

**TESTIMONY**

**by**

**Rhonda Brownstein, Esquire**

**Executive Director**

**Education Law Center**

**1315 Walnut Street, Suite 400**

**Philadelphia, PA 19107**

**Phone: 267-515-6855**

**rbrownstein@elc-pa.org**

**www.elc-pa.org**

**to**

**Pennsylvania Senate Majority Policy Committee**

**Special Education—Challenges Facing Pennsylvania School Districts**

**Wednesday, January 23, 2013—9:00 AM**

**Hearing Room #1, North Office Building**

**Harrisburg, PA**

*“One day it had snowed hard, and when we got to school, all the stairs and the ramp into the building were covered with snow. I went up to the janitor who was shoveling the stairs and asked him if he could shovel the ramp. He turned to me and said, “All these other kids are waiting to use the stairs. When I get through shoveling them off, then I will clear the ramp for you.” I said to him, but if you shovel off the ramp, we can all get in.”*

*This quote appeared in a Vermont publication and is attributed to a public school student with a disability.*

Thank you for inviting the Education Law Center to present testimony today dealing with the challenges of special education. We are a non-profit, legal advocacy organization dedicated to making quality public education a reality for all of Pennsylvania’s students, especially those who are most vulnerable. This includes poor children, children with disabilities, English language learners, children in foster homes, and others. We’ve been in existence for over thirty-seven (37) years and operate offices in both Philadelphia and Pittsburgh. In the early years, we dealt primarily with special education issues—challenged by what were then complex new federal and state laws for students with disabilities.

In the early years, we provided some traditional legal representation for students to access programs and schools but our mission has broadened significantly. Today we still proudly represent the consumers of public education in Pennsylvania—the students and their families -- but believe that special education must not be an “isolated place,” but rather, integral to all improvement and reform associated with quality teaching, instruction, curriculum, standards, services, supports, and funding.

Along with other statewide advocacy organizations, we still provide direct technical and legal assistance to parents and advocates through our publications, web site, intake system, and trainings. We’ve given each member of the Policy Committee a sample of the type of materials we provide for our families—families who many times struggle to seek appropriate placements for their children despite strong federal and state statutes in place. The manual titled, *“The Right to Special Education in Pennsylvania—A Guide for Parents and Advocates,”* is available on our web site. We also work on policy and regulations with many policymakers, coalitions, task forces, and partnerships—statewide, regional, and local levels—to seek systemic reform that benefits students.

<b>What do special education laws require?</b>	
Free appropriate public education (FAPE)	Accommodations
Identification of needs	Behavior supports
Professional evaluation	Supplementary assistance
Individual Education Program (IEP)	Research-based strategies
IEP Team of educators and parents	Teacher training and classroom aides
Academic and functional goals	Annual reviews
Meaningful progress to IEP Goals	Periodic re-evaluations
Inclusion in general curriculum	Transition planning (for post high school)
Inclusion in non-academic activities	Procedural rights (meetings, reports, notices)
Least restrictive environment (LRE)	Procedural rights (complaints, appeals)
Specially designed instruction	Parental Involvement
Related therapies and services	

The investments we make play a significant factor in determining the outcomes. Yes, money does matter and always appears to be the “elephant in the room” when we discuss quality special education programs. In 2008, significant improvements in Basic Education Funding reforms were enacted by this General Assembly based on a costing-out study also commissioned by this body. Despite special education recommendations brought forward in the study, the new funding system that was in effect from 2008 to 2010 only took into consideration the higher costs associated with educating students in poverty, English language learners, and other district-based factors. It totally ignored the recommendations that special education should be funded based on student and district needs. While this was unacceptable to many, it was especially distressing to the many disability organizations statewide and was regarded as “unfinished business.”

In response to that omission, the Disability Rights Network of PA, the Arc of Pennsylvania, and the Education Law Center commissioned a report which built upon the original study and dug much deeper into special education costs. *“Costing-Out the Resources Needed to Meet Pennsylvania’s Education Goals for Students with Disabilities”* was done by the same national consultants as the 2007 Costing-Out Study—Augenblick, Palaich and Associates—and released in February, 2009. (This report was previously distributed to the Legislature when it was released and can be downloaded from the Education Law Center web site at [www.elc-pa.org](http://www.elc-pa.org).) We have attached an Executive Summary to this testimony. The report was designed to help Pennsylvania’s policymakers and education leaders address the special education funding recommendations contained in the 2007 costing out study and drew expertise and input from not only the original study but from additional panel meetings of special education experts held across Pennsylvania and consultation with education researchers about programs and resources. You’ve asked us to address the challenges to school districts in providing special education services, specifically the cost drivers, the inequities in the funding formula, and some possible solutions. The same questions driving this hearing today are the questions around which this study was designed.

The primary findings of the study showed that providing a basic, quality education for students with disabilities, on average, were more than twice the cost of students without special needs. The study concluded that 391 school districts had inadequate funding for special education.

Additional resources needed by students eligible for special education typically fall into three (3) major categories: (1) personnel, which includes adequate staffing, specialized personnel, and professional development; (2) assistive technology devices, services, and materials; and (3) specialized student support programs and services.

## Personnel

Adequate staffing is a significant cost-driver for special education. The types of staff most needed in schools fall into three categories, which include those designed to address inclusion support, improve communication, and deliver specialized services.

- **Inclusion:** Experts point to the importance of instructing students with disabilities in regular education classrooms. Placement in the “least restrictive environment” is required by law and supported by most families. It is a right, not a privilege. Educating students with disabilities alongside their non-disabled peers is also a more cost-efficient model than segregated classrooms. However, successful inclusion requires adequate funding and resources. Such models might include “co-teaching” or a “consultative” teaching model. To properly implement inclusive models, teachers must be properly trained to juggle and manage an ever-widening range of student behavioral, emotional, and learning needs. Teachers need access to outside support, coaching, and ongoing training. The administrative requirements of utilizing an inclusive instructional model require considerable amounts of paperwork, meetings, and other management functions in order to coordinate services between school personnel and with parents. Far too many schools in our state continue to unnecessarily segregate students with disabilities. Pennsylvania ranks 40<sup>th</sup> in the country when it comes to how often students with disabilities are educated in general classrooms with their peers without disabilities. The slow progress we have made in this area is a red flag for needing to do better. Our experience over the years has shown us that many teachers feel inadequate in today’s diverse classrooms, primarily due to their lack of training.

It is appropriate to note that the PA State Board of Education revised Chapter 49 Teacher Certification regulations in 2007. The first proposal was termed the “Cadillac” model and would have required every college education graduate to hold “dual certification” in both regular education and special education. Due to political pressures, this proposal was withdrawn, and we were only able to encourage some minor statutory changes for all teacher education programs that require nine credits or 270 hours of special education and three credits or 90 hours of teaching English language learners by 2011. Not fully considering the “dual certification” route was a missed opportunity for our schools and our students, although some universities in our state proudly undertake this model and have done so for years. As it stands, our inclusive models of classroom instruction for special education students become complex and stressful for classroom teachers who cannot build upon their pre-service training and now must rely on isolated training from staff development days, many times long after they enter the classroom. With many cuts in staff development taking place, this has become more problematic.

- **Communication:** Parents, experts, and practitioners consistently point to the need for improved communication among families, teachers, and school personnel. Lowering the total number of students assigned to each teacher is especially important. The communication is essential to ensuring that parent input—including child developments of which teachers are unaware but that a parent may observe at home—can be clearly received and appropriately integrated into teaching strategies and preparation. It is also vital to ensuring that teachers can communicate to parents effective ways to reinforce at home key elements of what is being taught in the classroom. Communication also minimizes potential misunderstandings which can ultimately lead to conflicts between

school personnel and parents and can divert significant time and resources from other priorities.

- **Specialized Student Support Programs and Services:** Because of the widely varying levels of physical and emotional student needs involved, highly specialized expertise is typically needed at the school level. Such expertise often goes well beyond what can be provided to administrators or teachers through professional development programs or through more centralized service providers. Examples of such personnel would include classroom aides, paraprofessionals, psychologists, mental health experts, behavioral specialists, assistive technology specialists, physical and occupational therapists, speech-language pathologists, and literacy specialists to focus on what experts say is one of the most critical components of academic development—the acquisition of core reading skills.

### **Assistive Technology Devices and Support**

Assistive Technology devices are defined in the Individuals with Disabilities Education Act (IDEA) as “any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.” A simple example might be a clear magnification sheet to place for written materials for students with visual disabilities. A more costly example would be a lift to help students move between different seated or reclining positions. Software programs, interactive white boards, laptop computers, and augmentative speech generating devices would also be in this category. Administrators are also challenged to research and present options for assistive technology to meet the needs of teachers and students.

### **Student Support Programs and Services**

- This category includes a wide array of school-based programs which have been found effective in improving performance for students eligible for special education.
  - **Extended school day or year** services require additional staffing and student transportation costs. An example of a program would be summer school and after school programs designed especially to work on reading skills and to reduce the learning gaps that occur with a three month summer break. Reducing such gaps is critical for students already learning at a slower rate than their peers.
  - **Transition services** would fall into this category, with transition services legally mandated to students who turn 14. These services would include vocational or job skills training, self-advocacy skills for living independently as an adult, or building community partnerships to help with job and educational placements.
  - **Early intervening services** are likewise critical for those in Pre-kindergarten through Grade 3. Such services are designed as intervention models for young students to address their developmental needs early on and require staffing, training, and program coordination.
  - **A School-Wide Positive Behavior Support (SWPBS)** is an evidence-based approach for establishing the social culture needed for schools to be effective learning environments for all students. This type of program eliminates barriers to learning, maintains a safe environment, and supports student development of

social and emotional skills needed to succeed in school and beyond. The successful implementation of this program can show a significant drop in student misbehaviors and a commensurate reduction in staff time needed to respond to these behaviors. A reduction in problem behaviors also leads to a reduction in the number of students referred to the juvenile justice and special education systems, with further cost savings for schools.

While the special education study took an in-depth look at the above-mentioned factors, the experiences the Education Law Center has had over three decades has also shown us some practices that have been costly and ineffective.

- As districts have faced economic pressures and have attempted to cut costs, many have told us they've resorted to "taking back" classrooms previously provided for by an entity such as an intermediate unit. In hastily doing so, they may be saving some dollars but have discovered they did not have the "capacity" to maintain that classroom in the district and were ill-prepared to handle the expert staffing, student supports, and inclusive models previously outlined. Everyone is shortchanged by this type of action, most especially the students.
- Special Education and Exclusionary School Discipline: According to the U.S. Department of Education Office for Civil Rights, students with disabilities are more than twice as likely to receive one or more out-of-school suspensions than their non-disabled peers. The highest rates are among black students with disabilities. Experts have found this a very disturbing pattern because students with disabilities are supposed to be getting additional supports and counseling. Relying on suspensions and expulsions carries significant economic costs and leads to higher dropout rates. We are likewise concerned when students are placed into Alternative Education for Disruptive Youth (AEDY) programs. Students with disabilities comprise only 15% of our general public school population, but nearly 40% of the over 30,000 students placed in AEDY programs. This not only raises the question of cost-effectiveness in the short term, but certainly in the long term for students who receive less instruction and are provided a narrower academic curriculum than students in a regular school environment. [http://www.portal.state.pa.us/portal/server.pt/community/alternative\\_education\\_for\\_distri ve\\_youth\\_\(aedy\)/7318](http://www.portal.state.pa.us/portal/server.pt/community/alternative_education_for_distri ve_youth_(aedy)/7318)

We've discussed many of the cost-drivers and the intervention solutions. The resources to do this are the missing ingredient. Special education funding has been flat lined in the state budget for five years. Under the current method of special education funding distribution, where no actual student count exists, many districts are struggling to provide mandated services and supports to students with disabilities. In turn, families are finding it increasingly more difficult to press for services to which students are entitled but often denied due to scarce funds. The current funding system has become a barrier to learning for thousands of the most vulnerable students.

In response to this critical problem, the Education Law Center established a statewide coalition of more than 40 organizations, commissioned and published the cost study for special education, and successfully cultivated legislative champions in both chambers of this General Assembly. In 2012, Senate Bill 1115 was adopted almost unanimously in both chambers, but charter school amendments sidelined the bill. The legislation would have established parameters for a new cost-based formula to distribute special education funding, established a

permanent legislative commission to develop and monitor the final form of this formula, and strengthened the accountability system related to these resources. Most of you voted for this legislation before it was held hostage to the charter amendments last year. (More information about SB 1115 and additional special education data and reports can be found at [www.reformspecialdefunding.org](http://www.reformspecialdefunding.org)).

The endorsing groups of the special education funding reform remain committed to fixing a broken system. Seeking access to quality special education programs has never been a spectator sport in Pennsylvania. Without parent advocacy and challenges to the school system in the 1970's, federal and state laws would not even exist today. Basic principles were established by the supporting groups and remain the centerpiece of any new legislation proposed in this session of the General Assembly. They include:

- Maintain an independent line item in the state budget;
- Allow legislative discretion over annual spending levels;
- Provide a commission for legislative oversight, review, and updating of the system;
- Define the objectives of the system—improve student outcomes and facilitate best practices;
- Focus on distribution, not funding levels;
- Count students;
- Recognize the real added costs of special education;
- Recognize that not all students with disabilities have the same costs;
- Recognize that conditions in school districts are different and affect their costs;
- Protect against over-identification;
- Encourage cost savings;
- Maintain and strengthen the Contingency Fund;
- Connect spending with accountability within the existing systems for program planning and monitoring;
- Avoid creating new bureaucracy or excess paperwork; and
- Maintain and improve the new system for the long term.

So what are the consequences if we don't fix the system? State and federal laws prohibit schools from using cost as a reason to deny any accommodation or support service to a student with a disability. The greatest consequences are to the students and their families. When funds are scarce, we often see districts under pressure by delaying the initial identification of children for evaluation, recommending only some of the many services and supports that could help a student in school, or recommending that services be provided less frequently than the optimum level. These tactics may actually increase the ultimate long-run cost to the education system as inadequate special education may lead to teacher frustration and turnover and slow the learning process both for students with disabilities and the peers who are educated alongside them. In response to that, we see more and more families doing unusual negotiations with schools to tap legally mandated services when time and assets could better be used for delivering services and supports. We also know there is a shortage of specialized professionals—professionals who are unwilling to enter systems without the resources to succeed.

The consequences for school districts and local property taxpayers are also great. The increased pressures of high stakes testing and of meeting new Common Core standards demand more time and staff attention to prepare students with disabilities for testing accommodations and include their families in these mandated communications and paperwork requirements. Schools will continue to face the pressures of reaching Adequate Yearly

Progress (AYP) and struggle to help students with disabilities reach proficiency—with fewer resources often than the year before. Without adequate resources, local boards of education have had no other choice than to escalate property taxes. When local media quotes school board members or superintendents as saying, “The special education costs are causing this tax increase,” the families in that district feel pitted against the community. The local property taxpayers in each school district are paying the majority of the bill for special education services. Our poorest school districts statewide have the highest percentages of students being educated in special education programs. Some of these school districts aren’t *unwilling* to raise taxes—they clearly are *unable* when no tax base exists to do so. This is an injustice. Until the General Assembly steps up to the plate and has the political will to tackle this issue of severe neglect for special education funding and accountability reform, we will see another generation of the most vulnerable students having their rights violated. If we continue to grade schools on “outputs” without necessary “inputs,” we have failed all students.