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## Education Committee

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### E2SSB 5311

**Brief Description:** Concerning special education funding formula.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Braun, Dhingra, Hunt, Kuderer, Mullet, Nguyen, Nobles, Pedersen, Torres and Wilson, C.; by request of Office of Financial Management).

**Brief Summary of Engrossed Second Substitute Bill**

- Increases the special education excess cost multipliers and enrollment cap.
- Modifies what can be considered in the safety net determination of need and changes the threshold for awarding safety net funding for high-need students.
- Requires the establishment of an allocation and cost accounting methodology for special education.
- Directs, subject to appropriation, the delegation of one Special Education Ombuds to serve in each educational service district.

**Hearing Date:** 3/14/23

**Staff:** Megan Wargacki (786-7194).

**Background:**

Special Education Funding.

*Excess Cost Formula and Funding Cap.* The state allocates funding for a program of special education for students with disabilities is using an excess cost formula that multiplies the base allocation of a charter school, state-tribal education compact school, or school district by an

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

excess cost multiplier.

Students receiving special education services who are in kindergarten through age 21 (K-21) are funded based on their inclusion in the general education setting as follows:

- For students receiving special education and reported to be in the general education setting for 80 percent or more of the school day, the excess cost multiplier is 1.0075.
- For students receiving special education and reported to be in the general education setting for less than 80 percent of the school day, the excess cost multiplier is 0.995.

For K-21 students, the excess cost allocations are capped at 13.5 percent of the full-time student equivalent enrollment.

Students receiving special education services prior to kindergarten who are ages three through five are funded based on an excess cost multiplier of 1.15 percent. These students are excluded from the 13.5 percent enrollment funding cap.

*Safety Net Funding.* Safety net funding is available to charter schools, state-tribal education compact schools, and school districts that need more than what is provided through the special education excess cost formula. The Safety Net Oversight Committee, appointed by the Office of the Superintendent of Public Instruction (OSPI) awards funding based on a determination of need. Among other conditions and limitations, it is specified that differences in program costs that are attributable to service delivery choice are not a legitimate basis for safety net awards.

The committee may award safety net funding to applicants for high-need individuals (HNIs) eligible for and receiving special education services and for community characteristics that draw a larger number of students in need of special education services. An HNI is eligible for a safety net award if the student's individualized education program costs exceed 2.3 times the average per-pupil expenditure as defined in federal law.

The K-21 students receiving special education services generate funding through both the basic education allocation (BEA) and the special education excess cost formula. In addition to the excess costs allocations, the OSPI redirects a portion of the BEA for special education purposes based on the percentage of time a student receiving special education services is reported to be outside the general education setting. Additional BEA beyond the redirected amount may also be used for special education services.

#### Education Ombuds.

The Office of the Education Ombuds (OEO) was created within the Office of the Governor to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system and to advocate on behalf of students.

The Governor must appoint an Education Ombuds who is a person of recognized judgment, independence, objectivity, and integrity and who is qualified by training or experience or both in

the following areas: (1) Public education law and policy in Washington; (2) dispute resolution or problem resolution techniques, including mediation and negotiation; and (3) community outreach. The Education Ombuds may not be an employee of any school district, the OSPI, or the State Board of Education while serving as an education ombuds.

The Education Ombuds has eight statutory powers and duties, for example, to:

- provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;
- identify and recommend strategies for greater parent and community involvement in school shared decision-making processes;
- identify and recommend strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement; and
- facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system.

### **Summary of Bill:**

#### Special Education Funding.

*Excess Cost Formula.* The special education excess cost multiplier for students receiving special education services who are in kindergarten through age 21 (K-21) is increased to:

- 1.12 for students receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or
- 1.06 for students receiving special education and reported to be in the general education setting for less than 80 percent of the school day.

Students receiving special education services prior to kindergarten who are ages three through five are funded based on an excess cost multiplier of 1.2 percent.

*Funding Cap.* For K-21 students, the excess cost allocations are capped at 15 percent of the full-time equivalent (FTE) student enrollment.

*Safety Net Funding.* When making its determination of need, the Safety Net Oversight Committee is no longer required to exclude differences in program costs that are attributable to service delivery choices.

A high-need student is eligible for safety net awards from state funding if the student's individualized education program (IEP) costs exceed either:

- 2 times the average per-pupil expenditure, for charter schools, state-tribal education compact schools, and school districts with fewer than 1,000 FTE students; or
- 2.2 times the average per-pupil expenditure, for charter schools, state-tribal education compact schools, and school districts with 1,000 or more FTE students.

The "average per-pupil expenditure" for high-need student calculations may not include safety

net funding.

Cost Accounting.

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 and, as a class, are to receive the benefits of this allocation for the entire school day whether the student is placed in the general education setting or another setting.

The Superintendent of Public Instruction (SPI) must develop an allocation and cost accounting methodology that ensures state general apportionment funding for students who receive their basic education services primarily in an alternative classroom or setting are prorated and allocated to the special education program and accounted for before calculating special education excess costs. Nothing requires districts to provide services in a manner inconsistent with the student's IEP or other than in the least restrictive environment as determined by the IEP team.

The SPI must provide the Legislature with an accounting of prorated general apportionment allocations provided to special education programs broken down by school district by January 1, 2024, and then every January 1 of odd-numbered years thereafter.

Special Education Ombuds.

Subject to appropriation, the Education Ombuds must delegate and certify at least one Special Education Ombuds to serve each educational service district region. The Education Ombuds must ensure that the Special Education Ombuds selected are appropriate to the community in which they serve and hold the same qualifications as required of the Education Ombuds. The Education Ombuds may not contract with the Superintendent of Public Instruction, or any school, school district, educational service district, or current employee of a school, school district, educational service district, or the Office of the Superintendent of Public Instruction for the provision of Special Education Ombuds services.

Special Education Ombuds must serve as a resource for students eligible for special education services and their parents, including:

- advocating on behalf of the student for a free appropriate public education from the public school system that emphasizes special education and related services that are provided in the least restrictive environment, designed to meet the student's unique needs, appropriately ambitious and reasonably calculated to enable a student to make progress in light of the student's circumstances, and addressing the student's further education, employment, and independent living goals; and
- assisting students and parents with IEP development, including preparing for a meeting to develop or update a student's IEP, attending IEP meetings to help present the parents' concerns, negotiate components that meet the parents' goals and requests, or otherwise assist the parent in understanding and navigating the individualized education program process, and attending an IEP meeting to assist in writing an appropriate program when a parent opts out or otherwise cannot attend.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.