

**ESHB 1436 - S AMD 400**  
By Senator Wellman

**ADOPTED 04/12/2023**

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.155  
4 RCW to read as follows:

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

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

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

29 (a) The prevalence of disabilities and whether the provisions and  
30 funding for evaluating students and providing services reflects the

1 prevalence of disabilities, including whether any populations are  
2 disparately underevaluated or underserved;

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

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

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

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

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

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

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

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

20 (5) Prior to the 2024 legislative session, the joint legislative  
21 audit and review committee and the state auditor must identify a lead  
22 agency for each element of the report and audit defined in subsection  
23 (1)(a) through (f) of this section and any aspects of the study that  
24 are being conducted by contractors. These designations must be  
25 provided to the governor and the committees of the legislature with  
26 jurisdiction over fiscal matters and special education by December  
27 31, 2023.

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

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

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

36 (1) The superintendent of public instruction shall submit to each  
37 regular session of the legislature during an odd-numbered year a  
38 programmed budget request for special education programs for students  
39 with disabilities. Funding for programs operated by local school

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

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

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

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

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

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

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

26 (II) 0.995 for students eligible for and receiving special  
27 education and reported to be in the general education setting for  
28 less than ~~((eighty))~~ 80 percent of the school day;

29 (B) Beginning in the 2023-24 school year, either:

30 (I) 1.12 for students eligible for and receiving special  
31 education and reported to be in the general education setting for 80  
32 percent or more of the school day; or

33 (II) 1.06 for students eligible for and receiving special  
34 education and reported to be in the general education setting for  
35 less than 80 percent of the school day.

36 (ii) If the enrollment percent exceeds ~~((thirteen and five-~~  
37 ~~tenths))~~ 15 percent, the excess cost allocation calculated under  
38 (b)(i) of this subsection must be adjusted by multiplying the  
39 allocation by ~~((thirteen and five-tenths))~~ 15 percent divided by the  
40 enrollment percent.

1 (3) As used in this section:

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

7 (b) "Basic education enrollment" means enrollment of resident  
8 students including nonresident students enrolled under RCW  
9 28A.225.225 and students from nonhigh districts enrolled under RCW  
10 28A.225.210 and excluding students residing in another district  
11 enrolled as part of an interdistrict cooperative program under RCW  
12 28A.225.250.

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

19 **Sec. 4.** RCW 28A.150.392 and 2019 c 387 s 2 are each amended to  
20 read as follows:

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

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

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

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

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

1 (c) Differences in program costs attributable to district  
2 philosophy(~~(, service delivery choice,)~~) or accounting practices are  
3 not 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 eligibility  
6 for all state revenues related to services for students eligible for  
7 special education and all federal revenues from federal impact aid,  
8 medicaid, and the individuals with disabilities education act-Part B  
9 and appropriate special projects. Awards associated with (e) and (f)  
10 of this subsection shall not exceed the total of a district's  
11 specific determination of need.

12 (e) The committee shall then consider the extraordinary high cost  
13 needs of one or more individual students eligible for and receiving  
14 special education. Differences in costs attributable to district  
15 philosophy(~~(, service delivery choice,)~~) or accounting practices are  
16 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 cost  
25 needs of one or more individual students eligible for and receiving  
26 special education served in residential schools (~~(as defined in RCW~~  
27 ~~28A.190.020)~~), programs for juveniles under the department of  
28 corrections, and programs for juveniles operated by city and county  
29 jails to the extent they are providing a secondary program of  
30 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.

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

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

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

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

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

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

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

35 (c) One or more representatives from school districts or  
36 educational service districts knowledgeable of special education  
37 programs and funding.

38 (6) (a) Beginning in the 2019-20 school year, a high-need student  
39 is eligible for safety net awards from state funding under subsection  
40 (2)(e) and (g) of this section if the student's individualized

1 education program costs exceed two and three-tenths times the average  
2 per-pupil expenditure as defined in Title 20 U.S.C. Sec. 7801, the  
3 every student succeeds act of 2015.

4 (b) Beginning in the 2023-24 school year, a high-need student is  
5 eligible for safety net awards from state funding under subsection  
6 (2)(e) and (g) of this section if the student's individualized  
7 education program costs exceed:

8 (i) 2 times the average per-pupil expenditure, for school  
9 districts with fewer than 1,000 full-time equivalent students;

10 (ii) 2.2 times the average per-pupil expenditure, for school  
11 districts with 1,000 or more full-time equivalent students.

12 (c) For purposes of (b) of this subsection, "average per-pupil  
13 expenditure" has the same meaning as in 20 U.S.C. Sec. 7801, the  
14 every student succeeds act of 2015, and excludes safety net funding  
15 provided in this section.

16 **Sec. 5.** RCW 43.06B.010 and 2013 c 23 s 82 are each amended to  
17 read as follows:

18 (1) There is hereby created the office of the education ombuds  
19 within the office of the governor for the purposes of providing  
20 information to parents, students, and others regarding their rights  
21 and responsibilities with respect to the state's public elementary  
22 and secondary education system, and advocating on behalf of  
23 elementary and secondary students.

24 (2) (a) The governor shall appoint an ombuds who shall be a person  
25 of recognized judgment, independence, objectivity, and integrity and  
26 shall be qualified by training or experience or both in the following  
27 areas:

28 (i) Public education law and policy in this state;

29 (ii) Dispute resolution or problem resolution techniques,  
30 including mediation and negotiation; and

31 (iii) Community outreach.

32 (b) The education ombuds may not be an employee of any school  
33 district, the office of the superintendent of public instruction, or  
34 the state board of education while serving as an education ombuds.

35 (3) Before the appointment of the education ombuds, the governor  
36 shall share information regarding the appointment to a six-person  
37 legislative committee appointed and comprised as follows:

38 (a) The committee shall consist of three senators and three  
39 members of the house of representatives from the legislature.



1 (b) The senate members of the committee shall be appointed by the  
2 president of the senate. Two members shall represent the majority  
3 caucus and one member the minority caucus.

4 (c) The house of representatives members of the committee shall  
5 be appointed by the speaker of the house of representatives. Two  
6 members shall represent the majority caucus and one member the  
7 minority caucus.

8 (4) If sufficient appropriations are provided, the education  
9 ombuds shall delegate and certify regional education ombuds. The  
10 education ombuds shall ensure that the regional ombuds selected are  
11 appropriate to the community in which they serve and hold the same  
12 qualifications as in subsection (2)(a) of this section. The education  
13 ombuds may not contract with the superintendent of public  
14 instruction, or any school, school district, or current employee of a  
15 school, school district, or the office of the superintendent of  
16 public instruction for the provision of regional ombuds services.

17 (5)(a) Subject to amounts appropriated for this specific purpose,  
18 the education ombuds shall delegate and certify at least one special  
19 education ombuds to serve each educational service district region.  
20 The education ombuds shall ensure that the special education ombuds  
21 selected are appropriate to the community in which they serve and  
22 hold the same qualifications as in subsection (2)(a) of this section.  
23 The education ombuds may not contract with the superintendent of  
24 public instruction, or any school, school district, educational  
25 service district, or current employee of a school, school district,  
26 educational service district, or the office of the superintendent of  
27 public instruction for the provision of special education ombuds  
28 services.

29 (b) Special education ombuds must serve as a resource for  
30 students eligible for special education services and their parents,  
31 including:

32 (i) Advocating on behalf of the student for a free and  
33 appropriate public education from the public school system that  
34 emphasizes special education and related services that are:

35 (A) Provided in the least restrictive environment;

36 (B) Designed to meet the student's unique needs;

37 (C) Appropriately ambitious and reasonably calculated to enable a  
38 student to make progress in light of the student's circumstances; and

39 (D) Addressing the student's further education, employment, and  
40 independent living goals.

1 (ii) Assisting students and parents with individualized education  
2 program development, including:

3 (A) Preparing for a meeting to develop or update a student's  
4 individualized education program;

5 (B) Attending individualized education program meetings to help  
6 present the parents' concerns, negotiate components that meet the  
7 parents' goals and requests, or otherwise assist the parent in  
8 understanding and navigating the individualized education program  
9 process; and

10 (C) Attending an individualized education program meeting to  
11 assist in writing an appropriate program when a parent opts out or  
12 otherwise cannot attend.

13 NEW SECTION. Sec. 6. A new section is added to chapter 28A.150  
14 RCW to read as follows:

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 shall develop an  
23 allocation and cost accounting methodology that ensures state general  
24 apportionment funding for students who receive their basic education  
25 services primarily in an alternative classroom or setting are  
26 prorated and allocated to the special education program and accounted  
27 for before calculating special education excess costs. Nothing in  
28 this section requires districts to provide services in a manner  
29 inconsistent with the students individualized education program or  
30 other than in the least restrictive environment as determined by the  
31 individualized education program team.

32 (3) The superintendent of public instruction shall provide the  
33 legislature with an accounting of prorated general apportionment  
34 allocations provided to special education programs broken down by  
35 school district by January 1, 2024, and then every January 1st of  
36 odd-numbered years thereafter."

**ADOPTED 04/12/2023**

1 On page 1, line 1 of the title, after "funding;" strike the  
2 remainder of the title and insert "amending RCW 28A.150.390,  
3 28A.150.392, and 43.06B.010; adding a new section to chapter 28A.155  
4 RCW; adding a new section to chapter 28A.150 RCW; creating a new  
5 section; and providing an expiration date."

EFFECT: (1) Strikes all provisions from the underlying bill except those that:

(a) Direct OSPI to annually review data to ensure there is not a disproportionate identification of students;

(b) Require OSPI to provide technical assistance to school districts experiencing issues related to disproportionality and make professional development opportunities available to promote inclusionary teaching practices;

(c) Require JLARC and the State Auditor to conduct a performance audit of the state's system of providing special education.

(2) Adds the special education funding policies from Engrossed Second Substitute Senate Bill 5311, which does the following:

(a) Increases the special education excess cost multipliers for pre-K and K-12 students.

(b) Increases the special education enrollment funding cap from 13.5 percent to 15 percent.

(c) Allows the Safety Net Oversight Committee to consider differences in program costs that are attributable to service delivery choices.

(d) Provides that the average per-pupil expenditure used to determine safety net award eligibility for high-need students is 2 times the average per pupil expenditure for districts with fewer than 1,000 students and 2.2 times the average per-pupil expenditure for districts with 1,000 or more students, beginning in the 2023-24 school year.

(e) Requires the Office of Education Ombuds to delegate special education ombuds to serve as a resource for students and their parents, subject to appropriations.

(f) Directs the Superintendent of Public Instruction to develop an allocation and cost accounting methodology that ensures state general apportionment funding is allocated to a student's special education program when basic education services are provided in an alternative setting and report to the Legislature.

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