

# 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.

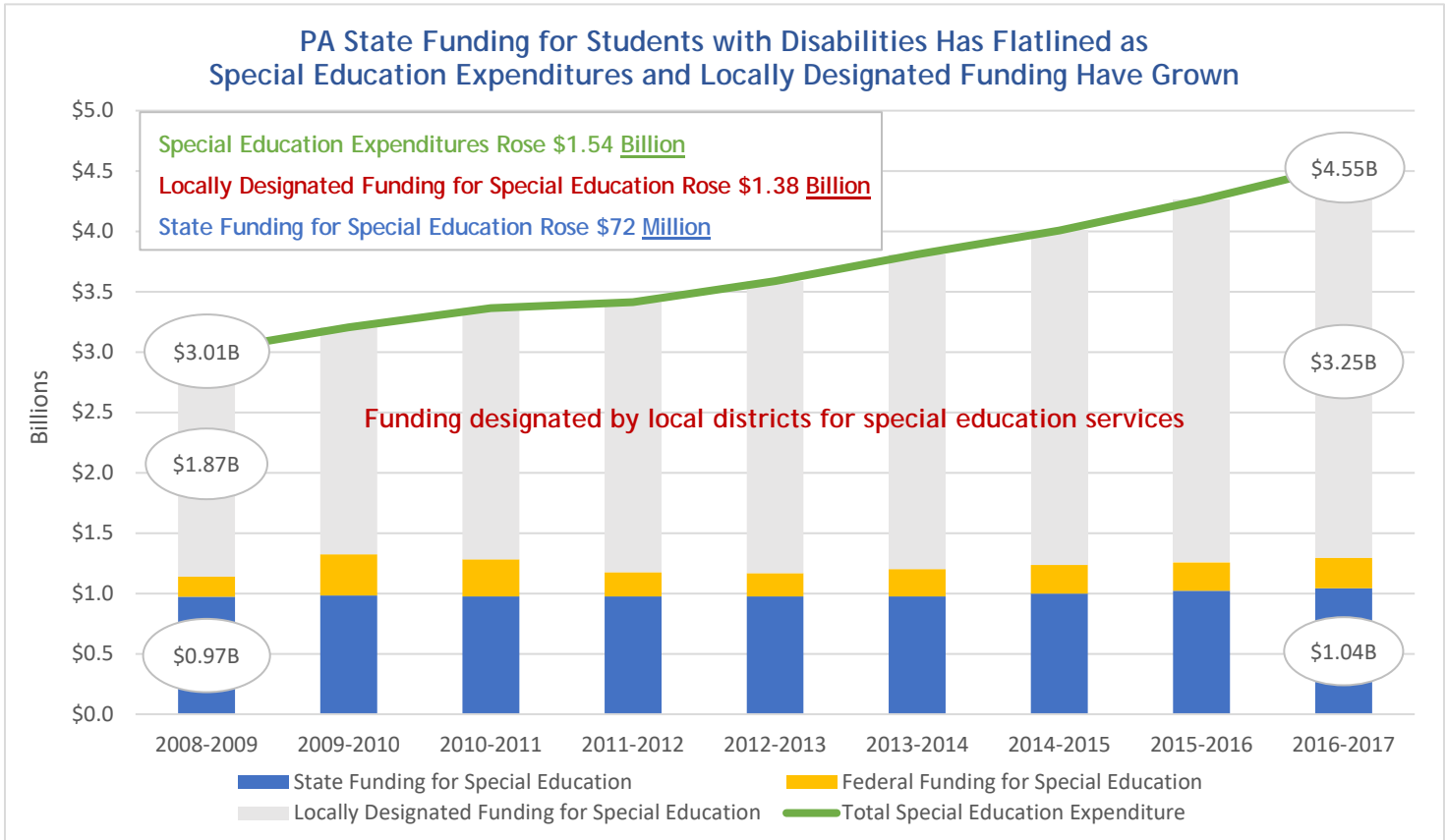
## Despite Modest Progress in Recent Years, State Special Education Funding Remains Inadequate

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.

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

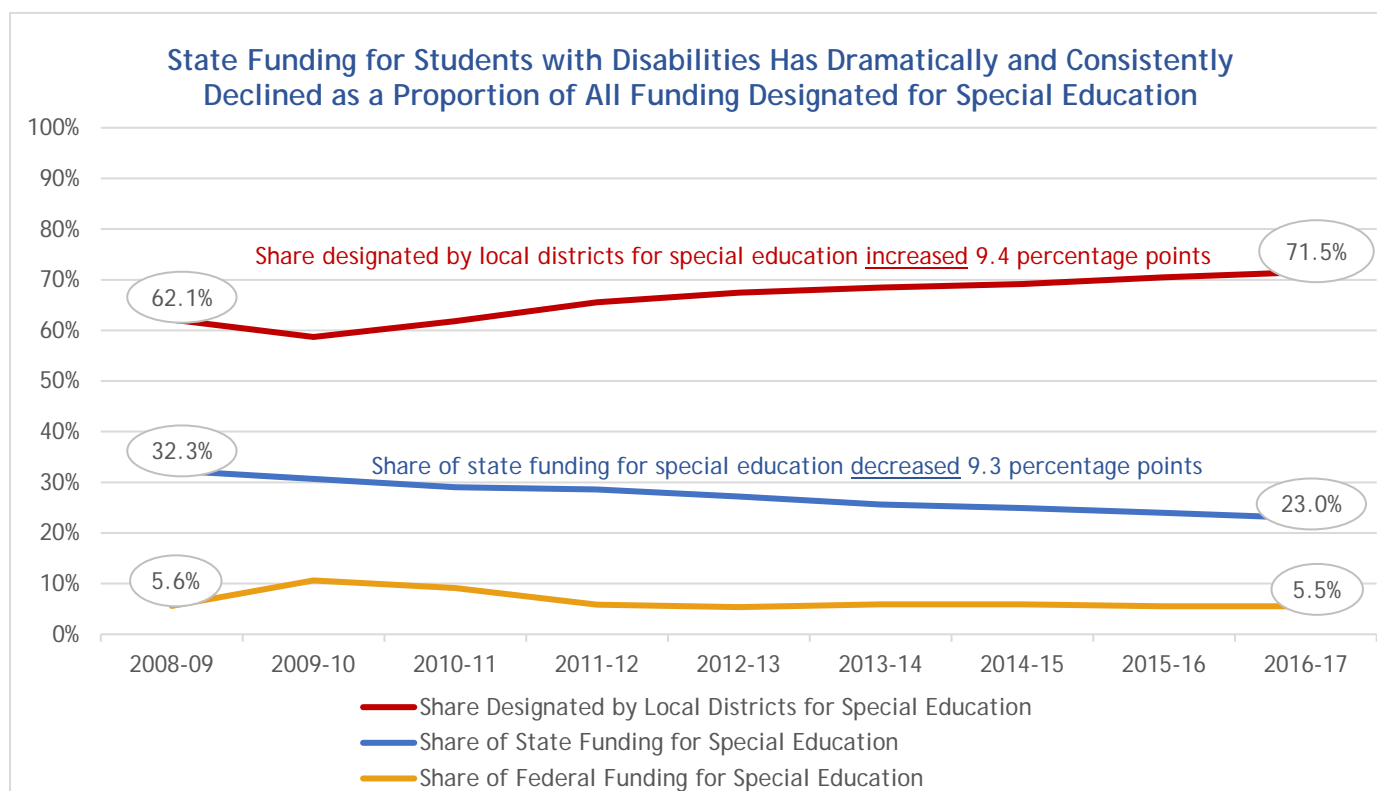
Even with such significant local funding increases, most districts still lack sufficient resources to ensure that students with disabilities receive the services and supports they are legally entitled to receive. A 2009 report found that 391 school districts had inadequate funding for special education, 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).