S-2408.1

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**SECOND SUBSTITUTE SENATE BILL 5091**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Conway, Darneille, Wilson, C., Kuderer, and Takko)

AN ACT Relating to state and federal special education funding; amending RCW 28A.150.392, 28A.150.415, 28A.150.390, and 43.09.2856; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature intends to provide the funding necessary to support a comprehensive and responsive education system that fully addresses the needs of students with disabilities. Under the current funding model, students with disabilities are funded as basic education students first, with additional funding provided through a statewide multiplier intended to meet the additional needs of each student as established in the student's individualized education program. Additionally, a safety net administered by the office of the superintendent of public instruction is available for school districts that demonstrate significant extra need beyond what they receive from the base funding formula.

The legislature notes that school districts across the state have identified the need for additional resources to create the educational environment necessary to give every student with an individualized education program the opportunity to succeed. It is the legislature's intent to maintain the current funding structure for special education with necessary resources, and to collect data related to the numbers of students who fall into different cost categories of support. These additional data will inform whether an alternative system of funding may be necessary to better reflect current needs of our schools and our students. However, as these data are collected, the legislature also intends to provide immediate relief to school district special education programs by enhancing the supplemental funding school districts receive for every student in the program of special education and to provide easier access to the safety net when those base funds are not adequate.

**Sec.**  RCW 28A.150.392 and 2018 c 266 s 106 are each amended to read as follows:

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

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

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

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

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

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

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

(e) The committee shall then consider the extraordinary high cost needs of one or more individual ((~~special education~~)) students with disabilities under the individuals with disabilities act. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

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

(g) The committee shall then consider the extraordinary high cost needs of one or more individual ((~~special education~~)) students with disabilities under the individuals with disabilities act served in residential schools as defined in RCW 28A.190.020, programs for juveniles under the department of corrections, and programs for juveniles operated by city and county jails to the extent they are providing a secondary program of education ((~~for students enrolled in special education~~)).

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

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

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

(k) Beginning in school year 2019-20, the average per pupil expenditure used to determine safety net awards must exclude state safety net funding provided in this section.

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

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

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

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

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

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

(6) Beginning in fiscal year 2020, safety net appropriations provided in the omnibus operating appropriations act may not include federal funding thereby eliminating the federal expenditure ratio requirement for districts to expend three times the statewide average per pupil to qualify for state safety net awards. A state expenditure ratio requirement may be identified in the omnibus operating appropriations act but, if identified, it must be less than the federal expenditure ratio requirement.

**Sec.**  RCW 28A.150.415 and 2017 3rd sp.s. c 13 s 105 are each amended to read as follows:

(1) Beginning with the 2018-19 school year, the legislature shall begin phasing in funding for professional learning days for certificated instructional staff. At a minimum, the state must allocate funding for:

(a) One professional learning day in the 2018-19 school year;

(b) Two professional learning days in the 2019-20 school year; and

(c) Three professional learning days in the 2020-21 school year.

(2) The office of the superintendent of public instruction shall calculate each school district's professional learning allocation as provided in subsection (1) of this section separate from the minimum state allocation for salaries as specified in RCW 28A.150.410 and associated fringe benefits on the apportionment reports provided to each school district. The professional learning allocation shall be equal to the proportional increase resulting from adding the professional learning days provided in subsection (1) of this section to the required minimum number of school days in RCW 28A.150.220(5)(a) applied to the school district's minimum state allocation for salaries and associated fringe benefits for certificated instructional staff as specified in the omnibus operating appropriations act. Professional learning allocations shall be included in per-pupil calculations, such as special education, for programs funded on a per-student rate calculation.

(3) Nothing in this section entitles an individual certificated instructional staff to any particular number of professional learning days.

((~~(3)~~)) (4) The professional learning days must meet the definitions and standards provided in RCW 28A.415.430, 28A.415.432, and 28A.415.434.

(5) Federal special education allocations may be used to provide professional development to classified and certificated staff who provide educational services and supports to students with a disability, as provided in this section or under RCW 28A.413.060.

**Sec.**  RCW 28A.150.390 and 2018 c 266 s 102 are each amended to read as follows:

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

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

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

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by ((~~0.9609~~)) 1.00.

(3) As used in this section:

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

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

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or thirteen and five-tenths percent.

**Sec.**  RCW 43.09.2856 and 2018 c 266 s 406 are each amended to read as follows:

(1) Beginning with the 2019-20 school year, to ensure that school district local revenues are used solely for purposes of enriching the state's statutory program of basic education, the state auditor's regular financial audits of school districts must include a review of the expenditure of school district local revenues for compliance with RCW 28A.150.276, including the spending plan approved by the superintendent of public instruction under RCW 28A.505.240 and its implementation, and any supplemental contracts entered into under RCW 28A.400.200.

(2) If an audit under subsection (1) of this section results in findings that a school district has failed to comply with these requirements, then within ninety days of completing the audit the auditor must report the findings to the superintendent of public instruction, the office of financial management, and the education and operating budget committees of the legislature.

(3) The use of the state allocation provided for professional learning under RCW 28A.150.415 must be audited as part of the regular financial audits of school districts by the state auditor's office to ensure compliance with the limitations and conditions of RCW 28A.150.415.

(4)(a) The state auditor must conduct a performance audit of school districts by February 1, 2020, for the 2018-19 school year to include a review of the following:

(i) Special education revenues and the sources of those revenues, by school district;

(ii) Special education expenditures and the object of those expenditures, by school district;

(iii) The distribution of students receiving special education services with a cost of fifteen thousand dollars or more per student, per school year. These data must be organized by band of cost, beginning with fifteen thousand dollars and increasing in increments of one thousand dollars.

(b) Special education data reported for each school district through the performance audit under this subsection must be compiled and submitted to the education committees of the legislature by December 1, 2020.

NEW SECTION. **Sec.**  Section 5 of this act expires December 1, 2021.

**--- END ---**