
ENGROSSED SUBSTITUTE HOUSE BILL 1436

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Pollet, Berry, Simmons, Farivar, Orwall, Street, Caldier, Alvarado, Ryu, Reeves, Ortiz-Self, Christian, Kloba, Duerr, Stonier, Bateman, Lekanoff, Berg, Riccelli, Fosse, Macri, Bergquist, Reed, Doglio, and Chopp; by request of Superintendent of Public Instruction)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to special education funding; amending RCW
2 28A.150.390 and 28A.150.392; adding a new section to chapter 28A.150
3 RCW; adding a new section to chapter 28A.155 RCW; creating new
4 sections; providing effective dates; and providing an expiration
5 date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that students
8 receiving special education services are entitled, under both federal
9 and state law, to a free appropriate public education that enables
10 their full participation.

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

17 The legislature further finds that school districts pay for
18 special education services with local funding, creating an
19 inequitable situation for school districts and students. The
20 legislature supports a system of funding that does not require school

1 districts to generate local funding to meet their obligation to
2 provide special education services.

3 The legislature finds that along with reliable and sufficient
4 state funding, receiving special education services in the least
5 restrictive environment possible is crucial to student success. A
6 recent large-scale study found that students who spend at least 80
7 percent of their day in a general education setting improved their
8 reading scores by 24 points and math scores by 18 points compared to
9 peers with similar disabilities in less inclusive settings.

10 The legislature finds that the documented prevalence of
11 disabilities amongst children, particularly amongst vulnerable
12 populations and communities with disparately poor health outcomes and
13 access to health services, indicates that the state should improve
14 access to evaluations for disabilities.

15 The legislature finds that special education is fully part of the
16 state's statutory program of basic education that is deemed by the
17 legislature to implement Article IX, section 1 of the state
18 Constitution.

19 The legislature, therefore, intends to fully fund special
20 education services by removing the 13.5 percent cap, eliminating the
21 cap entirely in the 2027-28 school year, and increasing the tiered
22 special education multipliers for elementary and secondary students,
23 thereby giving every school district a funding increase.

24 The legislature intends to require a comprehensive study of
25 funding and services for students with disabilities completed prior
26 to the 2025 legislative session to understand if the state is
27 appropriately identifying students with disabilities, identify
28 funding and service gaps, and ensure that funding provided by the
29 state to school districts, charter schools, and other entities for
30 services are being used to meet the needs of students with
31 disabilities.

32 **Sec. 2.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to
33 read as follows:

34 (1) The superintendent of public instruction shall submit to each
35 regular session of the legislature during an odd-numbered year a
36 programmed budget request for special education programs for students
37 with disabilities. Funding for programs operated by local school
38 districts shall be on an excess cost basis from appropriations
39 provided by the legislature for special education programs for

1 students with disabilities and shall take account of state funds
2 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and
3 28A.150.415.

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

6 (a) A district's annual average headcount enrollment of students
7 ages three and four and those five year olds not yet enrolled in
8 kindergarten who are eligible for and receiving special education,
9 multiplied by the district's base allocation per full-time equivalent
10 student, multiplied by 1.15;

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

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

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

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

24 ~~(II) 0.995 for))~~ .:

25 (I) In the 2023-24 school year, 1.035;

26 (II) In the 2024-25 school year, 1.04;

27 (III) In the 2025-26 school year, 1.043;

28 (IV) Beginning in the 2026-27 school year, 1.059; or

29 (B) For students eligible for and receiving special education and
30 reported to be in the general education setting for less than
31 ~~((eighty))~~ 80 percent of the school day:

32 (I) In the 2023-24 school year, 1.02;

33 (II) In the 2024-25 school year, 1.025;

34 (III) In the 2025-26 school year, 1.028;

35 (IV) Beginning in the 2026-27 school year, 1.043.

36 (ii) ~~((If))~~ Through the 2026-27 school year, if the enrollment
37 percent exceeds ~~((thirteen and five tenths percent))~~ the funded
38 enrollment limit, the excess cost allocation calculated under (b)(i)
39 of this subsection must be adjusted by multiplying the allocation by

1 (~~thirteen and five-tenths percent~~) the funded enrollment limit
2 divided by the enrollment percent.

3 (3) As used in this section:

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

9 (b) "Basic education enrollment" means enrollment of resident
10 students including nonresident students enrolled under RCW
11 28A.225.225 and students from nonhigh districts enrolled under RCW
12 28A.225.210 and excluding students residing in another district
13 enrolled as part of an interdistrict cooperative program under RCW
14 28A.225.250.

15 (c) "Enrollment percent" means the district's resident annual
16 average enrollment of students who are eligible for and receiving
17 special education, excluding students ages three and four and those
18 five year olds not yet enrolled in kindergarten and students enrolled
19 in institutional education programs, as a percent of the district's
20 annual average full-time equivalent basic education enrollment.

21 (d) "Funded enrollment limit" means:

22 (i) Through the 2022-23 school year, 13.5 percent;

23 (ii) In the 2023-24 school year, 14 percent;

24 (iii) In the 2024-25 school year, 14.5 percent;

25 (iv) In the 2025-26 and 2026-27 school years, 15 percent;

26 (v) Beginning in the 2027-28 school year, all students eligible
27 for and receiving special education must generate excess cost
28 allocations under this section.

29 **Sec. 3.** RCW 28A.150.392 and 2019 c 387 s 2 are each amended to
30 read as follows:

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

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

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

4 (a) The committee shall award additional funds for districts that
5 can convincingly demonstrate that all legitimate expenditures for
6 special education exceed all available revenues from state funding
7 formulas.

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

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

13 (d) In the determination of need, the committee shall require
14 that districts demonstrate that they are maximizing their eligibility
15 for all state revenues related to services for students eligible for
16 special education and all federal revenues from federal impact aid,
17 medicaid, and the individuals with disabilities education act-Part B
18 and appropriate special projects. Awards associated with (e) and (f)
19 of this subsection shall not exceed the total of a district's
20 specific determination of need.

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

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

33 (g) The committee shall then consider the extraordinary high cost
34 needs of one or more individual students eligible for and receiving
35 special education served in residential schools as defined in RCW
36 (~~28A.190.020~~) 28A.190.005, programs for juveniles under the
37 department of corrections, and programs for juveniles operated by
38 city and county jails to the extent they are providing a secondary
39 program of education.

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

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

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

10 (3) The superintendent of public instruction shall adopt such
11 rules and procedures as are necessary to administer the special
12 education funding and safety net award process. By December 1, 2018,
13 the superintendent shall review and revise the rules to achieve full
14 and complete implementation of the requirements of this subsection
15 and subsection (4) of this section including revisions to rules that
16 provide additional flexibility to access community impact awards.
17 Before revising any standards, procedures, or rules, the
18 superintendent shall consult with the office of financial management
19 and the fiscal committees of the legislature. In adopting and
20 revising the rules, the superintendent shall ensure the application
21 process to access safety net funding is streamlined, timelines for
22 submission are not in conflict, feedback to school districts is
23 timely and provides sufficient information to allow school districts
24 to understand how to correct any deficiencies in a safety net
25 application, and that there is consistency between awards approved by
26 school district and by application period. The office of the
27 superintendent of public instruction shall also provide technical
28 assistance to school districts in preparing and submitting special
29 education safety net applications.

30 (4) On an annual basis, the superintendent shall survey districts
31 regarding their satisfaction with the safety net process and consider
32 feedback from districts to improve the safety net process. Each year
33 by December 1st, the superintendent shall prepare and submit a report
34 to the office of financial management and the appropriate policy and
35 fiscal committees of the legislature that summarizes the survey
36 results and those changes made to the safety net process as a result
37 of the school district feedback.

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

1 (a) One staff member from the office of the superintendent of
2 public instruction;

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

5 (c) One or more representatives from school districts or
6 educational service districts knowledgeable of special education
7 programs and funding.

8 (6) Beginning in the ((2019-20)) 2023-24 school year, a high-need
9 student is eligible for safety net awards from state funding under
10 subsection (2)(e) and (g) of this section if the student's
11 individualized education program costs exceed two and ((three)) two-
12 tenths times the average per-pupil expenditure as defined in Title 20
13 U.S.C. Sec. 7801, the every student succeeds act of 2015.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.150
15 RCW to read as follows:

16 Beginning July 1, 2025:

17 (1) It is the policy of the state that for purposes of state
18 funding allocations, students eligible for and receiving special
19 education generate the full basic education allocation under RCW
20 28A.150.260 and, as a class, are to receive the benefits of this
21 allocation for the entire school day, as defined in RCW 28A.150.203,
22 whether the student is placed in the general education setting or
23 another setting.

24 (2) The superintendent of public instruction must maintain a full
25 cost method of excess cost accounting to account for expenditures
26 beyond amounts provided through the special education funding formula
27 under RCW 28A.150.390. This method of accounting must shift the
28 following portions of a school district's general apportionment
29 revenue for students eligible for and receiving special education to
30 the school district's special education program for expenditure.

31 (a) A percentage of a school district's base allocation as
32 defined in RCW 28A.150.390(3) for students eligible for and receiving
33 special education based on their percentage of time served in a
34 special education setting;

35 (b) To the extent that state special education expenditures in
36 the previous year exceeded state funding provided for that year under
37 RCW 28A.150.390, 28A.150.392, and methods for redirecting general
38 apportionment revenue based on the students' percentage of time
39 served in a special education setting, up to 50 percent of the school

1 district's base allocation as defined in RCW 28A.150.390(3) for
2 students eligible for and receiving special education combining
3 portions under (a) of this subsection.

4 (3) Unless otherwise prohibited by law, nothing in this section
5 prohibits school districts from using other funding and state
6 allocations above the amounts provided under RCW 28A.150.390 and
7 subsection (2) of this section to serve students eligible for and
8 receiving special education.

9 (4) The legislature must review any findings and recommendations
10 from the report and audit required under section 6 of this act and
11 adjust formulas in this section as appropriate.

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.155
13 RCW to read as follows:

14 (1) The superintendent of public instruction shall annually
15 review data from local education agencies, including the percentage
16 of students receiving special education services, to ensure there is
17 not a disproportionate identification of students, as defined by the
18 superintendent of public instruction in accordance with federal
19 requirements of the individuals with disabilities education act, 20
20 U.S.C. Sec. 1400.

21 (2) The office of the superintendent of public instruction shall
22 provide technical assistance to school districts experiencing issues
23 related to disproportionality and will make available professional
24 development opportunities statewide to support local education
25 agencies, schools, and community partners in promoting inclusionary
26 teaching practices within a multitiered system of supports framework
27 to help safeguard against over-identification and other issues
28 related to disproportionality.

29 NEW SECTION. **Sec. 6.** (1) The joint legislative audit and review
30 committee and the state auditor must collaborate to conduct a
31 performance audit of the state's system of providing special
32 education services to students with disabilities. The joint
33 legislative audit and review committee and the state auditor may
34 divide responsibility for the work and reporting required in this
35 section as appropriate, and contract with qualified third-party
36 researchers or higher education institutions to perform any aspect of
37 the report and audit. The report and audit must address:

1 (a) The prevalence of disabilities and whether the provisions and
2 funding for evaluating students and providing services reflects the
3 prevalence of disabilities, including whether any populations are
4 disparately underevaluated or underserved;

5 (b) The degree to which changes in funding formulas intended to
6 encourage increased inclusion are successful and whether the state
7 and school districts are utilizing best practices to improve
8 inclusion;

9 (c) Whether the changes in evaluation timelines or increases in
10 the funded enrollment limit have resulted in funding for students who
11 do not have disabilities or in excess of districts' costs to serve
12 students with disabilities;

13 (d) Whether districts are appropriately accounting for and
14 reporting use of basic education allocations for students with
15 disabilities, including if statutory expectations for use of funds
16 are being met;

17 (e) The amount of funding from levies or other local sources that
18 school districts continue to utilize under current accounting
19 methodologies in order to meet obligations to provide free and
20 appropriate public education to students with disabilities, the
21 degree to which funding shortfalls will continue following planned
22 increases in multipliers, proposed changes to accounting
23 methodologies, and the elimination of a cap on the percent of
24 students for whom the state provides funding; and, options for
25 additional changes to funding formulas to eliminate shortfalls in
26 state funding for special education; and

27 (f) How the state may improve recruitment and retention of
28 certificated educators, instructional aides, or paraeducators and
29 professionals serving students with disabilities.

30 (2) To develop the appropriate scope, define study questions, and
31 select one or more contractors to complete the performance audit and
32 report, the joint legislative audit and review committee and state
33 auditor shall consult with the office of the superintendent of public
34 instruction, the office of the education ombuds, organizations
35 representing and serving students with disabilities, the Washington
36 state special education advisory council, and labor organizations
37 representing educators providing educational services to students
38 with disabilities in developing study questions and choosing
39 appropriate contractors. To address the study questions, the joint

1 legislative audit and review committee and the state auditor may
2 conduct the audit at a sample of school districts as needed.

3 (3) The performance audit required by this section must include
4 charter schools to the same extent as school districts.

5 (4) Upon request, the office of financial management and any
6 state or local agency must provide the joint legislative audit and
7 review committee and the state auditor with education records
8 necessary to conduct the performance audit required under this
9 section. The joint legislative audit and review committee and the
10 state auditor shall be considered authorized representatives of
11 relevant state education authorities, including the superintendent of
12 public instruction and the department of children, youth, and
13 families, for the purpose of accessing records for this evaluation.
14 The office of financial management and any state or local agency must
15 provide records within four months from the date of an initial
16 request. The office of financial management or agencies contributing
17 data to the education research and data center must notify the joint
18 legislative audit and review committee and the state auditor's office
19 in writing if they determine a request does not comply with the
20 federal educational rights and privacy act, no later than 21 days
21 after the initial request.

22 (5) Prior to the 2024 legislative session, the joint legislative
23 audit and review committee and the state auditor must identify a lead
24 agency for each element of the report and audit defined in subsection
25 (1)(a) through (f) of this section and any aspects of the study that
26 are being conducted by contractors. These designations must be
27 provided to the governor and the committees of the legislature with
28 jurisdiction over fiscal matters and special education by December
29 31, 2023.

30 (6) The joint legislative audit and review committee and the
31 state auditor must, in accordance with RCW 43.01.036, report the
32 study's findings and recommendations to the governor and the
33 committees of the legislature with jurisdiction over fiscal matters
34 and special education by November 30, 2024.

35 (7) This section expires August 1, 2025.

36 NEW SECTION. **Sec. 7.** Sections 2 and 3 of this act take effect
37 September 1, 2023.

1 NEW SECTION. **Sec. 8.** Section 4 of this act takes effect July 1,
2 2025.

3 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 2023, in the omnibus appropriations act, this
6 act is null and void.

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