

# SENATE BILL REPORT

## E2SSB 5311

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As Passed Senate, March 3, 2023

**Title:** An act relating to special education funding formula.

**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 History:**

**Committee Activity:** Early Learning & K-12 Education: 1/19/23, 1/26/23 [DPS-WM].  
Ways & Means: 2/09/23, 2/22/23 [DP2S].

**Floor Activity:** Passed Senate: 3/3/23, 48-0.

### Brief Summary of Engrossed Second Substitute Bill

- Increases the special education excess cost multipliers for pre-K and K-12 students.
- Increases the special education enrollment funding cap from 13.5 percent to 15 percent.
- Allows the Safety Net Oversight Committee to consider differences in program costs that are attributable to service delivery choices.
- 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 1000 students and 2.2 times the average per pupil expenditure for districts with 1000 or more students, beginning in the 2023-24 school year.
- Requires the Office of Education Ombuds to delegate a special education ombuds to serve as a resource for students and their parents, subject to appropriations.

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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.*

- Directs the Superintendent of Public Instruction and the State Auditor 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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## SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** That Substitute Senate Bill No. 5311 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

**Staff:** Alexandra Fairfortune (786-7416)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5311 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Kayla Hammer (786-7305)

**Background:** Special Education Funding. The state allocates funding for a program of special education for students with disabilities. Special education is funded on an excess cost formula for up to 13.5 percent of a district's K-12 students. This formula multiplies the district's base allocation for students enrolled in K-12 special education by an excess cost multiplier of either:

- 1.0075 for students receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or
- 0.995 for students receiving special education and reported to be in the general education setting for less than 80 percent of the school day.

Pre-K students receiving special education services, including three-, four-, and five-year-olds not yet enrolled in kindergarten, are funded based on a multiplier of 1.15 percent. These students are excluded from the 13.5 percent enrollment funding cap.

Safety Net Funding. Beyond these allocations, the Safety Net Oversight Committee, appointed by the Superintendent of Public Instruction, may award safety net funding if a district can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas, and it is maximizing its eligibility for all related state and federal revenues. The committee may award safety net funding to applicants for high-need individuals and for community characteristics that draw a large number of students eligible for special education. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

**Summary of Engrossed Second Substitute Bill: Special Education Excess Cost.** The special education excess cost multipliers are increased as follows:

	Current	23-24 SY
Pre-K	1.15	1.2
K-12 Students in Gen. Ed. $\geq$ 80 percent	1.0075	1.12
K-12 Students in Gen. Ed. <80 percent	0.995	1.06

Enrollment Percent Cap. The K-12 special education enrollment funding cap is increased from 13.5 percent to 15 percent.

Safety Net Awards. When determining safety net award need, the Safety Net Oversight Committee is no longer required to exclude differences in program costs that are attributable to service delivery choices.

Beginning in the 2023-24 school year, a high-need student is eligible for safety net awards if the student's IEP costs exceed:

- 2 times the average per-pupil expenditure for school districts with fewer than 1000 full-time equivalent students; or
- 2.2 times the average per-pupil expenditure for school districts with 1000 or more full-time equivalent students.

When calculating the average per-pupil expenditure for safety net eligibility purposes, safety net funding must be excluded.

Cost Accounting. The Superintendent of Public Instruction and the State Auditor are directed to develop an allocation and cost accounting methodology to ensure basic education general apportionment funding is prorated and allocated to a student's special education program and accounted for before calculating special education excess cost when services are provided outside of the general education setting. Beginning January 1, 2024, and every odd-numbered year thereafter, the Superintendent of Public Instruction must provide the Legislature with an accounting of prorated general apportionment allocations

provided to special education programs broken down by school district.

Special Education Ombuds. The Office of the Education Ombuds must delegate and certify at least one special education ombuds to serve each educational service district region, subject to appropriations for that purpose. A special education ombuds must be appropriate to the community in which they serve and hold the same qualifications as other education ombuds. The Office of Education Ombuds may not contract with the Superintendent of Public Instruction, a school, a school district, an educational service district, or an employee of those entities for the provision of special education ombuds services.

A special education ombuds must serve as a resource for students eligible for special education services and their parents. This includes advocating on behalf of the student for a free and appropriate public education 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.

A special education ombuds must also assist students and parents with individualized education program development, including:

- preparing for a meeting to develop or update a student's IEP;
- attending IEP meetings to help present the parent's concerns, negotiate components that meet the parent's goals and requests, or otherwise assist the parent in understanding and navigating the IEP process; and
- attending IEP meetings to assist in writing an appropriate program when a parent opts out or cannot attend.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Available. New fiscal note requested on March 3, 2023.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute (Early Learning & K-12 Education):** *The committee recommended a different version of the bill than what was heard.* PRO: OSPI supports fully funding special education to reduce district reliance on local sources of revenue for excess costs of special education. This proposed substitute removes the restriction for reimbursement based on service delivery type, providing a pathway for OSPI and schools to engage in the rulemaking process with flexibility. It is

important to remove the arbitrary cap on state special education funding and support districts with their obligation to serve. SPED funding assumes an average cost for a student with an IEP but doesn't account for inflation or consider students who require individualized plans or 1-on-1 staffing. Additionally, some services require outside contracting and additional staff support for these services to legally fulfill certain IEP requirements. The proposed substitute incentivizes inclusion through the increases of the tiered multiplier which is essential in removing barriers for all students with disabilities, helping them feel included.

CON: School districts have a legal obligation to serve all students with special need requirements. Districts are spending over \$400 million per year more than what they receive in federal and state funding. The cap should be removed to ensure all students receive the resources that they need. This is an equity issue as not all districts have access to local funds. A student's zip code should not determine their access to support. The cap tells our students that there is a limited amount of space for disabled youth in our schools, creating additional stress when they are concerned about whether they will be receiving these services or not.

OTHER: Governor Inslee has put special education at the top of his education agenda and the underlying bill aligns with the Governor's budget. The proposed substitute bill makes changes that have a fiscal impact beyond the original bill. Raising the cap from 13.5% to 15% will enable districts to receive more state funding without having to apply to the safety net. We should be taking a closer look at funding allocation at the top to provide better impact aid to communities with higher need. This bill is trending in the right direction but investments and minor adjustments have not gone far enough. Money from local levy is still being spent on special education services. An increased need for mental health services in addition to special needs for students has placed a strain on school psychologists and counselors. Appropriate funding will allow for the creation of inclusionary models where all students in a community attend school together, learn together, and socialize together. According to the CDC, about 20% of kids in rural areas have a developmental disability, and about 17% in urban areas. Because of the cap, there are students with disabilities who fall beyond the limited number resulting in a lack of resources they need. A large portion of districts are already at or over the designated cap. Special community factors should be considered to determine the cap. If over identification is a real concern in one community, it should be dealt with independently, instead of jeopardizing the opportunity for students in another community.

**Persons Testifying (Early Learning & K-12 Education):** PRO: Senator Lisa Wellman, Prime Sponsor; Tracy Wilson, Pasco School District; Anita Waller, Ephrata School District; Tania May, Office of Superintendent of Public Instruction; Preston Dwoskin; Magan Cromar, King County.

CON: Nancy Chamberlain, Washington State PTA; Samantha Fogg, Seattle Council PTSA.

OTHER: Devin Gombosky, ESD 105 Schools Coalition and Central Valley School District;

Nikki Lockwood, Spokane Public Schools; Ramona Hattendorf, The Arc of King County; Marisa Peloquin, Washington State School Directors' Association (WSSDA); Jon Holmen, Lake Washington School District; Maddy Thompson, Office of the Governor; Shea Hamilton, Office of Financial Management; Christopher Willis, Orting School District; Ashley Burchett; Clifford Traisman, Bellevue, Highline, Olympia, Seattle Public School Districts; Charlie Brown, Pierce County Superintendents and Federal Way SD; Sue Ann Bube, School Alliance; Tyler Stiner, North Thurston Public Schools; Katie Howell, Chehalis School District; Troy Nichols, Capital Region ESD 113; Rachel Buschelman, Federal Way Education Association.

**Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):**

No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses the deficit between the needed funding numbers and what the state actually pays. The piece that is not included is the transportation of special education students. The state formula currently unfairly caps the number of students, this needs to be removed. Special education is not enrichment. The number of students eligible for special education services is increasing, and these students should not be cut off because of an unfair, arbitrary cap. High student caseloads are not good for students or educators.

CON: Special education must be fully funded and the cap must be removed.

OTHER: Before passing this bill, the cap must be eliminated. This bill provides small increases, but to fill the funding gap the multiplier must be increased to 1.81. Special education must be fully funded. The language should also be reviewed and modified to ensure that student programs are funded through the safety net process without complex, regional, or state comparisons.

**Persons Testifying (Ways & Means):** PRO: Senator Lisa Wellman, Prime Sponsor; Superintendent Patrick Murphy, Superintendent, Olympia School District; Dr. Ivan Duran, Superintendent, Highline Public Schools; Dr. Brent Jones, Superintendent, Seattle Public Schools; Sherry Rivard-Leon; Bridget Broderick, Orcas Island School District - Eastsound, WA; Simone Boe, Washington Education Association; Tania May, Office of Superintendent of Public Instruction; Charlie Brown, Pierce County Superintendents, Federal Way and School Alliance.

CON: Tracy Kahlo, PAVE.

OTHER: Lizzy Sebring, Washington State PTA; Jon Holmen, Superintendent, Lake Washington School District; June Nho Ivers, SCPTSA; Samantha Fogg, SEAC, Legislative Committee Member.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.