

---

**SECOND SUBSTITUTE SENATE BILL 5311**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

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

READ FIRST TIME 02/23/23.

1 AN ACT Relating to special education funding formula; amending  
2 RCW 28A.150.390 and 28A.150.392; adding a new section to chapter  
3 28A.310 RCW; and adding a new section to chapter 28A.150 RCW.

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

5 **Sec. 1.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to  
6 read as follows:

7 (1) The superintendent of public instruction shall submit to each  
8 regular session of the legislature during an odd-numbered year a  
9 programmed budget request for special education programs for students  
10 with disabilities. Funding for programs operated by local school  
11 districts shall be on an excess cost basis from appropriations  
12 provided by the legislature for special education programs for  
13 students with disabilities and shall take account of state funds  
14 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and  
15 28A.150.415.

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

18 (a) A district's annual average headcount enrollment of students  
19 ages three and four and those five year olds not yet enrolled in  
20 kindergarten who are eligible for and receiving special education,

1 multiplied by the district's base allocation per full-time equivalent  
2 student, multiplied by ~~((1.15))~~ 1.2;

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

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

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

13 ~~(I) 1.0075 for~~) following multipliers:

14 (A) For students eligible for and receiving special education and  
15 reported to be in the general education setting for ~~((eighty))~~ 80  
16 percent or more of the school day~~((; or~~

17 ~~(II) 0.995 for~~) : Beginning in the 2023-24 school year, 1.12;

18 (B) For students eligible for and receiving special education and  
19 reported to be in the general education setting for less than  
20 ~~((eighty))~~ 80 percent of the school day: Beginning in the 2023-24  
21 school year, 1.06.

22 (ii) If the enrollment percent exceeds ~~((thirteen and five-~~  
23 ~~tenths))~~ 15 percent, the excess cost allocation calculated under  
24 (b) (i) of this subsection must be adjusted by multiplying the  
25 allocation by ~~((thirteen and five-tenths))~~ 15 percent divided by the  
26 enrollment percent.

27 (3) As used in this section:

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

33 (b) "Basic education enrollment" means enrollment of resident  
34 students including nonresident students enrolled under RCW  
35 28A.225.225 and students from nonhigh districts enrolled under RCW  
36 28A.225.210 and excluding students residing in another district  
37 enrolled as part of an interdistrict cooperative program under RCW  
38 28A.225.250.

39 (c) "Enrollment percent" means the district's resident annual  
40 average enrollment of students who are eligible for and receiving

1 special education, excluding students ages three and four and those  
2 five year olds not yet enrolled in kindergarten and students enrolled  
3 in institutional education programs, as a percent of the district's  
4 annual average full-time equivalent basic education enrollment.

5 **Sec. 2.** RCW 28A.150.392 and 2019 c 387 s 2 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  
26 not 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 and all federal revenues from federal impact aid,  
31 medicaid, and the individuals with disabilities education act-Part B  
32 and appropriate special projects. Awards associated with (e) and (f)  
33 of this subsection shall not exceed the total of a district's  
34 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. Differences in costs attributable to district  
38 philosophy(~~(, service delivery choice,)~~) or accounting practices are  
39 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 served in residential schools (~~as defined in RCW~~  
11 ~~28A.190.020~~), programs for juveniles under the department of  
12 corrections, and programs for juveniles operated by city and county  
13 jails to the extent they are providing a secondary program of  
14 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) (a) Beginning in the 2019-20 school year, a high-need student  
22 is 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 (b) Beginning in the 2023-24 school year, the average per-pupil  
28 expenditure used to determine safety net award eligibility for a  
29 high-need student is the lesser of:

30 (i) The average per-pupil expenditure calculated using the  
31 methodology defined in 20 U.S.C. Sec. 7801, the every student  
32 succeeds act of 2015; or

33 (ii) The average per-pupil expenditure calculated using the  
34 methodology defined in 20 U.S.C. Sec. 7801, the every student  
35 succeeds act of 2015, using only the expenditure and average daily  
36 attendance data for the subset of districts receiving the same salary  
37 regionalization factor as the high-need student's district, as  
38 determined under RCW 28A.150.412 and the omnibus operating  
39 appropriations act.

1        (c) When calculating the average per-pupil expenditure for safety  
2 net eligibility purposes, safety net funding provided in this section  
3 must be excluded.

4        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 28A.310  
5 RCW to read as follows:

6        (1) Subject to amounts appropriated for this specific purpose,  
7 each educational service district shall contract for independent  
8 special education advocates.

9        (2) The role of a special education advocate is to:

10        (a) Serve as a resource for a child with disabilities who is  
11 eligible for special education due to the disability and the child's  
12 parents and family;

13        (b) Advocate on behalf of the child for a free and appropriate  
14 public education from the public school system that emphasizes  
15 special education and related services that are:

16            (i) Provided in the least restrictive environment;

17            (ii) Designed to meet the child's unique needs;

18            (iii) Appropriately ambitious and reasonably calculated to enable  
19 a child to make progress in light of the child's circumstances; and

20            (iv) Addressing the child's further education, employment, and  
21 independent living goals; and

22        (c) Assist parents with any one or more of the following:

23            (i) Preparing for a meeting to develop or update their child's  
24 individualized education program;

25            (ii) Attending the individualized education program meetings to  
26 help present the parents' concerns, negotiate components that meet  
27 the parents' goals and requests, or otherwise assist with the  
28 understanding and navigation of the process;

29            (iii) Attending an individual education program meeting on behalf  
30 of the child to assist in writing an appropriate program when a  
31 parent opts out or otherwise cannot attend the meeting.

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

34        (1) It is the policy of the state that for purposes of state  
35 funding allocations, students eligible and receiving special  
36 education generate the full basic education allocation under RCW  
37 28A.150.260 and, as a class, are to receive the benefits of this  
38 allocation for the entire school day, as defined in RCW 28A.150.203,

1 whether the student is placed in the general education setting or  
2 another setting.

3 (2) The superintendent of public instruction and the state  
4 auditor shall develop an allocation and cost accounting methodology  
5 that ensures state general apportionment funding for students who  
6 receive their basic education services primarily in an alternative  
7 classroom or setting are prorated and allocated to the special  
8 education program and accounted for before calculating special  
9 education excess costs. Nothing in this section requires districts to  
10 provide services in a manner inconsistent with the students  
11 individualized education plan or other than in the least restrictive  
12 environment as determined by the individualized education plan team.

13 (3) The superintendent of public instruction shall provide the  
14 legislature with an accounting of prorated general apportionment  
15 allocations provided to special education programs broken down by  
16 school district by January 1, 2024, and then every January 1st of  
17 odd-numbered years thereafter.

--- END ---