

SHB 1436 - H AMD 153

By Representative Stokesbary

NOT ADOPTED 03/02/2023

1 Strike everything after the enacting clause and insert the
2 following:

3

4

5 "NEW SECTION. **Sec. 1.** The legislature finds that students
6 receiving special education services are entitled, under both
7 federal and state law, to a free appropriate public education that
8 enables their full participation.

9 The legislature also finds that a cap or enrollment limit of
10 13.5 percent on the number of students receiving special education
11 services that generate state special education funding is not
12 consistent with the state's duty to provide a free appropriate
13 public education.

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

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

27 The legislature finds that the documented prevalence of
disabilities amongst children, particularly amongst vulnerable

1 populations and communities with disparately poor health outcomes
2 and access to health services, indicates that the state should
3 improve access to evaluations for disabilities.

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

8 The legislature, therefore, intends to fully fund special
9 education services by providing advocacy support for families to
10 help navigate the special education system, increasing the 13.5
11 percent cap to 15 percent, and increasing the special education
12 multipliers for elementary and secondary students and pre-
13 kindergarten students, thereby giving every school district a
14 funding increase.

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

23

24 **Sec. 2.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to
25 read as follows:

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

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

3 (a) A district's annual average headcount enrollment of students
4 ages three and four and those five year olds not yet enrolled in
5 kindergarten who are eligible for and receiving special education,
6 multiplied by the district's base allocation per full-time
7 equivalent student, multiplied by ~~((1.15))~~ 1.2;

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

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

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

18 ~~(I) 1.0075))~~ 1.12 for students eligible for and receiving
19 special education and reported to be in the general education
20 setting for ~~((eighty))~~ 80 percent or more of the school day; or

21 ~~((II) 0.995))~~

22 (B) 1.06 for students eligible for and receiving special
23 education and reported to be in the general education setting for
24 less than ~~((eighty))~~ 80 percent of the school day.

25 (ii) If the enrollment percent exceeds ~~((thirteen and five-
26 tenths))~~ 15 percent, the excess cost allocation calculated under (b)
27 (i) of this subsection must be adjusted by multiplying the
28 allocation by ~~((thirteen and five tenths))~~ 15 percent divided by the
29 enrollment percent.

30 (3) As used in this section:

31 (a) "Base allocation" means the total state allocation to all
32 schools in the district generated by the distribution formula under
33 RCW 28A.150.260 (4)(a), (5), (6), and (8) and the allocation under
34

1 RCW 28A.150.415, to be divided by the district's full-time
2 equivalent enrollment.

3 (b) "Basic education enrollment" means enrollment of resident
4 students including nonresident students enrolled under RCW 28A.
5 225.225 and students from nonhigh districts enrolled under RCW 28A.
6 225.210 and excluding students residing in another district enrolled
7 as part of an interdistrict cooperative program under RCW 28A.225.250.

8 (c) "Enrollment percent" means the district's resident annual
9 average enrollment of students who are eligible for and receiving
10 special education, excluding students ages three and four and those
11 five year olds not yet enrolled in kindergarten and students
12 enrolled in institutional education programs, as a percent of the
13 district's annual average full-time equivalent basic education
14 enrollment.

15
16 **Sec. 3.** RCW 28A.150.392 and 2019 c 387 s 2 are each amended to
17 read as follows:

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

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

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

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

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

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

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

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

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

24 (g) The committee shall then consider the extraordinary high
25 cost needs of one or more individual students eligible for and
26 receiving special education served in residential schools as defined
27 in RCW ((~~28A.190.020~~)) 28A.190.005, programs for juveniles under the
28 department of corrections, and programs for juveniles operated by
29 city and county jails to the extent they are providing a secondary
30 program of education.

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

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

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

7 (3) The superintendent of public instruction shall adopt such
8 rules and procedures as are necessary to administer the special
9 education funding and safety net award process. By December 1, 2018,
10 the superintendent shall review and revise the rules to achieve full
11 and complete implementation of the requirements of this subsection
12 and subsection (4) of this section including revisions to rules that
13 provide additional flexibility to access community impact awards.
14 Before revising any standards, procedures, or rules, the
15 superintendent shall consult with the office of financial management
16 and the fiscal committees of the legislature. In adopting and
17 revising the rules, the superintendent shall ensure the application
18 process to access safety net funding is streamlined, timelines for
19 submission are not in conflict, feedback to school districts is
20 timely and provides sufficient information to allow school districts
21 to understand how to correct any deficiencies in a safety net
22 application, and that there is consistency between awards approved
23 by school district and by application period. The office of the
24 superintendent of public instruction shall also provide technical
25 assistance to school districts in preparing and submitting special
26 education safety net applications.

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

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

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

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

7 (c) One or more representatives from school districts or
8 educational service districts knowledgeable of special education
9 programs and funding.

10 (6) Beginning in the ((2019-20)) 2023-24 school year, a high-
11 need student is eligible for safety net awards from state funding
12 under subsection (2)(e) and (g) of this section if the student's
13 individualized education program costs exceed two and ((three)) two-
14 tenths times the average per-pupil expenditure as defined in Title
15 20 U.S.C. Sec. 7801, the every student succeeds act of 2015.

16
17 NEW SECTION. Sec. 4. A new section is added to chapter 28A.310
18 RCW to read as follows:

19 (1) Subject to amounts appropriated for this specific purpose,
20 each educational service district shall contract for independent
21 special education advocates.

22 (2) The role of a special education advocate is to:

23 (a) Serve as a resource for a child with disabilities who is
24 eligible for special education due to the disability and the child's
25 parents and family;

26 (b) Advocate on behalf of the child for a free and appropriate
27 public education from the public school system that emphasizes special
28 education and related services that are:

29 (i) Provided in the least restrictive environment;

30 (ii) Designed to meet the child's unique needs;

31 (iii) Appropriately ambitious and reasonably calculated to enable
32 a child to make progress in light of the child's circumstances; and

33 (iv) Addressing the child's further education, employment, and
34 independent living goals; and

- 1 (c) Assist parents with any one or more of the following:
- 2 (i) Preparing for a meeting to develop or update their child's
- 3 individualized education program;
- 4 (ii) Attending the individualized education program meetings to
- 5 help present the parents' concerns, negotiate components that meet the
- 6 parents' goals and requests, or otherwise assist with the
- 7 understanding and navigation of the process;
- 8 (iii) Attending an individual education program meeting on behalf
- 9 of the child to assist in writing an appropriate program when a parent
- 10 opts out or otherwise cannot attend the meeting.

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12 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.150

13 RCW to read as follows:

14 Beginning July 1, 2025:

15 (1) It is the policy of the state that for purposes of state

16 funding allocations, students eligible for and receiving special

17 education generate the full basic education allocation under RCW

18 28A.150.260 and, as a class, are to receive the benefits of this

19 allocation for the entire school day, as defined in RCW 28A.150.203,

20 whether the student is placed in the general education setting or

21 another setting.

22 (2) The superintendent of public instruction must maintain a

23 full cost method of excess cost accounting to account for

24 expenditures beyond amounts provided through the special education

25 funding formula under RCW 28A.150.390. This method of accounting

26 must shift the following portions of a school district's general

27 apportionment revenue for students eligible for and receiving

28 special education to the school district's special education program

29 for expenditure.

30 (a) A percentage of a school district's base allocation as

31 defined in RCW 28A.150.390(3) for students eligible for and

32 receiving special education based on their percentage of time served

33 in a special education setting;

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

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

14 (4) The legislature must review any findings and recommendations
15 from the report and audit required under section 7 of this act and
16 adjust formulas in this section as appropriate.

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18 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.155
19 RCW to read as follows:

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

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

1 NEW SECTION. **Sec. 7.** (1) The joint legislative audit and
2 review committee and the state auditor must collaborate to conduct a
3 performance audit of the state's system of providing special
4 education services to students with disabilities. The joint
5 legislative audit and review committee and the state auditor may
6 divide responsibility for the work and reporting required in this
7 section as appropriate, and contract with qualified third-party
8 researchers or higher education institutions to perform any aspect
9 of the report and audit. The report and audit must address:

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

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

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

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

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

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

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

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

21 (4) Upon request, the office of financial management and any
22 state or local agency must provide the joint legislative audit and
23 review committee and the state auditor with education records
24 necessary to conduct the performance audit required under this
25 section. The joint legislative audit and review committee and the
26 state auditor shall be considered authorized representatives of
27 relevant state education authorities, including the superintendent
28 for public instruction and the department of children, youth and
29 families, for the purpose of accessing records for this evaluation.
30 The office of financial management and any state or local agency
31 must provide records within four months from the date of an initial
32 request. The office of financial management or agencies contributing
33 data to the education research and data center must notify the joint
34 legislative audit and review committee and the state auditor's

1 office in writing if they determine a request does not comply with
2 the federal educational rights and privacy act, no later than
3 twenty-one days after the initial request.

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

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

17 (7) This section expires August 1, 2025.

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19 NEW SECTION. **Sec. 8.** Sections 2 and 3 of this act take effect
20 September 1, 2023.

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22 NEW SECTION. **Sec. 9.** Section 5 of this act takes effect July
23 1, 2025.

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25 NEW SECTION. **Sec. 10.** If specific funding for the purposes of
26 this act, referencing this act by bill or chapter number, is not
27 provided by June 30, 2023, in the omnibus appropriations act, this
28 act is null and void."

29

EFFECT: Strikes the underlying substitute bill and replaces
with the following:

- Increases excess cost multipliers for special education students to:
 - o 1.12 for kindergarten through age 21 (K-21) students 80 percent or more in a general education setting,

- o 1.06 for K-21 students spending less than 80 percent in a general education setting,
 - o 1.2 for pre-kindergarten (Pre-K) students.
- Increases the 13.5 percent enrollment limit for special education funding to 15 percent.
- Requires educational service districts to contract for independent special education advocates, subject to appropriations.
- Adds an intent section.
- Maintains the following provisions from the substitute bill:
 - o Reduces the threshold for high-need individuals to access the special education safety net from 2.3 to 2.2 times the average per-pupil expenditure.
 - o Requires up to 50 percent of a special education student's base education allocation to be used for special education if district special education expenditures exceeded revenues in the previous year, beginning July 2025.
 - o Requires the OSPI to review disproportionality data and assist schools with inclusionary teaching.
 - o Requires the Joint Legislative Audit and Review Committee and the State Auditor Office to conduct a performance audit of the state's special education system, with some revisions to the underlying language.

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