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**HOUSE BILL 2174**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Representatives Pollet, Bergquist, Reed, Berry, Timmons, Chapman, Ryu, Peterson, Callan, Berg, Paul, Wylie, Alvarado, Farivar, Nance, Macri, Reeves, and Davis; by request of Superintendent of Public Instruction

AN ACT Relating to funded special education enrollment; amending RCW 28A.150.390; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that students receiving special education services are entitled, under both federal and state law, to a free appropriate public education that enables their full participation.

The legislature also finds that a cap and enrollment limit on the number of students receiving special education services that generate state special education funding is not consistent with the state's duty to provide a free appropriate public education. An enrollment limit that fails to provide equity for all students with disabilities affects all students in public schools.

The legislature finds that there is significant evidence that the prevalence of disabilities amongst children, particularly amongst vulnerable populations and communities with disparately poor health outcomes and access to health services, coupled with evidence of obstacles and delays in evaluating students for services to be provided pursuant to individual education plans, may often exceed 15 percent of students in a district. The legislature intends to fund districts to fully serve those students identified as having disabilities following evaluation when evidence supports that the district is properly evaluating and identifying needed services to provide all students with free and appropriate education.

The legislature further finds that school districts pay for special education services with local funding, creating an inequitable situation for school districts and students. The legislature supports a system of funding that does not require school districts to generate local funding to meet their obligation to provide special education services.

**Sec.**  RCW 28A.150.390 and 2023 c 417 s 3 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 head count enrollment of students ages three and four and those five year olds not yet enrolled in kindergarten who are eligible for and receiving special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.2;

(b)(i) Subject to the limitation in (b)(ii) of this subsection (2), a district's annual average enrollment of resident students who are eligible for and receiving special education, excluding students ages three and four and those five year olds not yet enrolled in kindergarten, multiplied by the district's base allocation per full-time equivalent student, multiplied by the special education cost multiplier rate of:

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

(I) 1.0075 for students eligible for and receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or

(II) 0.995 for students eligible for and receiving special education and reported to be in the general education setting for less than 80 percent of the school day;

(B) Beginning in the 2023-24 school year, either:

(I) 1.12 for students eligible for and receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or

(II) 1.06 for students eligible for and receiving special education and reported to be in the general education setting for less than 80 percent of the school day.

(ii) If the enrollment percent exceeds 15 percent, school districts must include a spending plan of current and future activities related to identification of students with disabilities, analysis of identification processes, a breakout of the types of disabilities and how that relates to likely prevalence in the community served, and trends to the office of the superintendent of public instruction for approval through the school district's annual application for special education funds. If a spending plan is not approved, the excess cost allocation calculated under (b)(i) of this subsection must be adjusted by multiplying the allocation by 15 percent divided by the enrollment percent.

(3) As part of ongoing data collection, the superintendent of public instruction shall continue to use enrollment data as one of the criteria for selecting local education agencies for additional monitoring activities, including desk reviews and on-site visits, in accordance with federal requirements of the individuals with disabilities education act, Title 20 U.S.C. Sec. 1400 et seq.

(4) The superintendent of public instruction shall annually provide the state performance plan to the education committees of the house of representatives and the senate. This report must detail data trends and identify school districts that are above a 15 percent special education enrollment percent and those districts requiring universal and targeted supports to address over-identification of students with disabilities.

(5) The state auditor, in consultation with the office of the superintendent of public instruction, shall conduct a review of the prevalence of disabilities and whether the provisions and funding for evaluating students and providing services reflects the prevalence of disabilities, including whether any populations are disparately underevaluated or underserved.

(6) The superintendent of public instruction may adopt rules to implement this section.

(7) 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 annual average enrollment of students who are eligible for and receiving special education, excluding students ages three and four and those five year olds not yet enrolled in kindergarten and students enrolled in institutional education programs, as a percent of the district's annual average full-time equivalent basic education enrollment.

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