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**ENGROSSED SUBSTITUTE HOUSE BILL 1436**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Pollet, Berry, Simmons, Farivar, Orwall, Street, Caldier, Alvarado, Ryu, Reeves, Ortiz-Self, Christian, Kloba, Duerr, Stonier, Bateman, Lekanoff, Berg, Riccelli, Fosse, Macri, Bergquist, Reed, Doglio, and Chopp; by request of Superintendent of Public Instruction)

AN ACT Relating to special education funding; amending RCW 28A.150.390 and 28A.150.392; adding a new section to chapter 28A.150 RCW; adding a new section to chapter 28A.155 RCW; creating new sections; providing effective dates; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that students receiving special education services are entitled, under both federal and state law, to a free appropriate public education that enables their full participation.

The legislature also finds that a cap or enrollment limit on the number of students receiving special education services that generate state special education funding is not consistent with the state's duty to provide a free appropriate public education. An enrollment limit that fails to provide equity for all students with disabilities affects all students in public schools.

The legislature further finds that school districts pay for special education services with local funding, creating an inequitable situation for school districts and students. The legislature supports a system of funding that does not require school districts to generate local funding to meet their obligation to provide special education services.

The legislature finds that along with reliable and sufficient state funding, receiving special education services in the least restrictive environment possible is crucial to student success. A recent large-scale study found that students who spend at least 80 percent of their day in a general education setting improved their reading scores by 24 points and math scores by 18 points compared to peers with similar disabilities in less inclusive settings.

The legislature finds that the documented prevalence of disabilities amongst children, particularly amongst vulnerable populations and communities with disparately poor health outcomes and access to health services, indicates that the state should improve access to evaluations for disabilities.

The legislature finds that special education is fully part of the state's statutory program of basic education that is deemed by the legislature to implement Article IX, section 1 of the state Constitution.

The legislature, therefore, intends to fully fund special education services by removing the 13.5 percent cap, eliminating the cap entirely in the 2027-28 school year, and increasing the tiered special education multipliers for elementary and secondary students, thereby giving every school district a funding increase.

The legislature intends to require a comprehensive study of funding and services for students with disabilities completed prior to the 2025 legislative session to understand if the state is appropriately identifying students with disabilities, identify funding and service gaps, and ensure that funding provided by the state to school districts, charter schools, and other entities for services are being used to meet the needs of students with disabilities.

**Sec.**  RCW 28A.150.390 and 2020 c 90 s 3 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) and 28A.150.415.

(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 three and four and those five year olds not yet enrolled in kindergarten who are eligible for and receiving special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15;

(b)(i) Subject to the limitation in (b)(ii) of this subsection (2), a district's annual average enrollment of resident students who are eligible for and receiving special education, excluding students ages three and four and those five year olds not yet enrolled in kindergarten, multiplied by the district's base allocation per full-time equivalent student, multiplied by the special education cost multiplier rate of:

(A) ((~~In the 2019-20 school year, 0.995 for students eligible for and receiving special education.~~

~~(B) Beginning in the 2020-21 school year, either:~~

~~(I) 1.0075 for~~)) For students eligible for and receiving special education and reported to be in the general education setting for ((~~eighty~~)) 80 percent or more of the school day((~~; or~~

~~(II) 0.995 for~~)):

(I) In the 2023-24 school year, 1.035;

(II) In the 2024-25 school year, 1.04;

(III) In the 2025-26 school year, 1.043;

(IV) Beginning in the 2026-27 school year, 1.059; or

(B) For students eligible for and receiving special education and reported to be in the general education setting for less than ((~~eighty~~)) 80 percent of the school day:

(I) In the 2023-24 school year, 1.02;

(II) In the 2024-25 school year, 1.025;

(III) In the 2025-26 school year, 1.028;

(IV) Beginning in the 2026-27 school year, 1.043.

(ii) ((~~If~~)) Through the 2026-27 school year, if the enrollment percent exceeds ((~~thirteen and five-tenths percent~~)) the funded enrollment limit, the excess cost allocation calculated under (b)(i) of this subsection must be adjusted by multiplying the allocation by ((~~thirteen and five-tenths percent~~)) the funded enrollment limit divided by the enrollment percent.

(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) and the allocation under RCW 28A.150.415, 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 annual average enrollment of students who are eligible for and receiving special education, excluding students ages three and four and those five year olds not yet enrolled in kindergarten and students enrolled in institutional education programs, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment limit" means:

(i) Through the 2022-23 school year, 13.5 percent;

(ii) In the 2023-24 school year, 14 percent;

(iii) In the 2024-25 school year, 14.5 percent;

(iv) In the 2025-26 and 2026-27 school years, 15 percent;

(v) Beginning in the 2027-28 school year, all students eligible for and receiving special education must generate excess cost allocations under this section.

**Sec.**  RCW 28A.150.392 and 2019 c 387 s 2 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.

(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 students eligible for special education 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 students eligible for and receiving special education. 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 students eligible for and receiving special education served in residential schools as defined in RCW ((~~28A.190.020~~)) 28A.190.005, 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 secondary program of 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.

(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.

(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 December 1, 2018, 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 including revisions to rules that provide additional flexibility to access community impact awards. 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.

(6) Beginning in the ((~~2019-20~~)) 2023-24 school year, a high-need student is eligible for safety net awards from state funding under subsection (2)(e) and (g) of this section if the student's individualized education program costs exceed two and ((~~three~~)) two-tenths times the average per-pupil expenditure as defined in Title 20 U.S.C. Sec. 7801, the every student succeeds act of 2015.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.150 RCW to read as follows:

Beginning July 1, 2025:

(1) It is the policy of the state that for purposes of state funding allocations, students eligible for and receiving special education generate the full basic education allocation under RCW 28A.150.260 and, as a class, are to receive the benefits of this allocation for the entire school day, as defined in RCW 28A.150.203, whether the student is placed in the general education setting or another setting.

(2) The superintendent of public instruction must maintain a full cost method of excess cost accounting to account for expenditures beyond amounts provided through the special education funding formula under RCW 28A.150.390. This method of accounting must shift the following portions of a school district's general apportionment revenue for students eligible for and receiving special education to the school district's special education program for expenditure.

(a) A percentage of a school district's base allocation as defined in RCW 28A.150.390(3) for students eligible for and receiving special education based on their percentage of time served in a special education setting;

(b) To the extent that state special education expenditures in the previous year exceeded state funding provided for that year under RCW 28A.150.390, 28A.150.392, and methods for redirecting general apportionment revenue based on the students' percentage of time served in a special education setting, up to 50 percent of the school district's base allocation as defined in RCW 28A.150.390(3) for students eligible for and receiving special education combining portions under (a) of this subsection.

(3) Unless otherwise prohibited by law, nothing in this section prohibits school districts from using other funding and state allocations above the amounts provided under RCW 28A.150.390 and subsection (2) of this section to serve students eligible for and receiving special education.

(4) The legislature must review any findings and recommendations from the report and audit required under section 6 of this act and adjust formulas in this section as appropriate.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.155 RCW to read as follows:

(1) The superintendent of public instruction shall annually review data from local education agencies, including the percentage of students receiving special education services, to ensure there is not a disproportionate identification of students, as defined by the superintendent of public instruction in accordance with federal requirements of the individuals with disabilities education act, 20 U.S.C. Sec. 1400.

(2) The office of the superintendent of public instruction shall provide technical assistance to school districts experiencing issues related to disproportionality and will make available professional development opportunities statewide to support local education agencies, schools, and community partners in promoting inclusionary teaching practices within a multitiered system of supports framework to help safeguard against over-identification and other issues related to disproportionality.

NEW SECTION. **Sec.**  (1) The joint legislative audit and review committee and the state auditor must collaborate to conduct a performance audit of the state's system of providing special education services to students with disabilities. The joint legislative audit and review committee and the state auditor may divide responsibility for the work and reporting required in this section as appropriate, and contract with qualified third-party researchers or higher education institutions to perform any aspect of the report and audit. The report and audit must address:

(a) The prevalence of disabilities and whether the provisions and funding for evaluating students and providing services reflects the prevalence of disabilities, including whether any populations are disparately underevaluated or underserved;

(b) The degree to which changes in funding formulas intended to encourage increased inclusion are successful and whether the state and school districts are utilizing best practices to improve inclusion;

(c) Whether the changes in evaluation timelines or increases in the funded enrollment limit have resulted in funding for students who do not have disabilities or in excess of districts' costs to serve students with disabilities;

(d) Whether districts are appropriately accounting for and reporting use of basic education allocations for students with disabilities, including if statutory expectations for use of funds are being met;

(e) The amount of funding from levies or other local sources that school districts continue to utilize under current accounting methodologies in order to meet obligations to provide free and appropriate public education to students with disabilities, the degree to which funding shortfalls will continue following planned increases in multipliers, proposed changes to accounting methodologies, and the elimination of a cap on the percent of students for whom the state provides funding; and, options for additional changes to funding formulas to eliminate shortfalls in state funding for special education; and

(f) How the state may improve recruitment and retention of certificated educators, instructional aides, or paraeducators and professionals serving students with disabilities.

(2) To develop the appropriate scope, define study questions, and select one or more contractors to complete the performance audit and report, the joint legislative audit and review committee and state auditor shall consult with the office of the superintendent of public instruction, the office of the education ombuds, organizations representing and serving students with disabilities, the Washington state special education advisory council, and labor organizations representing educators providing educational services to students with disabilities in developing study questions and choosing appropriate contractors. To address the study questions, the joint legislative audit and review committee and the state auditor may conduct the audit at a sample of school districts as needed.

(3) The performance audit required by this section must include charter schools to the same extent as school districts.

(4) Upon request, the office of financial management and any state or local agency must provide the joint legislative audit and review committee and the state auditor with education records necessary to conduct the performance audit required under this section. The joint legislative audit and review committee and the state auditor shall be considered authorized representatives of relevant state education authorities, including the superintendent of public instruction and the department of children, youth, and families, for the purpose of accessing records for this evaluation. The office of financial management and any state or local agency must provide records within four months from the date of an initial request. The office of financial management or agencies contributing data to the education research and data center must notify the joint legislative audit and review committee and the state auditor's office in writing if they determine a request does not comply with the federal educational rights and privacy act, no later than 21 days after the initial request.

(5) Prior to the 2024 legislative session, the joint legislative audit and review committee and the state auditor must identify a lead agency for each element of the report and audit defined in subsection (1)(a) through (f) of this section and any aspects of the study that are being conducted by contractors. These designations must be provided to the governor and the committees of the legislature with jurisdiction over fiscal matters and special education by December 31, 2023.

(6) The joint legislative audit and review committee and the state auditor must, in accordance with RCW 43.01.036, report the study's findings and recommendations to the governor and the committees of the legislature with jurisdiction over fiscal matters and special education by November 30, 2024.

(7) This section expires August 1, 2025.

NEW SECTION. **Sec.**  Sections 2 and 3 of this act take effect September 1, 2023.

NEW SECTION. **Sec.**  Section 4 of this act takes effect July 1, 2025.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

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