

SHB 2140 - H AMD TO H AMD (H-3105.1/19) **815**
By Representative Caldier

NOT ADOPTED 04/26/2019

1 On page 9, after line 2, insert the following:

2 "NEW SECTION. **Sec. 7.** The legislature finds that special
3 education services are an essential part of basic education and are
4 required to be provided by districts or public schools for every
5 student who qualifies pursuant to state and federal law. The
6 legislature finds that the thirteen and five-tenths percent cap on
7 the percentage of special education students funded by the state is
8 not consistent with the state's obligation to pay for basic education
9 for every student. The legislature intends to provide additional
10 state funding, remove funding limitations, and improve access to
11 educational opportunities and outcomes for students enrolled in
12 special education programs. The legislature intends to improve
13 outcomes by providing resources and supports for students to be in
14 the least restrictive environment as part of general education
15 classrooms, offering services and therapies recommended by qualified
16 professionals regardless of whether the district directly employs
17 professionals for such therapeutic services, and training educators.

18 **Sec. 8.** RCW 28A.150.390 and 2018 c 266 s 102 are each amended to
19 read as follows:

20 (1) The superintendent of public instruction shall submit to each
21 regular session of the legislature during an odd-numbered year a
22 programmed budget request for special education programs for students
23 with disabilities. Funding for programs operated by local school
24 districts shall be on an excess cost basis from appropriations
25 provided by the legislature for special education programs for
26 students with disabilities and shall take account of state funds
27 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and
28 28A.150.415.

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

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

6 (b) A district's resident special education annual average
7 ~~((full-time equivalent basic education))~~ enrollment, excluding
8 students ages birth through four and those five year olds not yet
9 enrolled in kindergarten, multiplied ~~((by the district's funded~~
10 ~~enrollment percent, multiplied))~~ by the district's base allocation
11 per full-time equivalent student, multiplied by ~~((0.9609))~~ 1.07.

12 (3) As used in this section:

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

17 (b) "Basic education enrollment" means enrollment of resident
18 students including nonresident students enrolled under RCW
19 28A.225.225 and students from nonhigh districts enrolled under RCW
20 28A.225.210 and excluding students residing in another district
21 enrolled as part of an interdistrict cooperative program under RCW
22 28A.225.250.

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

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

31 **Sec. 9.** RCW 28A.150.392 and 2018 c 266 s 106 are each amended to
32 read as follows:

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

37 ~~((b) If the federal safety net awards based on the federal~~
38 ~~eligibility threshold exceed the federal appropriation in any fiscal~~

1 year, then the superintendent shall expend all available federal
2 discretionary funds necessary to meet this need.)

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

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

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

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

15 (ii) Differences in program costs attributable to a district's
16 best practical efforts to provide services and accommodations
17 included in an individualized education program or to meet goals for
18 including students in the least restrictive environment are a
19 legitimate basis for awards and are consistent with the legislature's
20 intent.

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

29 (e) (i) The committee shall then consider the extraordinary high
30 cost needs of one or more individual (~~(special education)~~) students
31 with disabilities under the individuals with disabilities education
32 act. Differences in costs attributable to district philosophy,
33 service delivery choice, or accounting practices are not a legitimate
34 basis for safety net awards.

35 (ii) Differences in program costs attributable to a district's
36 best practical efforts to provide services and accommodations
37 included in an individualized education program or to meet goals for
38 including students in the least restrictive environment are a
39 legitimate basis for awards and are consistent with the legislature's
40 intent.

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

8 (g) The committee shall then consider the extraordinary high cost
9 needs of one or more individual (~~(special education)~~) students with
10 disabilities under the individuals with disabilities education act
11 served in residential schools as defined in RCW 28A.190.020, programs
12 for juveniles under the department of corrections, and programs for
13 juveniles operated by city and county jails to the extent they are
14 providing a program of secondary education (~~(for students enrolled in~~
15 ~~special education)~~).

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

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

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

25 (3) The superintendent of public instruction shall adopt such
26 rules and procedures as are necessary to administer the special
27 education funding and safety net award process. By December 1, 2018,
28 the superintendent shall review and revise the rules to achieve full
29 and complete implementation of the requirements of this subsection
30 and subsection (4) of this section including revisions to rules that
31 provide additional flexibility to access community impact awards.
32 Before revising any standards, procedures, or rules, the
33 superintendent shall consult with the office of financial management
34 and the fiscal committees of the legislature. In adopting and
35 revising the rules, the superintendent shall ensure the application
36 process to access safety net funding is streamlined, timelines for
37 submission are not in conflict, feedback to school districts is
38 timely and provides sufficient information to allow school districts
39 to understand how to correct any deficiencies in a safety net
40 application, and that there is consistency between awards approved by

1 school district and by application period. The office of the
2 superintendent of public instruction shall also provide technical
3 assistance to school districts in preparing and submitting special
4 education safety net applications.

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

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

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

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

19 (c) One or more representatives from school districts or
20 educational service districts knowledgeable of special education
21 programs and funding.

22 (6) Beginning in fiscal year 2020, safety net appropriations
23 provided in the omnibus operating appropriations act may not include
24 federal funding thereby eliminating the federal expenditure ratio
25 requirement for districts to expend three times the statewide average
26 per pupil to qualify for state safety net awards. A state expenditure
27 ratio requirement may be identified in the omnibus operating
28 appropriations act but, if identified, it must be less than the
29 federal expenditure ratio requirement.

30 NEW SECTION. Sec. 10. Section 8 of this act takes effect
31 September 1, 2019."

32 Correct the title.

EFFECT: Increases the excess cost allocation for students in
kindergarten through twelfth grade receiving special education
services from 0.9609 to 1.07. Removes the 13.5 percent funded
enrollment percent limit on the special education excess cost
allocation. Removes federal funding from the special education safety
net in fiscal year 2020 and makes changes to safety net eligibility
thresholds. Changes the safety net eligibility requirement that

school districts convincingly demonstrate that special education expenditures exceed funding from "state funding formulas" to "state special education formulas." States that school district cost differences due to best practical efforts to support Individualized Education Programs or to meet goals of including students in the least restrictive environment are a legitimate basis for safety net awards and consistent with legislative intent. Provides that, in fiscal year 2020, safety net appropriations may not include federal funding, thus eliminating the federal requirement that school districts expend at least three times the average per pupil expenditure prior to being able to receive federal safety net awards.

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