

HOUSE BILL REPORT

E2SSB 5311

As Reported by House Committee On:

Education
Appropriations

Title: An act relating to special education funding formula.

Brief Description: Concerning special education funding formula.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Braun, Dhingra, Hunt, Kuderer, Mullet, Nguyen, Nobles, Pedersen, Torres and Wilson, C.; by request of Office of Financial Management).

Brief History:

Committee Activity:

Education: 3/14/23, 3/20/23 [DP];

Appropriations: 4/1/23, 4/4/23 [DPA].

Brief Summary of Engrossed Second Substitute Bill (As Amended By Committee)

- Increases special education excess cost multipliers for kindergarten through age 21 (K-21) over four school years to 1.059 for students who spend at least 80 percent of the school day in a general education setting, and 1.043 for those who spend less than 80 percent by the 2026-27 school year.
- Increases the enrollment limit for special education funding over several years until the 2027-28 school year, when the limit is removed.
- Reduces the threshold for high-need individuals to access the special education safety net from 2.3 to 2.2 times the average per-pupil expenditure.
- Requires the Office of the Superintendent of Public Instruction to review data for disproportionate identification of students and assist school districts to support inclusionary teaching practices.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires up to 50 percent of a special education student's base education allocation to be used for special education if district special education expenditures exceeded revenues in the previous year, beginning July 2025.
- Requires the Joint Legislative Audit and Review Committee and the State Auditor to conduct a performance audit of the state's special education system.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass. Signed by 14 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bergquist, Callan, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

Staff: Megan Wargacki (786-7194).

Background:

Excess Cost Formula and Funding Cap.

The state allocates funding for a program of special education for students with disabilities using an excess cost formula that multiplies the base allocation of a charter school, state-tribal education compact school, or school district by an excess cost multiplier.

Students receiving special education services who are in kindergarten through age 21 (K-21) are funded based on their inclusion in the general education setting as follows:

- For students receiving special education and reported to be in the general education setting for 80 percent or more of the school day, the excess cost multiplier is 1.0075.
- For students receiving special education and reported to be in the general education setting for less than 80 percent of the school day, the excess cost multiplier is 0.995.

The K-21 students receiving special education services generate funding through both the basic education allocation (BEA) and the special education excess cost formula. In addition to the excess costs allocations, the OSPI redirects a portion of the BEA for special education purposes based on the percentage of time a student receiving special education services is reported to be outside the general education setting. Additional BEA beyond the redirected amount may also be used for special education services.

For K-21 students, the excess cost allocations are capped at 13.5 percent of the full-time equivalent student enrollment.

Students receiving special education services prior to kindergarten who are ages 3 through 5

are funded based on an excess cost multiplier of 1.15 percent. These students are excluded from the 13.5 percent enrollment funding cap.

Safety Net Funding.

Safety net funding is available to charter schools, state-tribal education compact schools, and school districts that need more than what is provided through the special education excess cost formula. The Safety Net Oversight Committee, appointed by the Office of the Superintendent of Public Instruction (OSPI) awards funding based on a determination of need. Among other conditions and limitations, it is specified that differences in program costs that are attributable to service delivery choice are not a legitimate basis for safety net awards.

The committee may award safety net funding to applicants for high-need individuals (HNIs) eligible for and receiving special education services and for community characteristics that draw a larger number of students in need of special education services. An HNI is eligible for a safety net award if the student's individualized education program costs exceed 2.3 times the average per-pupil expenditure as defined in federal law.

Professional Development.

Funding has been provided in the last two biennial operating budgets for professional development to promote the inclusion of special education students within the general education classroom.

Summary of Bill:

Special Education Funding.

Excess Cost Formula. The special education excess cost multiplier for students receiving special education services who are in kindergarten through age 21 (K-21) is increased to:

- 1.12 for students receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or
- 1.06 for students receiving special education and reported to be in the general education setting for less than 80 percent of the school day.

Students receiving special education services prior to kindergarten who are ages 3 through 5 are funded based on an excess cost multiplier of 1.2 percent.

Funding Cap. For K-21 students, the excess cost allocations are capped at 15 percent of the full-time equivalent (FTE) student enrollment.

Safety Net Funding. When making its determination of need, the Safety Net Oversight Committee is no longer required to exclude differences in program costs that are attributable to service delivery choices.

A high-need student is eligible for safety net awards from state funding if the student's individualized education program (IEP) costs exceed either:

- 2 times the average per-pupil expenditure, for charter schools, state-tribal education compact schools, and school districts with fewer than 1,000 FTE students; or
- 2.2 times the average per-pupil expenditure, for charter schools, state-tribal education compact schools, and school districts with 1,000 or more FTE students.

The "average per-pupil expenditure" for high-need student calculations may not include safety net funding.

Cost Accounting.

It is the policy of the state that for purposes of state funding allocations, students eligible for and receiving special education services generate the full basic education allocation and, as a class, are to receive the benefits of this allocation for the entire school day whether the student is placed in the general education setting or another setting.

The Superintendent of Public Instruction (SPI) must develop an allocation and cost accounting methodology that ensures state general apportionment funding for students who receive their basic education services primarily in an alternative classroom or setting is prorated and allocated to the special education program and accounted for before calculating special education excess costs. Nothing requires districts to provide services in a manner inconsistent with the student's IEP or other than in the least restrictive environment as determined by the IEP team.

The SPI must provide the Legislature with an accounting of prorated general apportionment allocations provided to special education programs broken down by school district by January 1, 2024, and then every January 1 of odd-numbered years thereafter.

Special Education Ombuds.

Subject to appropriation, the Education Ombuds must delegate and certify at least one Special Education Ombuds to serve each educational service district region. The Education Ombuds must ensure that the Special Education Ombuds selected are appropriate to the community in which they serve and hold the same qualifications as required of the Education Ombuds. The Education Ombuds may not contract with the Superintendent of Public Instruction, or any school, school district, educational service district, or current employee of a school, school district, educational service district, or the Office of the Superintendent of Public Instruction for the provision of Special Education Ombuds services.

Special Education Ombuds must serve as a resource for students eligible for special education services and their parents, including:

- advocating on behalf of the student for a free appropriate public education from the public school system that emphasizes special education and related services that are provided in the least restrictive environment, designed to meet the student's unique

- needs, appropriately ambitious and reasonably calculated to enable a student to make progress in light of the student's circumstances, and addressing the student's further education, employment, and independent living goals; and
- assisting students and parents with IEP development, including preparing for a meeting to develop or update a student's IEP, attending IEP meetings to help present the parents' concerns, negotiate components that meet the parents' goals and requests, or otherwise assist the parent in understanding and navigating the IEP process, and attending an IEP meeting to assist in writing an appropriate program when a parent opts out or otherwise cannot attend.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The state needs to step up and address special education in a purposeful, intentional way, including by providing more funding. The state needs to meet all the needs of students.

The experience of being in special education is not always pleasant for parents or students. Some students are segregated from the general education setting and their families must fight for them to be integrated into the regular classroom. Some students regressed during the pandemic because services were not available, or funding was lacking. Special education students can graduate and go on to careers when they are provided the services they need.

The financial portion of the bill will be negotiated in the future. It is known what school districts receive from the state and from the federal government, and what school districts use from local levies to support special education needs.

The special education enrollment cap is a concern because there may be significant misdiagnosis of students for special education. The cap should not be used as a way for school districts to get more money for the district, rather districts should only be identifying children who qualify due to a disability. Most school districts are well under the cap. It is not true that the state only serves up to 13.5 percent of students with disabilities. In a small school district, one or two students can make a school district exceed the cap. When there are more students who are eligible for special education services, the school district also serves those students.

Service delivery choices have not been able to be considered as part of determining whether a school district should receive a safety net award, but this bill allows the safety net committee to consider service delivery choices, such as providing additional paraeducators to assist students. The safety net committee should be able to adjust the award after considering resources that are available in some school districts but not in other districts.

There are areas of the state that attract families with students who have disabilities due to greater availability of services. In these areas, parents may have resources to access advocates for their students; advocates which are not available to other parents. In addition, some large school districts have many staff and many students, and many of the students speak different languages. Students should not be translating their individualized education program for their parents.

A few entities were reviewed for provision of advocacy services, but most do not have reach across the entire state. The educational service districts cover the entire state, so having a special education advocate in each educational service district would be helpful. If the Office of the Education Ombuds is not the right entity to host the advocates, then another entity can be selected.

This bill would allow students to have greater access to specialized programs that are not available under the current funding model. The policy in this bill does not address everything, but it is a step to provide students an equitable education.

(Opposed) None.

(Other) The bill does not go far enough but is a critical first step in special education funding by providing critical resources to serve special education students.

A free appropriate education is a civil right and so access to a meaningful education must be provided to every student with a disability. The state has segregated and excluded some students with disabilities. These students are not a problem or a burden, rather the system was created to exclude these students. Students say it is hard to learn when they do not have access to learn. There should be more support for inclusionary practices and efforts to guard against disproportionate identification.

Students have a wide variety of disabilities and require a range of services and other resources. Lack of funding, staff, training, etc. affects these students. Families must fight for additional services, recovery hours, etc. Some families do not have access to private services and providers. Some school districts make decisions based on the budget, rather than on what each student needs. School districts need additional resources to support these students. The state should consider whether the bill provides enough resources.

Appropriate evaluations are the most crucial part of the special education processes. Evaluation requests are denied, even for students with obvious or already diagnosed

disabilities, which can exacerbate mental health conditions for students.

Some students are bullied and their mental health is affected. The trauma spans generations. Students who are not able to be engaged in school are not able to become what they want to become. Students need to develop relationships with school staff.

Families need to be meaningfully included in the process to support students with disabilities. Families know their students and can identify strategies to reduce behavioral incidents. Families need to be provided language support beyond the minimum requirements. An advocate can guide families and provide support to help families participate in a meaningful way. Schools need to be accessible in all forms.

Special education advocates should be provided to support families in accessing special education services for their students. The state should tap into existing community partnerships with established parent connections to support students across the state. The special education advocate should be independent from the Office of the Superintendent of Public Instruction.

Persons Testifying: (In support) Senator Lisa Wellman, prime sponsor; Julie Barrett, Conservative Ladies of Washington; Devony Audet; Jeremiah Audet; and Leslie Hamada, Kent School District.

(Other) Samantha Fogg, Seattle Council Parent Teacher Student Association; Tanya Aggar, Washington Parent Teacher Association; Jana Parker, Seattle Special Education Parent Teacher Student Association; Melissa Spiker; Erica Hieggelke; Dr. Brent Jones, Seattle Public Schools; Tania May, Office of Superintendent of Public Instruction; Dr. Sue Ann Bube, Mercer Island School District; Ian Fogg, Seattle Public Schools; and Jim Kowalkowski, Rural Education Center.

Persons Signed In To Testify But Not Testifying: Dan Steele, Washington Association of School Administrators and Washington Association of School Business Officials; Michele Campbell; Ramona Hattendorf, The Arc of King County; Jen Chong Jewell, Office of the Superintendent of Public Instruction Special Education Advisory Council; Diana Stadden, The Arc of Washington State.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Springer, Steele, Stonier and Tharinger.

Staff: James Mackison (786-7104).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Education:

The amended bill strikes all provisions of the underlying bill and replaces them with the following special education funding policies, which were also adopted in Engrossed Substitute House Bill 1436.

Excess cost multipliers for special education are increased as follows:

- for kindergarten through age 21 (K-21) students spending 80 percent or more of the school day in a general education setting:
 - for the 2023-24 school year, 1.035;
 - for the 2024-25 school year, 1.04;
 - for the 2025-26 school year, 1.043; and
 - beginning in the 2026-27 school year, 1.059; and
- for K-21 students spending less than 80 percent of the school day in a general education setting:
 - for the 2023-24 school year, 1.02;
 - for the 2024-25 school year, 1.025;
 - for the 2025-26 school year, 1.028; and
 - beginning in the 2026-27 school year, 1.043.

The 13.5 percent enrollment limit is gradually increased:

- to 14 percent in the 2023-24 school year;
- to 14.5 percent in the 2024-25 school year;
- to 15 percent in the 2025-26 and 2026-27 school years; and
- beginning in the 2027-28 school year, the enrollment limit is removed.

The threshold for high-need individuals to access the special education safety net is reduced from 2.3 to 2.2 times the statewide average per-pupil expenditure.

Beginning July 1, 2025, the use of basic education allocations for special education purposes by special education students is codified. The Office of the Superintendent of Public Instruction (OSPI) is required to redirect up to 50 percent of a school district's special education students' basic education allocations for special education if special education expenditures exceeded revenues in the previous year.

The OSPI is required to:

- annually review data from local education agencies (LEAs) to ensure that disproportionate percentages of students are not identified for special education services; and
- provide technical assistance and professional development opportunities to LEAs and community partners to promote inclusionary practices and help safeguard against

overidentification and disproportionality.

The Joint Legislative Audit and Review Committee (JLARC) and the State Auditor (SA) are required to conduct a performance audit of the state's special education system on several topics, including options for funding formula changes. The JLARC and the SA are required to consult with several entities, including the OSPI, in their work. Use of contractors for any aspect of the work is authorized. State and local agencies are required to provide any records within four months of a request to the JLARC and SA and notify the requestor if the request does not comply with federal privacy laws. By December 31, 2023, the JLARC and the SA are required to identify a lead agency for each component of the audit, and any aspects of the work being performed by contractors. The study's findings and recommendations must be reported to the Governor and the committees of the Legislature with jurisdiction over fiscal matters and special education by November 30, 2024.

An intent section is also included stating that the purpose of the bill is to fully fund special education services in the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) The systemic approach to special education funding in the bill is appreciated. School districts have significant shortfalls in funding to serve special education students, which they are forced to fund with their local enrichment levies. Please support this funding level this session. It will benefit the entire system.

This is a much-needed significant investment in our special education students. Special education students bring so much to the kindergarten through grade 12 system. Students should not have to worry whether a school district is able to pass a levy to receive services. Larger school districts in the eastern and southwestern part of the state report paying anywhere from \$4.5 million to \$16 million each for special education from local levies. School districts in Pierce and south King counties are paying tens of millions of dollars from local levies for special education, which is a basic education program and a federal requirement. The Legislature should step up and pay to support students' rights to receive these services. Increase the multipliers and enrollment threshold as high as possible. Some school districts are above 15 percent enrollment in special education.

The funding levels are good, but please add the policy that fully removes the enrollment limit that penalizes rural communities. The accounting requirements in this version are

preferred so that the money follows the student. Students should not lose funding because of the setting in which they receive instruction. The ombuds policy is welcomed, but the positions will be supporting thousands of students, limiting what they can realistically do. Ombuds should not replace parents.

The Superintendent requested to fully fund special education. This is a significant step in that direction. Immediate increases to the cap, the enrollment limit, and lower safety net threshold are important. The funding level should match the bill, but include a full removal of the cap. The policy is better in Engrossed Substitute House Bill 1436, but the funding level is better in this bill. Without special education, these students cannot access basic education. Those with disabilities have been portrayed as burdens to schools, but they are not the problem. The system and funding model is the problem.

Staff, parents, and administrators have been unified in making special education a top priority. Funding should be aligned with the services being provided. Immediate changes in the formula are needed. The multiplier will reduce the \$465 million funding gap that disproportionately impacts large school districts. Local levies should be used for locally determined enhancements to basic education, not special education.

(Opposed) None.

(Other) There is support for the higher multiplier and the funding level reflected in the bill. The enrollment limit should be fully removed as soon as possible, with the phaseout beginning at 15 percent. All students should have access to the services they need to be successful.

Persons Testifying: (In support) Marissa Rathbone, Washington State School Directors' Association; Ramona Hattendorf, The Arc of King County; Melissa Gombosky, Central Valley, Spokane, Richland, Evergreen and Vancouver Public Schools; Mikhail Cherniske, Office of Superintendent of Public Instruction; Samantha Fogg, Seattle Council of Parent Teacher Student Association; Djibril Diop, Washington Education Association; Harlan Gallinger, Issaquah School District; and Charlie Brown, Pierce County Superintendents, The School Alliance, and Federal Way School District.

(Other) Lizzy Sebring, Washington State Parent Teacher Association.

Persons Signed In To Testify But Not Testifying: None.