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January 3, 2019

Governor Tom Wolf  
Office of the Governor  
508 Main Capitol Building  
Harrisburg, PA 17120

**Re: Education Funding for Students with Disabilities**

Dear Governor Wolf,

On behalf of the Education Law Center (ELC) and the parents, students, and community members with whom we work, congratulations on your re-election. Thank you for your first-term leadership on increasing funding for special education, early intervention, basic education, and early childhood education and your second-term commitment to “education progress through sustained investment,” as highlighted in your 2018-19 Mid-Year Budget Briefing. As you begin developing your second-term budget priorities, we write to remind you of the urgent educational needs of students with disabilities. The enclosed letter from statewide disability advocates and our recent report on special education funding highlight the need for your sustained and increased support.

Insufficient funding prevents too many of the over 270,000 students with disabilities across Pennsylvania from receiving the supports and services they are legally entitled to receive. Without significant increases in state support, particularly for the most underfunded districts, the level of unmet educational needs will only intensify. To support the full educational needs of students with disabilities from birth to age 21, we urge you to make the following commitments in the FY19-20 budget:

- **Propose a minimum increase of \$100 million in state special education funding to be distributed through the special education formula;**
- **Propose a minimum increase of \$400 million in state basic education funding to be distributed through the basic education formula;**
- **Increase early childhood funding so that at least 10,000 additional eligible three- and four-year-old children can attend high-quality pre-K programs;**
- **Increase funding for infant, toddler, and preschool Early Intervention programs so that at least 1,000 additional eligible infants and toddlers and 1,000 additional three- to five-year-old children with disabilities can receive high-quality early intervention services.**

In addition, we hope you will join us in calling on the General Assembly to ensure that all public schools serving children with disabilities, including charter schools, receive tiered funding based on the needs of the students they serve.

We thank you for your continued commitment to education and investing in the future of Pennsylvania's children.

Respectfully submitted,

Deborah Gordon Klehr  
Executive Director

Reynelle Brown Staley  
Policy Director

Enclosure

cc: Jen Swails, Pennsylvania Office of the Budget  
Pedro Rivera, Pennsylvania Department of Education

October 9, 2018

TO: Governor Wolf

FROM: The Arc Alliance  
The Arc of Greater Pittsburgh/ACHIEVA  
The Arc of Lehigh and Northampton Counties  
The Arc of Pennsylvania  
The Arc of Philadelphia  
Alliance for Philadelphia Public Schools  
Autism Sharing and Parenting  
Disability Rights Pennsylvania  
Education Law Center  
Juvenile Law Center  
Local Special Education Task Force IU 20  
Local Special Education Task Force IU 21  
Mental Health Partnerships & Parents Involved Network  
Parent Education & Advocacy Leadership Center (PEAL)  
PARENT POWER  
Parents Exchange  
Parents United for Public Education  
PEAC (Pennsylvania's Education for All Coalition)  
Penn TASH  
Philadelphia HUNE  
Public Interest Law Center  
SPEAK Unlimited Inc.  
Vision for Equality  
Special Education Attorneys and Advocates:  
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Esq.; Judith Silver, Ph.D.; Frederick M. Stanczak, Esq.; Liliana  
Yazno-Bartle, Esq.

Re: **Education Funding for Students with Disabilities**

We are writing to you on behalf of parents, students, and community members across Pennsylvania to ask for your urgent attention and support to address the critical educational needs of students with disabilities. We thank you for your leadership in advocating successfully for \$90 million in special education funding increases over the past four years. These commitments are important to providing necessary educational supports to students with disabilities. However, as the enclosed report shows, significant

additional investment is needed to address the widening gap between adequate and actual special education funding.

State funding increases are critical to meeting the need for special education services across the state, but they have not been at an adequate level. Since 2008, local districts have borne more than 95% of the increased costs of special education services, the equivalent of \$1.49 billion that had to be raised in local taxes. Over this same period, the state share in special education funding has declined from roughly one-third to less than a quarter. Even with significant local funding increases, most districts still lack sufficient resources to ensure that students with disabilities are provided the services they are legally entitled to receive.

For the over 270,000 students with disabilities across Pennsylvania, the need for significant state investment in special education is urgent. **We strongly urge you to commit to restoring the state's share of special education funding back to its 2008-09 level of 33%.** This commitment will require significant ongoing investments in state funding for special education services. Therefore, **we urge you to propose a minimum increase of \$100 million in state special education funding to be distributed through the special education formula until the state's share of funding is fully restored.** Such increases are needed to prevent the allocation of funding between state and local sources from becoming increasingly more inequitable and unsustainable and to ensure that children with disabilities receive the high-quality inclusive education they need and to which they are legally entitled.

Inadequate special education funding has resulted in an insufficient number of staff to support our students as well as deep cuts to critical resources and services that these students need to make educational progress. Relatedly, funding deficits in basic education also impact students with disabilities. **We urge you to close the approximately \$3 billion basic education funding adequacy gap that plagues our schools and children.** By using the bipartisan basic education funding formula to distribute the increased investment, dollars will be allocated based on actual district and student need. This investment is crucial because, due to past divestment and inequitable distribution of funding, students with disabilities are not receiving the education they deserve and to which they are legally entitled.

Finally, we hope you will join us in calling on the General Assembly to review the state's special education funding system, as recommended by the 2013 bipartisan Special Education Funding Commission. All public schools serving children with disabilities, including charter schools, should receive tiered funding based on the needs of the students they serve.

Both additional resources and the equitable distribution of those resources are needed to ensure that students with disabilities in all public schools receive the appropriate supports and services they desperately need to be successful in school and beyond. We thank you for your continued commitment to education and investing in the future of Pennsylvania's children.

Thank you for your consideration.

**STATEWIDE & REGIONAL ORGANIZATIONS:**

**The Arc Alliance**, Paul Stengle, Chief Executive Officer  
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*Pittsburgh, PA 15203*

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**The Arc of Pennsylvania**, Maureen Cronin, Executive Director  
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**The Arc of Philadelphia**, Tanya Regli, Executive Director  
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**Juvenile Law Center**, Susan Mangold, Executive Director  
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**Public Interest Law Center**, Jennifer Clarke, Executive Director  
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# Shortchanging Children with Disabilities: State Underfunding of Special Education in Pennsylvania

October 2018

The trajectory of a person's life is profoundly shaped by what happens in school. For students with disabilities, the stakes could not be higher, as these children are more likely to face unemployment and underemployment later in life,<sup>1</sup> leading to homelessness or institutional placement.<sup>2</sup> Prior to the adoption of federal and state civil rights laws, these students were literally shut out of school. Today, we recognize that students with disabilities need and are legally entitled to a free and appropriate public education ("FAPE") in the least restrictive environment.<sup>3</sup>

Providing a FAPE to children with disabilities involves providing specialized instruction tailored to meet their unique needs, integration in the regular classroom with supplemental supports and services, and providing an education calculated to achieve grade advancement and true progress in light of their potential.<sup>4</sup> Under the law, needed educational services must be provided through a combination of federal, state, and local funding, without additional cost to parents or students.

*Providing a FAPE means meeting the needs of a child like Tammy, a 12-year old student with multiple physical and neurological disabilities in an underfunded school district. Tammy was unable to attend school for four months because her district could not hire the nurse she needed. She is now far behind her peers because her communication and social skills regressed while she languished at home, receiving only a few hours of education each week.*

Five years ago, in response to advocacy by the Education Law Center, parents, and other partners statewide, Pennsylvania's General Assembly convened a [Special Education Funding Commission](#) and held [hearings](#) across the state to examine how to improve funding to better serve 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 Commission's December 2013 [Report](#) observed. Despite this important purpose, the Funding Commission Report went on to say that the state's existing funding system "is often seen as not fairly and adequately serving the current needs in Pennsylvania for students with disabilities and their schools."<sup>5</sup>

In response, the General Assembly adopted a new special education formula that distributes funding in excess of 2013-14 levels based on the number of eligible students, the severity of their disability, and the cost of services. But does the current system enable Pennsylvania school districts to fairly and adequately serve the current needs of students with disabilities? Does state funding provide what is required to ensure that these students receive a FAPE as required by law? Those questions are the subjects of this report.

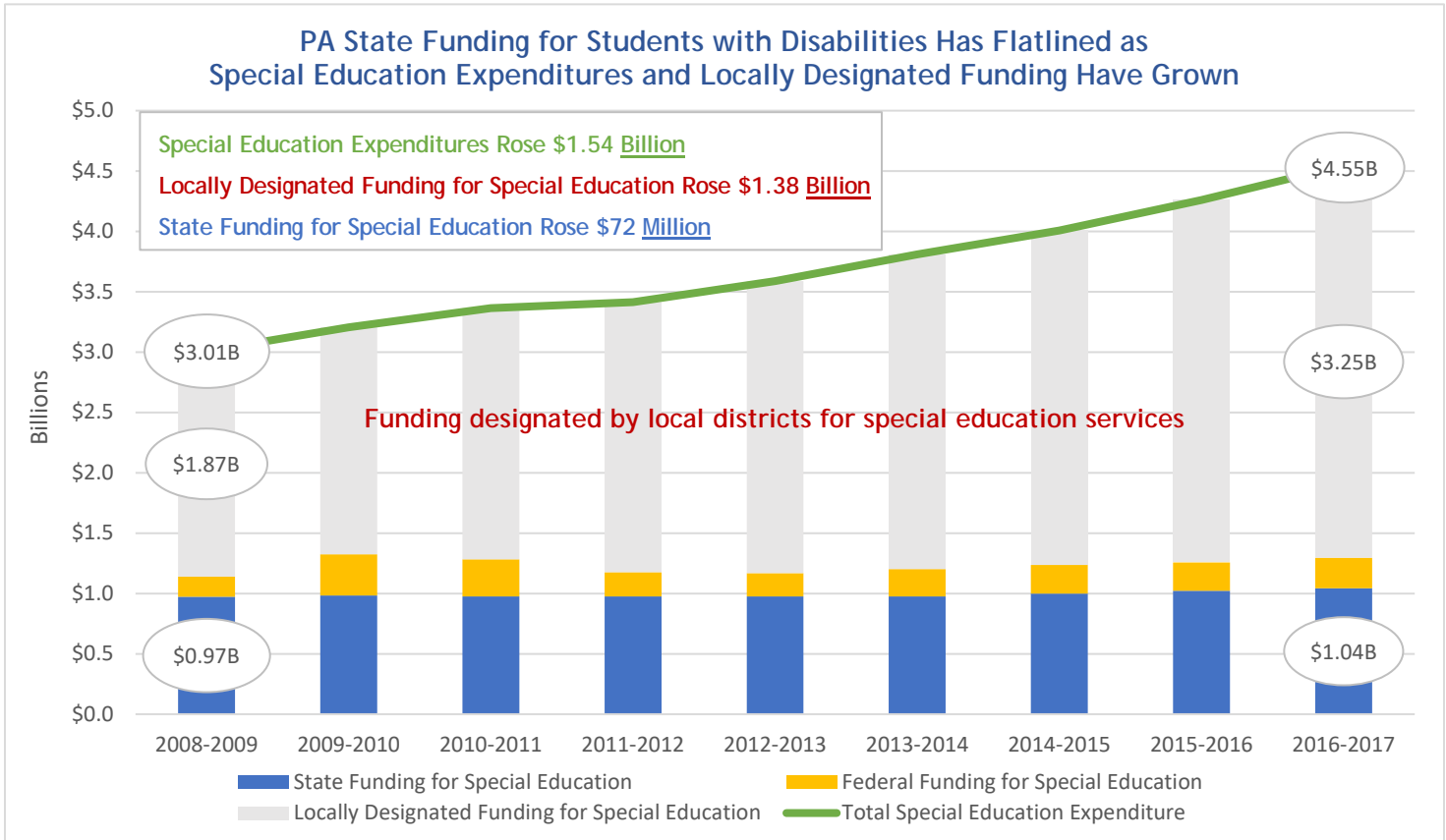
## Despite Modest Progress in Recent Years, State Special Education Funding Remains Inadequate

Recent state increases in special education have been a welcome shift from the years of stagnation that preceded the Commission's Report. From 2014 to 2018, the state increased special education funding by \$90 million, a notable change from the preceding four-year period where state funding for special education instead fell by \$6.1 million. The General Assembly itself acknowledged this previous lack of investment in special education, noting in the 2013 Funding Commission Report that "since 2008-09, Pennsylvania has not increased special education funding."<sup>6</sup>

Despite this upward trend, the rate of state investment has failed to keep pace with local needs. Statewide, special education costs have been rising at a rate averaging nearly \$200 million per year, with the most recent years reflecting even larger increases.<sup>7</sup> From 2008 to 2016, the most recent year for which both revenue and expenditure data are available, state investment in special education increased by \$72 million. Yet during that time, *district special education costs increased by \$1.54 billion, from \$3 billion to \$4.5*

billion.<sup>8</sup> Local districts had to allocate funds to cover 90% of those increased costs, the equivalent of \$1.38 billion, in district budgets. In other words, local districts designated close to \$20 to special education for every additional \$1 contributed by the state. This creates significant revenue challenges for local communities that must be met through general education sources, such as local taxes and state basic education funding. For example, in Wilkes-Barre Area School District, the cost of special education services increased by \$11 million from 2008 to 2016. The state’s special education funding increase of only \$641,000 required the district to designate \$10.3 million in other education funding to meet increased costs.

Since 2008, local districts designated close to \$20 to special education for every additional \$1 contributed by the state.



Source: Pennsylvania Department of Education. Annual Financial Reports. Online at <https://bit.ly/2P7d3hG>

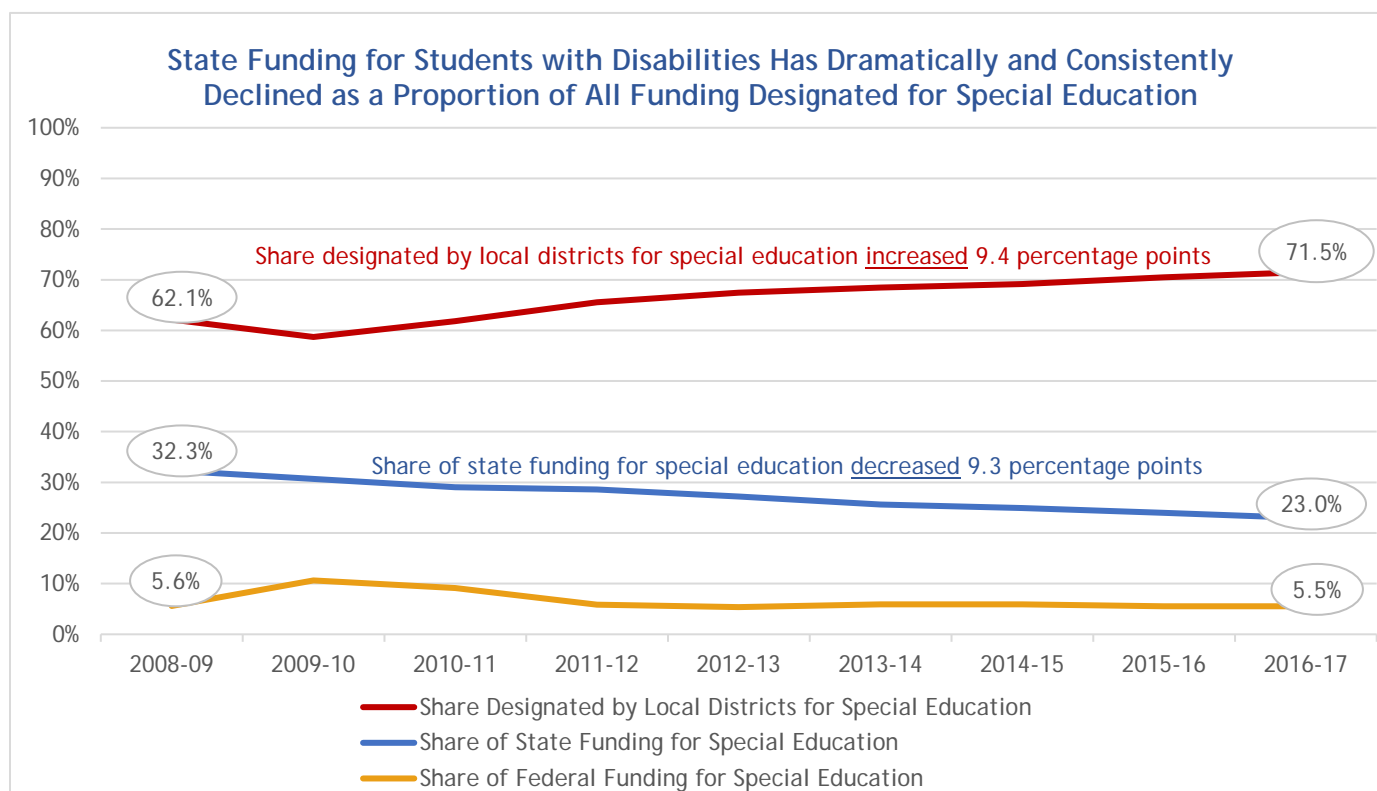
Even with such significant local funding increases, most districts still lack sufficient resources to ensure that students with disabilities receive the services and supports they are legally entitled to receive. A 2009 report found that 391 school districts had inadequate funding for special education, resulting in an annual funding gap of \$380 million, or \$1,947 per pupil on average.<sup>9</sup> Given minimal state investments and local challenges meeting increased fiscal pressures,<sup>10</sup> problems of underfunding and inadequate special education services have undoubtedly grown since then.

### Pennsylvania’s Declining State Share of Special Education Revenues Deepens Funding Inequities

Because state contributions have so significantly lagged behind local expenditures, the allocation of funding between state and locally designated sources has become increasingly inequitable. In 2008-09, the state provided nearly one-third of total special education funding; by 2016-17, the state share had declined to less than one-quarter. Over that same time, the share designated by local districts increased from 62% to 72%.<sup>11</sup> Many districts faced even more dramatic changes in state and local allocations. More than 83% of districts, 417 in total, have seen their share of special education expenditure increase since 2008, and 53 districts have seen

their share increase by 20 percentage points or more. Changes in special education expenditures and revenues for all 500 Pennsylvania districts are provided in the spreadsheet found at [bit.ly/spec-ed](http://bit.ly/spec-ed).

Pennsylvania’s growing reliance on locally-designated funding to provide needed services for students with disabilities is unsustainable. It forces local school boards to choose between raising additional revenue to meet funding gaps, spreading limited resources across a range of programs, and/or reducing needed services and supports for students with disabilities. It exposes families to local tax increases and service cuts. It also



Source: Pennsylvania Department of Education. Annual Financial Reports. Online at <https://bit.ly/2P7d3hG>

exacerbates inequality. State dollars are the funds that state legislatures can and should use to address funding disparities resulting from differences in local wealth. When adequate state funding is not available, poorer districts – the communities least able to compensate for state underfunding through local tax increases – are particularly ill-equipped to provide students with disabilities the FAPE the law requires.<sup>12</sup> This leaves vulnerable students in poorer districts acutely harmed by state underfunding.

### Inadequate and Inequitable Basic Education Funding Compounds Revenue Challenges

The state’s basic education funding system compounds the resource challenges that schools face in meeting the needs of students with disabilities. Providing students with disabilities a FAPE in the least restrictive environment where their unique needs can be met requires adequate levels of *both* basic and special education funding. General education classrooms must be well-resourced with the basic instruction services that all students need, *and* students with disabilities must receive the individualized supports and services they need to succeed in that integrated environment. When both basic and special education funding systems are broken, as they are in Pennsylvania, students with disabilities suffer twofold.

Basic education in Pennsylvania suffers from the same funding flaws as special education, among them, persistent state underfunding, low state share, and overreliance on local district wealth to support students with complex educational needs. State underfunding of basic education exceeds \$3 billion each year.<sup>13</sup> Pennsylvania ranks 46<sup>th</sup> in the nation in terms of state share of basic education funding and last in the nation in terms of the gap between what our wealthiest and poorest school districts spend.<sup>14</sup> Providing students with disabilities the resources they need requires that we address *both* basic and special education funding.

## The State Must Ensure Students with Disabilities Receive the Resources They Need to Succeed

The state has both a moral and legal obligation to better educate and support children with disabilities. Under the Individuals with Disabilities Education Act, a state education agency has an obligation — independent of the local district — to ensure a FAPE for students with disabilities in the least restrictive environment. This obligation involves ensuring that school districts and other local educational agencies comply with state and federal requirements applicable to children with disabilities.<sup>15</sup> Students with disabilities are entitled to an education that is specially designed to meet their needs, modifies instruction and materials, and provides the necessary related supplemental aids and services to accommodate their unique learning needs in the most integrated setting — independent of how much those supports and services cost. In addition, teachers must be specially trained, and facilities and equipment must be adapted as needed to accommodate these students.

Despite the state's legal obligation to protect and advance the rights of students with disabilities and the pivotal reforms of the Commission, ELC and our partners across the Commonwealth continue to hear from and advocate for parents and caregivers in financially strapped school districts whose children have failed to receive the services they need, and to which they are legally entitled in order to receive FAPE: the boy who was out of school for more than a year because his school district failed to provide an aide, the girl who was repeatedly suspended because her behavior support plan was not properly implemented, the boy who was required to travel for hours to access needed speech and language services, and hundreds of children who failed to be identified or fell further behind while waiting for evaluations.

*Part of the Commission's charge was to review the state's special education funding system every five years.<sup>16</sup> Five years later, it is abundantly clear that we need an increased state investment.* Without prompt and comprehensive state action to address both basic and special education funding, issues of inadequacy and inequity will deepen for students with disabilities. None of us can afford to have the Commonwealth continue to ignore its obligation to meet the resource needs of these students. We must uphold their right to learn, progress, and thrive. Their life outcomes depend on it.

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The Education Law Center-PA ("ELC") is a nonprofit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, trainings, and policy advocacy, ELC advances the rights of vulnerable children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness. Visit [elc-pa.org/contact](http://elc-pa.org/contact) or call 215-238-6970 (Philadelphia) or 412-258-2120 (Pittsburgh).

PA Schools Work is a coalition of organizations from across Pennsylvania representing teachers and other educators; urban, suburban and rural communities; and parents and other community members working together to advocate for PA public schools, their students, and the communities they serve.

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<sup>1</sup> According to [the Department of Labor](#), in 2017, the [unemployment rate](#) for the general population was 4.2%, while it was 9.2% for individuals with disabilities. DEP'T OF LABOR, *Persons with a Disability: Labor Force Characteristics Summary*, BUREAU OF LABOR STATISTICS, <https://bit.ly/2jdEFVS>.

<sup>2</sup> See, e.g., Shaun Heasley, *Report: Housing A 'Crisis' For People with Disabilities*, DISABILITY SCOOP (Dec. 15, 2017), <https://bit.ly/2QnMJjo>.

<sup>3</sup> See Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400(d)(1)(A), 1401(9), 1415; 22 PA CODE § 14.102; Daniel G. ex rel. Robert G. v. Delaware Valley Sch. Dist., 813 A.2d 36, n.2 (Pa. Commw. Ct. 2002) (stating that Pennsylvania has adopted regulations to implement the Individuals with Disabilities Education Act (IDEA)).

<sup>4</sup> PAT BROWNE & BERNIE O'NEILL, SPECIAL EDUCATION FUNDING COMMISSION REPORT 19-21 (2013), <https://bit.ly/2QnUdd3> (describing "least restrictive environment" and support options for students eligible for special education).

<sup>5</sup> See *id.* at 5.

<sup>6</sup> See *id.* at 3.

<sup>7</sup> In 2014-15, expenditure increased by \$198 million, in 2015-16 it increased by \$253 million, and in 2016-17 it increased by \$286 million. PENNSYLVANIA DEP'T OF EDUC., *AFR Data: Detailed*, <https://bit.ly/2OtdPZ3> (navigate to the appropriate expenditure year, which are listed under "expenditures").

<sup>8</sup> *Id.*

<sup>9</sup> PALAICH AUGENBLICK AND ASSOCIATES, INC., COSTING-OUT THE RESOURCES NEEDED TO MEET PENNSYLVANIA'S EDUCATION GOALS FOR STUDENTS WITH DISABILITIES: SPECIAL EDUCATION SOLUTIONS BASED ON THE 2007 COSTING-OUT STUDY BY THE COMMONWEALTH 2 (Feb. 2009), <https://bit.ly/2DMhkFY>.

<sup>10</sup> For a discussion of the fiscal challenges faced by local school districts, see PASBO-PASA SCHOOL DISTRICT BUDGET REPORT (June 2018), <https://bit.ly/2NfpyWw>.

<sup>11</sup> PENNSYLVANIA DEP'T OF EDUC., *AFR Data: Detailed*, <https://bit.ly/2OtdPZ3> (navigate to the links indicating local revenue, state revenue, federal revenue, and expenditure detail).

<sup>12</sup> Research has shown that the low state share and inequitable distribution of education funding in Pennsylvania also disadvantages students of color. EDUCATION LAW CENTER, MONEY MATTERS IN EDUCATION JUSTICE: ADDRESSING RACIAL AND CLASS INEQUITIES IN PENNSYLVANIA'S SCHOOL FUNDING SYSTEM 4 (2017), <https://bit.ly/2P1lytf>.

<sup>13</sup> MICHAEL CHURCHILL, PA BASIC EDUCATION FUNDING COMMISSION FORMULA MEANS DISTRICTS NEED AT LEAST \$3.2 BILLION MORE IN STATE FUNDING (May 2016), <https://bit.ly/2zK68pr>.

<sup>14</sup> See 2016 *Public Elementary-Secondary Education Data*, UNITED STATES CENSUS BUREAU, <https://bit.ly/2zJVzIZ> (navigate to link indicating summary tables and select the 5<sup>th</sup> sheet in the workbook).

<sup>15</sup> See 20 U.S.C. 1232d(b)(3)(E); 34 CFR §§ 300.149, 300.600(e).

<sup>16</sup> 24 Pa. Stat. Ann. § 1-122 (West).