



Pennsylvania Association of School Administrators
Proud Leadership for Pennsylvania Schools

Special Education: Challenges Facing Pennsylvania School Districts
Testimony before the Senate Majority Policy Committee
January 23, 2013

Good morning, Chairman Erikson and distinguished members of the Senate Majority Policy Committee. My name is Dr. Sherri Smith. I have the honor to serve as Superintendent of the Lower Dauphin School District, located here in Dauphin County. I am here today to testify on behalf of the Pennsylvania Association of School Administrators (PASA). PASA represents school superintendents and other chief school administrators across Pennsylvania. We thank the Committee for holding this hearing and providing PASA the opportunity to share our observations and recommendations regarding special education mandates, programs, services and funding.

My testimony will be presented in two parts. I will first focus on what we believe are the two most significant issues that face school districts and other educational agencies in providing high quality educational, health and other services to students with disabilities in a cost-effective manner. I will then highlight several additional challenges that face school districts across the state for your consideration.

Pennsylvania has a long tradition of being on the forefront of states in providing educational opportunities to its children with disabilities, dating back to the landmark court decision *Pennsylvania Association for Retarded Citizens v. Commonwealth* in 1971, that helped establish the responsibility of states and localities to educate children with disabilities four years prior to enactment of the federal *Education for All Handicapped Children Act*, which is the predecessor of today's *Individuals with Disabilities Education Act*. Providing a free, appropriate public education for all children, regardless of disability or other condition, is simply the right thing to do.

All children deserve an equal opportunity to reach their full potential. However, after experiencing two consecutive years of school budgets that has resulted in cuts of nearly 20,000 teachers and other school staff, cuts to instructional programs and student support services across the state, it has become increasingly clear that a consequence to the current special education mandates is that educational opportunities for students without disabilities have been reduced on a disproportionately greater level from those provided to students with disabilities. Federal and state protections and guarantees require that students with disabilities be provided the services and supports called for in students' Individualized Education Plans. While school districts may have some limited flexibility in moving contracted programs and services to or from their intermediate unit or other service provider, they are limited in their ability to achieve cost savings under current federal and state mandates.

In my own district, in the 2011-2012 school year, our general budget was reduced by 3%, (\$1,700,000), while my special education budget was increased by 4.2%, since we needed an additional \$300,000 to educate the students with disabilities in this given school year. Given this fact, we must work together to find other strategies to achieve cost efficiencies while maintaining high quality educational opportunities.

One area that we urge this committee to investigate for possible action is to make state laws and regulation no more restrictive than what federal laws and regulations mandate. Although the federal government had loosened numerous requirements when Congress reauthorized IDEA in 2004 and the federal Department of Education promulgated new regulations in 2006, Pennsylvania chose to retain several of the old, more costly federal mandates. The new, federal requirements set new, more realistic minimum standards, timelines and requirements for the identification, evaluation, education and transition of students with disabilities. They provide schools greater flexibility in addressing the needs of students. They do not prevent school districts from providing higher levels of supports and services. Restoring state alignment with the newer federal rules would offer school districts opportunities to achieve savings.

State policies that currently exceed federal requirements include:

- Completion of evaluations and reevaluations of students within 60 calendar days, not 60 school days as permitted by federal law. The shorter timeframe requires schools to employ additional school psychologists and other staff.
- Students with an intellectual disability must be reevaluated every 2 years rather than 3 years as required by federal law.
- Requirements that new teachers of special education hold dual certificates in both special education and the subject area/grade level in which they will work. This requires additional staffing levels.
- Requirements that instructional classroom aides and personal care assistants assigned to work with students with disabilities must hold a two-year college degree or its equivalent. This higher standard for these employees has increased the cost to employ these personnel.
- Requirements that classroom aides be provided at least 20 hours of professional education each year.
- Transition planning for students must begin at age 14. Federal rules require transition planning at age 16.
- Extended school year services and timelines exceed federal requirements.
- State requirements for discipline of students with disabilities through suspension or expulsion exceed federal requirements by treating such actions as changes in placement, which require costly procedural actions.
- Teacher-student caseload maximums increase staffing levels and limit district flexibility.
- The amount of homebound instruction provided to a student with a disability is limited to 30-days, regardless of the circumstances.
- The assessment, plan development, notification and reporting requirements for behavior supports exceed federal requirements.

- When parents request mediation in lieu of filing a complaint, the district must maintain the educational setting for the child.

PASA urges the committee to undertake a comprehensive review of state laws, regulations and policies to determine those that might be updated to provide flexibility to school districts to provide high quality special education services in a cost effective manner.

In addition to this important issue, we also would like to share our thoughts about the adequacy, equity, predictability and fairness of the state formula for distribution of state special education funding. It is also important to note that state funding for special education has been unchanged for five consecutive years. As the cost of providing mandated services to students with disabilities have increased over the past five years, the impact of flat state funding has meant the increased costs have shifted to local property taxpayers and/or to cutting other educational programs and services for all students.

State and federal special education funding allocated to school districts totaled \$1.242 billion in 2012-13. While this is a considerable sum, it covers just 37 percent of the \$3.356 billion spent by school districts to provide nearly 270,000 students mandated special education services. School districts, on average, spend \$12,500 per student with disabilities above the amount spent to educate students without disabilities. Of that, combined state and federal funding provides about \$4,600 per student. A 2009 study by the Education Law Center determined that special education is underfunded by \$380 million.

If the inadequacy of state and federal resources alone was not a big enough problem, the method used to distribute state funding, where every district is assumed to have a students-with-disabilities incidence rate of 16 percent, the statewide average, is perhaps a much more significant problem. This formula, with a few minor adjustments, has been used since 1991-92, when it replaced direct state reimbursement of 100 percent

of special education spending by school districts. The funding distribution system assumes that each of our 500 school districts has exactly the same percentage of students with disabilities in their overall student enrollment. The reality is that the actual percentage of students with disabilities ranges from a low of about five percent to a high of nearly 30 percent. The other significant concern with the current funding formula is that it assumes that the level of disabilities experienced by students in each school district is exactly the same. This also is not the case. And finally, the formula does not factor the wealth of each district or the lack thereof.

This formula has created distortions in resource allocation that has little relationship to actual need. I refer you to the following chart that shows the special education incidence rate of the 15 Delaware County school districts and the amount spent on special education that is covered by state and federal funding.

School District	Special Ed % of Total SD Enrollment	% of Special Ed Costs Covered by State & Fed Funds
Delaware County SD 1	20.1%	33.8%
Delaware County SD 2	19.0%	26.6%
Delaware County SD 3	20.8%	20.4%
Delaware County SD 4	19.4%	21.3%
Delaware County SD 5	17.0%	26.2%
Delaware County SD 6	18.7%	17.4%
Delaware County SD 7	17.6%	30.3%
Delaware County SD 8	15.2%	17.3%
Delaware County SD 9	21.2%	29.3%
Delaware County SD 10	16.0%	20.1%
Delaware County SD 11	18.2%	24.7%
Delaware County SD 12	14.6%	46.0%
Delaware County SD 13	15.9%	33.6%
Delaware County SD 14	18.5%	22.9%
Delaware County SD 15	16.2%	31.8%

The district with the highest incidence of students with disabilities, 21.2 percent (Delaware County SD 9), has 29.3% of special education costs covered by state and federal funding. The district with the lowest incidence level, 14.6 percent (Delaware County SD 12), has the largest percentage of special education costs, 46.0 percent, covered by state and federal funds.

Another important factor is that all students with disabilities are not equal. Many students with disabilities may require only limited supports and adaptations to instruction that can be addressed by the regular classroom teacher and add relatively small additional cost. For instance, a student who just requires speech and language services may mean an additional cost of a few thousand dollars. However, other students who have multiple or severe disabilities may require intensive supports provided by several specialized staff or specialized placements both inside and outside the school district. Students with severe autism, for example, can cost a minimum of an additional \$60,000 or more. Students requiring placement in specialized residential facilities can result in costs into the six figures.

The distortions in resource allocation shown here in just one county can be found in similar fashion throughout the state. Forty-six school districts have incidence levels of greater than 20 percent. Most of the 46 districts are in lower wealth communities with limited tax bases and ability to raise the resources necessary to adequately cover the cost of special education services. Another 15 school districts have incidence levels less than ten percent. Unless they have students with disabilities that require expensive services, these districts have a disproportionately larger share of their special education costs covered by state and federal funding.

In addition to the base funding provided to school districts, the Department of Education administers a Special Education Contingency fund. This fund is supported by a one-percent set-aside of state special education funding that is targeted to provide assistance to school districts that have one or more students with disabilities who require extraordinary education and support services. It is not unheard of to learn of students that require placements that exceed \$100,000 a year. One superintendent has told us that one student placement in a specialized residential facility is costly that district \$245,000 annually. Another example of the inadequacy of the contingency funding comes from data gathered across the Dauphin and Cumberland county schools in 2010-2011. There were 404 students costing \$25,000 or more across 21 districts, totaling a minimum of

\$13,050,000 to educate these children. The contingency funds distributed to these 21 districts to provide financial relief was a mere \$501,000, leaving the remaining \$12,500,000 for the districts to pay.

While the contingency fund provides districts with much needed targeted assistance, funding is exhausted quickly and high demand for the funds frequently results in funds being provided on a pro-rata basis. An example of this is that one area school district recently applied for \$340,000 but was provided \$150,000, less than half the district's actual costs.

PASA urges the committee to undertake the development of a new special education funding formula to replace the long-outdated allocation based upon statewide average incidence levels. We suggest the new formula should allocate state funds based upon the actual number of students with disabilities enrolled in each school district, the distribution of the students' level of disability in each district, and the relative wealth of each school district. The formula should be phased in over several years to allow school districts to plan and adjust local resources as state funding levels change.

In addition to these concerns, school district superintendents across the state shared concerns about the following:

- The state Department of Education (PDE) penalized schools and school districts for providing mandated services to students with disabilities when it calculated the 2011-12 Adequate Yearly Progress results. Under Pennsylvania law, students with disabilities may continue to remain in school and receive educational services through age 21. Although it could have made accommodations for these students, PDE considered them as not having graduated on-time, one of the factors used in determining Adequate Yearly Progress.
- As county and community mental health services continue to be under-resourced, school districts are being forced to provide assistance that in the

past was provided by county MH/MR agencies. This is another example of where school districts, mandated by state and federal law, are required to provide the services as the agency of last resort.

- Tuition payments to charter schools and cyber charter schools for district residents with disabilities enrolled in those schools are provided the base tuition paid for nondisabled students in addition to the amount of the average special education expenditure per student in the district. This provides charter and cyber charter schools 2.7 times the average funding that school districts receive from the state and federal government. And, like the state funding formula, the special education tuition payments districts provide to charter and cyber charter schools bear no relationship to the level of disability or the cost of providing required services.
- The complaint and dispute resolution process continues to impose considerable burdens on school districts in terms of time required by teachers, school psychologists, principals, specialists and district administrators to prepare for and participate in hearings, time that otherwise could be focused on advancing instruction. In addition, legal costs associated with these proceedings can climb very quickly, many times costing a district \$30,000 plus, as sometimes there can be little incentive for parents and their attorneys to come to a quick resolution of the issue since the school district is required to cover the legal costs of both the parents and the district. We encourage the committee to explore expanded use of alternative dispute resolution such as mediation to help resolve disputes in a timely, less costly manner.

As outlined in our testimony, school districts across the state face many significant challenges in working to provide a free, appropriate public education to students with disabilities. Pennsylvania's public schools have made tremendous progress over the past decade to improve student achievement, graduation rates and other measures of success

for its most highly challenged students. If this progress is to continue, state policymakers must provide school districts relief and flexibility from state mandates, provide for the adequate and equitable distribution of state funding, and address state policies that add costs and serve as barriers or disincentives to schools that want to provide the best educational opportunities possible to their students.

I would be pleased to respond to your questions.