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**SUBSTITUTE SENATE BILL 5311**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators Wellman, Braun, Dhingra, Hunt, Kuderer, Mullet, Nguyen, Nobles, Pedersen, Torres, and C. Wilson; by request of Office of Financial Management)

READ FIRST TIME 01/27/23.

1 AN ACT Relating to special education funding formula; and  
2 amending RCW 28A.150.390 and 28A.150.392.

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

4 **Sec. 1.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to  
5 read as follows:

6 (1) The superintendent of public instruction shall submit to each  
7 regular session of the legislature during an odd-numbered year a  
8 programmed budget request for special education programs for students  
9 with disabilities. Funding for programs operated by local school  
10 districts shall be on an excess cost basis from appropriations  
11 provided by the legislature for special education programs for  
12 students with disabilities and shall take account of state funds  
13 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and  
14 28A.150.415.

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

17 (a) A district's annual average headcount enrollment of students  
18 ages three and four and those five year olds not yet enrolled in  
19 kindergarten who are eligible for and receiving special education,  
20 multiplied by the district's base allocation per full-time equivalent  
21 student, multiplied by ~~((1.15))~~ the following multipliers:

1       (i) In the 2023-24 school year, 1.175;  
2       (ii) In the 2024-25 school year, 1.18;  
3       (iii) In the 2025-26 school year, 1.19;  
4       (iv) Beginning in the 2026-27 school year, 1.2;  
5       (b) (i) Subject to the limitation in (b) (ii) of this subsection  
6 (2), a district's annual average enrollment of resident students who  
7 are eligible for and receiving special education, excluding students  
8 ages three and four and those five year olds not yet enrolled in  
9 kindergarten, multiplied by the district's base allocation per full-  
10 time equivalent student, multiplied by the ~~((special education cost~~  
11 ~~multiplier rate of:~~  
12       ~~(A) In the 2019-20 school year, 0.995 for students eligible for~~  
13 ~~and receiving special education.~~  
14       ~~(B) Beginning in the 2020-21 school year, either:~~  
15       ~~(I) 1.0075 for~~) following multipliers:  
16       (A) For students eligible for and receiving special education and  
17 reported to be in the general education setting for ~~((eighty))~~ 80  
18 percent or more of the school day ~~((; or~~  
19 ~~(II) 0.995 for~~):  
20       (I) In the 2023-24 school year, 1.0742;  
21       (II) In the 2024-25 school year, 1.1408;  
22       (III) In the 2025-26 school year, 1.2074;  
23       (IV) Beginning in the 2026-27 school year, 1.2740;  
24       (B) For students eligible for and receiving special education and  
25 reported to be in the general education setting for less than  
26 ~~((eighty))~~ 80 percent of the school day:  
27       (I) In the 2023-24 school year, 1.0283;  
28       (II) In the 2024-25 school year, 1.0617;  
29       (III) In the 2025-26 school year, 1.0950;  
30       (IV) Beginning in the 2026-27 school year, 1.1283.  
31       (ii) If the enrollment percent exceeds ~~((thirteen and five~~  
32 ~~tenths))~~ 15 percent, the excess cost allocation calculated under  
33 (b) (i) of this subsection must be adjusted by multiplying the  
34 allocation by ~~((thirteen and five tenths))~~ 15 percent divided by the  
35 enrollment percent.  
36       (3) As used in this section:  
37       (a) "Base allocation" means the total state allocation to all  
38 schools in the district generated by the distribution formula under  
39 RCW 28A.150.260 (4) (a), (5), (6), and (8) and the allocation under

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

3 (b) "Basic education enrollment" means enrollment of resident  
4 students including nonresident students enrolled under RCW  
5 28A.225.225 and students from nonhigh districts enrolled under RCW  
6 28A.225.210 and excluding students residing in another district  
7 enrolled as part of an interdistrict cooperative program under RCW  
8 28A.225.250.

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

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

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

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

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

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

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

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

37 (d) In the determination of need, the committee shall require  
38 that districts demonstrate that they are maximizing their eligibility  
39 for all state revenues related to services for students eligible for

1 special education and all federal revenues from federal impact aid,  
2 medicaid, and the individuals with disabilities education act-Part B  
3 and appropriate special projects. Awards associated with (e) and (f)  
4 of this subsection shall not exceed the total of a district's  
5 specific determination of need.

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

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

18 (g) The committee shall then consider the extraordinary high cost  
19 needs of one or more individual students eligible for and receiving  
20 special education served in residential schools (~~(as defined in RCW~~  
21 ~~28A.190.020)~~), programs for juveniles under the department of  
22 corrections, and programs for juveniles operated by city and county  
23 jails to the extent they are providing a secondary program of  
24 education.

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

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

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

34 (3) The superintendent of public instruction shall adopt such  
35 rules and procedures as are necessary to administer the special  
36 education funding and safety net award process. By December 1, 2018,  
37 the superintendent shall review and revise the rules to achieve full  
38 and complete implementation of the requirements of this subsection  
39 and subsection (4) of this section including revisions to rules that  
40 provide additional flexibility to access community impact awards.

1 Before revising any standards, procedures, or rules, the  
2 superintendent shall consult with the office of financial management  
3 and the fiscal committees of the legislature. In adopting and  
4 revising the rules, the superintendent shall ensure the application  
5 process to access safety net funding is streamlined, timelines for  
6 submission are not in conflict, feedback to school districts is  
7 timely and provides sufficient information to allow school districts  
8 to understand how to correct any deficiencies in a safety net  
9 application, and that there is consistency between awards approved by  
10 school district and by application period. The office of the  
11 superintendent of public instruction shall also provide technical  
12 assistance to school districts in preparing and submitting special  
13 education safety net applications.

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

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

24 (a) One staff member from the office of the superintendent of  
25 public instruction;

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

28 (c) One or more representatives from school districts or  
29 educational service districts knowledgeable of special education  
30 programs and funding.

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

37 (b) Beginning in the 2023-24 school year, the average per-pupil  
38 expenditure used to determine safety net award eligibility for a  
39 high-need student is the lesser of:

1       (i) The average per-pupil expenditure calculated using the  
2 methodology defined in 20 U.S.C. Sec. 7801, the every student  
3 succeeds act of 2015; or

4       (ii) The average per-pupil expenditure calculated using the  
5 methodology defined in 20 U.S.C. Sec. 7801, the every student  
6 succeeds act of 2015, using only the expenditure and average daily  
7 attendance data for the subset of districts receiving the same salary  
8 regionalization factor as the high-need student's district, as  
9 determined under RCW 28A.150.412 and the omnibus operating  
10 appropriations act.

11       (c) When calculating the average per-pupil expenditure for safety  
12 net eligibility purposes, safety net funding provided in this section  
13 must be excluded.

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