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**HOUSE BILL 2964**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Pollet, Senn, Ortiz-Self, Valdez, Bergquist, Haler, Wylie, Santos, Slatter, Stanford, Ryu, Frame, and Orwall

AN ACT Relating to special education funding; amending RCW 28A.150.390, 28A.150.392, and 28A.150.276; and creating new sections.

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

NEW SECTION. **Sec.**  The legislature finds that special education services are required to be provided by districts or public schools for every student who qualifies under state and federal law. The legislature finds that the existing multiplier and safety net funding provisions do not adequately fund the full costs of providing the programs of special education for all districts. The legislature intends to provide additional state funding and improve access to educational opportunities for students enrolled in special education programs regardless of the source of revenue supporting the program or the location where the student receives instruction.

**Sec.**  RCW 28A.150.390 and 2017 3rd sp.s. c 13 s 406 are each amended to read as follows:

(1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8).

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

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

(b) For any district eligible under (d) of this subsection, a district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.05 beginning with the 2018-19 school year through the 2020-21 school year, and 1.09 beginning with the 2021-22 school year.

(c) For any district not eligible under (d) of this subsection, a district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(d) To be eligible for the excess cost allocation in (b) of this subsection, a district shall certify to the superintendent of public instruction that the total costs of providing the program of special education for all eligible students in the district are not met if excess cost allocations are based on (c) of this subsection. The superintendent of public instruction may prescribe the form and detail of such certification.

(3) As used in this section:

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

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

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

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

NEW SECTION. **Sec.**  Prior to the 2021-22 school year, the legislature intends to review the special education multiplier and adjust as necessary to provide adequate funding for special education, based on recommendations made by the superintendent of public instruction. The superintendent of public instruction will recommend a special education multiplier to the fiscal committees of the legislature and the office of financial management by September 1, 2018.

**Sec.**  RCW 28A.150.392 and 2017 3rd sp.s. c 13 s 407 are each amended to read as follows:

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

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

(c) Beginning in the 2018-19 school year, the office of the superintendent of public instruction shall lower the threshold to qualify for safety net funding and determine an appropriate threshold for institutions providing special education, subject to limitations and funding included in the operating budget. The criteria to determine the change in the safety net threshold must be determined in consultation with the office of financial management and the fiscal committees of the legislature.

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

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

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

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

(d) In the determination of need, the committee shall require that districts demonstrate that they are maximizing their eligibility for all state revenues related to services for special education-eligible students and all federal revenues from federal impact aid, medicaid, and the individuals with disabilities education act-Part B and appropriate special projects. Awards associated with (e) and (f) of this subsection shall not exceed the total of a district's specific determination of need.

(e) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

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

(g) The committee shall then consider the extraordinary high cost needs of one or more individual special education students served in residential schools as defined in RCW 28A.190.020, programs for juveniles under the department of corrections, and programs for juveniles operated by city and county jails to the extent they are providing a program of education for students enrolled in special education.

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

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

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

(3) The superintendent of public instruction shall adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. By September 1, 2019, the superintendent shall review and revise the rules to achieve full and complete implementation of the requirements of this subsection and subsection (4) of this section. Before revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature. In adopting and revising the rules, the superintendent shall ensure the application process to access safety net funding is streamlined, timelines for submission are not in conflict, feedback to school districts is timely and provides sufficient information to allow school districts to understand how to correct any deficiencies in a safety net application, and that there is consistency between awards approved by school district and by application period. The office of the superintendent of public instruction shall also provide technical assistance to school districts in preparing and submitting special education safety net applications.

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

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

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

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

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding;

(d) One representative from the office of the education ombuds within the office of the governor;

(e) One representative from the educational opportunity gap oversight and accountability committee; and

(f) One representative of a nonprofit entity serving or advocating for students with learning or physical disabilities.

**Sec.**  RCW 28A.150.276 and 2017 3rd sp.s. c 13 s 501 are each amended to read as follows:

(1)(a) Beginning September 1, 2019, school districts may use local revenues only for documented and demonstrated enrichment of the state's statutory program of basic education as authorized in subsection (2) of this section.

(b) Nothing in this section revises the definition of the program of basic education under RCW 28A.150.220 and 28A.150.260.

(c) For purposes of this section, "local revenues" means enrichment levies collected under RCW 84.52.053, transportation vehicle enrichment levies, local effort assistance funding received under chapter 28A.500 RCW, and other school district local revenues including, but not limited to, grants, donations, and state and federal payments in lieu of taxes, except that "local revenues" does not include other federal revenues, or local revenues that operate as an offset to the district's basic education allocation under RCW 28A.150.250.

(2)(a) Enrichment activities are permitted under this section if they provide supplementation beyond the state:

(i) Minimum instructional offerings of RCW 28A.150.220 or 28A.150.260;

(ii) Staffing ratios or program components of RCW 28A.150.260, including providing additional staff for class size reduction beyond class sizes allocated in the prototypical school model and additional staff beyond the staffing ratios allocated in the prototypical school formula;

(iii) Program components of RCW 28A.150.200, 28A.150.220, or 28A.150.260; or

(iv) Program of professional learning as defined by RCW 28A.415.430 beyond that allocated pursuant to RCW 28A.150.415.

(b) Permitted enrichment activities consist of:

(i) Extracurricular activities, extended school days, or an extended school year;

(ii) Additional course offerings beyond the minimum instructional program established in the state's statutory program of basic education;

(iii) Activities associated with early learning programs;

(iv) Any additional salary costs attributable to the provision or administration of the enrichment activities allowed under this subsection; and

(v) Additional activities or enhancements that the office of the superintendent of public instruction determines to be a documented and demonstrated enrichment of the state's statutory program of basic education under (a) of this subsection and for which the superintendent approves proposed expenditures during the preballot approval process required by RCW 84.52.053 and 28A.505.240.

(c) The restrictions on local revenues to enrichment activities in subsection (1) of this section do not apply to special education program offerings. A district may use levies authorized in this section to support special education programs until the superintendent of public instruction certifies that the district's costs for special education are fully funded under RCW 28A.150.390 and 28A.150.392.

(3) In addition to the limitations of subsections (1) and (2) of this section and of RCW 28A.400.200, permitted enrichment activities are subject to the following conditions and limitations:

(a) If a school district spends local revenues for salary costs attributable to the administration of enrichment programs, the portion of administrator salaries attributable to that purpose may not exceed the proportion of the district's local revenues to its other revenues; and

(b) Supplemental contracts under RCW 28A.400.200 are subject to the limitations of this section.

(4) The superintendent of public instruction must adopt rules to implement this section.

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