

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1436

Chapter 417, Laws of 2023

(partial veto)

68th Legislature
2023 Regular Session

SPECIAL EDUCATION FUNDING—VARIOUS PROVISIONS

EFFECTIVE DATE: July 23, 2023

Passed by the House April 22, 2023
Yeas 98 Nays 0

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 21, 2023
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Approved May 11, 2023 9:44 AM with
the exception of section 2, which is
vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1436** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 11, 2023

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1436

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

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, 28A.150.392, and 43.06B.010; adding a new section to
3 chapter 28A.155 RCW; adding a new section to chapter 28A.150 RCW;
4 creating a new section; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.155
7 RCW to read as follows:

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

15 (2) The office of the superintendent of public instruction shall
16 provide technical assistance to school districts experiencing issues
17 related to disproportionality and will make available professional
18 development opportunities statewide to support local education
19 agencies, schools, and community partners in promoting inclusionary
20 teaching practices within a multitiered system of supports framework

1 to help safeguard against over-identification and other issues
2 related to disproportionality.

3 ***NEW SECTION.** Sec. 2. (1)(a) It is the intent of the
4 legislature to ensure that the state's special education funding
5 formula does not result in a limitation on services or excess cost
6 allocations to which students are entitled. To this end, the
7 legislature acknowledges that a comprehensive review of the special
8 education funding formula to examine the impacts of recent
9 modifications and the potential need for future modifications is
10 overdue, including the need to look at enrollment percent caps and
11 minimum threshold values for access to the safety net.

12 (b) The legislature also intends to examine the current
13 accounting and reporting methodologies to ensure that they continue
14 to accurately serve their purpose of providing transparency and
15 accountability and enable the legislature to oversee the state's
16 funding of the program of special education.

17 (2) The joint legislative audit and review committee and the
18 state auditor, in consultation with the office of the superintendent
19 of public instruction, must collaborate to conduct a performance
20 audit of the state's system of providing special education services
21 to students with disabilities, including a review of each funding
22 formula component used to allocate resources to school districts for
23 the program of special education and the interplay between those
24 different components. The joint legislative audit and review
25 committee and the state auditor may divide responsibility for the
26 work and reporting required in this section as appropriate, and
27 contract with qualified third-party researchers or higher education
28 institutions to perform any aspect of the report and audit. The
29 report and audit must address:

30 (a) The prevalence of disabilities and whether the provisions and
31 funding for evaluating students and providing services reflects the
32 prevalence of disabilities, including whether any populations are
33 disparately underevaluated or underserved;

34 (b) The degree to which changes in funding formulas intended to
35 encourage increased inclusion are successful and whether the state
36 and school districts are utilizing best practices to improve
37 inclusion;

38 (c) Whether the changes in evaluation timelines or increases in
39 the funded enrollment limit have resulted in funding for students who

1 do not have disabilities or in excess of districts' costs to serve
2 students with disabilities;

3 (d) Whether districts are appropriately accounting for and
4 reporting use of basic education allocations for students with
5 disabilities, including if statutory expectations for use of funds
6 are being met. As part of this review, the joint legislative audit
7 and review committee shall revisit their special education excess
8 cost accounting and reporting requirements report from February 2006
9 and determine if the special education excess cost accounting
10 methodology and requirements are still functioning as intended with
11 other changes in funding and service delivery focused on inclusion in
12 a general education setting and if additional modifications are
13 recommended;

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

24 (f) How the state may improve recruitment and retention of
25 certificated educators, instructional aides, or paraeducators and
26 professionals serving students with disabilities;

27 (g) How the existing special education funding formula components
28 used to allocate resources to school districts in Washington address
29 the actual funding needs of school districts to fully serve all
30 students with disabilities. This review must include an examination
31 of each individual funding formula component including, but not
32 limited to, the use of multiple student weights, the funded
33 percentage cap, and safety net eligibility requirements. This review
34 must also address how the funding formula components interplay within
35 the overall funding model to address the diverse and variable needs
36 of school district special education programs; and

37 (h) How Washington's special education funding model compares to
38 different special education funding models used in other states. This
39 review and comparison must identify the strengths and weaknesses of
40 Washington's funding model as compared to other funding models and,

1 at a minimum, review past studies and findings related to
2 Washington's special education funding model. This review must
3 identify which state formulas place a cap or threshold value on the
4 number or percentage of special education students for purposes of
5 generating funding and if those states differ in other ways from the
6 states that do not have a limit, such as using tiered funding
7 formulas or an average dollar allocation per special education
8 student.

9 (3) To develop the appropriate scope, define study questions, and
10 select one or more contractors to complete the performance audit and
11 report, the joint legislative audit and review committee and state
12 auditor shall consult with the office of the superintendent of public
13 instruction, the office of the education ombuds, organizations
14 representing and serving students with disabilities, the Washington
15 state special education advisory council, and labor organizations
16 representing educators providing educational services to students
17 with disabilities in developing study questions and choosing
18 appropriate contractors. To address the study questions, the joint
19 legislative audit and review committee and the state auditor may
20 conduct the audit at a sample of school districts as needed.

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

23 (5) Upon request, the office of financial management and any
24 state or local agency must provide the joint legislative audit and
25 review committee and the state auditor with education records
26 necessary to conduct the performance audit required under this
27 section. The joint legislative audit and review committee and the
28 state auditor shall be considered authorized representatives of
29 relevant state education authorities, including the superintendent of
30 public instruction and the department of children, youth, and
31 families, for the purpose of accessing records for this evaluation.
32 The office of financial management and any state or local agency must
33 provide records within four months from the date of an initial
34 request. The office of financial management or agencies contributing
35 data to the education research and data center must notify the joint
36 legislative audit and review committee and the state auditor's office
37 in writing if they determine a request does not comply with the
38 federal educational rights and privacy act, no later than 21 days
39 after the initial request.

1 (6) Prior to the 2024 legislative session, the joint legislative
2 audit and review committee and the state auditor must identify a lead
3 agency for each element of the report and audit defined in subsection
4 (2)(a) through (h) of this section and any aspects of the study that
5 are being conducted by contractors. These designations must be
6 provided to the governor and the committees of the legislature with
7 jurisdiction over fiscal matters and special education by December
8 31, 2023.

9 (7) The joint legislative audit and review committee and the
10 state auditor must, in accordance with RCW 43.01.036, report the
11 study's findings and recommendations to the governor and the
12 committees of the legislature with jurisdiction over fiscal matters
13 and special education by November 30, 2024.

14 (8)(a) As the joint legislative audit and review committee
15 examines the current special education excess cost accounting and
16 reporting methodologies, the following methodology shall be used by
17 the superintendent of public instruction through the 2026-27 school
18 year: If a school district's percentage used to calculate the state
19 general apportionment revenue allocated to special education is lower
20 than the percentage used for the 2022-23 school year, the
21 superintendent of public instruction must allocate state general
22 apportionment revenue to special education based on the percentage
23 used in the 2022-23 school year, except as provided in (b) of this
24 subsection.

25 (b)(i) Subsection (8)(a) of this section does not apply to school
26 districts with a percentage used to calculate the state general
27 apportionment revenue allocated to special education greater than 30
28 percent.

29 (ii) School districts with a percentage used to calculate the
30 state general apportionment revenue allocated to special education
31 less than 20 percent must be allocated at 20 percent.

32 (iii) If a school district's percentage of time students eligible
33 for and receiving special education are served in a general education
34 setting is at least five percentage points greater than its 2022-23
35 percentage in a school year, the school district's percentage used to
36 calculate the state general apportionment revenue allocated to
37 special education may be reduced by one percentage point for that
38 school year from the 2022-23 percentage.

1 (iv) *School districts with enrollments of less than 300 full-time*
2 *equivalent students are exempt from all provisions of this subsection*
3 *(8).*

4 (9) *This section expires December 31, 2026.*

**Sec. 2 was vetoed. See message at end of chapter.*

5 **Sec. 3.** 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,
21 multiplied by the district's base allocation per full-time equivalent
22 student, multiplied by ~~((1.15))~~ 1.2;

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

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

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

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

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

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

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

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

8 (ii) If the enrollment percent exceeds (~~(thirteen and five-~~
9 ~~tenths))~~ 15 percent, the excess cost allocation calculated under
10 (b)(i) of this subsection must be adjusted by multiplying the
11 allocation by (~~(thirteen and five-tenths))~~ 15 percent divided by the
12 enrollment percent.

13 (3) As used in this section:

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

19 (b) "Basic education enrollment" means enrollment of resident
20 students including nonresident students enrolled under RCW
21 28A.225.225 and students from nonhigh districts enrolled under RCW
22 28A.225.210 and excluding students residing in another district
23 enrolled as part of an interdistrict cooperative program under RCW
24 28A.225.250.

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

31 **Sec. 4.** RCW 28A.150.392 and 2019 c 387 s 2 are each amended to
32 read as follows:

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

37 (b) If the federal safety net awards based on the federal
38 eligibility threshold exceed the federal appropriation in any fiscal

1 year, then the superintendent shall expend all available federal
2 discretionary funds necessary to meet this need.

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

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

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

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

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

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

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

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

1 jails to the extent they are providing a secondary program of
2 education.

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

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

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

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

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

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

3 (a) One staff member from the office of the superintendent of
4 public instruction;

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

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

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

16 (b) Beginning in the 2023-24 school year, a high-need student is
17 eligible for safety net awards from state funding under subsection
18 (2)(e) and (g) of this section if the student's individualized
19 education program costs exceed:

20 (i) 2 times the average per-pupil expenditure, for school
21 districts with fewer than 1,000 full-time equivalent students;

22 (ii) 2.2 times the average per-pupil expenditure, for school
23 districts with 1,000 or more full-time equivalent students.

24 (c) For purposes of (b) of this subsection, "average per-pupil
25 expenditure" has the same meaning as in 20 U.S.C. Sec. 7801, the
26 every student succeeds act of 2015, and excludes safety net funding
27 provided in this section.

28 **Sec. 5.** RCW 43.06B.010 and 2013 c 23 s 82 are each amended to
29 read as follows:

30 (1) There is hereby created the office of the education ombuds
31 within the office of the governor for the purposes of providing
32 information to parents, students, and others regarding their rights
33 and responsibilities with respect to the state's public elementary
34 and secondary education system, and advocating on behalf of
35 elementary and secondary students.

36 (2)(a) The governor shall appoint an ombuds who shall be a person
37 of recognized judgment, independence, objectivity, and integrity and
38 shall be qualified by training or experience or both in the following
39 areas:

1 (i) Public education law and policy in this state;

2 (ii) Dispute resolution or problem resolution techniques,
3 including mediation and negotiation; and

4 (iii) Community outreach.

5 (b) The education ombuds may not be an employee of any school
6 district, the office of the superintendent of public instruction, or
7 the state board of education while serving as an education ombuds.

8 (3) Before the appointment of the education ombuds, the governor
9 shall share information regarding the appointment to a six-person
10 legislative committee appointed and comprised as follows:

11 (a) The committee shall consist of three senators and three
12 members of the house of representatives from the legislature.

13 (b) The senate members of the committee shall be appointed by the
14 president of the senate. Two members shall represent the majority
15 caucus and one member the minority caucus.

16 (c) The house of representatives members of the committee shall
17 be appointed by the speaker of the house of representatives. Two
18 members shall represent the majority caucus and one member the
19 minority caucus.

20 (4) If sufficient appropriations are provided, the education
21 ombuds shall delegate and certify regional education ombuds. The
22 education ombuds shall ensure that the regional ombuds selected are
23 appropriate to the community in which they serve and hold the same
24 qualifications as in subsection (2)(a) of this section. The education
25 ombuds may not contract with the superintendent of public
26 instruction, or any school, school district, or current employee of a
27 school, school district, or the office of the superintendent of
28 public instruction for the provision of regional ombuds services.

29 (5)(a) Subject to amounts appropriated for this specific purpose,
30 the education ombuds shall delegate and certify at least one special
31 education ombuds to serve each educational service district region.
32 The education ombuds shall ensure that the special education ombuds
33 selected are appropriate to the community in which they serve and
34 hold the same qualifications as in subsection (2)(a) of this section.
35 The education ombuds may not contract with the superintendent of
36 public instruction, or any school, school district, educational
37 service district, or current employee of a school, school district,
38 educational service district, or the office of the superintendent of
39 public instruction for the provision of special education ombuds
40 services.

1 (b) Special education ombuds must serve as a resource for
2 students eligible for special education services and their parents,
3 including:

4 (i) Advocating on behalf of the student for a free and
5 appropriate public education from the public school system that
6 emphasizes special education and related services that are:

7 (A) Provided in the least restrictive environment;

8 (B) Designed to meet the student's unique needs;

9 (C) Appropriately ambitious and reasonably calculated to enable a
10 student to make progress in light of the student's circumstances; and

11 (D) Addressing the student's further education, employment, and
12 independent living goals.

13 (ii) Assisting students and parents with individualized education
14 program development, including:

15 (A) Preparing for a meeting to develop or update a student's
16 individualized education program;

17 (B) Attending individualized education program meetings to help
18 present the parents' concerns, negotiate components that meet the
19 parents' goals and requests, or otherwise assist the parent in
20 understanding and navigating the individualized education program
21 process; and

22 (C) Attending an individualized education program meeting to
23 assist in writing an appropriate program when a parent opts out or
24 otherwise cannot attend.

25 NEW SECTION. Sec. 6. A new section is added to chapter 28A.150
26 RCW to read as follows:

27 (1) It is the policy of the state that for purposes of state
28 funding allocations, students eligible for and receiving special
29 education generate the full basic education allocation under RCW
30 28A.150.260 and, as a class, are to receive the benefits of this
31 allocation for the entire school day, as defined in RCW 28A.150.203,
32 whether the student is placed in the general education setting or
33 another setting.

34 (2) The superintendent of public instruction shall develop an
35 allocation and cost accounting methodology that ensures state general
36 apportionment funding for students who receive their basic education
37 services primarily in an alternative classroom or setting are
38 prorated and allocated to the special education program and accounted
39 for before calculating special education excess costs. Nothing in

1 this section requires districts to provide services in a manner
2 inconsistent with the students individualized education program or
3 other than in the least restrictive environment as determined by the
4 individualized education program team.

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

Passed by the House April 22, 2023.

Passed by the Senate April 21, 2023.

Approved by the Governor May 11, 2023, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 11, 2023.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 2,
Engrossed Substitute House Bill No. 1436 entitled:

"AN ACT Relating to special education funding."

Section 2 requires the Joint Legislative Audit and Review Committee
and the State Auditor to conduct a performance audit of the state's
special education system. Subsection 5 of Section 2 provides that
these entities shall be considered authorized representatives of
relevant state education authorities, including the Superintendent of
Public Instruction and the Department of Children, Youth, and
Families, for the purpose of accessing student records for this
evaluation. This provision conflicts with policies that favor the
protection of student records and individual student privacy, without
a corresponding need for that confidential, personal information.

For these reasons I have vetoed Section 2 of Engrossed Substitute
House Bill No. 1436.

With the exception of Section 2, Engrossed Substitute House Bill No.
1436 is approved."

--- END ---