
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5091

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Wellman, Conway, Darneille, Wilson, C., Kuderer, and Takko)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to state and federal special education funding;
2 amending RCW 28A.150.392, 28A.150.415, 28A.150.390, and 43.09.2856;
3 creating a new section; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature intends to provide the
6 funding necessary to support a comprehensive and responsive education
7 system that fully addresses the needs of students with disabilities.
8 Under the current funding model, students with disabilities are
9 funded as basic education students first, with additional funding
10 provided through a statewide multiplier intended to meet the
11 additional needs of each student as established in the student's
12 individualized education program. Additionally, a safety net
13 administered by the office of the superintendent of public
14 instruction is available for school districts that demonstrate
15 significant extra need beyond what they receive from the base funding
16 formula.

17 The legislature notes that school districts across the state have
18 identified the need for additional resources to create the
19 educational environment necessary to give every student with an
20 individualized education program the opportunity to succeed. It is
21 the legislature's intent to maintain the current funding structure

1 for special education with necessary resources, and to collect data
2 related to the numbers of students who fall into different cost
3 categories of support. These additional data will inform whether an
4 alternative system of funding may be necessary to better reflect
5 current needs of our schools and our students. However, as these data
6 are collected, the legislature also intends to provide immediate
7 relief to school district special education programs by enhancing the
8 supplemental funding school districts receive for every student in
9 the program of special education and to provide easier access to the
10 safety net when those base funds are not adequate.

11 **Sec. 2.** RCW 28A.150.392 and 2018 c 266 s 106 are each amended to
12 read as follows:

13 (1) ~~((a))~~ To the extent necessary, state funds shall be made
14 available for safety net awards for districts with demonstrated needs
15 for special education funding beyond the amounts provided through the
16 special education funding formula under RCW 28A.150.390.

17 ~~((b) If the federal safety net awards based on the federal
18 eligibility threshold exceed the federal appropriation in any fiscal
19 year, then the superintendent shall expend all available federal
20 discretionary funds necessary to meet this need.))~~

21 (2) Safety net funds shall be awarded by the state safety net
22 oversight committee subject to the following conditions and
23 limitations:

24 (a) The committee shall award additional funds for districts that
25 can convincingly demonstrate that all legitimate expenditures for
26 special education exceed all available revenues from state basic
27 education funding formulas.

28 (b) In the determination of need, the committee shall consider
29 additional available revenues from federal sources.

30 (c) Differences in program costs attributable to district
31 philosophy, service delivery choice, or accounting practices are not
32 a legitimate basis for safety net awards.

33 (d) In the determination of need, the committee shall require
34 that districts demonstrate that they are maximizing their eligibility
35 for all state revenues related to services for students eligible for
36 special education ~~((-eligible students))~~ and all federal revenues from
37 federal impact aid, medicaid, and the individuals with disabilities
38 education act-Part B and appropriate special projects. Awards

1 associated with (e) and (f) of this subsection shall not exceed the
2 total of a district's specific determination of need.

3 (e) The committee shall then consider the extraordinary high cost
4 needs of one or more individual (~~(special education)~~) students with
5 disabilities under the individuals with disabilities act. Differences
6 in costs attributable to district philosophy, service delivery
7 choice, or accounting practices are not a legitimate basis for safety
8 net awards.

9 (f) Using criteria developed by the committee, the committee
10 shall then consider extraordinary costs associated with communities
11 that draw a larger number of families with children in need of
12 special education services, which may include consideration of
13 proximity to group homes, military bases, and regional hospitals.
14 Safety net awards under this subsection (2)(f) shall be adjusted to
15 reflect amounts awarded under (e) of this subsection.

16 (g) The committee shall then consider the extraordinary high cost
17 needs of one or more individual (~~(special education)~~) students with
18 disabilities under the individuals with disabilities act served in
19 residential schools as defined in RCW 28A.190.020, programs for
20 juveniles under the department of corrections, and programs for
21 juveniles operated by city and county jails to the extent they are
22 providing a secondary program of education (~~(for students enrolled in~~
23 ~~special education)~~).

24 (h) The maximum allowable indirect cost for calculating safety
25 net eligibility may not exceed the federal restricted indirect cost
26 rate for the district plus one percent.

27 (i) Safety net awards shall be adjusted based on the percent of
28 potential medicaid eligible students billed as calculated by the
29 superintendent of public instruction in accordance with chapter 318,
30 Laws of 1999.

31 (j) Safety net awards must be adjusted for any audit findings or
32 exceptions related to special education funding.

33 (k) Beginning in school year 2019-20, the average per pupil
34 expenditure used to determine safety net awards must exclude state
35 safety net funding provided in this section.

36 (3) The superintendent of public instruction shall adopt such
37 rules and procedures as are necessary to administer the special
38 education funding and safety net award process. By December 1, 2018,
39 the superintendent shall review and revise the rules to achieve full
40 and complete implementation of the requirements of this subsection

1 and subsection (4) of this section including revisions to rules that
2 provide additional flexibility to access community impact awards.
3 Before revising any standards, procedures, or rules, the
4 superintendent shall consult with the office of financial management
5 and the fiscal committees of the legislature. In adopting and
6 revising the rules, the superintendent shall ensure the application
7 process to access safety net funding is streamlined, timelines for
8 submission are not in conflict, feedback to school districts is
9 timely and provides sufficient information to allow school districts
10 to understand how to correct any deficiencies in a safety net
11 application, and that there is consistency between awards approved by
12 school district and by application period. The office of the
13 superintendent of public instruction shall also provide technical
14 assistance to school districts in preparing and submitting special
15 education safety net applications.

16 (4) On an annual basis, the superintendent shall survey districts
17 regarding their satisfaction with the safety net process and consider
18 feedback from districts to improve the safety net process. Each year
19 by December 1st, the superintendent shall prepare and submit a report
20 to the office of financial management and the appropriate policy and
21 fiscal committees of the legislature that summarizes the survey
22 results and those changes made to the safety net process as a result
23 of the school district feedback.

24 (5) The safety net oversight committee appointed by the
25 superintendent of public instruction shall consist of:

26 (a) One staff member from the office of the superintendent of
27 public instruction;

28 (b) Staff of the office of the state auditor who shall be
29 nonvoting members of the committee; and

30 (c) One or more representatives from school districts or
31 educational service districts knowledgeable of special education
32 programs and funding.

33 (6) Beginning in fiscal year 2020, safety net appropriations
34 provided in the omnibus operating appropriations act may not include
35 federal funding thereby eliminating the federal expenditure ratio
36 requirement for districts to expend three times the statewide average
37 per pupil to qualify for state safety net awards. A state expenditure
38 ratio requirement may be identified in the omnibus operating
39 appropriations act but, if identified, it must be less than the
40 federal expenditure ratio requirement.

1 **Sec. 3.** RCW 28A.150.415 and 2017 3rd sp.s. c 13 s 105 are each
2 amended to read as follows:

3 (1) Beginning with the 2018-19 school year, the legislature shall
4 begin phasing in funding for professional learning days for
5 certificated instructional staff. At a minimum, the state must
6 allocate funding for:

7 (a) One professional learning day in the 2018-19 school year;

8 (b) Two professional learning days in the 2019-20 school year;
9 and

10 (c) Three professional learning days in the 2020-21 school year.

11 (2) The office of the superintendent of public instruction shall
12 calculate each school district's professional learning allocation as
13 provided in subsection (1) of this section separate from the minimum
14 state allocation for salaries as specified in RCW 28A.150.410 and
15 associated fringe benefits on the apportionment reports provided to
16 each school district. The professional learning allocation shall be
17 equal to the proportional increase resulting from adding the
18 professional learning days provided in subsection (1) of this section
19 to the required minimum number of school days in RCW
20 28A.150.220(5)(a) applied to the school district's minimum state
21 allocation for salaries and associated fringe benefits for
22 certificated instructional staff as specified in the omnibus
23 operating appropriations act. Professional learning allocations shall
24 be included in per-pupil calculations, such as special education, for
25 programs funded on a per-student rate calculation.

26 (3) Nothing in this section entitles an individual certificated
27 instructional staff to any particular number of professional learning
28 days.

29 ~~((3))~~ (4) The professional learning days must meet the
30 definitions and standards provided in RCW 28A.415.430, 28A.415.432,
31 and 28A.415.434.

32 (5) Federal special education allocations may be used to provide
33 professional development to classified and certificated staff who
34 provide educational services and supports to students with a
35 disability, as provided in this section or under RCW 28A.413.060.

36 **Sec. 4.** RCW 28A.150.390 and 2018 c 266 s 102 are each amended to
37 read as follows:

38 (1) The superintendent of public instruction shall submit to each
39 regular session of the legislature during an odd-numbered year a

1 programmed budget request for special education programs for students
2 with disabilities. Funding for programs operated by local school
3 districts shall be on an excess cost basis from appropriations
4 provided by the legislature for special education programs for
5 students with disabilities and shall take account of state funds
6 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and
7 28A.150.415.

8 (2) The excess cost allocation to school districts shall be based
9 on the following:

10 (a) A district's annual average headcount enrollment of students
11 ages birth through four and those five year olds not yet enrolled in
12 kindergarten who are eligible for and enrolled in special education,
13 multiplied by the district's base allocation per full-time equivalent
14 student, multiplied by 1.15; (~~and~~)

15 (b) A district's annual average full-time equivalent basic
16 education enrollment, multiplied by the district's funded enrollment
17 percent, multiplied by the district's base allocation per full-time
18 equivalent student, multiplied by (~~(0.9609)~~) 1.00; and

19 (c) A district's annual average full-time equivalent enrollment
20 of students with disabilities in institutional education programs
21 under chapters 28A.190, 28A.193, and 28A.194 RCW, multiplied by the
22 district's base allocation per full-time equivalent student,
23 multiplied by 1.00.

24 (3) As used in this section:

25 (a) "Base allocation" means the total state allocation to all
26 schools in the district generated by the distribution formula under
27 RCW 28A.150.260 (4)(a), (5), (6), and (8) and the allocation under
28 RCW 28A.150.415, to be divided by the district's full-time equivalent
29 enrollment.

30 (b) "Basic education enrollment" means enrollment of resident
31 students including nonresident students enrolled under RCW
32 28A.225.225 and students from nonhigh districts enrolled under RCW
33 28A.225.210 and excluding students residing in another district
34 enrolled as part of an interdistrict cooperative program under RCW
35 28A.225.250.

36 (c) "Enrollment percent" means the district's resident special
37 education annual average enrollment, excluding students ages birth
38 through four and those five year olds not yet enrolled in
39 kindergarten and students enrolled in institutional education

1 programs, as a percent of the district's annual average full-time
2 equivalent basic education enrollment.

3 (d) "Funded enrollment percent" means the lesser of the
4 district's actual enrollment percent or thirteen and five-tenths
5 percent.

6 (4) School districts must distribute the allocation provided
7 under subsection (2)(c) of this section to the institutional program
8 that generated the funding.

9 **Sec. 5.** RCW 43.09.2856 and 2018 c 266 s 406 are each amended to
10 read as follows:

11 (1) Beginning with the 2019-20 school year, to ensure that school
12 district local revenues are used solely for purposes of enriching the
13 state's statutory program of basic education, the state auditor's
14 regular financial audits of school districts must include a review of
15 the expenditure of school district local revenues for compliance with
16 RCW 28A.150.276, including the spending plan approved by the
17 superintendent of public instruction under RCW 28A.505.240 and its
18 implementation, and any supplemental contracts entered into under RCW
19 28A.400.200.

20 (2) If an audit under subsection (1) of this section results in
21 findings that a school district has failed to comply with these
22 requirements, then within ninety days of completing the audit the
23 auditor must report the findings to the superintendent of public
24 instruction, the office of financial management, and the education
25 and operating budget committees of the legislature.

26 (3) The use of the state allocation provided for professional
27 learning under RCW 28A.150.415 must be audited as part of the regular
28 financial audits of school districts by the state auditor's office to
29 ensure compliance with the limitations and conditions of RCW
30 28A.150.415.

31 (4) (a) The state auditor must conduct a financial or
32 accountability audit of each school district by June 1, 2020, for the
33 2018-19 school year to include a review of the following:

34 (i) Special education revenues and the sources of those revenues,
35 by school district; and

36 (ii) Special education expenditures and the object of those
37 expenditures, by school district.

38 (b) Special education data reported for each school district
39 through the audits under this subsection must be compiled and

1 submitted to the education committees of the legislature by December
2 1, 2020.

3 NEW SECTION. **Sec. 6.** Section 5 of this act expires December 1,
4 2021.

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