

# **Senate Majority Policy Committee**

## ***Special Education – Challenges Facing Pennsylvania School Districts***

**Public Hearing Presentation  
from**

**The Upper Darby School District (Delaware County):**

**Louis F. DeVlieger, Superintendent  
Mary Cedrone, Director of Special Education Services  
Daniel P. McGarry, Assistant Superintendent for Curriculum and Instruction  
Edward J. Smith, Business Manager**

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## **Introduction: Louis F. DeVlieger, Superintendent**

Good morning, distinguished members of the Senate. We want to thank you and particularly Senator Erickson for this opportunity to present before the Senate Majority Policy Committee a snapshot of Upper Darby School District's special education concerns. Although we are a large, culturally and economically diverse suburban school district of over 12,000 students from over 80 native countries that sits right on the border of West Philadelphia, we believe the experiences that we share with you today are not unlike the other 499 school districts throughout the State.

For our presentation this morning, I have brought with me three of my colleagues who will share their expertise and insights into regulations and funding issues surrounding special education.

First, you will hear from our Director of Special Education, Mary Cedrone, who will give you an overview of the complex world of special education as a practitioner.

Next, you will hear from Assistant Superintendent, Dan McGarry, who will share some poignant stories on how our efforts to save money by keeping some special education programs in-house rather than spending a fortune for outside placements have had an impact upon the climate, safety, and very limited space within our schools.

Finally, you will hear from our Business Manager, Ed Smith, who will show you the dramatically rising costs over the past five years for the mandate of special education despite our efforts to contain costs wherever possible.

Thank you again for this opportunity to be with you today. And now, our Director of Special Education, Mary Cedrone.

## **Overview of the Complex World of Special Education: Mary Cedrone, Director of Special Education**

Good morning distinguished members of the Senate. Thank you for this important opportunity to speak with you today about the significant issues the Upper Darby School District is facing in our efforts to continue to provide a meaningful education for the students in our care.

My name is Mary Cedrone and I am the Director of Special Education for the Upper Darby School District. I have been in the field of education for the last 34 years in the private and public arenas as a general and special education teacher, school principal and now Director of Special Education. Over the years I have had an opportunity to understand not only the challenges of teaching special education students first hand, but also the increasing demands placed on school districts to

assure that services are adequately and appropriately provided in accordance with obligations mandated by both state and federal laws and regulations.

As Director, it is my primary responsibility to ensure that the Individuals with Disabilities Education Improvement Act (or as it is commonly referred to as the IDEIA) is implemented consistently and with fidelity in our district, an increasing challenge and burden given the huge costs associated with providing students with the necessary services required to deliver a Free Appropriate Public Education as mandated by the IDEIA.

Students who qualify for Special Education are provided with an Individualized Education Program - also known as an IEP. Special Education teachers are held accountable each and every day for the implementation of the Individual Education Programs developed by IEP teams throughout the district. In order to develop an appropriate plan, a team meets to discuss the individual needs of the student and what programs, services or other alternative accommodations may be necessary to permit the student to excel. In addition to the parent, special education and general education teacher, an IEP team may also include outside support services personnel, a school psychologist, social worker, other teachers, counselors, behavior support personnel and other professionals. To schedule an IEP meeting in a timely fashion, given the schedules of multiple participants can sometimes be a daunting task to even begin the process of providing an IEP. With most IEP meetings occurring during the school day additional costs to the district begins at this point. In order to insure the attendance of all necessary team members the district must provide substitute teachers to cover classes for those teachers attending the IEP meeting. Also, if a parent chooses to attend with legal representation the district incurs the additional cost of having the district solicitor attend.

Additionally, unlike general education teachers, the IDEIA governs the total number of students that may be assigned to each special education teacher. Although the district agrees with this requirement and clearly understands that the intention is to ensure the development and administration of each student's education program, the fact remains that limiting the number of students that may be assigned to each teacher creates the need for additional teachers - hence additional costs.

With approximately 2000 students identified with disabilities and in need of special education and related services in the Upper Darby School District, we have numerous IEP teams meeting regularly with the responsibility to clearly understand each student's academic, behavioral and emotional strengths and needs in order to develop appropriate goals, identify specially designed instruction, and determine the resources required to assist students to progress to the best of their abilities.

It is the District's responsibility, however, to ensure the provision of any and all necessary resources. Resources that include but are not limited to scientifically researched based programs, related services such as transportation, assistive technology, personal care assistants, classroom assistants, speech/language, occupational, and physical therapy, vision, hearing, orientation and mobility, nursing and mental health supports.

Along with the learning support programs in all of our 14 schools, we have intensive programs for those students with low incidence disabilities such as Autism Spectrum Disorder, Emotional Disturbance, Intellectual and Multiple Disabilities at the elementary and secondary levels. These are students with much greater needs than the child with a learning disability and are in need of additional costly supports. All of these programs have grown in size over the years; however, our Autistic Support program has increased dramatically expanding in size from 2 classes in 2005 to 9 classes this school year at the elementary level alone.

In the emotional support programs, in addition to the special education teachers and classroom assistants, we have an additional school psychologist to conduct both assessments and provide therapy, a Behavioral Specialist in each of our nine classrooms, and with the assistance of the Department of Public Welfare and help from the Child Guidance Resource Center are able to have a Satellite Mental Health Clinic located on the campus of one of our elementary school locations.

Although we strive to meet the needs of our students within district schools, it has been the decision of IEP teams to place approximately 255 students with greater needs in Intermediate Unit Programs, Approved Private Schools, and Private Schools with 6 of those students in Residential Facilities with all programs having non-negotiable tuition and residential costs ranging from \$18,500 to \$210,000.

Although the Approved Private Schools are allotted State funding to assist Districts with tuition costs, the funding is limited and not available for every student attending an Approved Private School leaving Districts responsible for covering the entire cost of the tuition.

Also, of growing concern is how to program for and handle cases involving students who are committing crimes outside the school environment, but for whom the District is responsible for during the school day. When special education students are not incarcerated for their actions, the District is required to continue providing services and programming. This creates a two-fold issue for the District. One, the District, due to the severity or nature of the crime, may be forced to place the student in an out of district placement again bearing the burden of the cost of tuition. And two, the tension that is created between wanting to keep safe schools and strictly discipline students as well as provide a Free Appropriate Public Education to students receiving special education who may need to return to District schools if not placed by the Courts.

Keeping the achievement and well being of students always in the forefront of our minds, Upper Darby School District's main concern is to develop all students, which include our students with special needs, into well-rounded, capable individuals who will someday have the skills needed to be productive members of society.

The Special Education budget in Upper Darby School District is currently approaching \$30 million dollars as it currently employs 246 full time and 98 hourly employees to meet all the programming and related services needs required to fulfill our obligations under the IDEIA. However, our hourly personnel are provided by outside vendors and although much thought and negotiation is used to obtain the best rates, we have very little control over the basic costs. Yet, our main responsibility and focus will continue to be the provision of services needed for each

student's IEP in order for the academic program to be implemented appropriately and to assure that as a District we comply with the IDEIA and other Federal and state mandated statutes and regulations.

Furthermore, with Due Process being an essential and justified part of the law to assist families in assuring that a Free Appropriate Public Education is provided to every child, the law permits prevailing parent counsel to seek attorney fees from the school district, but does not limit or cap the fees for attorneys representing families filing claims. This fact alone encourages the District to settle claims prior to going to a hearing to avoid the risk of having to pay large costs for attorney fees, now being approved by Federal Courts in excess of \$400 an hour for some attorneys. These fees can easily exceed \$10,000 before a case even goes to a hearing and the cost of services or accommodations awarded to a family.

In conclusion, as you can see, the Upper Darby School District is faced with a huge burden to meet the obligations of the IDEIA and state and federal laws and regulations. Other than local funding sources, districts do receive a State Subsidy and Federal IDEA funds. However, the State Subsidy has been frozen for the last 5 years and the Federal IDEA funds have never reached the level as originally approved. When the law was enacted back in 1975, Congress did authorize the federal government to provide up to 40% of each State's "excess cost" incurred in providing special education and related services. The plan was to phase in the funding over a five-year period with states receiving full funding by the year 1981. That unfortunately did not occur leaving the majority of the burden of cost on the local and state government.

Therefore, we come here today to sincerely seek the support and recognition of the Senate to help Upper Darby School District as well as other districts throughout the commonwealth in providing the much deserved Free Appropriate Public Education for all students with special needs as well as a quality education for their non-disabled peers.

Please assist us in seeking or providing legislation that would:

- Guarantee the promise of Congress so long ago and transfer IDEA funding into 'mandatory spending' and out of the 'discretionary budget'.
- Provide the necessary funding for Approved Private Schools to offer tuition support for all students who are placed by District IEP teams.
- Increase the State's Special Education subsidy and create a formula that takes into account the types of services provided and the actual cost expended.
- And help support Federal Legislation to cap parents' attorneys' fees at a rate no more than what a school district's solicitor is paid.

Again, I thank you for your time and any support you may be able to provide in helping us help our students.

**Special Education Impact Issues:  
Daniel P. McGarry, Assistant Superintendent for Curriculum and  
Instruction**

Good Morning. My name is Daniel McGarry, the Assistant Superintendent of Curriculum and Instruction, and I cannot thank you enough for this opportunity. We are here as advocates for public education and the rights of all children. The information I am going to share with you this morning is sad but real. Public schools face the responsibility of educating students with a range of disabilities as Mrs. Cedrone just referenced in her presentation. I am here to share the added pressure and concerns students identified with one of the 13 IDEIA disability categories present public schools should he/she commit one of the following acts in school or outside of school: possession of drugs, possession of a weapon, fighting, sexual harassment, bullying, being identified as a sexual predator, and even rape. When a special education student commits one of these acts, it costs the district additional resources, puts strain on our district's ability to keep other students and staff safe, provides additional protections not afforded by regular education students, and has led to an overall fear and frustration from our local taxpayers. Moreover, special education is not the answer or appropriate protection for students who demonstrate criminal like behaviors.

To begin, the Upper Darby School District has special education students who register from other school districts having committed serious acts of violence, possession of drugs, sexual harassment, bullying, identified as sex offenders, or with possession of a weapon. Over the last 2 years, we have had special education students register to enter our school district having committed such acts. As a school community, if the special education student was up for an expulsion in another district or actually expelled but has not served the length of the expulsion, we hold informal hearings, formal hearings, IEP meetings, and move to offer the family and student another placement. We honor the expulsion. Consequently, the school district must provide FAPE at an agreed upon placement by the parent/guardian. As Mrs. Cedrone pointed out, the cost to the district for special education students who enter our schools not having served his/her expulsion from a previous district increases our budget, and these are not anticipated line items from year to year. Perhaps, one would suggest not honoring the expulsion from another district for a student in possession of a weapon, drugs, or having caused serious bodily injury to another individual, but this puts other students and staff in danger. The special education students who register in our district having committed such acts are a serious concern. Of the 13 IDEIA disability categories that currently exist, no one identification creates more concern for safety and well-being than students identified as emotionally disturbed.

There are students identified with emotional disturbance who have needs well beyond what the educational environment can provide. In our district, we currently have over 100 students with the special education identification of emotional

disturbance in 2<sup>nd</sup> through 12<sup>th</sup> grade. We have three emotional support programs, and our district needs more. The behaviors and violent acts some emotionally disturbed students commit interrupt the learning environment. When these students do act out violently, our teachers' union, other parents, and students want answers as to the discipline and actions our district can and will take. Emotionally disturbed students, who engage in fighting or other serious violations of the code of conduct, must be provided protections of the IDEIA and regulations and do not receive the same treatment as regular education students. Unless the act in question is "near death," as the special education law requires, emotionally disturbed students cannot be expelled for fighting, pushing a teacher, or acting out in aggressive ways if their actions are related to their disability. If discipline is not the answer, then additional resources and support certainly are, and our district cannot afford the costs. My concern is that we are not only dealing with students with academic needs, but we are also dealing with some students who act with criminal intent and whose mental health needs exceed our current resources and require alternative placements and services. As a district, we are working hard to service emotionally disturbed students, students with specific learning disabilities, autism, life skills, or multi-handicap, but we are not equipped to work with special education students 18 years and older who are registered as sex offenders.

As a district, we have recently had special education students, who are identified as sex offenders, register to attend our high school. Often times, these students are past the age of 18 and have the right to an education until the age of 21. The documentation we receive from probation officers and the court system informs us that these individuals are not allowed to be around other students 17 years old and younger. Our options are to educate the student through an online application by conducting IEP meetings in school when other students are not around, provide a PCA to the student during school hours, which is a potential risk, or look to find an alternative placement. These students pose a safety risk to other students and staff. Again, this increases the demands of our already financially strapped budget. As our budget crisis mounts, our parents demand answers as to the cost for the placement of a special education student, and parents want to know what we are doing with the student(s) who violate our code of conduct or commit crimes. We are not in a position to discuss the discipline or reasons for placement of a particular student because of the Family Educational Rights and Privacy Act. FERPA also comes into play when our special education students commit the following acts outside of our buildings while on the way home from school, over the weekend, or over a holiday break: strong arm robbery, assault, possession of drugs, fighting, retail theft, or sexual misconduct. We have had situations where the local news channels report the name, age, and the school of a student, who commits a criminal act. Our district has been vilified for the heinous and violent actions of students when they are not even on school grounds, not acting during school hours and not under the supervision of school personnel. Often times, the student shows back up to school the next day we are in session, on probation awaiting his/her day in court. Our staff, other students, and our community want answers and protection. We conduct informal hearings and work to place students in alternative settings until the

student's court hearing takes place, and this again takes time and financial resources away from our schools. It goes without saying that safety is the major focus of concern and focus of my conversation with you. You may think, "too bad, deal with it," and I will tell you that we have been dealing with these situations for the last several years, but now we have an increased area of concern with the type of special education students I have described. We have students with significant mental health issues whose needs present great financial challenges, more than we or any other public school district can handle with ever mounting budget cuts. We are now to the point that we must look to take away educational opportunities from other students who come to school to learn in order to meet these other obligations.

Recent events such as Sandy Hook highlight another key concern for our district and districts that work with diverse student bodies. We have students who require significant mental health resources. We have students who are identified as emotionally disturbed and require services beyond the regular education environment. Often times, these students require psychological services or medication. However, when a child reaches the age of 14, he/she can deny mental health supports and services, which increases concerns of safety and well-being not only for the student in question, but also for the other students in our schools.

The Upper Darby School District has answered the bell on many key special education areas. We have responded by creating a nationally recognized RtII program, programs for special education students, and programs to bring students back from outside placement as a potential cost savings. The ironic aspect of creating our own programs, however, is that families now seek out our district because of our hard work and success stories with special needs children. As a result, our initial cost saving efforts to create our own programs have worked against us financially. Our special education population continues to grow and so do our costs. Our district serves a diverse population of over 12,000 students, and we celebrate our diversity. But, we do not celebrate a system that does not provide us with the proper resources to meet the needs of all students. I am not sure who has the answer for what we face, but it is time that to look at some of the systems currently in place and challenge whether or not they are actually working.

### **Financial Issues: Edward J. Smith, Business Manager**

Good morning. My name is Ed Smith and I am the Director of Business Management for the Upper Darby School District. I would like to thank the committee for this opportunity to talk about the special education funding challenges facing public schools, particularly Upper Darby School District. My focus will be on the dollars spent on Special Education, since you have already heard about the programming issues and our other challenges previously presented. As you can from the chart,



Upper Darby's special education expenditures went from \$18.8M in 2008-09, to a current 2012-13 budget of \$27.8M, a 48% increase. What is not included on this chart is our preliminary estimate for next year's 2013-14 budget, which exceeds the \$30M mark. The next critical piece of information, which unfortunately cannot be represented on the chart, is the number of students with low incidence disabilities, and the cost of the types of services needed to ensure that their IEP is appropriately implemented.

School Districts must provide the mandated services required for each and every special education student. Failure to provide the services results in costly litigation, with the plaintiff often times receiving compensatory education, which equates to real dollars. The resulting increased cost requires us to make reductions in our regular education program and propose property tax increases. Our goal has been to try and maintain our existing educational program. Upper Darby is a bedroom community with an eroding tax base, and little taxable commercial property. The lack of adequate State and Federal funding, especially for Special Education, is a main contributor to our very high local real estate tax rates.

The chart also shows our funding from both the Federal and State levels. Over the last four (4) years, our IDEIA funding has remained level, again while the number of students served and the corresponding costs has dramatically increased. The State Subsidy has also remained level, with the exception of a small amount of extraordinary cost funding. The biggest problem as I see it, is that there is no correlation between the subsidy amount, the number of children served, and the actual cost of providing the mandated special education services. Upper Darby School District has had a reputation of providing an excellent educational program at a cost per student that is envied by many comparable School Districts. But we are at a tipping point. The lack of special education funding support has a direct negative impact on our ability to provide a thorough and efficient education for all of our students. Programs have been slashed, and we see no relief in sight. We implore this committee to review the current special education funding system and provide an equitable solution to the funding problem. Thank you.

### **Conclusion: Louis F. DeVlieger, Superintendent**

In closing, although we appreciate the exception to Act 1 for special education costs, simply increasing our local property taxes is not a way to bring special education costs under control. As you can see, our costs are compounded each year due to the lack of billing restrictions for providers whether they are outside placements facilities or attorneys representing families of special education students. Caps on their rates would be a huge help. In addition, after five years of a frozen special education subsidy, it is time for the State to make a substantial increase to that budget line so that school districts like ours may have a viable future in serving the needs of our students. Future State special education subsidies need to be based on

a formula that takes into account actual expenditures for the types of services provided and the true number of students serviced.

Thank you again for this opportunity to present to you today. We are glad to answer any questions that you may have.