H-1419.1

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**SUBSTITUTE HOUSE BILL 1109**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Senn, Stonier, Rude, Taylor, Slatter, Callan, Doglio, Orwall, Caldier, Simmons, Timmons, Reeves, Couture, Thai, Bergquist, Ortiz-Self, Pollet, Santos, Kloba, and Davis)

AN ACT Relating to providing funding for school districts to conduct extraordinary numbers of special education eligibility determinations and to subsequently develop individualized education programs for the eligible students; amending RCW 28A.150.392; creating new sections; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature acknowledges that school districts and other recipients of federal individuals with disabilities education act grants and state appropriations for special education programs are obligated to conduct timely initial student evaluations for special education and to timely develop individualized education programs for eligible three-year olds through 21-year olds, as provided in law. While the legislature recognizes that initial student evaluations for special education are not often conducted during the summer, it finds that there is no exception in the individuals with disabilities education act that suspends these required activities during summer breaks. Washington administrative rules do not direct recipients of these funds to perform the required activities during summer breaks.

(2) The legislature recognizes that students are referred for special education initial evaluations throughout the school year, including within the final weeks of the school year. When the initial evaluation process is paused for summer breaks, it delays the determination of whether the student is eligible for special education to the following school year. This results in delayed provision of special education and related services and can result in reorganization of classroom assignments, both of which cause unnecessary frustrations at the beginning of the school year. In addition, for children under age five who rely on school districts to conduct their evaluations, a delay in individualized education program development and special education service provision can have particularly negative impacts on child development. Finally, because of adverse childhood experiences, isolation, health issues, and related trauma from the COVID-19 pandemic, which resulted in reduced engagement in early learning and pediatric visits and fewer children identified as needing special education evaluations, it is anticipated that extraordinary numbers of children need evaluations and individualized education programs so that they can receive special education and related services.

(3) Therefore, the legislature intends to provide funding for public schools to conduct extraordinary numbers of initial evaluations for special education and to subsequently develop individualized education programs for the eligible students, first, by providing reimbursements for the cost of these activities conducted during the summers of 2023, 2024, and 2025, and second, by expanding the uses of the special education safety net to these purposes.

NEW SECTION. **Sec.**  (1) The office of the superintendent of public instruction shall reimburse school districts, charter schools, and state-tribal education compact schools up to:

(a) $3,000 per eligible student for conducting an initial evaluation for special education; and

(b) $3,000 per eligible student for development of individualized education programs including, if needed, assistive technology devices and services.

(2) Reimbursements provided under this section are only for activities described in subsection (1) of this section that are conducted during the months of July through September.

(3) The office of the superintendent of public instruction shall establish processes and procedures to implement this section.

(4) School districts, charter schools, and state-tribal education compact schools without capacity to conduct the activities described in subsection (1) of this section during the time frame defined in subsection (2) of this section may contract for these activities to be completed by educational service districts or private organizations with expertise.

(5)(a) At the time and in the manner required by the office of the superintendent of public instruction, recipients of the reimbursements provided under this section must submit information as required by this subsection. Recipients must submit the number of hours of staff time spent conducting initial student evaluations, developing individualized education programs, and performing related administrative activities, disaggregated by staff type. Recipients must also submit the number of initial student evaluations conducted and individualized education programs developed, per month, between September 2021 and September 2024, disaggregated by student grade level or age, if in preschool.

(b) Annually by December 1st, and in compliance with RCW 43.01.036, the office of the superintendent of public instruction must report to the appropriate committees of the legislature with a summary of the information submitted under (a) of this subsection and a commentary on the effectiveness of the reimbursements.

(6) For the purposes of this section, "eligible student" means a student with an incomplete initial special education evaluation as of June 30th, of the current year, who was referred for an initial evaluation prior to June 30th of the current year.

(7) This section expires June 30, 2026.

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

(1)(a) To the extent necessary, 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 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 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), and (h) 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 students eligible for and receiving special education. 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 students eligible for and receiving special education served in residential schools as defined in RCW ((~~28A.190.020~~)) 28A.190.005, 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.

(h) Using criteria developed by the committee, the committee shall then consider the extraordinary costs associated with conducting extraordinarily high numbers of initial evaluations for special education and related services, and subsequent development of individualized education programs for the eligible students, during a school year. Safety net awards under this subsection (2)(h) shall be adjusted to reflect amounts awarded under (e) and (f) of this subsection.

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

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

NEW SECTION. **Sec.**  Section 3 of this act takes effect July 1, 2026.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

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