



## Pennsylvania Association of Pupil Services Administrators

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The Honorable Rosemary M. Brown, PA House Special Education Subcommittee Chair

Dear Representative Brown,

This letter is being submitted to you on behalf of the Pennsylvania Association of Pupil Services Administrators (PAPSA) in your capacity as Chairperson of the House Special Education Subcommittee.

In its sixth decade of existence, PAPSA is a statewide organization of pupil services administrators with membership approaching 400 members from among the 600 local educational entities in the Commonwealth of Pennsylvania. As part of their duties, our members are involved in the administration of special education and 504 services.

It is PAPSA's understanding that SB 664 allows for the parent(s)/guardian(s) to opt to retain their child during the 2021-22 school year, regardless of whether that child had met requirements for grade advancement. It also allows any parent/guardian of a student with a disability who is enrolled in school during 2020-21 and who "has reached 21 years of age" to opt for an additional year of school during the 2021-2022 school year.

When the uncharacteristically rapid passage of SB 664 in the PA Senate became known this past week, it caused great alarm to our executive board and our membership. Many important questions and concerns were immediately raised and it was determined that, as written, this piece of legislation could have significant impact on our school districts in many ways. Among those questions and concerns are the following bulleted items:

- SB 664 provides only that "the school entity shall implement the student's IEP." The term "IEP" is defined as "an individualized education program established under 22 Pa. Code Ch. 14 (relating to special education services and programs)." An IEP "established under" Chapter 14, of course, is one that is updated at least annually and is reviewed as needed. The only logical conclusion from the language of the bill is that schools will have to develop an IEP afresh for the 2021-22 school year for the post-21-year-old-student. Therefore, will students with disabilities who elect an additional year of education be entitled to a new annual IEP for that year, or will they receive services under their *existing*, 2020-2021, plan?
- There is a question as to everything encompassed in a Chapter 14-compliant IEP, such as the right to request a due process hearing to challenge its appropriateness and the obligation to conduct two- or three-year reevaluations to inform its content. We are concerned that the answer that hearing officers and courts will likely offer to this question will be in the affirmative. Thus, if parents lack a mechanism for enforcing the appropriateness of an IEP, and if an IEP is not informed by updated reevaluations, the better argument is that it is not a plan "established" (whatever that term means in this context) under Chapter 14, which allows for IEPs to be scrutinized in due process and to be informed by reevaluation.
- If a student who has already begun at least 9<sup>th</sup> grade opts for retention under S.B. 664, and thus does not graduate with his or her 9<sup>th</sup> grade cohort, will the Local Educational Agency (LEA) have

to report him or her as a “drop out” for purposes of its ESSA-mandated school performance report? It appears that the General Assembly cannot waive the requirements of federal law, and the existence of a state law mandating retention regardless of need will not excuse the obligation under ESSA to record the retained student as a “drop out.”

- In the coming weeks, schools will be graduating students. If indeed students go through graduation and then this bill subsequently becomes law, will school districts be bringing those students back to school if their parents decide to opt for an additional year of schooling after their child graduates, but before the deadline that such a decision must be made?
- From a funding perspective, IDEA funding does not account for students over the age of 21. It is deemed that at least 20% of the funding received through American Rescue Plan Elementary and Secondary Schools Emergency Relief (“ARP ESSER”) by each LEA must be reserved “to address learning loss through the implementation of evidence-based interventions such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, such as COVID Compensatory Services”. Of note here is the absence of anything resembling the provision of an “additional year” of schooling beyond age 21—which is the maximum age for all federal elementary and secondary education programs (ESEA, IDEA, Perkins, etc). In essence, since federal law does not allow students with disabilities to be educated beyond age 21, it appears that school districts will not receive federal money for these students.
- Since the number of parents/guardians who would be opting for the child to be retained is unknown, and the passage of this bill can result in increased class sizes in regular and special education classes, there will be a financial impact on schools the extent of which is also unknown.
- There is no provision that the parent(s)/guardian(s) must consider input/data from the school. Further, the student may self-select without parent involvement if that student has reached “age of consent.” Is it clear as to what this bill considers to be the age of consent?
- Will specialized schools/placements have the capacity to accommodate students with disabilities returning for an additional year? If not, how will FAPE be provided? Similarly, with the possible loss of community/agency support services and funding that is current in place for students with disabilities who are set to graduate in June 2021, will the same services and funding be available to them when they leave school in 2022?
- It is unclear with regard to parameters for when a student reaches age 21 and there exists the opportunity to remain for an additional year and/or to receive ESY services.
- The bill is silent on its impact on PIAA eligibility rules and regulations. Could there be instances whereby a parent will retain their child if s/he has a year of eligibility left?

Here is an actual case in point as it relates to district expenditures. It should be noted that the school district in this case is not considered a large school district and that financial impacts will vary with regard to the size of the school district and the degree of need for students.

- The school district will have five (5) students with disabilities who have or will reach age 21 by August 15, 2021 and are graduating in June 2021.
- All five (5) students have specialized agency/community supports ready to begin during summer 2021.
- If any or all of those students opt to return for the 2021-22 school year:
  - One (1) student would return to a district-operated program in the High School.
  - Four (4) students would return to specialized programs outside of the school district. The estimated costs for these students are as follows:
    - The cost for one of the students is estimated to be \$39,258 without taking into account related services (OT, PT, Speech/Language Services) as well as transportation and ESY.
    - Another of these students would cost an estimated \$67,500 with related services included, but not taking into account transportation and ESY costs.

- Another of these students would cost an estimated \$98,417 with Approved Private School (APS) funding or \$132,113 without APS funding. These costs would not include transportation, ESY, or Behavioral Health Services.
  - The last of these students would cost an estimated \$29,545 with APS funding and \$63,241 without APS funding. These costs would not include transportation, ESY, or Behavioral Health Services.
  - In total, the estimated costs for these students would be \$234,720 with APS funding or \$302,112 without APS funding. These numbers do not reflect additional costs as previously noted.
  - Please take into account that ESY is Extended School Year (Summer programming as mandated by law) and that with APS Funding the school district covers 40% of the cost and PDE covers 60% of the cost.
- The financial impact on school districts, whose budgets will most likely be passed before decisions to retain are made (since the bill does not require such decisions to be made until July), will be unknown prior to the passage of final budgets. In certain instances, staffing could be an issue. For example, school districts may need to add additional staff should certain students be retained. There could also be a need for additional classroom space.
  - It is our understanding that SB 909 has been in the House Education Committee since March 15, 2021. It is also our understanding that SB 909 states, “The student's attendance shall be included in the school entity's average daily membership for purposes of calculating the special education subsidy under Article XXV.” In addition to that provision, are there any other provisions in that piece of legislation that would address some of these questions and, if so, will any of them be incorporated in the language of SB 664?

In closing, it is of the utmost importance that the impact of the passage of SB 664 would have on school districts not be underestimated. What on the surface may appear to be just a few students extending another year of schooling could end up costing school districts and their taxpayers significant dollars. This is especially true for those severely disabled students with very costly needs. In such case, has there been any preliminary collection of data to project what the actual costs could be and whether the state or federal governments will come to the aid of school districts and their taxpayers to help mitigate costs incurred? This is particularly important to consider in light of school districts that must already address the need to provide compensatory education for students adversely affected by the pandemic and resultant school closures.

Thank you in advance for your kind consideration with regard to our concerns. Please share this letter with Representative Sonney and Representative Longietti. Should you wish to further discuss any of these concerns and/or desire additional information, please feel free to contact me in accordance with the contact information provided below.

Respectfully,



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Dr. Janylyn Elias, President  
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C: Rep. Curtis Sonney, House Education Committee Chair  
Rep. Mark Longietti Democratic Chair, House Education Committee