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**HOUSE BILL 1910**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Representatives Pollet, Senn, Slatter, Kloba, Callan, Doglio, Fey, Orwall, Sells, Stanford, Thai, Reeves, Goodman, Morgan, and Frame

Read first time 02/05/19. Referred to Committee on Appropriations.

1 AN ACT Relating to special education funding; amending RCW  
2 28A.150.390 and 28A.150.392; creating a new section; and providing an  
3 effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that special  
6 education services are an essential part of basic education and are  
7 required to be provided by districts or public schools for every  
8 student who qualifies pursuant to state and federal law. The  
9 legislature finds that the thirteen and five-tenths percent cap on  
10 the percentage of special education students funded by the state is  
11 not consistent with the state's obligation to pay for basic education  
12 for every student. The legislature intends to provide additional  
13 state funding, remove funding limitations, and improve access to  
14 educational opportunities and outcomes for students enrolled in  
15 special education programs. The legislature intends to improve  
16 outcomes by providing resources and supports for students to be in  
17 the least restrictive environment as part of general education  
18 classrooms, offering services and therapies recommended by qualified  
19 professionals regardless of whether the district directly employs  
20 professionals for such therapeutic services, and training educators.

1       **Sec. 2.** RCW 28A.150.390 and 2018 c 266 s 102 are each amended to  
2 read as follows:

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

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

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

19       (b) A district's resident special education annual average  
20 ~~((full-time equivalent basic education))~~ enrollment, excluding  
21 students ages birth through four and those five year olds not yet  
22 enrolled in kindergarten, multiplied ~~((by the district's funded~~  
23 ~~enrollment percent, multiplied))~~ by the district's base allocation  
24 per full-time equivalent student, multiplied by ~~((0.9609))~~ 1.07.

25       (3) As used in this section:

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

30       (b) "Basic education enrollment" means enrollment of resident  
31 students including nonresident students enrolled under RCW  
32 28A.225.225 and students from nonhigh districts enrolled under RCW  
33 28A.225.210 and excluding students residing in another district  
34 enrolled as part of an interdistrict cooperative program under RCW  
35 28A.225.250.

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

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

4 **Sec. 3.** RCW 28A.150.392 and 2018 c 266 s 106 are each amended to  
5 read as follows:

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

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

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

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

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

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

26 (ii) Differences in program costs attributable to a district's  
27 best practical efforts to provide services and accommodations  
28 included in an individual education plan or to meet goals for  
29 including students in the least restrictive environment are a  
30 legitimate basis for awards and are consistent with the legislature's  
31 intent.

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

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

7 (ii) Differences in program costs attributable to a district's  
8 best practical efforts to provide services and accommodations  
9 included in an individual education plan or to meet goals for  
10 including students in the least restrictive environment are a  
11 legitimate basis for awards and are consistent with the legislature's  
12 intent.

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

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

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

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

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

37 (3) The superintendent of public instruction shall adopt such  
38 rules and procedures as are necessary to administer the special  
39 education funding and safety net award process. By December 1, 2018,  
40 the superintendent shall review and revise the rules to achieve full

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

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

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

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

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

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

34 (6) Beginning in fiscal year 2020, safety net appropriations  
35 provided in the omnibus operating appropriations act may not include  
36 federal funding thereby eliminating the federal expenditure ratio  
37 requirement for districts to expend three times the statewide average  
38 per pupil to qualify for state safety net awards. A state expenditure  
39 ratio requirement may be identified in the omnibus operating

1 appropriations act but, if identified, it must be less than the  
2 federal expenditure ratio requirement.

3 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect  
4 September 1, 2019.

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