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Testimony of the Education Law Center to the Special Education Funding Commission

October 8, 2019

Chairmen Browne, Sonney, and Rivera, and members of the Special Education Funding Commission, thank you for the opportunity to speak with you today. My name is Reynelle Brown Staley, and I serve as Policy Director for the [Education Law Center – PA](http://www.elc-pa.org) (ELC), a non-profit statewide legal advocacy organization that focuses on education. Our mission is to ensure that all of Pennsylvania’s children have access to quality public education. In working on behalf of all public schoolchildren, we focus our litigation, legislative, and other advocacy efforts on the students who have historically been – and who continue to be – the most underserved by the state’s education system. Given the work of this commission, the students on whom I focus my testimony today are children with disabilities, particularly those who are also marginalized based on poverty and/or race.

For each of the past 2 years, ELC, in conjunction with the funding coalition, [PA Schools Works](#), has issued a report on special education funding in Pennsylvania. These reports have been referenced directly and indirectly many times over during this commission’s hearings – by IU directors, school business officials, and parents, among others. They are the product of ELC’s advocacy on two issues that have been central to our work for more than four decades. The first is our school funding advocacy and our focus on ensuring that all children receive the educational resources they need to succeed, regardless of the educational or societal advantage they enter school with. The second is our advocacy to establish and protect the unique legal rights of students with disabilities and to ensure that they receive a free appropriate public education.

In our recent reports (attached as Appendix A and B), we highlight the urgent need to address the state’s underfunding of special education. We understand that the levels of total special education funding are beyond the scope of this Commission and that your focus is on the distribution of allocated state special education funding. But we believe it bears emphasizing that decisions about how to distribute funds cannot truly be divorced from the issue of how much funding is available. When resources are scarce, decisions about how those resources are distributed can either sustain or debilitate a community. In the eyes of communities across the Commonwealth, state special education funding is a resource in short supply, and as discussed in our report and [PA Schools Works’ open letter to this Commission](#), this perception is well supported by data.

Ensuring that all of Pennsylvania’s children have equal access to a quality public education.

For the hundreds of families statewide who contact us each year regarding issues with their child's special education services, state underfunding of special education matters, both to their child's educational experience and to the issues of funding distribution being discussed today. It doesn't just mean higher local taxes. It means that their child may not get critical services that they need to succeed academically and to reach their full potential. Their concerns – and their children's special education needs – are truly not captured by the existing state special education funding system. They are not in the formula factors, and they are not in formula weights. Every child who needs but never receives an evaluation isn't captured in the current formula because there is no district spending to be reflected in Tier 1, 2, or 3. Every child who receives some, but not all, of the services and supports they need to succeed in school is only partially captured by the current formula because district spending may be in a lower tier than it actually should be. We know that under-identification and inadequate or inappropriate special education services, including under-inclusion in general education classrooms, are realities for families in Pennsylvania because we hear these stories every day. School districts are stretched by the educational needs of their students, and students with disabilities are among those suffering the consequences of inadequate funding.

Whether they contact our office from here in the Lehigh Valley, from across the state in Cambria County, or from communities in between, families in poor Pennsylvania communities consistently struggle – in ways that parents in wealthier communities do not – to ensure that their children with disabilities receive the services and supports that they need and are legally entitled to receive. Children are made to wait for evaluations or re-evaluations because their district lacks adequate resources for psychological services to meet student demands for support. This is particularly true for English learners, given the acute shortages of both psychological evaluators and interpretation services. Yet delayed evaluations aren't the only struggles poor families regularly face. Children with disabilities in poor districts experience waiting lists and gaps in service delivery, often because of high staff-to-student ratios. They may be educated in highly segregated classrooms where the legal expectation of a free appropriate public education in the least restrictive environment is not being met. Our testimony today aims to shed light on the experiences of these students and the need to allocate state funding in a way that ensures a district's poverty isn't determinative of a child's ability to access the special education services they need and require under the law.

We believe that the formula can be improved to better reflect the needs of the many students with disabilities with whom we work, many of whom live in poor communities and/or are students of color. As discussed in more detail in our forthcoming report with Research for Action, many of the tools to better reflect district poverty and student need already exist in the Basic Education Funding (BEF) formula. Because the BEF formula was developed after the Special Education Funding (SEF) formula, it builds upon the learning from both commissions. Simply replacing the SEF district weights with the district weights in the BEF formula would ensure that state funding for special education is efficiently directed towards the districts with the greatest resource needs and the least capacity to meet them locally. The three district weights in the BEF formula – the 0.7 weighted sparsity index (as opposed to 0.5 in current SEF), Median Household Income Index and Local Effort Capacity – are more closely correlated to both a

district's percentage of students receiving Free and Reduced-Price Lunch and its percentage of students of color than the corresponding sparsity, wealth and tax factors in the SEF formula. In addition, incorporating the BEF English Learner student weight into the SEF district weights will ensure that the unique resource needs of students with disabilities who are English learners are accurately captured in future budget allocations. These changes should be implemented as part of the 2020-21 budget process for funds allocated in that budget year and in all subsequent years. We know that many of the districts that benefit from the current SEF base and formula remain inadequately funded by the state and believe the Commission should take steps to accelerate funding in accordance with the BEF district weights without reducing the allocation that any district currently receives.

We therefore urge you to make the following recommendations:

1. Change the three SEF district weights to the three district weights currently in the BEF formula.
2. Add additional district formula weights, such as the EL weight in the BEF formula, to account for the unrecognized costs of special education services for particular marginalized populations that districts must serve.
3. Distribute funding in the 2020-21 budget and in future years in a manner that would bring the poorest, most inequitably funded districts closer to their proportional share of state revenue based on the three BEF district weights, while continuing to ensure that all districts maintain current levels of state support.

Many of the changes we propose today have been endorsed by legislative commissions in the past. Specifically, the Basic Education Funding Commission determined that new BEF weights were needed to more accurately capture community need than the SEF weights could.

State special education funding should be a vehicle for equitably distributing funding that is adequate for all schools to meet their legal obligation to provide a free appropriate public education to students with disabilities. We applaud the legislature for its 2014 adoption of the state special education funding formula as an important step towards recognizing the needs of district and students. We believe that by adopting these recommended changes, the Commission will move further towards ensuring these needs are met and that the formula is working as intended. Thank you.

Appendix A

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,¹ leading to homelessness or institutional placement.² 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.³

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.⁴ 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."⁵

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.

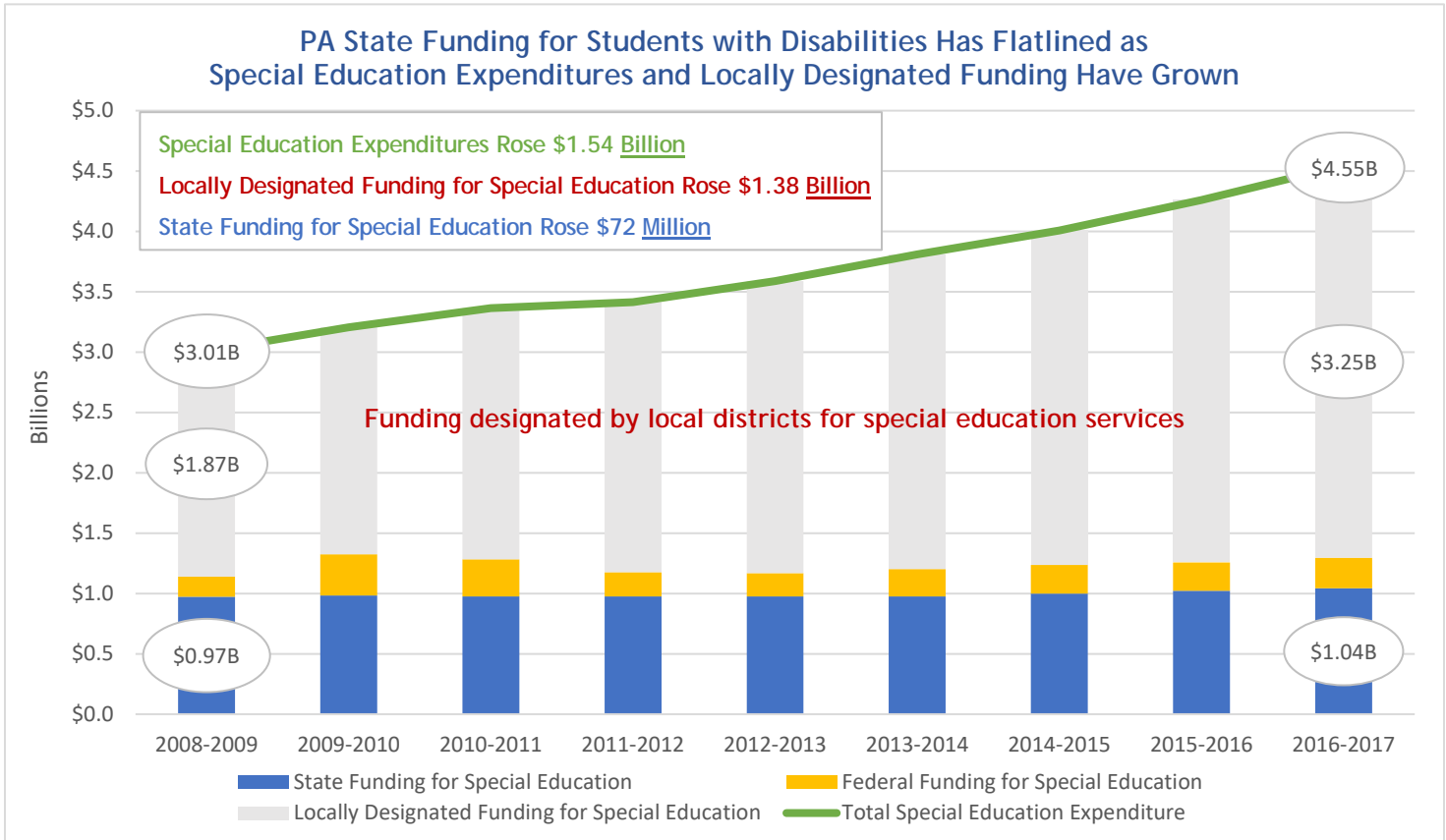
Despite Modest Progress in Recent Years, State Special Education Funding Remains Inadequate

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."⁶

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.⁷ 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.⁸ 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>

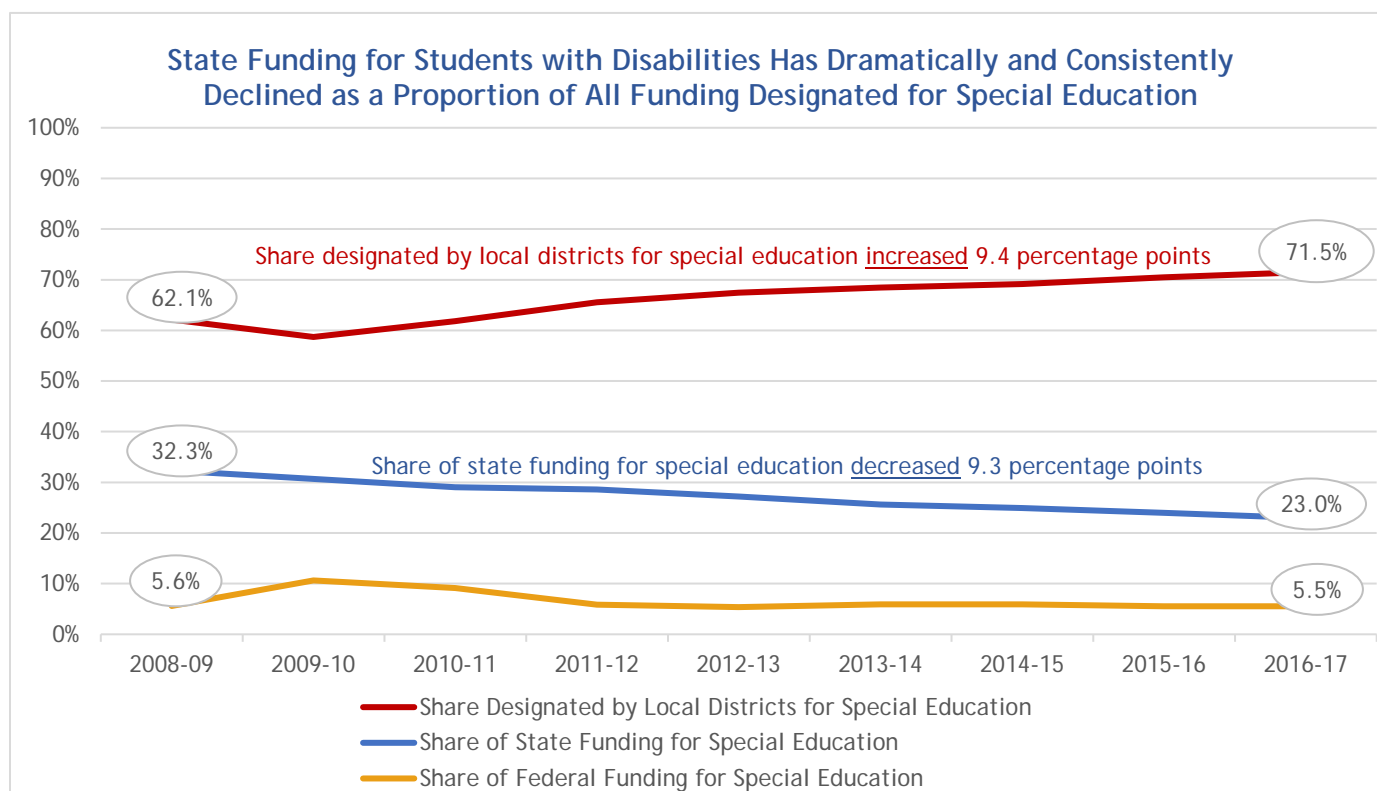
Even with such significant local funding increases, most districts still lack sufficient resources to ensure that students with disabilities receive the services and supports they are legally entitled to receive. A 2009 report found that 391 school districts had inadequate funding for special education, resulting in an annual funding gap of \$380 million, or \$1,947 per pupil on average.⁹ Given minimal state investments and local challenges meeting increased fiscal pressures,¹⁰ 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%.¹¹ 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.

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.¹² 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.¹³ Pennsylvania ranks 46th 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.¹⁴ 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.¹⁵ 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.¹⁶ 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.

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 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.

¹ 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>.

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

³ 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)).

⁴ 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).

⁵ See *id.* at 5.

⁶ See *id.* at 3.

⁷ 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").

⁸ *Id.*

⁹ 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>.

¹⁰ 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>.

¹¹ 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).

¹² 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>.

¹³ 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>.

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

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

¹⁶ 24 Pa. Stat. Ann. § 1-122 (West).

Appendix B

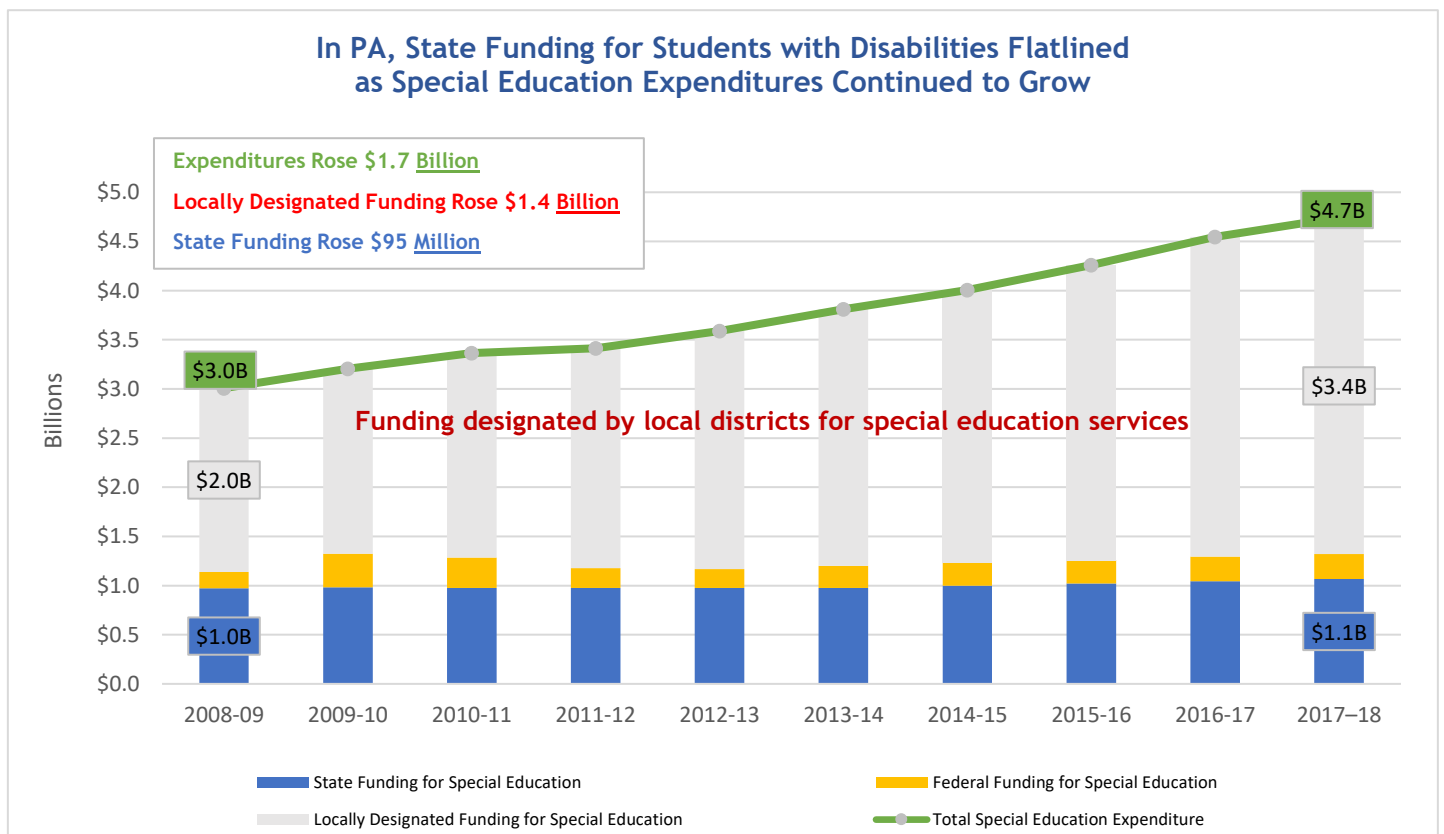
Still Shortchanging Children with Disabilities: State Underfunding of Special Education Continues

October 2019

In a [report](#) issued last fall, “Shortchanging Children with Disabilities,” we warned that over an eight-year period, Pennsylvania’s financial support for special education had failed to keep pace with local needs. [New data](#) show that trend has continued. Between 2008 and 2018, Pennsylvania increased state special education funding by \$95 million, or about 10%. Yet during that time, total special education costs to local school districts increased by \$1.7 billion – or 58%. This growing reliance on local funding to provide needed services for students with disabilities is unsustainable.

In the last decade, local districts have taken on more and more financial responsibility to cover increased costs as Pennsylvania’s share of special education funding declined:

- Between 2008-09 and 2017-18, local districts’ share of special education costs grew from 62% to 72%.
- In the same period, the share of costs covered by state special education funding fell from 32% to 22%.



Throughout this period, Pennsylvania retreated from its financial responsibility of providing students with disabilities the education they deserve. But the state remains legally responsible under the Individuals with Disabilities Education Act for ensuring that students with disabilities receive a free and appropriate public education in the least restrictive environment.

The pace of growth in total special education costs means that even the state's \$50 million increase in special education funding for 2019-2020 is unlikely to reverse the decline in state share, nor will it provide students and school districts the resources they need. Statewide special education costs have been growing by about \$200 million per year. Local school districts continue to face difficult choices 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. Families continue to experience local tax increases and service cuts. These challenges are compounded because a lack of state investment in basic education funding has eroded the resources available to all students, which increases the incremental investment required to meet the needs of students with disabilities.

State dollars are the funds that state legislatures can and should use to address funding disparities resulting from differences in local wealth. When adequate basic and special education state funding is not available, poorer districts – the communities least able to compensate for state underfunding through local tax increases – and the most vulnerable students within them – are acutely harmed.

For the state to meaningfully boost its share of support, recurring annual increases in state aid for special education of \$100 million or more are needed. Pennsylvania's chronic underfunding of special education cannot be resolved solely through the work of the legislature's Special Education Funding Commission, which is considering adjustments to the funding formula that determines how the available state funds are distributed – but not deciding whether available funds are adequate. The General Assembly must make an increased state investment. Without prompt and comprehensive state action, issues of inadequacy and inequity will deepen for students with disabilities across the Commonwealth.

Changes in special education expenditures and revenues for all 500 Pennsylvania districts are provided in the spreadsheet found at bit.ly/spec-ed-2019.

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