

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5091

Chapter 387, Laws of 2019

66th Legislature
2019 Regular Session

SPECIAL EDUCATION FUNDING

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 28, 2019
Yeas 47 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 27, 2019
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 13, 2019 4:27 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5091** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 16, 2019

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5091

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

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

READ FIRST TIME 03/01/19.

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

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

5 NEW SECTION. **Sec. 1.** The legislature intends to provide the
6 funding necessary to support a comprehensive and responsive education
7 system that fully addresses the needs of students with disabilities
8 eligible for special education. Under the current funding model,
9 students with disabilities eligible for special education are funded
10 as basic education students first, with additional funding provided
11 through a statewide multiplier intended to meet the additional needs
12 of each student as established in the student's individualized
13 education program. Additionally, a safety net administered by the
14 office of the superintendent of public instruction is available for
15 school districts that demonstrate significant extra need beyond what
16 they receive from the base funding formula.

17 The legislature notes that school districts across the state have
18 identified the need for additional resources to create the
19 educational environment necessary to give every student with an
20 individualized education program the opportunity to succeed. It is
21 the legislature's intent to provide immediate relief to school

1 district special education programs by enhancing the supplemental
2 funding school districts receive for every student in the program of
3 special education and to provide easier access to the safety net when
4 those base funds are not adequate.

5 **Sec. 2.** RCW 28A.150.392 and 2018 c 266 s 106 are each amended to
6 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 superintendent of public instruction shall also provide technical
2 assistance to school districts in preparing and submitting special
3 education safety net applications.

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

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

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

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

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

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

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

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

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

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

35 and

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

37 (2) The office of the superintendent of public instruction shall
38 calculate each school district's professional learning allocation as
39 provided in subsection (1) of this section separate from the minimum

1 state allocation for salaries as specified in RCW 28A.150.410 and
2 associated fringe benefits on the apportionment reports provided to
3 each school district. The professional learning allocation shall be
4 equal to the proportional increase resulting from adding the
5 professional learning days provided in subsection (1) of this section
6 to the required minimum number of school days in RCW
7 28A.150.220(5)(a) applied to the school district's minimum state
8 allocation for salaries and associated fringe benefits for
9 certificated instructional staff as specified in the omnibus
10 operating appropriations act. Professional learning allocations shall
11 be included in per-pupil calculations, such as special education, for
12 programs funded on a per-pupil basis.

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

16 ~~((3))~~ (4) The professional learning days must meet the
17 definitions and standards provided in RCW 28A.415.430, 28A.415.432,
18 and 28A.415.434.

19 **Sec. 4.** RCW 28A.150.390 and 2018 c 266 s 102 are each amended to
20 read as follows:

21 (1) The superintendent of public instruction shall submit to each
22 regular session of the legislature during an odd-numbered year a
23 programmed budget request for special education programs for students
24 with disabilities. Funding for programs operated by local school
25 districts shall be on an excess cost basis from appropriations
26 provided by the legislature for special education programs for
27 students with disabilities and shall take account of state funds
28 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and
29 28A.150.415.

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

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

37 (b)(i) Subject to the limitation in (b)(ii) of this subsection
38 (2), a district's annual average ~~((full-time equivalent base~~
39 ~~education))~~ enrollment ~~((, multiplied by the district's funded~~

1 enrollment percent)) of resident students who are eligible for and
2 receiving special education, excluding students ages birth through
3 four and those five year olds not yet enrolled in kindergarten,
4 multiplied by the district's base allocation per full-time equivalent
5 student, multiplied by ~~((0.9609))~~ the special education cost
6 multiplier rate of:

7 (A) In the 2019-20 school year, 0.995 for students eligible for
8 and receiving special education.

9 (B) Beginning in the 2020-21 school year, either:

10 (I) 1.0075 for students eligible for and receiving special
11 education and reported to be in the general education setting for
12 eighty percent or more of the school day; or

13 (II) 0.995 for students eligible for and receiving special
14 education and reported to be in the general education setting for
15 less than eighty percent of the school day.

16 (ii) If the enrollment percent exceeds thirteen and five-tenths
17 percent, the excess cost allocation calculated under (b)(i) of this
18 subsection must be adjusted by multiplying the allocation by thirteen
19 and five-tenths percent divided by the enrollment percent.

20 (3) As used in this section:

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

26 (b) "Basic education enrollment" means enrollment of resident
27 students including nonresident students enrolled under RCW
28 28A.225.225 and students from nonhigh districts enrolled under RCW
29 28A.225.210 and excluding students residing in another district
30 enrolled as part of an interdistrict cooperative program under RCW
31 28A.225.250.

32 (c) "Enrollment percent" means the district's resident ~~((special~~
33 ~~education))~~ annual average enrollment of students who are eligible
34 for and receiving special education, excluding students ages birth
35 through four and those five year olds not yet enrolled in
36 kindergarten and students enrolled in institutional education
37 programs, as a percent of the district's annual average full-time
38 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. 5.** RCW 43.09.2856 and 2018 c 266 s 406 are each amended to
5 read as follows:

6 (1) Beginning with the 2019-20 school year, to ensure that school
7 district local revenues are used solely for purposes of enriching the
8 state's statutory program of basic education, the state auditor's
9 regular financial audits of school districts must include a review of
10 the expenditure of school district local revenues for compliance with
11 RCW 28A.150.276, including the spending plan approved by the
12 superintendent of public instruction under RCW 28A.505.240 and its
13 implementation, and any supplemental contracts entered into under RCW
14 28A.400.200.

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

21 (3) The use of the state allocation provided for professional
22 learning under RCW 28A.150.415 must be audited as part of the regular
23 financial audits of school districts by the state auditor's office to
24 ensure compliance with the limitations and conditions of RCW
25 28A.150.415.

26 (4) (a) The state auditor must conduct a financial or
27 accountability audit of each school district by June 1, 2020, for the
28 2018-19 school year to include a review of the following:

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

31 (ii) Special education expenditures and the object of those
32 expenditures, by school district.

33 (b) Special education data reported for each school district
34 through the audits under this subsection must be compiled and
35 submitted to the education committees of the legislature by December
36 1, 2020.

37 NEW SECTION. **Sec. 6.** Section 5 of this act expires December 1,
38 2021.

Passed by the Senate April 28, 2019.
Passed by the House April 27, 2019.
Approved by the Governor May 13, 2019.
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