefit students with disabilities, along with all other students in local education agencies. Most students receive special education services in regular classrooms, ride the school bus, and eat in the lunchroom with their peers who do not have disabilities. In this way, the line items for basic education, pupil transportation, food services, and other programs are important to the quality of education for students with disabilities.

### State Funding for Special Education

The state currently provides school districts with \$948 million in funding for special education. This equates to a statewide average of about \$3,530 per student receiving special education services.<sup>76</sup> In addition to Basic Education funding provided to each school district the state also provides school districts with \$948 million. Special education funding is not the only state revenue that can be used to support special education programs.

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<sup>75</sup> Information about the 2013-14 Pennsylvania budget is found on the website for the Department of Education at [http://www.portal.state.pa.us/portal/server.pt/community/education\\_budget/8699](http://www.portal.state.pa.us/portal/server.pt/community/education_budget/8699).

<sup>76</sup> Per student funding is estimated using the data for special education enrollment found on the PennData website of the Pennsylvania Department of Education (<http://penndata.hbg.psu.edu/index.aspx>) divided by the state funding data listed in the immediately preceding footnote.

State funding for special education has remained at the same level since 2008. Ms. Fick testified that special education funding has become much more of a local responsibility over the last several years as expenses continue to increase but state funding has been flat.<sup>77</sup> Funding increased by about 80 percent in total over the last 20 years, or an average of around 4 percent per year.<sup>78</sup>

Special Education Funding for LEAs (millions of dollars)			
2008-09 through 2013-14	\$948	2001-02	\$788
2007-08	\$926	2000-01	\$715
2006-07	\$898	1999-00	\$666
2005-06	\$876	1998-99	\$626
2004-05	\$856	1997-98	\$562
2003-04	\$836	1996-97	\$533
2002-03	\$800	1995-96	\$502

There has been a wide range of funding increases received among the 500 school districts over the last 20 years. Funding for some districts has grown by over 150 percent (more than doubled), while other districts have received less than a 50 percent increase. As discussed below, these variations appear to be related to the many changes over time in the state's funding formula for special education and are not closely correlated to student enrollment, poverty, or other data-based factors. For example, some districts with significant enrollment and poverty growth have received among the smallest funding increases, while other districts with declining enrollment and poverty have received large funding increases.

Ms. Scafuro testified that the financial issues currently faced by local education agencies are making it more and more difficult to meet their service obligations and provide high quality programs to students with disabilities.<sup>79</sup> Mr. Crossey testified that school districts have responded by pulling funding from non-mandated regular education programs or raising local taxes in order to support special education programs.<sup>80</sup> In addition, differences in available funding between local education agencies lead to differences in the provision of special education services. Ms. Somerville also testified that if other districts had more funding available they would be more willing and able to provide the needed services for special education.<sup>81</sup>

### Past Formulas Used to Distribute State Funding for Special Education

#### Excess Cost System<sup>82</sup>

<sup>77</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>78</sup> Pennsylvania data about funding levels over time, including data in the chart, are found on the website for the Department of Education at [http://www.portal.state.pa.us/portal/server.pt/community/historical\\_files\\_and\\_reports/12951/special\\_education\\_funding/509062](http://www.portal.state.pa.us/portal/server.pt/community/historical_files_and_reports/12951/special_education_funding/509062).

<sup>79</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>80</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>81</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>82</sup> See 24 P.S. § 25-2509, Payments on account of courses for exceptional children.

Prior to 1991, Pennsylvania used the "excess cost" system to fund special education. The state paid school districts for the difference between special education costs and regular education costs. The formula included the actual number of students in special education and the actual costs in each district. Adjustments were made during the fiscal year to give extra funds needed or apply left-over funds to the next year. The excess cost system was intended to meet the actual needs for each school district.

Special education costs were perceived to increase rapidly under the excess cost system. There was no effective limitation on cost increases. As a result, the system may have included potential incentives for over-identification of students for special education and for using expensive programs.

### Census System<sup>83</sup>

In order to establish more predictability, in 1991 the state adopted a new mechanism for distributing special education funding. Under the "census system", the state paid school districts a supplement based on a formula. The formula assumed that 15 percent of all students in each district had mild disabilities and that 1 percent had severe disabilities.<sup>84</sup> Districts received a fixed amount of funding per assumed student<sup>85</sup> whether they had more or less than this 16 percent overall level. The census system did not count the actual number of students who received special education services. In some years, the formula included a higher payment rate for the one-percent category of students with severe disabilities.<sup>86</sup>

Under the census system, the funding formula for special education changed in almost every year since 1991. Changes over time included:

- The state usually gave funding to every district at the same or a higher level as the year before. This is called "hold harmless." In addition, guaranteed minimum increases for districts were set between 1% and 5%, varying each year.
- From 1994 to 2001, the formula included factors that benefited districts with higher costs than the "average" district.
- From 1997 to 2001, the formula favored districts with high levels of poverty and high tax effort (equalized mills). After 2001, local poverty levels remained a factor, but equalized mills were not considered.
- From 1999 to 2002, the formula added a factor benefiting districts with very high numbers of students receiving special education services.
- Since 2000-01, the state has capped state funding and used the overall sixteen-percent factor to divide the total amount of any new funding between districts.
- The 2008-09 state budget was the last time that special education received an increase.<sup>87</sup> This was also the last year that a formula was used to distribute funding for special education. The level of state funding has remained the same since 2008-09,

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<sup>83</sup> See 24 P.S. § 25-2509.5, Special education payments to school districts.

<sup>84</sup> In the first year of the census formula, but not in other years, the state assumed that 17 percent of all students have mild disabilities and 1 percent have severe disabilities.

<sup>85</sup> For example, in 1999-2000, the assumed percentage of students with mild disabilities (15%) was multiplied by \$1,315 and the assumed percentage of students with severe disabilities (1%) was multiplied by \$14,535. See 24 P.S. § 25-2509.5(u).

<sup>86</sup> After 1999-2000, the state generally stopped paying a higher rate for students with severe disabilities.

<sup>87</sup> See 24 P.S. § 25-2509.5(zz).

both statewide and for each school district.<sup>88</sup> Thus, at this time Pennsylvania does not actually use a special education funding formula.

Ms. Cowburn testified that many local education agencies currently do not receive a share of state funding that matches their level of need, based on the number of students with disabilities or their educational costs, which places more of the burden on local taxpayers in those communities.<sup>89</sup> As a result, tax increases occur at the local level. Ms. Cowburn explained that high-poverty communities with low property values and property taxes that are already very high are unable to effectively generate much more local revenue.

Ms. Wentzel testified that, given limited state funding and increasing costs, some local education agencies have sought to satisfy special education mandates by reducing the resources allocated to regular education programs.<sup>90</sup> She recommended that state funding should be more accurately distributed based on actual student enrollment, cost and service levels needed, school district wealth, and local tax burden. Mr. Matyas testified that school districts have little choice beyond reducing costs in other program areas to preserve special education services, due to legal mandates, increasing special education costs, flat state funding, and caps on property tax increases.<sup>91</sup>

Ira Weiss, Solicitor, Pittsburgh School District, testified at the Commission hearing on August 7, 2013 that special education funding reforms are needed and will “benefit families and communities by strengthening the education of all students, increasing instructional effectiveness, reducing dropout rates, improving student performance, and lowering long term societal costs.”

### **Charter Schools and Cyber Charter Schools**

Charter schools and cyber charter schools follow the same federal requirements for special education as all other public schools,<sup>92</sup> although the funding is handled differently. Payments to charter schools by school districts are based on the school districts expenditures, not the charter schools cost of educating students.<sup>93</sup> The payments are made through the school district of residence for each student. When payment disagreements arise, the Department of Education may handle the reimbursements by withholding funding from the school district and passing it along to the charter or cyber charter school.

The funding rates are set by state law. The rate is different for each school district, based on its average per-student expenditure for regular education plus an additional amount representing its average per-student expenditure for special education. The special education amount uses an assumed 16 percent of average daily membership of students, not enrollment. Ms. Cowburn testified that this system penalizes school districts with more than 16 percent of students receiving special education services, forcing them to pay a much higher rate to charter schools than actually occurs in the district.<sup>94</sup>

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<sup>88</sup> See 24 P.S. § 25-2509.5(aaa).

<sup>89</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>90</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>91</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>92</sup> Special education costs may be lower at charter schools and cyber charter schools, because they are exempted from some state requirements for school districts (such as class size and age range). See 22 Pa. Code Chapter 711.

<sup>93</sup> See 24 P.S. 17-1725-A, Funding for charter schools. Also see state regulations (22 Pa. Code Ch. 711.9) and basic education circulars (BEC-Charter Schools, 24 P.S. Section 17-1701-A and BEC-Cyber Charter Schools, 24 P.S. Section 17-1741-A), found online at

[http://www.portal.state.pa.us/portal/server.pt/community/charter\\_school\\_regulations/7359](http://www.portal.state.pa.us/portal/server.pt/community/charter_school_regulations/7359)).

<sup>94</sup> Testimony at the Commission hearing on July 10, 2013.

### **Special Education Contingency Fund<sup>95</sup>**

The Contingency Fund provides additional state funding for local education agencies (LEAs) with extraordinary special education program expenses for students with significant disabilities. Each LEA can annually apply for funding for individual students through the Department of Education. The Department has discretion over the approval process, based on standard procedures established by the Secretary of Education. When an application is received by the annual deadline and approved, funding is often provided below the requested amount due to limited overall state appropriations.

The total amount of statewide funding for the Contingency Fund is appropriated each year as a small percentage of the special education line item in the budget. The percentage has been set at 1 percent in recent years, although this was higher in the past. Total funding available for distribution to LEA's is \$9.3 million for 2013-14.

Ms. Fick, Ms. Gustafson, and Ms. Somerville testified that funding received through the Contingency Fund can be unpredictable from year to year, with a local education agency receiving much less funding in some years than in others despite stable or increasing student needs.<sup>96</sup> Ms. Wentzel testified about similar concerns.<sup>97</sup> Dr. Galasso and Dr. Grieco testified that the Contingency Fund should be expanded or additional resources provided in other ways for students with extraordinary costs, with emphasis on an equitable and transparent process for distributing these dollars.<sup>98</sup>

Richard Moss, Chief, Division of Technical Assistance and Improvement – Central, Pennsylvania Department of Education (PDE), testified at the Commission hearing on August 7, 2013, that PDE advises local education agencies to not count on the Contingency Fund as part of their annual budgeting process.

Dr. Ronald Wells, Special Education Advisor, Pennsylvania Department of Education, testified at the Commission hearing on August 7, 2013, that the Contingency Fund was established by state statute in 1991.<sup>99</sup> Dr. Wells explained that local education agencies apply to PDE for reimbursement of instructional costs and related services included in the individualized educational program (IEP) for the student. There are certain cost factors deducted from each application, so that any award from the state is in the form of a partial match for total spending on each child. The LEA's aid ratio is used to weight the approved funding level, but is not used to determine which applications are approved. The total award is limited to a maximum of \$150,000 per LEA,<sup>100</sup> which could include one or more students. An LEA cannot access additional funds above the cap, regardless of the number of high-cost students enrolled in its schools. Applications received before the annual deadline are considered and approved starting with those having the highest net cost after deductions, causing the available funding to be expended before many lower-cost applications are reviewed.

Dr. Wells further testified that in 2012-13 a total of 788 applications were received from 199 LEAs. Many LEAs choose to not apply to the Contingency Fund, due to the low amount of available funding. 236 requests were approved through the Fund for 122 LEAs. 17 LEAs received the maximum allotment of \$150,000. In 2012-13, the number of very high cost

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<sup>95</sup> See 24 P.S. § 25-2509.8. Also see Guidelines published by the Department of Education at [http://www.portal.state.pa.us/portal/server.pt/community/special\\_education/7465/contingency\\_fund\\_information/611390](http://www.portal.state.pa.us/portal/server.pt/community/special_education/7465/contingency_fund_information/611390).

<sup>96</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>97</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>98</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>99</sup> 24 P.S. § 25-2509.8 Extraordinary special education program expenses.

<sup>100</sup> The limit is \$300,000 for the School District of Philadelphia.

applications (more than \$100,000 after cost deductions) for individual students was more than four times higher than six years earlier – an increase of over 400% since 2007-08.

Mr. Moss testified that PDE changed the application review process after 2006-07 to prioritize funding approval for the highest cost students and to weight the funding for approved applications using the aid ratio. Before that time, PDE had approved nearly all applications but funded only a very small percentage of each request. Mr. Moss testified that the current Contingency Fund system is not set to be equitable between LEAs of different total enrollment or special education enrollment.

## **STUDENT-BASED FORMULA FACTORS AFFECTING COST AND EXPENDITURES**

Special education costs and expenditures for local education agencies are affected by student-based factors. The state formula used to distribute funding should take at least some of these factors into consideration. The objective for using a formula is to distribute state funding according to the relative needs of students and schools.

### **Act 3 Instructions**

Pennsylvania Act 3 of 2013 (House Bill 2) contains instructions for possible student-based factors that may have an impact on special education funding.<sup>101</sup> In compliance with Act 3, the Commission considered the factors discussed below.

### **Relative Cost for Students**

Students receiving special education services cost more to educate than students who do not have disabilities or a need for these services. The additional costs vary for each individual student based on their personal needs for accommodations and supports.

Some students with disabilities have relatively simple needs and require special education services that are only a little more costly than students who do not have a disability. Other students have more complex disabilities and thus require very costly services. There is potentially a different cost for each child based on his or her unique needs. Most importantly, the composition of students varies among local education agencies.

Mr. Weiss testified that state funding for special education should be distributed in recognition of the enrollment levels of students with disabilities as well as their needs and service costs in different local education agencies.<sup>102</sup> Mr. Weiss concluded that "Not all students cost the same and the formula should include weighting for higher costs." Susan Gobreski, Executive Director, Education Voters PA, testified at the Commission hearing on September 26, 2013 that the special education formula should include factors reflecting different levels of community poverty and student costs.

Ms. Resh testified that every student should get appropriate special education services regardless of the school district in which they reside.<sup>103</sup> "When special education funding reform ensures that funding is allocated based on current enrollment of special education students and the level of disability and need these students have, districts will be able to rise to the challenge." Ms. Tomko testified that fair distribution of special education funding by the state will help ensure that schools can give all children with disabilities the services they need, instead of the current system in which under-funded schools may not provide the same level of services when their families are unable to actively advocate for more.<sup>104</sup>

### **Student Cost Categories**

Pennsylvania has nearly 270,000 students receiving special education services in local education agencies. It is not practicable to design a mechanism to distribute state funding that

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<sup>101</sup> See Public School Code of 1949 -- Omnibus Amendments, Act of Apr. 25, 2013, P.L. 12; No. 3, Section 122(h) and Sections 122(i)(6), (7) and (8).

<sup>102</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>103</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>104</sup> Testimony at the Commission hearing on August 22, 2013.

directly considers the needs of each individual student and the cost impact of their unique needs on the schools in which they are enrolled. For this reason, funding formulas used in other states create broad student categories reflecting a range of student needs for special education services.

Act 3 includes three student categories, varying by intensity in the range of services required by students with disabilities.<sup>105</sup> Cost Category 1 includes “students with disabilities typically requiring the least-intensive range of services.” Cost Category 2 includes “students with disabilities typically requiring a middle range of services.” Cost Category 3 includes “students with disabilities typically requiring the most intensive range of services.”

Defining the student categories by cost and intensity of services is an effective way to ensure the funding formula distributes resources according to the special education costs and expenditures incurred by local education agencies. LEAs with higher costs and expenditures should receive a larger share of state funding than LEAs with lower levels of need.

Ms. Edling testified that breaking special education costs into categories would move Pennsylvania’s formula in the direction of providing resources where they are needed.<sup>106</sup> Ms. Cowburn testified and emphasized that “a whole mind set has to change” so that the funding system is paying for services where they are delivered for students.<sup>107</sup>

In order to provide for an accurate funding formula, other states use different definitions for student cost categories.<sup>108</sup> The variety of approaches includes categories based on intensity of services, type of placement, student-teacher ratios, and actual expenditures.

Several states have moved away from using formula categories based on student disability labels.<sup>109</sup> In general, disability types are not an accurate measure of cost or intensity of services. Mr. Ramsey testified that students are idiosyncratic with a wide range of individualized needs for each kind of disability.<sup>110</sup> For example, a student with autism may require more or less intensive services than a student with a “specific learning disability”. In addition, the cost and intensity of services often change from year to year for each individual student, although the disability label assigned to them remains the same. Many students require less intensive services as they get older, learn more, and progress into higher grade levels.

There is an inherent limitation on the high cost category created as part of any funding formula. A relatively small number of students with disabilities have extraordinary educational costs. Some students may require special education services costing more than \$100,000 in each year. The high cost category in the formula is not likely to accurately reflect the needs of these students and the schools responsible for their education. For this reason, many states use a separate funding mechanism to provide additional resources for local education agencies outside of the special education formula. In Pennsylvania, the Contingency Fund may serve this purpose.

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<sup>105</sup> See Act 3, Section 122(i)(6)(i).

<sup>106</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>107</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>108</sup> See Special Education Funding Formula on Other States Section above for more information on this topic.

<sup>109</sup> Students receiving special education services are each assigned a label representing the nature of their primary disability. Students are labeled as “autism”, “emotional disturbance”, “orthopedic impairment”, “specific learning disability”, or one out of the dozen different labels provided by state and federal law.

<sup>110</sup> Testimony at the Commission hearing on June 13, 2013.

### **Weighting Factor for Each Category**

A funding formula that contains more than one student category requires the assignment of a different weight for each category. The purpose of the weight is to accurately distribute funding based on the relative needs of students and schools.

Act 3 states that the formula may include “a weighting factor that differs for each of the three cost categories of students with disabilities based on the typical range of services for each cost category.”<sup>111</sup>

The weights used in the special education formulas of other states cover a wide scope of values and measures. The weights are given different values based on the number of student categories in the formula, the definition and scope of each category, the use of other formula variables, and other factors.

In general, student categories reflecting higher costs are assigned a weight of greater value. For example, a low cost category may have a weight of 1.1, reflecting student and school needs slightly above the needs of students who do not have disabilities. A high cost category may have a weight of 5.1, reflecting much greater student and school needs.

### **Student Enrollment Count**

The final formula factor involves the number of students in each category for local education agencies. Using student enrollment counts can help to increase the accurate distribution of state funding, so that LEAs with more students receive a greater share of the resources.

Ms. Fick and Ms. Somerville testified that some LEAs attract more students with complex and costly needs, due to the high quality of the special education services offered in their schools, with families moving into the community in order to access these services.<sup>112</sup> Ms. Weiss also testified that this circumstance is a significant cost driver for special education in many school districts.<sup>113</sup> Mr. Sarandrea testified that Pennsylvania school districts bordering on Ohio attract families moving across the state line to access better quality special education programs available in Pennsylvania.<sup>114</sup>

There are two possible complications with the use of student enrollment counts. First, most states are careful to avoid creating incentives for LEAs to over-identify students or artificially inflate costs. When real student counts are used in the formula, states often adopt monitoring protocols and protections to discourage LEAs from shifting students away from lower cost categories with lower weights in the formula (and into higher cost categories), thus attracting a greater share of funding. Pennsylvania adopted such protections as part of Act 3.

Second, states often seek to avoid placing new bureaucratic data reporting requirements onto LEAs. A real student count for each category has the potential to require LEAs to report detailed data needed for operating the funding formula, unless such data is already collected by the state.

For these two reasons, some states utilize student enrollment averages within the special education funding formula. An enrollment count average can involve a statewide percentage of students receiving special education or a statewide percentage of all students enrolled in all local education agencies (not just students with disabilities). In Pennsylvania, the Census System of funding assumed that special education enrollment in all school districts was at the

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<sup>111</sup> See Act 3, Section 122(i)(6)(iii).

<sup>112</sup> Testimony at the Commission hearing on June 13, 2013.

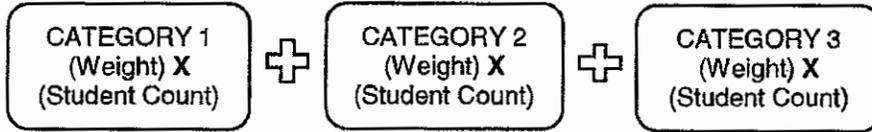
<sup>113</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>114</sup> Testimony at the Commission hearing on August 7, 2013.

same rate of 16 percent. Such assumed percentages greatly reduce the accuracy of the formula.

**Building a Formula with Student-based Factors**

A typical formula using student-based factors will look something like the following illustration:



**Base Cost Factor**

Some states apply a base cost to multiply by the various student factors in the formula. The base cost typically reflects the average cost to educate a student without disabilities. Some states add special education student costs to a base cost in the formula in order to reflect the additional costs associated with special education.

Act 3 does not include a base cost factor. In adopting Act 3, the General Assembly determined that other methods can be used to accurately distribute special education funding among local education agencies in Pennsylvania.

## **LEA FORMULA FACTORS AFFECTING COST & ABILITY TO PROVIDE SERVICES**

A variety of community-based factors affect special education costs for local education agencies and the ability of LEAs to provide services to students with disabilities. Some of these factors should be part of the state's special education formula, in order to distribute funding according to the relative needs of students and schools.

### **Act 3 Instructions**

Pennsylvania Act 3 of 2013 (House Bill 2) contains instructions for possible community-based factors that may have an impact on special education funding.<sup>115</sup> In compliance with Act 3, the Commission considered the factors discussed below.

### **Relative Capacity of Local Education Agencies**

Local education agencies face different conditions for the provision of special education services. For example, the level of poverty varies throughout the state. Some communities have much lower levels of local wealth and more students living in poverty. Local property taxes are also much higher in some communities, often the same places with high poverty. In addition, the local cost of living can vary between communities, with higher prices for the same goods and services.

These factors can make it much more expensive for some LEAs to provide special education services. Many states include community-based variables in their special education funding formulas, in order to accurately distribute resources and provide all schools with the ability to provide quality services to students with disabilities.

Mr. Crossey testified that an effective state formula should take into account the local wealth of school districts and their ability to pay for special education programs.<sup>116</sup>

### **Community Poverty**

The overall level of community poverty imposes additional educational challenges and costs on local education agencies. Students in poverty, especially children with disabilities, tend to have more complicated academic needs.

Act 3 includes a factor designated as the market value/personal income aid ratio. The aid ratio is commonly used within education funding formulas in Pennsylvania. It is defined by state law<sup>117</sup> to represent the relative wealth (market sales value of local real estate and personal income of residents) of a particular community in relation to the state average.

John Sarandrea, Superintendent, New Castle Area School District, testified at the Commission hearing on August 7, 2013 that there is a correlation between the percentage of students needing special education services and the aid ratio of the community in which the local education agency is located.

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<sup>115</sup> See Public School Code of 1949 – Omnibus Amendments, Act of Apr. 25, 2013, P.L. 12, No. 3, Section 122(h) and Sections 122(i)(6), (7) and (8).

<sup>116</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>117</sup> 24 P.S. § 25-2501(14.1), Definitions.

## Local Tax Effort

Communities often have high local tax rates because local poverty and other conditions make it difficult to generate sufficient revenue to support quality schools. Many Pennsylvania communities with very high local taxes are still unable to fund their schools at the same level as more wealthy communities.

Act 3 uses the equalized millage rate to reflect local tax effort. This factor is defined in state law<sup>118</sup> to reflect the total local school taxes collected by a school district divided by the market value of local real estate.

Mr. Sarandrea testified that, in many high poverty communities, the local tax base is shrinking and is “maxed out,” so that it is not an option to support special education costs by raising local taxes.<sup>119</sup>

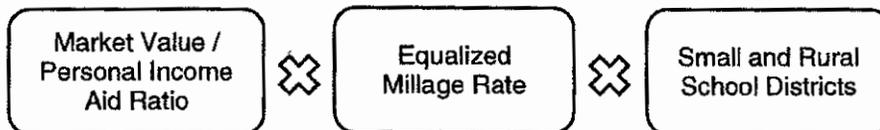
## Other Factors

Some states include other community-based factors in the formula. Other factors reflect conditions in local education agencies (LEAs) that are very small, rural, rapidly growing, or with large achievement gaps.

The Commission heard testimony from many witnesses that small and rural conditions in Pennsylvania have an impact on special education costs. Ms. Fick testified that small school districts may not be able to offer the full range of special education services that are available in larger districts.<sup>120</sup> Ms. Wheat and Mr. Weiss testified that small school districts may not benefit from the same efficiencies in service provision that larger districts experience.<sup>121</sup> Ms. Cowburn testified about the transportation costs incurred by small and rural districts needing to bus students for special education services outside of the district.<sup>122</sup>

## Building a Formula with LEA Factors

A typical formula using community-based factors will look something like the following illustration:



## Local Cost of Living

Throughout Pennsylvania, there are price differences for the same goods and services. It costs more in some communities to purchase school supplies and to pay teacher salaries and benefits. Special education expenses are sensitive to cost of living differences, because local education agencies must obtain most products and services in the local marketplace to meet the needs of students with disabilities.

Other education formulas in Pennsylvania do not currently use a factor for geographic price differences. The state does not have a well-tested measure for this data.

<sup>118</sup> 24 P.S. § 25-2501(9.2), Definitions.

<sup>119</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>120</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>121</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>122</sup> Testimony at the Commission hearing on July 10, 2013.

## ISSUES INVOLVING POSSIBLE OVER-IDENTIFICATION OF STUDENTS

State and Federal law prohibit public schools from using special education programs and funding to serve children who are not qualified for special education. In addition, government policies provide for monitoring of local education agency practices to identify circumstances where schools may over-identify students for special education by gender, race, family income, and type of disability. Such policies are intended to ensure that student needs are met in appropriate ways and that limited resources are allocated efficiently and without waste or manipulation.

### School Districts

The Commission did not hear any testimony to indicate the current practice of over-identification in school districts within Pennsylvania.

Over-identification may have been a concern when the Excess Cost System was used in Pennsylvania prior to 1991. Since that time, special education funding has been distributed in the Commonwealth through a Census System. Mr. Griffith and Dr. Versteegen testified that Census Systems are commonly adopted by states as a reaction to cost drivers such as over-identification.<sup>123</sup>

Bernie Miller, Director of Education Services, Pennsylvania State Education Association, testified at the Commission hearing on August 22, 2013 that school districts no longer have an incentive to over-identify students, partly because the science of special education has improved and drives the decision-making process.<sup>124</sup>

Ms. Cowburn testified that “school districts have absolutely no reason to over-identify students for special education.”<sup>125</sup> She explained that special education revenue received from state and federal sources do not cover the districts’ costs.

### Charter Schools and Cyber Charter Schools

The Commission received testimony from many witnesses about potential incentives for over-identification in Pennsylvania’s current funding system for special education in charter schools and cyber charter schools. Officials for school districts, charter schools, and cyber charter schools generally agreed about how the current system works, although there was no consensus about the impact of the system on how students are identified for special education.

David Lapp, Staff Attorney, Education Law Center, testified at the Commission hearing on September 26, 2013, summarizing the issues based on his experience: “The current charter school funding mechanism provides charter schools the same funding for each student with a disability, regardless of the severity of that student’s disability. This creates a strong incentive to over-identify students with less costly disabilities and to under-identify (or under-enroll) students with severe (or more costly) disabilities. A student with a mild disability can be a financial boon to a charter school, given that the funding the charter receives will exceed the charter’s cost to educate the child. In contrast, when a charter school does enroll a student with a severe disability, the funding may be inadequate. This creates a disincentive for charters to serve students with severe disabilities.”

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<sup>123</sup> Testimony at the Commission hearings on July 10 (Griffith) and September 26 (Versteegen).

<sup>124</sup> Testimony at the Commission hearing on August 22, 2013.

<sup>125</sup> Testimony at the Commission hearing on July 10, 2013.

Kevin Corcoran, Assistant Head of School, Agora Cyber Charter School, testified at the Commission hearing on September 26, 2013, that “93 percent of our special education students arrived at our school with IEPs from their school district of residence.”

Lawrence Jones, Jr., CEO, Richard Allen Preparatory Charter School, testified at the Commission hearing on September 4, 2013, responding to allegations that some charter schools have “gamed the system” to get more funding for special education. He testified that “if this is happening it is shameful, unethical and violates the spirit of Free and Appropriate Public Education” under IDEA. Nicole Snyder, Esq., Latsha Davis & McKenna (Pennsylvania Coalition of Public Charter Schools), testified at the Commission hearing on September 26, 2013 that charter schools comply with state and federal laws for special education, just as school districts do.

Larry Sperling, CEO, Philadelphia Academy Charter School, testified at the Commission hearing on September 4, 2013, about the significant costs for special education expended in his school to meet the needs of students with a wide variety of disabilities. Mr. Sperling explained that Philadelphia Academy Charter School has developed a reputation for providing excellent special education services.

Dr. Maurice Flurie, CEO, Commonwealth Connections Academy, testified at the Commission hearing on September 4, 2013, that special education costs for cyber charter schools “are not less, but rather they are different from those incurred in ‘bricks and mortar’ settings.” Mr. Flurie provided several examples of very high-cost students served through special education by Commonwealth Connections Academy. He noted that many of these students, while enrolled at the Academy, are served by costly private placements and not by the cyber charter school itself.

Nicholas D. Torres, CEO, Education Plus Academy Cyber Charter School, testified at the Commission hearing on September 26, 2013, about the success of the unique “blended approach of virtual and face-to-face learning” employed at his school, focusing on the special education needs of students with learning disabilities. Mr. Torres also said that his school sometimes spends more or less for the special education costs of a given student than the funding actually received from the district of residence. This point was also made by Mr. Corcoran about how funding is utilized by Agora Cyber Charter School, where many students cost less than the funding received but a smaller number of students cost much more.<sup>126</sup>

Hannah Barrick, Director of Advocacy, Pennsylvania Association of School Business Officials, testified at the Commission hearing on September 4, 2013 that the flat rate for special education tuition paid by school districts to charter schools regardless of actual student disability or cost may create potential incentives for over-identification.

Other school district officials also testified on this issue. Mr. Weiss testified that charter schools are funded based on the full special education tuition rate regardless of the level of services actually provided to students with disabilities.<sup>127</sup> This imposes significant costs on school districts. Ms. Scafuro testified that Central Bucks School District often pays more to a charter school or cyber charter school for special education than the costs would have been to educate the child in the school district itself.<sup>128</sup> This occurs because many of these children have relatively low cost special education needs. Ms. Cowburn and Mr. Crossey testified that special education in charter schools should be funded based on the actual costs of students they serve, not average costs.<sup>129</sup> On behalf of the Pennsylvania Coalition of Public Charter Schools, Ms.

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<sup>126</sup> Testimony at the Commission hearing on September 26, 2013.

<sup>127</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>128</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>129</sup> Testimony at the Commission hearing on July 10, 2013 (Cowburn) and August 22, 2013 (Crossey).

Snyder testified that a “tiered or cost approach” to special education funding would be encouraged by charter schools and cyber charter schools.<sup>130</sup>

Ms. Fick, Dr. Gustafson, and Ms. Somerville testified that students with disabilities often re-enroll in their school districts after an unsuccessful experience with special education in a cyber-charter school.<sup>131</sup> While the student is enrolled at the cyber charter school, the home district receives almost no information about the special education services provided, even though the district must pay for the tuition. They testified that cyber charter schools may not provide the same level of services as the home school district, creating extra costs for the district to help the student catch up after returning.<sup>132</sup> Ms. Cowburn testified about similar issues.<sup>133</sup> Mr. Sarandrea testified that similar trends occur in western Pennsylvania.<sup>134</sup>

Dr. Auris testified that Intermediate Units frequently provide special education services for students enrolled in charter schools and cyber charter schools, including full-time all-day services in classrooms located in the IU facility.<sup>135</sup> The charter schools pay the IU for these services. Ms. Snyder and other charter school officials testified about the challenges they have in obtaining services from some Intermediate Units, forcing the charter school to acquire services from other providers and driving up their costs for special education.<sup>136</sup>

Ms. Gobreski testified that the problems in the current system can be addressed by applying the same principles and structure for a funding formula to both school districts and charter schools.<sup>137</sup> Ms. Snyder, Mr. Corcoran, and other witnesses emphasized that the current special education funding system for charter schools and cyber charter schools involves a regular education reimbursement component which includes less than the full amount of regular education expenses from school districts.<sup>138</sup>

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<sup>130</sup> Testimony at the Commission hearing on September 26, 2013.

<sup>131</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>132</sup> Testimony at the Commission hearing on June 13, 2013.

<sup>133</sup> Testimony at the Commission hearing on July 10, 2013.

<sup>134</sup> Testimony at the Commission hearing on August 7, 2013.

<sup>135</sup> Testimony at the Commission hearing on July 25, 2013.

<sup>136</sup> Testimony at the Commission hearing on September 26, 2013.

<sup>137</sup> Testimony at the Commission hearing on September 26, 2013.

<sup>138</sup> Testimony at the Commission hearing on September 26, 2013. See 24 P.S. 17-1725-A, setting charter reimbursement rates for regular education using “the budgeted total expenditure per average daily membership . . . minus the budgeted expenditures of the district of residence for nonpublic school programs; adult education programs; community/junior college programs; student transportation services; special education programs; facilities acquisition, construction and improvement services; and other financing uses, including debt services and fund transfers.” The same net regular education amount is also part of current law for special education reimbursement for charter schools and cyber charter schools, with average special education expenditures added to the net regular education amount.

# **CORE PRINCIPLES FOR A NEW SPECIAL EDUCATION FUNDING FORMULA**

As described above, the Commission is charged by Act 3 with developing a special education formula based on several essential factors. The testimony presented to the Commission illustrates the importance of these factors and related issues from witnesses at the Commission's hearings. In addition, Act 3 places certain limitations on the authority of the Commission. Within these guidelines and limitations, this section lays out the core principles considered by the Commission in developing a new special education funding formula for Pennsylvania.

The Commission finds that Pennsylvania's special education funding formula should take into consideration the following core principles:

## **Meet the Needs of Students and Schools**

The formula should be designed to meet the needs of students and schools.

## **Provide Accuracy**

The formula should provide a reasonable level of accuracy in distributing state resources to local education agencies based on need.

## **Consider Changing Conditions**

The formula should contain variables that reflect changes in student population and community conditions, in order to remain a viable and effective funding system over time.

Section 122(k) of Act 3 also provides a mechanism for periodic review of the formula by the General Assembly. The Commission will be reconstituted every five years to meet, hold public hearings, review the operation of the special education funding formula, and make a report with recommendations for legislative action.

## **Achieve Sustainability and Workability**

The formula should be simple to use, easy to understand, and avoid placing an excessive administrative burden on the state and local education agencies, in order to remain a consistent, practical, and effective system over a period of many years.

There is an inherent balance between accuracy and workability. Compromise on both principles is necessary to construct a sustainable and effective system.

## **Protect Against Over-identification and Other Unintended Consequences**

Any funding formula inevitably creates incentives that influence the decisions of school officials. The special education formula should encourage compliance with best practices and legal standards. Schools should not be motivated by the formula to over-identify or under-identify students with disabilities, nor to withhold services needed by students or provide unnecessary services.

### **Limitations in Act 3**

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. *Section 122(j).*

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 (2010-11) and shall not be used for any other purpose. *Section 122(l).*

For the 2013-14 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 (2010-11). *Section 122(m).*

Nothing in the provisions of this Act (Act 3) 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 2509.17.*

## FINAL RECOMMENDATIONS

This section contains the recommendations of the Commission for developing a special education formula with factors that will be used to determine the distribution of a change in special education funding among the local education agencies in the Commonwealth.

As described above, the Commission held public hearings throughout the state and received testimony from over 50 witnesses about the various considerations for developing a new special education formula. In addition, the Department of Education and the Independent Fiscal Office assisted the Commission in performing a thorough survey of local education agencies<sup>139</sup> to evaluate special education funding and the distribution of costs among students and LEAs based on need. The Commission used the expert testimony received and the survey data to help determine the proper structure of the proposed new funding system.<sup>140</sup>

### Overall Structure of the Special Education Formula

Special education should remain as an independent line item in the state budget with its own formula. It should not be combined with basic education or other line items. This is the current practice in Pennsylvania and is followed by most other states. The independent status of the special education line item provides for greater transparency and accountability.

### LEA Factors in the Formula

The special education formula should include factors reflecting the cost and ability of local education agencies to provide services to students with disabilities. These formula factors should include:

- Market value/personal income aid ratio to reflect relative wealth
- Equalized millage rate to reflect local tax effort (relative to 70<sup>th</sup> percentile – 150<sup>th</sup> district)
- A factor for small, rural LEAs, measuring each LEA's average daily membership per square mile adjusted to reflect the LEA's ADM relative to statewide ADM (sparsity weighted 40%; size weighted 60%; overall minimum at 70<sup>th</sup> percentile; and overall weight at one-half value<sup>141</sup>)

These factors have been commonly used in basic education and other funding formulas in Pennsylvania.<sup>142</sup> The factors will be applied in the special education formula using the corresponding values associated with each LEA, averaged for the three most recent years for which data is available. Using three-year averages will stabilize annual variations over time.

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<sup>139</sup> Surveys were sent to 65 randomly selected school districts and 35 randomly selected charter schools and cyber charter schools. Survey responses were returned by 54 districts and 17 charter schools and cyber charter schools. Nearly 29,000 students receiving special education services are enrolled in these schools.

<sup>140</sup> The Commission also evaluated other data from the Department about students eligible for special education and the services provided by local education agencies, including past special education funding spreadsheets, Act 16 submission data from LEAs about cost distribution for students with disabilities, and Contingency Fund submission data from LEAs applying for the Fund.

<sup>141</sup> Testimony received at the commission's hearing indicates that, throughout the state: (i) size impacts special education costs more than sparsity factors; (ii) poverty level and tax effort have a greater impact in special education costs than small and rural factors; and (iii) all of these issues should be part of the formula.

<sup>142</sup> The local cost of living is a factor that has not been frequently used as part of education funding formulas in Pennsylvania. Accurate data about geographic price differences is not currently available. Further discussion of this issue is included in the Conclusions and Recommendations Section.

### **Student Factors in the Formula**

The special education formula includes factors reflecting the relative cost of special education supports and services provided for students with disabilities. These formula factors include:

- ***Three cost categories of students eligible for special education to reflect the intensity in the range of services required to meet their needs.***

Category 1 reflecting the least intensive range of services;

Category 2 includes students with a moderate range of services; and

Category 3 will include students with the most intensive range of services.

Three categories provide an effective balance between accuracy and workability. Fewer categories would not be sufficiently accurate in recognizing differences in student cost. A greater number of categories would be excessively burdensome to operate and maintain the formula over time. The categories are based on relative cost because this is the primary factor in distinguishing between the needs of different students and schools. Most states use cost-based formulas. Other alternatives, such as using formula categories based on disability labels or student placement, have been found to not accurately reflect a consistent measure of cost, need, and services for students and schools.

In addition, the use of three overall cost categories will not create incentives for over-identification and will avoid placing unnecessary administrative burdens on the state and local education agencies. LEAs will not be required to file excessive data reports and will not be motivated to incur spending in hopes of receiving additional state reimbursement. The Department will need to annually update the student factors as appropriate based on the inflation rate, ensuring that the cost ranges reflected by the three categories remain in proportion over time. The Act 16 reports filed annually by LEAs should include data with a validated total equal to the aggregate number of students eligible for special education in each LEA, including the number of students with expenditures in each category in the funding formula and also disaggregated by charter schools and cyber charter schools for the number of students in each category enrolled from each school district of residence.

- ***A student count for each LEA, designed for each of the three categories.***

The student count for each category should be based on annual data that LEAs currently report pursuant to Section 1372(8) of the Public School Code as amended by Act 16 of 2000. The Act 16 data reflects the identification of students in each LEA receiving special education services with annual expenditure levels less than \$25,000 (Category 1), greater than \$25,000 and less than \$50,000 (Category 2), and equal to or exceeding \$50,000 (Category 3). The annual cost data includes all expenditures for special education supports and services, including transportation and other related services mandated by the student's IEP, not including regular education expenditures.

The count of students eligible for special education within each of the three formula categories will be accurate, because it is based on long-standing reports filed by LEAs with the Department. The Act 16 reports also correlate to the Commission's thorough review of independent data and surveys completed by a representative sample of LEAs in September and October 2013.

The student counts for each category in the formula will not create incentives to over-identify students. The formula is constructed so that school districts are not directly paid

by the state on a per-student basis. Instead, a variety of community and student factors combine to measure the overall needs of each district relative to other districts. Funding is distributed based on these overall district ratios, using accurate data but only indirectly responding to newly identified individual students. The reasonable balance between accuracy and workability will help to sustain the effectiveness of the formula over time. In addition, Act 3 contains strong accountability provisions for oversight and monitoring by the Department of Education in compliance with federal prohibitions against student over-identification. The Department must ensure that LEAs adopt and comply with policies against over-identification and must monitor these issues. *Act 3, Section 2509.15(a)(3)(iv)*. The Department also must:

“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.” *Act 3, Section 2509.15(c)(4)(i), Special Education Accountability.*<sup>143</sup>

- ***A weighting factor that differs for each of the three cost categories.***

Based on careful review of data and surveys completed by a representative sample of LEAs, the weights are:

Category 1 – 1.51

Category 2 – 3.77

Category 3 - 7.46

These weights reflect the typical range of services for students in each category, based on special education costs in excess of regular education costs.<sup>144</sup>

## **Distribution Method**

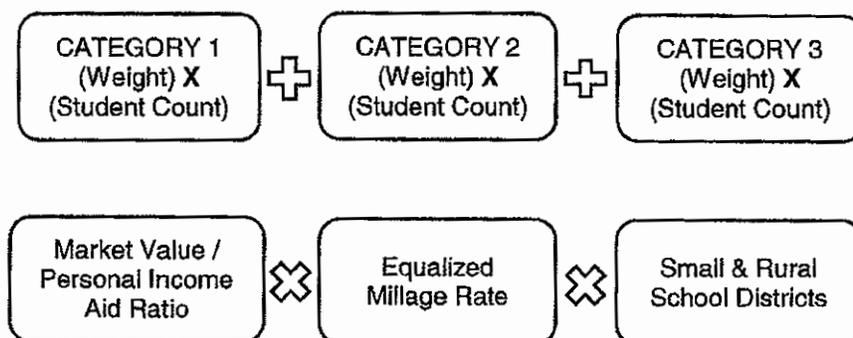
The special education formula should use a proportional system for distributing changes in special education funding among school districts based on the various factors listed above. The formula will result in a unique calculated total of the LEA factors and student factors for each local education agency. The calculated total for each LEA will be divided by the aggregation of calculated totals for all LEAs in the Commonwealth, resulting in a unique distribution ratio for each LEA. The distribution ratio for each LEA will be multiplied by the statewide total change in special education funding to calculate the change in funding to be provided for each LEA in a given year.

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<sup>143</sup> Public School Code of 1949 - Omnibus Amendments, Act of Apr. 25, 2013, P.L. 12, No. 3.

<sup>144</sup> The weights are consistent with national research and formula practices in other states. The weight values were calculated using both parts of the LEA survey conducted by the Department and IFO. The cost distribution provided by the survey reflects the range of services for students as annual special education costs vary across the three formula categories from less than \$500 to over \$100,000. In addition, cost variances based on student prototypes in the survey demonstrate similar relative student costs and needs between the three formula categories.

The special education formula described above will look like the following illustration:



Distributing a future increase in funding to each LEA will be achieved by: (1) totaling these calculations for each LEA where the factors apply; (2) adding up all LEA totals to get a statewide aggregate total; (3) determining the ratio of #1 to #2; and (4) applying the ratio to the aggregate state change in annual funding.

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### School Districts

School districts in Pennsylvania will receive changes in special education funding from the state according to the formula described above.

Pursuant to Act 3, school districts will also receive state funding for special education in an amount that does not exceed the base year (2010-11), allocated in the same manner as the state funding was allocated in the base year.

In the early years of using the new formula, the base year amount for school districts is expected to be much larger than the annual change in funding distributed through the new formula. With consistent use over time, the new formula will effectively match the needs of students and schools with the resources available for providing special education services.

### Charter Schools and Cyber Charter Schools

Special education funding is currently paid on a per-student basis for charter schools and cyber charter schools, with funding transferred from the school district of residence for each eligible student. The existing funding process is flawed, using an assumed percentage of 16 percent of all children enrolled in the district of residence and paying the same rate regardless of student differences in educational need and cost.

The Commission recommends applying the same principles for a new formula described above for all local education agencies, including school districts, charter schools, and cyber charter schools. The use of three cost categories will improve the accuracy and fairness of funding distribution for charter schools and cyber charter schools. This change should be phased in over three years, so that the new reimbursement rate affects LEA budgets in three equal steps.

Some adjustments to the formula are needed because charter schools and cyber charter schools receive per-student payment from each school district of residence, instead of state payment through aggregate state budget appropriations. The charter funding system also uses

a different "base amount" of the average per-student regular education expenditures in each district. The use of regular education expenditure amounts means that: (1) the formula category weights must be adjusted; and (2) the poverty, tax effort, and small-rural factors are not needed in the formula.

Compared to school districts, charter schools and cyber charter schools on average enroll relatively few students with high special education costs.<sup>145</sup> For this reason, the payment rate will usually fall within Category 1 (up to \$25,000 in excess of regular education costs). The Department will promulgate regulations allowing charter schools and cyber charter schools to document higher costs and receive funding within Category 2 (greater than \$25,000 and less than \$50,000) or Category 3 (equal to or exceeding \$50,000). Such documentation should be reasonable but not excessive, in order to avoid incentives for over-identification and over-spending.

The payment rate for each category will be calculated by multiplying (i) a special education weight by (ii) the average regular education expenditure amount for the district of residence, as calculated pursuant to the current provisions of Section 1725-A(a)(2). The weights will be 1.51 (Category 1), 3.77 (Category 2), and 7.46 (Category 3). Districts will adjust the weights to be more accurate based on local per student costs relative to average state costs for special education.

### **Approved Private Schools (APS)**

APS's have been challenged with their formula being tied to the special education line item which has not been increased in four years resulting in flat funding for the APS over that time period. They are scheduled to be level funded again in fiscal year 2014-15. An immediate change is to amend the statute to allow for any state allocated money that is returned by an APS to the Commonwealth in a previous fiscal year to be redirected to the APS's line item in the next fiscal year.

### **Extraordinary Cost Fund (Contingency Fund)**

Several changes are needed to the Contingency Fund to improve transparency, predictability, efficiency, and equity within this important aspect of special education funding. Given realistic prospects for total funding by the state, the Contingency Fund is unlikely to fully support the extraordinary special education program expenses of students with significant disabilities in most local education agencies. The objective of the Fund should remain as in recent years, where a limited number of LEAs receive a meaningful level of funding. The name of the Fund should be the "Extraordinary Cost Fund" to better reflect its purpose.

The Fund should be appropriated by the General Assembly through an independent line item in the annual education budget, not included within the special education line item as is the current practice. A separate line item will provide for greater transparency and accountability, including acknowledgement of the actual amount of the appropriation. The current Contingency Fund and the Category 3 Fund, as recommended by Act 3 of 2013, should be combined as an independent line item (the newly named Extraordinary Cost Fund), and the Commission recommends using the Fund distribution mechanism described below to distribute the new fund.

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<sup>145</sup> Charter schools and cyber charter schools responding to the survey of the Department of Education and the Independent Fiscal Office in September and October 2013 provided data showing that they have special education costs per student less than \$30,000 for 98 percent of all students with disabilities.

In consultation with the Pennsylvania Department of Education, the Commission recommends that LEA's apply for Extraordinary Cost Funds for student costs that exceed \$75,000. The market value/ personal income aid ratio shall be applied to calculations for applications for student costs between \$75,000 and \$100,000. The market value/ personal income aid ratio shall not be applied to calculations for applications for student costs over \$100,000. For funds distributed for student costs in excess of \$100,000, a payment cap for the largest school district shall be established, not to exceed the percentage of the school district's special education population divided by the total special education population of Pennsylvania.

Funding for the distribution of extraordinary costs is summarized as follows:

- a. More than \$75,000 -- \$100,000 -- Special Education costs per student minus the special education subsidy per student x MV/PI aid ratio
- b. Over \$100,000 and greater would be funded minus special education subsidy per student (MV/PI aid ratio not applied)
- c. Establish a cap for the largest school district. Funding/payments cap not to exceed the school district's special education population divided by the total special education population of Pennsylvania, multiplied by the total funds in the Extraordinary Cost Fund for that year.

The annual budget appropriation for the Extraordinary Cost Fund should be maintained at no less than the sum of one percent of the state's special education appropriation plus the additional amount of one percent of the state's special education appropriation above the level appropriated in 2010-11. This basic level of funding is needed to ensure the Fund can serve its intended purpose to a minimal extent.

### **LEA Data on Student Enrollment and Educational Cost**

Pennsylvania has not invested in developing the capacity to regularly document and evaluate the educational costs associated with special education supports and services provided by public schools to students with disabilities. The resources needed to annually collect this data would be substantial, including computer systems and staffing within the Department and LEA's. Current systems and staffing levels are not able to provide such data.

As a result, the Commission worked with the Department and the Independent Fiscal Office to perform a thorough survey of 65 randomly selected school districts and 35 randomly selected charter schools and cyber charter schools. (See Appendix for survey instrument.) The resulting survey data, as correlated with additional data from the Department, allowed the Commission to develop factors in the special education funding formula to accurately represent the needs and costs of students and schools.

Based on its experience, the Commission recommends that the Department develop options for strengthening the state and LEA capacity to provide improved annual data regarding these issues. Model systems used by other states should be examined, with relative costs and benefits considered.

### **Inclusion Costs**

Inclusion of students with disabilities in regular classrooms is one of the most challenging issues for students, their families, and schools. The Commission repeatedly heard testimony about how inclusion decisions are complicated by cost issues. Schools may be reluctant to pursue inclusion due to transitional costs for training teachers and adjusting student services. Families may perceive that students are placed in regular classrooms without sufficient support. State

and federal law mandate student placement in the least restrictive environment and cost concerns should not be a barrier to legal compliance.

Section 2509.13(b) of Act 3 establishes a voluntary competitive grant program for LEA's meeting academic inclusion and achievement criteria. The General Assembly should fund this program to address these important issues, as the state budget allows.

## **ISSUES CONSIDERED WITHOUT RECOMMENDATION**

This section contains observations about additional improvements worth considering for special education funding, although the Commission will not make formal recommendations about these issues.

### **Local Cost of Living**

As discussed in previous sections, special education costs vary throughout the state based on geographic price differences. The General Assembly should study options for developing an accurate cost of living measurement for different communities in Pennsylvania, for possible inclusion in future formulas for special education funding.

### **Hold Harmless and Minimum Increase**

The practices of "hold harmless" (no loss of funding) and "minimum increase" (guaranteed rise in funding) occur when the state provides education funding for LEA's even when the official formula would not have provided such funding. These practices cause the state to spend limited resources and distort the objective, equitable nature of data-based funding formulas. The General Assembly should carefully consider these issues before applying hold harmless and limited increases as part of the special education funding system.

### **Transportation Costs**

The General Assembly should examine ways to revise the current formula used to calculate and distribute state funding for public school transportation to recognize the additional costs associated with students eligible for special education.

### **Long Term Cost Projections**

Special education costs are affected by long term state and national trends in disability rates, which are predictable to some degree. Inflation is another predictable influence on costs, affecting special education more than other areas of public education. The General Assembly should study whether these factors can help to predict special education costs over time, allowing for more effective fiscal planning by the state and LEA's.

### **Other Programs for Students with Special Needs**

Two programs outside the scope of special education deserve recognition. These programs are valuable aspects of public education but receive neither state nor federal funding.

The General Assembly should study the various aspects of gifted education in Pennsylvania, including funding issues. It is an important aspect of public education for many students, families, and schools.

Similarly, the General Assembly should examine the funding issues related to services provided by public schools for students with disabilities pursuant to Section 504 of the Rehabilitation Act of 1973 and PA Code Chapter 15. Such students have disabilities requiring accommodation, but are not eligible for special education.

### **Student Transience**

The General Assembly should study ways that the state can facilitate a smooth transition between LEA's for students with disabilities who may experience frequent changes in residence,

including children in foster care and many low-income families. Systemic improvements such as centralizing records and coordinating communication between LEAs for these children could lower costs and improve student services.

## APPENDIX - PUBLIC HEARINGS AND TESTIMONY

<b>May 15, 2013</b>	<b>Harrisburg</b> Room 8 E-B, State Capitol Building
<b>Organizational Meeting</b>	

<b>June 13, 2013</b>	<b>Harrisburg</b> North Office Building, Hearing Room 1, State Capitol Complex
<b>Special Education: How It Works for Students and Schools</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Dr. Malcolm Conner	Special Education Advisor, PA Department of Education, Bureau of Special Education
Louse Fick	Supervisor Special Education, Parkland School District
Dr. Mary Beth Gustafson	Assistant Superintendent for Special Education, Pocono Mountain School District
Jennifer King	Parent and Inclusion Consultant, Include Me from the Start
Dennis McAndrews, Esq.	Partner, McAndrews Law Office
David Ramsey	Coordinator of Student Services, Parkland School District
Betsey Somerville	Director of Special Education, Canon-McMillian School District

<b>July 10, 2013</b>	<b>Harrisburg</b> North Office Building, Hearing Room 1, State Capitol Complex
<b>Special Education: Financing of Special Education</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Sandra Edling, PRSBA	Assistant Director Management Services, Montgomery County IU 23, PA Association of School Business Officials
Laura Cowburn, PRSBA, RSBA	Assistant to the Superintendent for Business Services, Columbia Borough School District, PA Association of School Business Officials
Mike Griffith	School Finance Consultant, Education Commission of the States
Lee Ann Wentzel	Superintendent, Ridley School District, PA Association of School Administration

<b>July 25, 2013</b>	<b>Doylestown</b> Buck's County Intermediate Unit 22
<b>Special Education: Why Special Education Costs More to Educate</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Dr. Barry Galasso	Executive Director of Bucks IU 22
Dr. Anthony Grieco	Executive Director of Luzerne IU 18
Dr. Jacayln Auris	Director of Student Services at Chester County IU 24

Dr. Maria Edelberg	Assistant Executive Director at Delaware County IU 25
David W. Matyas, PRSBA	Business Administrator, Central Bucks School District
Dale Scafuro	Director of Student Services, Central Bucks School District, PA Association of School Business Officials

<b>August 7, 2013</b>	<b>Pittsburgh</b> William Pitt Union Ballroom, University of Pittsburgh
<b>Special Education: Cost Categories in Special Education Funding</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Richard Moss	Chief, Central Division, PA Department of Education, Bureau of Special Education
Dr. Ronald O. Wells	Special Education Adviser, PA Department of Education, Bureau of Special Education
Ira Weiss	Solicitor, Pittsburgh School District
John Sarandrea	Superintendent, New Castle Area School District
John Mozzochio	Director, Special Services, New Castle School District
Arlene Wheat	Assistant Superintendent, Special Education & Pupil Services, North Allegheny School District

<b>August 22, 2013</b>	<b>Allentown</b> Allentown School District Central Administration Building
<b>Special Education: To Consider Costs of Special Education Funding</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Robyn Oplinger	Parent and Senior Advocate of the Children's Team, Disability Rights Network of PA
Diane Perry	Parent and Coordinator, Special Kids Network
Kimberly Resh	Parent and Advocate
Colleen Tomko	Parent and Advocate
Nan Porter	School Director, Martin Luther School, Alliance of Approved Private Schools
Michael Crossey	President, PA State Education Association

<b>September 4, 2013</b>	<b>State College</b> Assembly Room, Nittany Lion Inn
<b>Special Education Funding: Charter &amp; Cyber Charter Schools</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Lawrence Jones, Jr.	CEO, Richard Allen Preparatory Charter School, Inc.
Larry Sperling	CEO, Philadelphia Academy Charter School
Maurice "Reese" Flurie, Ed.D.	CEO, Commonwealth Connections Academy
Randy L. Brown, PRSBA	Business Administrator, State College Area School District
Cindy Duch	Director of Parent Advising, Parent Education & Advocacy Leadership Center (PEAL Center)
Jane Stadnik	Parent

Audrey Rasmusson, Esq.	Parent
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<b>September 26, 2013</b>	<b>Reading</b> Student Center, Alvernia University
<b>Special Education Funding: Charter &amp; Cyber Charter Schools</b>	
<b>Presenters</b>	<b>Position/ Affiliation</b>
Susan Gobreski	Executive Director, Education Voters PA
Nicolyn Habecker	Parent and Advocate
Amber Mintz Foote	Parent and Advocate
Lisa Lightner	Parent and Advocate, Arc of Chester County
Nick Torres	CEO, Education Plus Academy Charter School
Aimee Denton	Parent
David Lapp	Staff Attorney, Education Law Center
Nicole D. Snyder, Esq.	Latsha Davis & Kenna, P.C., Pennsylvania Coalition of Public Charter Schools (PCPCS)
Kevin Corcoran	Assistant Head of School/Director of School Improvement, Agora Cyber Charter School
Karl A. Romberger, Jr., Esq	Sweet, Stevens, Katz, & Williams, Pennsylvania School Board Association (PSBA)
Mark B. Miller	School Director, Centennial School District and Co-Chair, Keystone State Education Coalition
Dr. John George	Executive Director, Berks County IU & President, Pennsylvania Association of Intermediate Units (PAIU)
Carl Blessing	Chief Financial Officer, Berks County IU, PAIU
Chris Celmer	Assistant Director of Business Services, Berks County IU, PAIU
Uldis Vilcins	Director of Transportation Services, Carbon Lehigh IU, PAIU
Tee Decker	Assistant Director of Special Programs & Services, Carbon Lehigh IU, PAIU
Deborah Verstegen, Ph.D.	Professor of Education Leadership, University of Nevada, Reno

## INDEPENDENT FISCAL OFFICE – SURVEY TO LEA’S

TO: Local Education Agency CEO/Superintendent

FROM: **Dr. Carolyn Dumaresq, Acting Secretary of Education; and**  
Senator Pat Browne and Representative Bernie O’Neill,  
Co-Chairs of the Pennsylvania Special Education Funding Formula Commission

DATE: September 24, 2013

RE: Request for Special Education Cost Estimations from Your LEA

As you know, special education funding is a crucial issue for all local education agencies (LEAs) in Pennsylvania. We will greatly appreciate your timely participation in completing cost estimations to assist the Commonwealth in addressing the needs of students with disabilities and the public schools that serve them. Details are enclosed below and in the spreadsheet accompanying this letter.

This work was authorized by Act 3, approved by the General Assembly earlier this year. Your LEA was randomly and impartially selected, along with dozens of other school districts, charter schools, and cyber charter schools. The data you provide will assist the Commission in considering options for developing a new special education funding formula to distribute any new state funding. The Commission will issue its final report later this year, including recommendations for moving forward legislation to enact a new special education funding system in Pennsylvania for the distribution of new special education dollars.

Your participation is vital and most appreciated. The cost estimation process for LEAs was developed by the Commission and the Department, along with the Independent Fiscal Office (IFO) and the Pennsylvania Association of School Business Officials (PASBO). The process was designed to minimize the time required for you and your staff to provide the requested data.

**INSTRUCTIONS.** Detailed instructions are contained in the spreadsheet accompanying this letter. You may find it helpful to coordinate your work on these tasks with the heads of special education and business/finance offices for the LEA.

**WEBINAR FORUM.** On Monday, September 30, 2013 at 3:00 p.m., the Commission, the IFO and PASBO will offer an informational web forum to discuss the methodology behind the cost analysis and to answer any questions regarding your completion of the cost estimates. Information about how to join the web forum is provided with this letter.

**DEADLINE.** By Friday, October 11, 2013, please complete the spreadsheet and return it to [SpecialEdFundForm@pasen.gov](mailto:SpecialEdFundForm@pasen.gov). You can send questions about the spreadsheet to the same e-mail address.

Thank you for joining in this important work. The members of the General Assembly along with the Department of Education greatly appreciate your assistance.

## Detail for Cost Distributions

lower bound	upper bound	School Districts		Charter Schools	
		share	cumulative	share	cumulative
0	1,000	2.7%	2.7%	3.3%	3.3%
1,000	2,000	5.2%	7.9%	4.9%	8.1%
2,000	3,000	7.0%	14.9%	7.7%	15.8%
3,000	4,000	5.7%	20.6%	7.8%	23.6%
4,000	5,000	5.1%	25.6%	9.0%	32.7%
5,000	6,000	5.3%	31.0%	9.0%	41.7%
6,000	7,000	5.2%	36.2%	9.7%	51.3%
7,000	8,000	5.0%	41.2%	8.7%	60.1%
8,000	9,000	5.4%	46.5%	7.3%	67.4%
9,000	10,000	5.2%	51.8%	4.9%	72.3%
10,000	11,000	4.5%	56.3%	3.3%	75.6%
11,000	12,000	4.4%	60.6%	3.7%	79.3%
12,000	13,000	4.3%	65.0%	2.7%	81.9%
13,000	14,000	3.8%	68.8%	3.4%	85.3%
14,000	15,000	3.4%	72.2%	2.4%	87.7%
15,000	16,000	2.6%	74.9%	2.0%	89.7%
16,000	17,000	2.2%	77.1%	0.7%	90.4%
17,000	18,000	1.9%	79.0%	1.3%	91.7%
18,000	19,000	1.6%	80.6%	1.2%	92.9%
19,000	20,000	1.4%	82.0%	0.6%	93.5%
20,000	21,000	1.3%	83.3%	0.5%	94.0%
21,000	22,000	1.2%	84.5%	0.6%	94.6%
22,000	23,000	1.0%	85.6%	0.5%	95.1%
23,000	24,000	1.0%	86.5%	0.6%	95.6%
24,000	25,000	0.8%	87.3%	0.4%	96.0%
25,000	26,000	0.6%	87.9%	0.5%	96.5%
26,000	27,000	0.6%	88.6%	0.4%	96.9%
27,000	28,000	0.6%	89.2%	0.3%	97.2%
28,000	29,000	0.6%	89.8%	0.4%	97.5%
29,000	30,000	0.5%	90.3%	0.3%	97.8%
30,000	50,000	5.7%	96.1%	1.0%	98.8%
50,000	75,000	2.9%	99.0%	0.5%	99.3%
75,000	100,000	0.8%	99.8%	0.2%	99.6%
100,000	no limit	0.2%	100.0%	0.4%	100.0%

**Instructions for Special Education Funding Formula Cost Analysis**  
**September 19, 2013**

To fulfill its obligations under Act 3 of 2012, the Special Education Funding Formula Commission (Commission) requests that 100 randomly sampled Local Education Agencies (LEAs, 65 school districts and 35 charter/cyber charter schools) provide two types of special education cost estimates. The information will be used by the Commission to (1) construct a statewide per pupil cost distribution for special education students and (2) provide data regarding the dispersion of costs to provide special education services across the state.

*Note: The first part of this information request focuses on the costs of certain actual special education students in each LEA, as opposed to costs about a specific exceptionality or specific special education service. The data will provide the Commission with a snapshot of an LEA's distribution of per pupil costs for special education students. For that purpose, this information request attempts to determine the range of an LEA's special education costs and the share of students that exist at each point on that cost spectrum. It is recognized that all cost estimates represent only rough approximations based on the LEA's best judgment.*

**A. Representative Students**

The Commission requests that LEAs estimate the cost of several representative special education students for the 2011-12 school year. This procedure is similar to the estimates LEAs supply in their annual Act 16 submission to the Pennsylvania Department of Education (PDE). However, for this purpose, the Commission requests that LEAs provide additional detail relative to what is required by the Act 16 submission and, unlike the Act 16 submission, this request does not specify specific dollar thresholds (e.g., \$25,000, \$50,000 and \$75,000) as each LEA will have a unique distribution of per pupil special education costs.

The Commission requests that LEAs identify an actual student based on 2011-12 data that would serve as a representative for each of the six categories below. Once students have been identified, please provide cost estimates for each of those representative students. See Part I of the Cost Analysis tab for an itemization of the various special education costs to include in those estimates.

**Median Student:** For this student, 50 percent of special education students are less expensive, and 50 percent are more expensive. The median student would be located in the middle of an LEA's distribution of special education students. For example, if the LEA has 100 special education students and they are aligned from lowest to highest cost, this would be the 50<sup>th</sup> student. (Note: The median student will be *less costly* than the average cost of a student because a relatively small number of students with severe disabilities drive up the average cost.)

**Representative Student 1:** A student who represents the very low end of the special education cost scale. In terms of cost, this student would approximately reside in the 10<sup>th</sup> cost percentile. That is, roughly 90 percent of special education students require a higher level of expenditures.

**Representative Student 2:** A student who is somewhat less costly than the median student. In terms of cost, this student would approximately reside the 30<sup>th</sup> cost percentile. That is, roughly 70 percent of special education students require a higher level of expenditures.

**Representative Student 3:** Median Student from above.

**Representative Student 4:** A student who represents the upper-middle end of the special education cost scale. In terms of cost, this student would approximately reside in the 75<sup>th</sup> cost percentile. That is, roughly 25 percent of special education students require a higher level of expenditures.

**Representative Student 5:** A student who represents the higher end of the special education cost scale. In terms of cost, this student would approximately reside in the 90<sup>th</sup> cost percentile. That is, roughly 10 percent of special education students require a higher level of expenditures.

**Representative Student 6:** A student who represents the very top end of the special education cost scale. In terms of cost, this student would approximately reside in the 99<sup>th</sup> cost percentile. The LEA will have a very small number of special education students who require a higher level of expenditures, but those students provide less information regarding "typical" costs for students who require a very high level of services.

Please use the Cost Analysis tab to enter cost estimates for the six Representative Students. The spreadsheet can be used to calibrate the estimates to ensure that they are roughly consistent (i.e., +/- 10 percent) with reported total special education spending for 2011-12. LEAs need only enter cost estimates for the six Representative Students; other data will be pre-populated once the survey responder has identified his or her LEA from the pull down menu.

**B. Prototype Students**

The Commission also seeks information regarding the dispersion of special education costs across LEAs. Each LEA will have unique factors that drive costs such as geography, immediate availability of services and the intensity of services provided. In order to gauge that dispersion, the Commission requests that LEAs estimate the cost for three hypothetical "prototype" students who represent the lower, middle and upper portions of the special education cost spectrum. The estimates will be used to demonstrate how costs vary based on geographic location, type of school district (e.g., rural, suburban or urban) and other relevant factors. Please see Part III of the Cost Analysis tab for a list of the services required by the three prototype students.

## Special Education Funding Formula Commission LEA Cost Analysis

Please use this spreadsheet to complete your response to the attached survey. Only the green cells require data. More detailed instructions can be found on the Instructions tab. Please complete and return this excel workbook no later than October 11, 2013.

Please Enter School District Name from dropdown box: Abington SD

### PART I

For school year 2011-12, lines 1-7 in column (a) have been populated. If these data are correct, please skip to Part II. If these data are incorrect, please use column (b) to enter a positive or negative value that when added to column (a) makes column (c) correct. The Excel sheet will automatically add columns (a) and (b) and compute the resulting sum in column (c). Column (c) data are used in Part II.

	<u>Column (a)</u> Data for 2011-12	<u>Column (b)</u> Adjustment to correct data (only use if necessary)	<u>Column (c)</u> Data used in Part II
1. Total number of special education students	874	0	874
2. Special and gifted education costs (1200)	\$13,843,415	\$0	\$13,843,415
3. Less: gifted support (1243)	\$712,107	\$0	\$712,107
4. Plus: special education schedule costs*	\$1,301,102	\$0	\$1,301,102
5. Plus: other special education costs not listed in the lines 2-4	\$0	\$0	\$0
6. Net special education spending	\$14,432,411		\$14,432,411
7. Average cost per student	\$16,513		\$16,513

\* Special education schedule costs are special education costs reported for purposes of Act 1 exceptions within the following categories: 2120 (guidance services), 2140 (psychological services), 2150 (speech pathology/audiology), 2160 (social work), 2260 (instruction and curriculum development), 2350 (legal services), 2420 (medical services), 2440 (nursing services), and 2700 (transportation).

**PART II**

Please enter the approximate dollar cost (include any costs that are detailed in Part I of this worksheet) for each representative student as described on the Instructions tab. Once the data are entered, line 7 (Implied Total Spending) will compute a rough approximation of total implied special education spending based on the estimates entered for each representative student. Line 10 computes a percentage difference between actual reported spending (Part I, line 6) and the implied amount (Part II, line 7). Those amounts should be reasonably close (i.e., +/- 10 percent).

<u>Representative Student</u>	<u>Approximate Cost (in dollars)</u>	<u>Approximate Percentile</u>	<u>Approximate Total Cost</u>
1	\$0	10.0%	\$0
2	\$0	30.0%	\$0
3 <i>median student</i>	\$0	50.0%	\$0
4	\$0	75.0%	\$0
5	\$0	90.0%	\$0
6	\$0	99.0%	\$0

7. Implied total spending on special education	\$0
8. Implied average spent on each special education student	\$0
9. Dollar difference: actual less implied	\$14,432,411
10. Percentage difference	100.0%

### **PART III**

Please cost out the services for the following three prototype students. If your school district typically provides services that are not referenced in the bullet points, please do not include those costs in this part. Instead, please list those services (including their costs) within the space provided for additional information in Part IV.

#### **Student A:**

- Speech impairment
- Grade 4 (school day 6.5 hours)
- Included in regular classroom at least 80% (22 students in regular classroom) (use average teacher salary and benefits—do not deduct state share of FICA and PSERS)
- Related Services: 30 minutes of one-on-one speech therapy 2x/week (at LEA)
- No transportation costs

**Total Costs for Student A:**

#### **Student B:**

- Autism
- Grade 4 (school day 6.5 hours)
- Included in regular classroom 50% (22 students in regular classroom) (use gross average teacher salary)
- Related Services: Autistic support classroom 3 hours/day (8 students, 1 teacher, 1 paraprofessional) (use average teacher salary and benefits—do not deduct state share of FICA and PSERS; average paraprofessional salary and benefits—do not deduct state share of FICA and PSERS)
- Related Services: 30 minutes of one-on-one OT 1x/week (at LEA)
- Full time one-on-one aide 6.5 hours/day (use average aide salary and benefits—do not deduct state share of FICA and PSERS)
- No transportation costs

**Total Costs for Student B:**

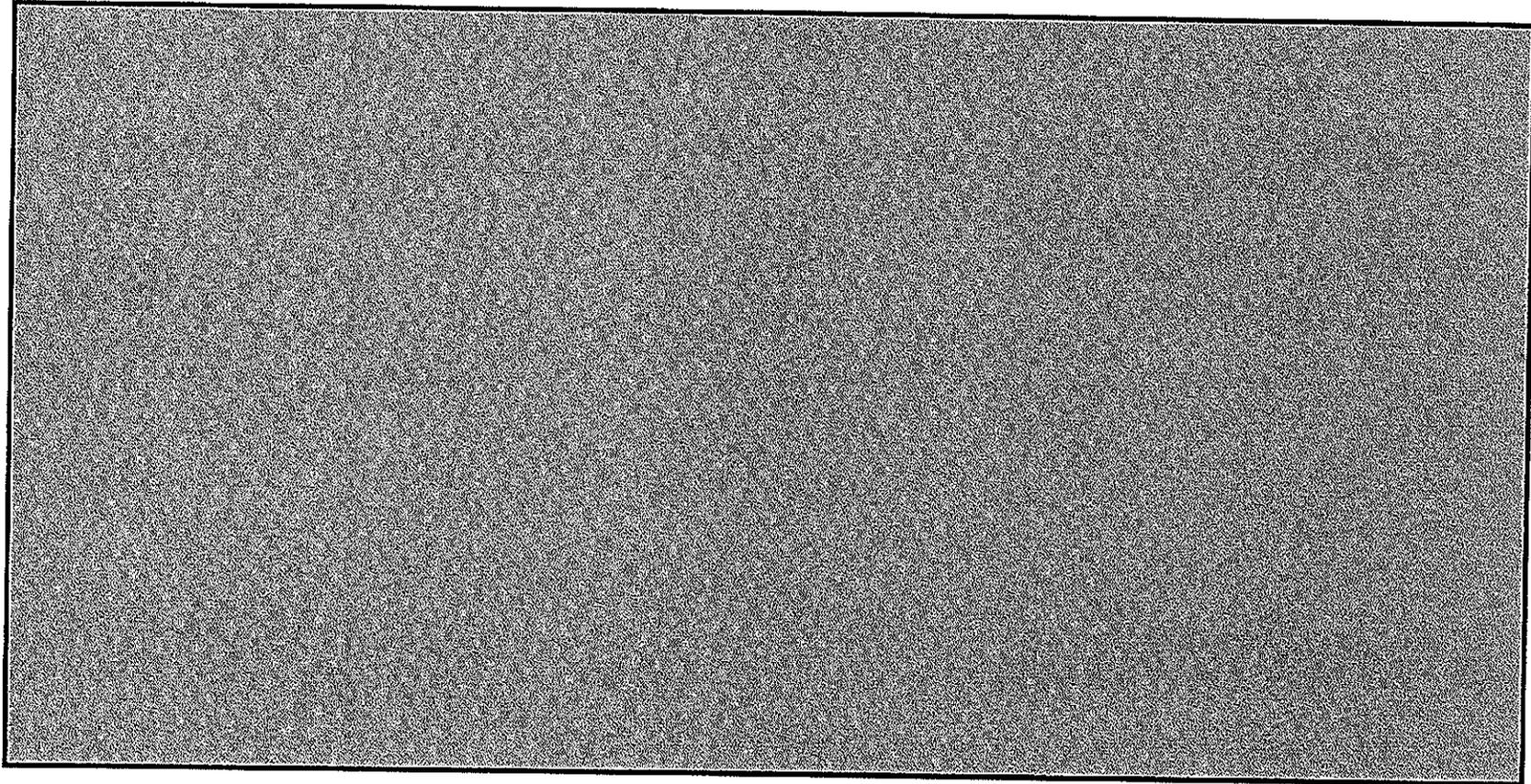
#### **Student C:**

- Autism
- Grade 4 (school day 6.5 hours)
- Receives all education services outside of LEA at either: approved private school for autism, intermediate unit, or other appropriate outside placement for autism services (assume APS day rate, where applicable)
- Full time one-on-one aide 6.5 hours/day (use average aide salary and benefits—do not deduct state share of FICA and PSERS)
- Transportation (assume roundtrip transportation to applicable placement outside LEA in 9 passenger van daily)

**Total Costs for Student C:**

**PART IV**

Please use this space to provide any additional information that may be pertinent to this survey.

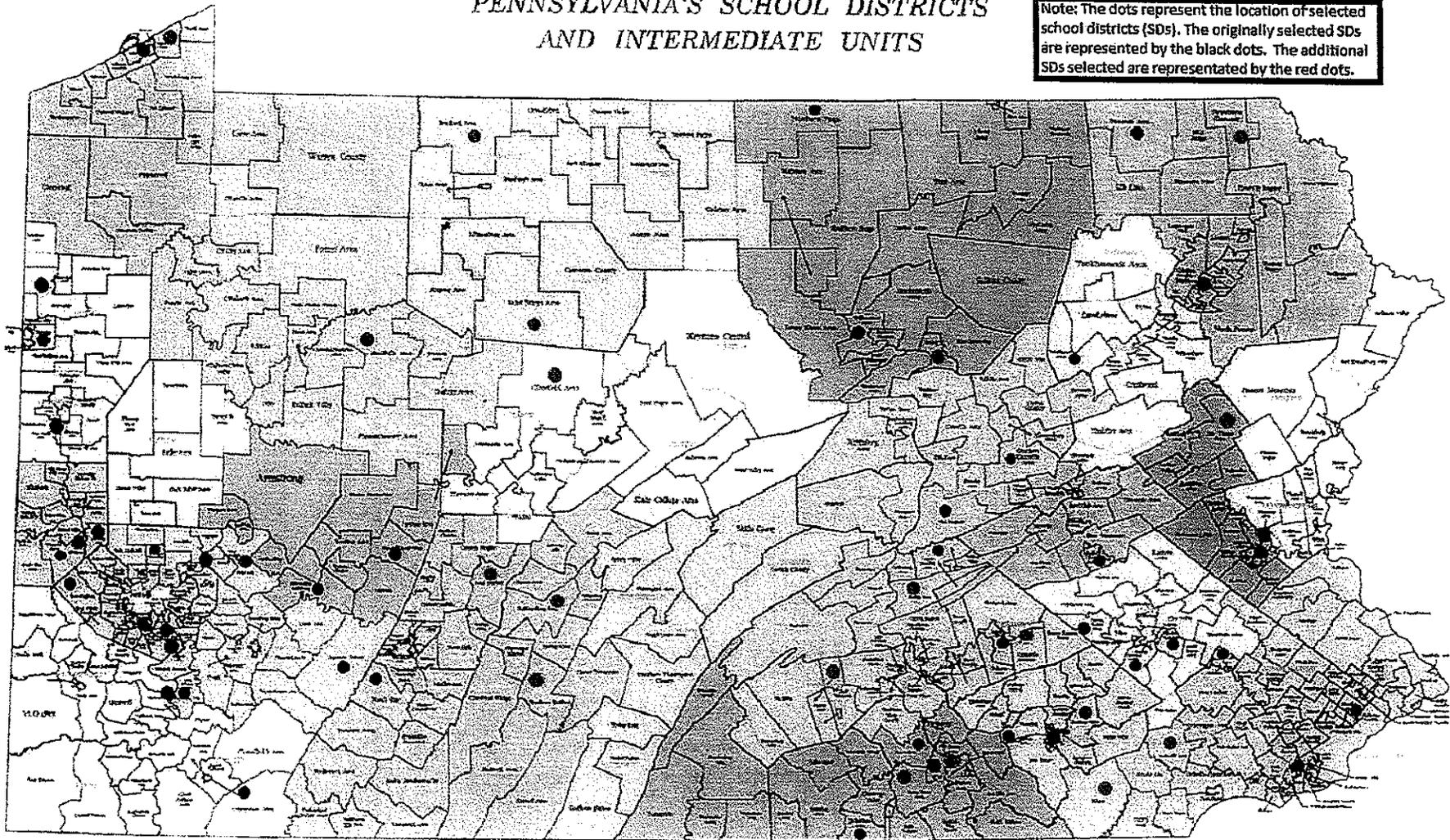
A large rectangular area filled with a dense, grey stippled pattern, intended for providing additional information pertinent to the survey.

Please provide the name, title, phone number and e-mail address of the contact person for this survey.

Name and title:	
E-mail address:	
Phone number:	

*PENNSYLVANIA'S SCHOOL DISTRICTS  
AND INTERMEDIATE UNITS*

Note: The dots represent the location of selected school districts (SDs). The originally selected SDs are represented by the black dots. The additional SDs selected are represented by the red dots.





Neighboring school districts who send special education students to the same charter schools *pay much less* than the District. This is patently unfair and one of the main reasons the District faces financial destruction. In addition, cyber charter schools are funded in the same manner as brick and mortar charter schools, despite the considerable savings from not having to operate school buildings. Therefore, as set forth more fully in the Amended Financial Recovery Plan and below, the Receiver seeks to modify charter and cyber charter tuition rates in an equitable manner.

But this initiative alone will not suffice to return the District to financial stability. The Receiver therefore proposes additional actions that will further reduce the ongoing structural deficit and reduce outstanding debt. All of these initiatives are rooted in principles of accountability, equity, and equal access to education, and the Receiver must implement every one of them for the District to remain viable. Having stable, long-term finances at last will not only allow the District to focus more on quality education, but also allow the District to do things it has been unable to do for years, such as accessing capital markets and engaging in long-term strategic debt planning.

## **I. QUESTION PRESENTED TO THE COURT**

Should the Court grant the Joint Petition to Approve the Amended Financial Recovery Plan and authorize the Receiver to implement the initiatives outlined in the Plan, namely: (1) adjust the tuition rate for special education students in all charter schools; (2) adjust the tuition rate for regular education students in cyber charter schools; (3) conduct a forensic audit; (4) address the accumulated deficit and recurring annual structural deficits with the use of expert resources; (5) obtain restructuring of the Transitional Loan extended by the Department of Education (“PDE”); and (6) ensure timely implementation of the Plan through ongoing monitoring of District operations?

Suggested Answer:       Yes.

## **II. BACKGROUND**

The District’s financial situation has continued to deteriorate over the past few years despite its severe financial recovery status. If no action is taken, the accumulated deficit will reach \$46,306,669 by the end of the 2015-16 school year. This is even with the Commonwealth directing an additional \$74.25 million in extraordinary state aid to the District within the last five years. The School District Financial Recovery Act provides the tools, if exercised, that will allow the District to turn this situation around and return the District to financial stability.

### **a. Financial Recovery Act**

The School District Financial Recovery Act was signed into law in 2012, at a time when many school districts struggled financially. Depending on the severity of the school district's financial state, the law classifies a financial recovery school district as either moderate or severe financial recovery status. 24 P.S. § 6-651-A; 6-661-A. The Chester Upland School District ("District"), the most financially distressed school district in the Commonwealth, is one of two school districts identified as in severe financial recovery status. Only nine school districts may be in financial recovery status at one time. 24 P.S. § 6-621-A(a)(1)(ii).

The development and implementation of a financial recovery plan is the crux of the financial recovery process. A financial recovery plan must:

- Provide for the delivery of effective educational services to all students enrolled in the financial recovery school district
- Provide for the payment of lawful financial obligations of the financial recovery school district
- Provide for the timely deposit of required payments to the Public School Employees' Retirement Fund
- Provide a plan for the financial recovery school district's return to financial stability

24 P.S. § 6-641-A(1-4). In addition to the development and implementation of a financial recovery plan, financial recovery school districts are empowered with the

legal authority to exercise extraordinary powers only available to financial recovery school districts. 24 P.S. § 6-642-A. Some of these extraordinary powers include the ability to:

- Convert school buildings to charter schools
- Cancel or renegotiate any contract to which the board of school directors or the school district is a party
- Dispense with the services of such nonprofessional employees that are not needed for the economical operation of the district
- Enter into agreements with persons, for-profit, or nonprofit organizations providing noninstructional or other services

24 P.S. § 6-642-A.

When a financial recovery school district is in receivership, the law grants the receiver even more robust powers to assist a district achieve financial stability. These additional powers are conferred upon the receiver in recognition of the fact that receivership is an extraordinary measure taken in only the most severe circumstances. The receiver is empowered with the additional authority to:

- Modify the financial recovery plan as necessary to restore the school district to financial stability by submitting a petition to the court of common pleas
- Employ financial or legal experts the receiver deems necessary to implement or modify the financial recovery plan
- Direct the board of school directors to levy and raise taxes

- Impair or modify existing bonds, notes, school district securities or other lawful contractual or legal obligations of the school district if ordered by a court of competent jurisdiction or as provided in section 642-A(a)(3)

24 P.S. § 6-672-A.

The School District Financial Recovery Act is unique in the respect that it allows financial recovery school districts to exercise extraordinary powers not available to other school districts. This is in contrast to previous laws which focused more on alternative governance structures as solutions to academic and fiscal problems.<sup>2</sup> However, the School District Financial Recovery Act recognizes that some school district issues are not solely caused by the governance of the school district. In the District's case, a change in its governance structure has been critical to its recovery, but is not enough to solve the District's financial woes. The Receiver must exercise additional powers provided by the Financial Recovery Act to reduce the District's structural deficit and outstanding debt, and to bring about true financial recovery.

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<sup>2</sup> The former Education Empowerment Act, which the District was subject to, governed academically distressed school districts from 2000-2010. See 24 P.S. § 17-1701-B, et. seq. The Education Empowerment Act provided for a Special Board of Control to govern the District.

## **b. Recommendations of the Special Education Funding Commission**

The Amended Financial Recovery Plan adopts and relies upon recommendations of the Special Education Funding Commission, and a brief background is provided here.

In 2013, the General Assembly recognized that significant issues existed regarding the funding of special education students in Pennsylvania. Act 3 of 2013 established a bipartisan, bicameral Special Education Funding Commission and charged the Commission with reviewing Pennsylvania's system related to special education funding. *See* 24 P.S. § 1-122. The Commission issued its report in December 2013 and recognized the inequity in funding all special education students in the same manner regardless of the actual cost of educating those students.<sup>3</sup>

The Commission recommended distributing funding based upon actual expenditures using three levels of per student multipliers relative to cost of services.<sup>4</sup> The three tiers of multipliers have since been enacted into law to

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<sup>3</sup> A copy of the Commission's report is attached to the Petition as Exhibit B.

<sup>4</sup> The commission proposed utilizing three categories based upon the actual cost of education. Category 1 was for students receiving services costing less than \$25,000 per year; Category 2 was for students receiving services equal to or greater than \$25,000, but less than \$50,000; and Category 3 was for students receiving services equal to or greater than \$50,000.

determine distribution of new state funding for special education. *See* 72 P.S. § 1722-J(10). The Commission also recommended using the same three tiers of multipliers for charter school funding. These multipliers should be used with the charter school regular education rate as the mechanism to provide additional funding for special education students, as compared to the current formula which provides just one flat special education rate.

### III. ARGUMENT

#### a. **The Financial Recovery Act Empowers the Court to Authorize the Modification or Impairment of Lawful Contractual or Legal Obligations.**

The School District Financial Recovery Act provides that a receiver may not “unilaterally impair or modify existing bonds, notes, school district securities or other lawful contractual or legal obligations of the school district, except as otherwise ordered by a court of competent jurisdiction or as provided in section 642-A(a)(3).” *See* 24 P.S. § 6-672-A(c)(3)(emphasis added). By its terms, this provision unequivocally allows the Receiver to impair or modify legal obligations—such as the ones identified in the Amended Financial Recovery Plan—when those modifications are approved by a court.

Pursuant to the Rules of Statutory Construction, every statute “shall be construed, if possible, to give effect to all of its provisions.” 1 Pa.C.S. § 1921(a).

Section 672-A(c)(3) restricts the Receiver from unilaterally modifying legal obligations, but the provision conversely permits such modifications with court approval. A contrary interpretation that only views section 672-A(c)(3) as a prohibition on the receiver's action would give no effect to the phrase "except as otherwise ordered by a court of competent jurisdiction." In order to give effect to all of the language in section 672-A(c)(3), it must be interpreted as both a restriction on the Receiver's unilateral power and an authorization for the Receiver to exercise such power if ordered by a court.

The Rules of Statutory Construction also provide that "[w]hen words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S § 1921(b). In this case, the language of section 672-A(c)(3) is clear. The plain language provides for a restriction on the Receiver's unilateral power and an authorization to exercise such power if ordered by a court.

If section 672-A(c)(3) were found to be ambiguous, the Rules of Statutory Construction permit the intention of the General Assembly to be ascertained by considering, among other matters, (1) the occasion and necessity for the statute/mischief to be remedied and (2) the consequences of a particular interpretation. 1 Pa.C.S § 1921(c)(1,3,&6).

When the School District Financial Recovery Act became law in 2012, many school districts were struggling financially. The General Assembly designed the law to provide targeted support to financial recovery school districts to allow them to achieve financial stability. *See generally* 24 P.S. § 6-601-A. In fact, legislative history demonstrates that the General Assembly intended to identify the District as one of the school districts in financial recovery status. *See House Journal*, Page 1577-1590, June 28, 2012.<sup>5</sup> In discussing the background of the law, Senator Piccola explained during a Senate debate that:

We have two school districts in this Commonwealth that literally are facing running out of money probably before the end of the year, Chester-Upland and Duquesne.... And I believe that the last thing we want to do is get to sometime in the middle of a school year and have school buildings closed, and kids out on the street and not receiving the education that I think they are entitled to here in the Commonwealth of Pennsylvania.

*See Senate Journal*, Page 623, June 19, 2012. Unquestionably, the General Assembly knew the law would apply to the District. Therefore, it must be inferred that the General Assembly intended the law to provide a remedy for the District to achieve financial stability, and the law should be interpreted accordingly.

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<sup>5</sup> In providing background of the law, Representative Clymer, one of the sponsors of the legislation, explained that “[t]his is a plan to stabilize financially failing schools. . . They have created two categories – a moderate financial recovery plan that would involve Harrisburg and York, and a severe financial recovery plan that would involve Duquesne and Chester Upland.”

Interpreting the Financial Recovery Act to not empower the receiver to alter contractual and legal obligations would eviscerate the purpose and spirit of the law. The Receiver is empowered with the authority to “[m]odify the financial recovery plan as necessary to restore the school district to financial stability by submitting a petition to the court of common pleas.” 24 P.S. § 6-672-A(b)(5)(emphasis added).<sup>6</sup> In order to restore the District to financial stability, the District must modify legal obligations such as the special education charter tuition rates and cyber charter tuition rates discussed more fully below. Without the ability to modify obligations such as tuition rates, the Receiver cannot create a plan that provides for the restoration of financial stability to the District—i.e., the primary purpose of the Financial Recovery Act. The consequence of an interpretation that does not permit a court to modify obligations is that none of the components of a financial recovery plan can be fulfilled.<sup>7</sup>

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<sup>6</sup> The Receiver’s power to modify the financial recovery plan in section 672-A(b)(5) is stronger than a Chief Recovery Officer’s power to modify the financial recovery plan in section 664-A(a)(4). A Receiver is empowered with the authority to modify the plan “as necessary to restore the school district to financial stability,” whereas a Chief Recovery Officer may only do so if “necessary to implement or complete the plan or adapt the plan to circumstances that arise or become apparent after approval of the plan.” 24 P.S. § 6-672-A(b)(5); 6-664-A(a)(4).

<sup>7</sup> A financial recovery plan must provide for (1) the delivery of effective educational services to all students enrolled in the financial recovery school district; (2) the payment of lawful financial obligations of the financial recovery school district; (3) the timely deposit of required payments to the Public School Employees’ Retirement Fund and (4) a plan for the financial recovery school district’s return to financial stability. 24 P.S. § 6-641-A(1-4). The plan must also include recommendations for satisfying judgments, past-due accounts payable; eliminating deficits; balancing the budget; and proposing the reduction of debt due on specific claims. 24 P.S. § 6-641-A(4)(i).

Additionally, the law states that “[i]f there is a conflict between this act or other State law, the provision of this article shall prevail.” 24 P.S. § 6-691-A(b). To the extent that the Act is inconsistent with another provision of law, the General Assembly intended the Financial Recovery Act to control.

**b. The Receiver Must Modify Charter School Tuition Rates or the District Cannot Achieve Financial Recovery.**

The initiatives in the proposed Amended Financial Recovery Plan fall well within the powers of the Receiver. As described above, one extraordinary power given to the Receiver—the power to impair legal and contractual obligations—may only be exercised with the permission of the court. The Financial Recovery Act only provides for this extraordinary power when school districts are in receivership, which is a very limited universe of two school districts at present.<sup>8</sup>

The Receiver recognizes that the power to modify a legal obligation is an extraordinary power that should only be wielded in extreme circumstances. However, given the dire financial situation facing the District, urgent circumstances require extraordinary action.

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<sup>8</sup> Given that only nine school districts can be identified in financial recovery status at one time, the pool of school districts that could be placed in receivership is also very limited.

Altering the charter school tuition rates would constitute a modification of a legal obligation because the rates are set pursuant to section 1725-A of the Charter School Law. 24 P.S. § 17-1725-A.<sup>9</sup> As set forth more fully in the Amended Financial Recovery Plan, the biggest obstacle to the District achieving financial stability is the huge amount of charter and cyber charter school payments made by the District. These extremely high payments are calculated using patently unfair methodology. Indeed, the inflated tuition rates paid by the District to charter schools account for *more than the District's entire structural deficit* in 2015-16. The District has no ability to attain financial stability without addressing this urgent and critical issue through the modification of charter and cyber charter tuition rates.

*i. Special Education Rate for Brick and Mortar  
Charter Schools*

The amount that the District pays per special education student to charter schools has absolutely no relation to the actual cost of educating these students. Arguably, the special education tuition formula was designed to measure a school district's own efforts related to special education expenditures per student such that the same amount would be contributed by the District with students enrolled in

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<sup>9</sup> The brick and mortar charter tuition rates set pursuant to section 1725-A of the Charter School Law are also applicable to cyber charter schools via section 1749-A of the Charter School Law. *See* 24 P.S. § 17-1749-A(a)(1).

charter schools. However, the formula completely and utterly distorts the District's own effort related to special education expenditures by assuming the percentage of special education students in a school district is the statewide average of 16 percent. In reality, the District's actual percentage of special education students is 24 percent.

Furthermore, if nothing changes, the charter schools will continue to receive a uniform tuition rate for all special education students, regardless of a student's special education needs. In 2015-16, charter schools would receive \$40,315 per special education student from the District. Charter schools would receive \$10,683 per regular education student, meaning an additional \$29,632 is paid to a charter school for each special education student regardless of the actual cost to educate and regardless of the needs of the special education student. The District is paying more than double the cost to educate special education students in charter schools than it does in its own District schools. And nearly all of the special education students in charter schools require the least intensive amount of services—yet the District is forced to pay the same rate of \$40,315 per student.

Perhaps more troubling is that neighboring school districts that send their special education students to the District's charter schools pay *significantly less* than the District. For example, the Philadelphia City School District will pay only

\$23,293 per special education student attending one of the District's charter schools.<sup>10</sup> This is in striking contrast to the \$40,315 rate paid by the District. As described in the Amended Financial Recovery Plan, students from numerous school districts attend the same exact District charter schools and each district pays wildly different tuition rates—with the District (the poorest) paying the highest tuition of all.

Given the extensive research done by the Special Education Funding Commission and considering its bipartisan, bicameral efforts, the Receiver urges funding charter school special education students in accordance with the recommendations of the Commission. Applying the Commission's three-tiered approach would reduce the special education tuition rate from \$40,315 to \$16,132, and save the District over \$20.7 million in 2015-16 alone.

***ii. Regular and Special Education Rates for  
Cyber Charter Schools***

Cyber charter schools are funded in the same exact manner as brick-and-mortar charter schools, even though their overhead costs are significantly reduced as compared to charter schools that have to operate school buildings. The Receiver proposes using a \$5,950 tuition rate for regular education students attending cyber

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<sup>10</sup> The Charter School Law permits students from other school districts to attend District charter schools. *See* 24 P.S. § 17-1723-A(a).

charter schools. This tuition rate was derived using an average cost of the top intermediate unit cyber schools run in the Commonwealth. This tuition rate would ensure that the District is not overpaying cyber charter schools. The same special education tiered tuition rates, as proposed above, would also be used to reduce the inequities from funding all special education students in the same manner. Modifying the cyber charter rates would save the District \$4.0 million this school year.

**c. The Financial Recovery Act Authorizes the Receiver to Employ Expert Resources Such as Forensic Auditors and Financial Turnaround Specialists.**

In addition to the reforms needed to the charter school tuition rates, there are other immediate measures that the District must take as part of the Amended Financial Recovery Plan. The District has been plagued by years of substantial financial difficulties that have created a concern that its funds are being expended improperly. One important component to the District's return to financial stability is community support. Therefore, in order to instill confidence in the community that its funds have been and will be well spent, the District must undergo a forensic audit.

Furthermore, even with the charter school reforms, the District still has existing debt that must be addressed as a key to its financial turnaround.

Therefore, the District must engage a financial turnaround specialist to advise the Receiver in how the District can pay down its existing debt. The financial turnaround specialist will also be able to assist the Receiver in reviewing current obligations and potential new sources of revenue. It is important to note that the Receiver will develop goals for the specialist to ensure that school services and programs are not only maintained, but enhanced.

The Receiver is empowered with the authority to “[e]mploy financial . . . experts the receiver deems necessary to implement or modify the financial recovery plan.” 24 P.S. § 6-672-A(b)(6). These financial experts are a key component in the District’s return to financial stability.<sup>11</sup>

#### **IV. CONCLUSION**

Simply cutting non-charter expenditures will never be enough to fix the massive structural deficit in the District’s budget each year. The only way the District can attack its structural deficit is to address its biggest cause—the extremely high charter school tuition rates that the District is forced to pay under inequitable formulas. This will attack the root cause of the District’s financial problems and ensure that all students in the District—regardless of whether they

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<sup>11</sup> There are two other initiatives in the amended financial recovery plan, (1) ongoing monitoring to ensure timely implementation conducted by a PDE contractor, Public Financial Management and (2) the restructuring of the District’s transitional loan received in the 2012-13 school year.

are educated at District or charter schools—have access to a quality education.

This initiative, in conjunction with the budget and financial management initiatives, will provide a clear path to recovery.

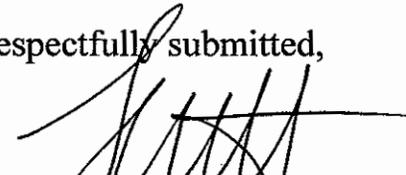
For the reasons set forth in the Joint Petition to Amend the Financial Recovery Plan and in this supporting Memorandum of Law, the Receiver and the Secretary of Education request that this Honorable Court approve the Amended Financial Recovery Plan.



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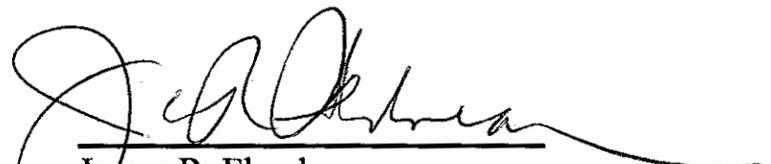
Respectfully submitted,



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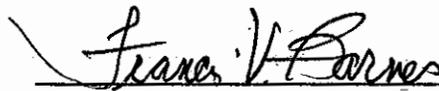
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*Counsel for Pennsylvania Department  
of Education and Secretary of  
Education Pedro Rivera*

Date: August 18, 2015

## VERIFICATION

Receiver Francis V. Barnes deposes and says (1) that I am authorized to make and do make this verification on behalf of the Chester Upland School District; and (2) that the factual averments contained in the foregoing document are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Francis V. Barnes

Receiver of Chester Upland School District

**VERIFICATION**

Executive Deputy Secretary of Education David Volkman deposes and says (1) that I am authorized to make and do make this verification on behalf of the Pennsylvania Department of Education; and (2) that the factual averments contained in the foregoing document are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in black ink, appearing to read "David Volkman", written over a horizontal line.

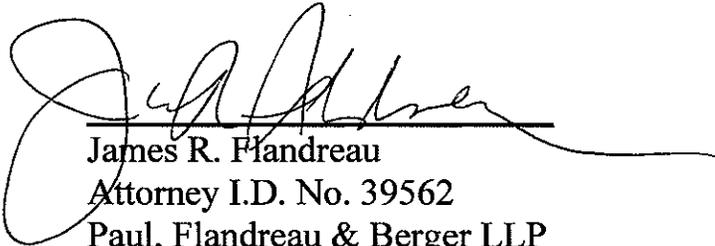
David Volkman  
Executive Deputy Secretary of Education

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of August, 2015, I have caused the foregoing Petition to be served upon the persons and in the manner indicated below:

**Service by Electronic Mail**

George Dawson, Esquire  
Suite F, Second Floor  
2173 MacDade Boulevard  
Holmes, PA 19043



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