

108TH CONGRESS
1ST SESSION

S. 890

To amend the Individuals with Disabilities Education Act to provide grants to State educational agencies to establish high cost funds from which local educational agencies are paid a percentage of the costs of providing a free appropriate public education to high need children and other high costs associated with educating children with disabilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2003

Mrs. MURRAY (for herself, Ms. COLLINS, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Individuals with Disabilities Education Act to provide grants to State educational agencies to establish high cost funds from which local educational agencies are paid a percentage of the costs of providing a free appropriate public education to high need children and other high costs associated with educating children with disabilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Supporting Success
3 for High Need Students Act of 2003”.

4 **SEC. 2. HIGH COST FUND FOR LOCAL EDUCATIONAL AGEN-**
5 **CIES.**

6 Part B of the Individuals with Disabilities Education
7 Act (20 U.S.C. 1411 et seq.) is amended by adding at
8 the end the following:

9 **“SEC. 620. HIGH COST FUND FOR LOCAL EDUCATIONAL**
10 **AGENCIES.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) AVERAGE PER-PUPIL EXPENDITURE.—The
13 term ‘average per-pupil expenditure’ has the mean-
14 ing given the term in section 9101 of the Elemen-
15 tary and Secondary Education Act of 1965.

16 “(2) HIGH NEED CHILD.—The term ‘high need
17 child’ means a child with a disability for whom a
18 free appropriate public education in a fiscal year
19 costs more than 4 times the average per-pupil ex-
20 penditure for such fiscal year.

21 “(b) AUTHORIZATION OF GRANT PROGRAM AND AL-
22 LOTMENT.—

23 “(1) RESERVATION.—From funds appropriated
24 under subsection (h), the Secretary shall reserve—

25 “(A) not more than 1 percent to assist the
26 outlying areas in providing a free appropriate

1 public education to children with disabilities in
2 such areas for whom a free appropriate public
3 education costs more than 4 times the national
4 average per-pupil expenditure or 4 times the av-
5 erage per-pupil expenditure in the outlying
6 area; and

7 “(B) 1.226 percent to assist the Secretary
8 of the Interior in providing a free appropriate
9 public education to children with disabilities on
10 reservations who are enrolled in schools for In-
11 dian children operated or funded by the Sec-
12 retary of the Interior for whom a free appro-
13 priate public education costs more than 4 times
14 the national average per-pupil expenditure or 4
15 times the average per-pupil expenditure in such
16 schools.

17 “(2) GRANT PROGRAM.—From funds appro-
18 priated under subsection (h), and not reserved under
19 paragraph (1), the Secretary shall award grants to
20 State educational agencies, from allotments under
21 paragraph (3), to enable the State educational agen-
22 cies to establish high cost funds, as described in sub-
23 section (c), from which local educational agencies
24 shall receive disbursements to pay a percentage of
25 the costs of providing a free appropriate public edu-

1 cation to high need children and other high costs, as
 2 described in subsection (c)(3), associated with edu-
 3 cating children with disabilities.

4 “(3) ALLOTMENT.—From funds appropriated
 5 under subsection (h) for a fiscal year, and not re-
 6 served under paragraph (1), the Secretary shall allot
 7 to each State an amount that bears the same ratio
 8 to such funds as the amount the State received
 9 under section 611 for the fiscal year bears to the
 10 total amount received by all States under that sec-
 11 tion for the fiscal year.

12 “(c) HIGH COST FUND.—

13 “(1) IN GENERAL.—Each State educational
 14 agency that receives a grant under subsection (b)
 15 shall—

16 “(A) use the grant funds to establish a
 17 high cost fund; and

18 “(B) make disbursements from the high
 19 cost fund to local educational agencies in ac-
 20 cordance with this subsection.

21 “(2) REQUIRED DISBURSEMENTS FROM THE
 22 FUND.—

23 “(A) IN GENERAL.—Each State edu-
 24 cational agency that receives a grant under sub-
 25 section (b) shall make disbursements from the

1 fund established under paragraph (1) to local
2 educational agencies to pay the percentage de-
3 scribed in subparagraph (C) of the costs of pro-
4 viding a free appropriate public education to
5 high need children.

6 “(B) APPLICATION.—

7 “(i) IN GENERAL.—A local edu-
8 cational agency that desires a disburse-
9 ment under this paragraph shall submit an
10 application to the State educational agency
11 at such time, in such manner, and con-
12 taining such information as the State edu-
13 cational agency may require.

14 “(ii) CONTENTS.—An application sub-
15 mitted pursuant to clause (i) shall contain
16 the following:

17 “(I) A figure that reflects the
18 costs of providing a free appropriate
19 public education to each high need
20 child served by the local educational
21 agency in a fiscal year for whom such
22 agency desires a disbursement under
23 this section.

24 “(II) The IEP for each high need
25 child served by the local educational

1 agency for whom such agency desires
2 a disbursement under this section.

3 “(III) Assurances that grant
4 funds provided under this section
5 shall not be used to pay costs that
6 otherwise would be reimbursable as
7 medical assistance for a child with a
8 disability under the State medicaid
9 program under title XIX of the Social
10 Security Act.

11 “(C) DISBURSEMENTS.—

12 “(i) IN GENERAL.—Subject to sub-
13 paragraph (D), a State educational agency
14 shall make a disbursement to a local edu-
15 cational agency that submits an application
16 under subparagraph (B) in an amount that
17 is equal to 75 percent of the costs that are
18 in excess of 4 times the average per-pupil
19 expenditure in either the Nation or the
20 State where the child resides (calculated
21 from whichever average per-pupil expendi-
22 ture is lower) associated with educating
23 each high need child served by such local
24 educational agency in a fiscal year for
25 whom such agency desires a disbursement.

1 “(ii) APPROPRIATE COSTS.—The costs
2 associated with educating a high need child
3 under clause (i) are only those costs associ-
4 ated with providing special education and
5 related services to such child that are iden-
6 tified in such child’s appropriately devel-
7 oped IEP.

8 “(D) DISALLOWANCE OF CERTAIN PAY-
9 MENTS.—A State educational agency may dis-
10 allow payment of certain costs included in the
11 figure submitted by a local educational agency
12 under subparagraph (B)(ii)(I) if such costs are
13 determined by the State educational agency to
14 be inappropriate or unnecessary excess costs as-
15 sociated with providing a free appropriate pub-
16 lic education to a high need child.

17 “(E) LEGAL FEES.—The costs associated
18 with providing a free appropriate public edu-
19 cation to a high need child shall not include
20 legal fees, court costs, or other costs associated
21 with a cause of action brought on behalf of such
22 child to ensure a free appropriate public edu-
23 cation for such child.

24 “(3) PERMISSIBLE DISBURSEMENTS FROM RE-
25 MAINING FUNDS.—A State educational agency may

1 make disbursements to local educational agencies
2 from any funds that are remaining in the high cost
3 fund after making the required disbursements under
4 paragraph (2) for a fiscal year for the following pur-
5 poses:

6 “(A) To pay the costs associated with serv-
7 ing children with disabilities who moved into
8 the areas served by such local educational agen-
9 cies after commencement of the school year to
10 assist the local educational agencies in pro-
11 viding a free appropriate public education for
12 such children in such year.

13 “(B) To compensate local educational
14 agencies that expend over a threshold amount
15 determined by the State educational agency on
16 costs associated with providing a free appro-
17 priate public education to all children with dis-
18 abilities served by such agencies.

19 “(4) LIMITATION ON ADMINISTRATIVE COSTS.—
20 A State educational agency may use not more than
21 2 percent of the funds received under this section for
22 the administrative costs of carrying out such agen-
23 cy’s responsibilities under this section.

1 “(d) ASSURANCE OF A FREE APPROPRIATE PUBLIC
2 EDUCATION.—Nothing in this section shall be con-
3 strued—

4 “(1) to limit or condition the right of a child
5 with a disability who is assisted under this part to
6 receive a free appropriate public education pursuant
7 to section 612(a)(1) in a least restrictive environ-
8 ment pursuant to section 612(a)(5); and

9 “(2) to authorize a State educational agency or
10 local educational agency to indicate a limit on what
11 is expected to be spent on the education of a child
12 with a disability.

13 “(e) EVALUATION AND REPORT.—The Secretary
14 shall—

15 “(1) evaluate the effectiveness of the high cost
16 funds established pursuant to this section; and

17 “(2) submit a report to the appropriate commit-
18 tees of Congress on such evaluation.

19 “(f) SUPPLEMENT, NOT SUPPLANT.—Funds made
20 available under this section shall be used to supplement
21 and not supplant other Federal, State, and local funds
22 available for providing a free appropriate public education
23 for children with disabilities.

24 “(g) MEDICAID SERVICES NOT AFFECTED.—Grant
25 funds provided under this section shall not be used to pay

1 costs that otherwise would be reimbursable as medical as-
2 sistance for a child with a disability under the State med-
3 icaid program under title XIX of the Social Security Act.

4 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to carry out this section
6 \$750,000,000 for fiscal year 2004 and such sums as may
7 be necessary for each succeeding fiscal year.”.

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