

# HOUSE BILL REPORT

## E2SSB 5091

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**As Reported by House Committee On:**  
Education  
Appropriations

**Title:** An act relating to state and federal special education funding.

**Brief Description:** Concerning state and federal special education funding.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Conway, Darneille, Wilson, C., Kuderer and Takko).

**Brief History:**

**Committee Activity:**

Education: 3/19/19, 3/26/19 [DPA];

Appropriations: 4/6/19, 4/8/19 [DPA(APP w/o ED)].

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

- Increases the special education excess cost multiplier from 0.9609 to a two-tiered multiplier of 1 for special education students spending 80 percent or more of their time in a general education classroom and to 0.9823 for special education students spending less than 80 percent in a general education classroom.
- Requires the threshold for high-cost individuals for state-funded special education safety net awards to be 2.2 times the average per-pupil expenditure defined in federal law, beginning in the 2019-20 school year.
- Excludes special education students in institutional education from enrollment percent, which is used to calculate the 13.5 percent funded enrollment limit.
- Directs how professional learning allocations must be calculated.
- Requires the State Auditor to audit special education data for the 2018-2019 school year, and report to the Legislature by December 1, 2020.

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### HOUSE COMMITTEE ON EDUCATION

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

**Majority Report:** Do pass as amended. Signed by 17 members: Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist, Caldier, Callan, Corry, Kilduff, Kraft, Ortiz-Self, Rude, Stonier, Thai, Valdez and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative McCaslin, Assistant Ranking Minority Member.

**Staff:** Megan Wargacki (786-7194).

**Background:**

Special Education Funding. There are two primary sources of funding to support special education and related services for students with qualifying disabilities who are in kindergarten through age 21 (K-21). The state special education allocation is based on an excess cost multiplier of 0.9609; that is, for each K-21 student enrolled in special education, a school district receives the basic education allocation multiplied by 0.9609. However, this state allocation is capped at 13.5 percent of the school district's K-21 full-time student enrollment.

The federal special education allocation is primarily based on a school district's enrollment of K-21 students in special education.

Safety Net Funding. Safety net funding is available to school districts that need more than what is provided through the state special education allocation. Safety net awards are provided using a combination of federal funds and dedicated state funds.

The Office of the Superintendent of Public Instruction (OSPI) appoints a committee to review school district applications for safety net funding. The committee may award safety net funding to school districts for high-need individuals (HNIs) or for community characteristics that draw a large number of students eligible for special education. Federal law requires that school districts expend at least three times the average per-pupil expenditure prior to being able to receive federal safety net awards for HNIs. The state has the authority to lower the HNI threshold using state resources, and since the 2012–13 school year, the threshold has been set at 2.7 times the average per-pupil expenditure. In order to receive safety net funding, a school district must convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas.

Institutional Education. Basic education services are provided to incarcerated and previously incarcerated juveniles in institutions such as residential habilitation centers, county detention centers, and long-term juvenile institutions. The formula for state funding for institutional education programs is calculated primarily using student-to-staff ratios. This formula is not codified, rather it is included in the state operating budget. Federal funding is available to support at-risk youth from dropping out of school and to provide transition services. Institutional education programs are also eligible for safety net awards for HNIs.

Professional Learning Days. Professional learning is a comprehensive, sustained, job-embedded, and collaborative approach to improving teachers' and principals' effectiveness in

raising student achievement. State funding for professional learning days for teachers and other certificated instructional staff must be provided to school districts as follows: one professional learning day in the 2018-19 school year, two professional learning days in the 2019-20 school year, and three professional learning days in the 2020-21 school year.

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### **Summary of Amended Bill:**

Special Education Excess Cost Multiplier. The special education excess cost multiplier is increased from 0.9609 to 1.00.

Special education excess cost allocations must include allocations for students who are eligible for and receiving special education in institutional education programs, with a multiplier of 1.00. Special education allocations for students in institutional education programs must be distributed to the institutional education program that generated the funding.

Safety Net Funding. Beginning in fiscal year 2020, safety net appropriations may not include federal funding, thus eliminating the federal requirement that school districts expend at least three times the average per-pupil expenditure prior to being able to receive federal safety net awards. A state expenditure requirement that is less than the federal expenditure requirement may be established in the state operating budget. Beginning in the 2019-20 school year, the average per-pupil expenditure must exclude state safety net funding.

To qualify for safety net awards, school districts must demonstrate that expenditures for special education exceed all available revenues from state basic education funding formulas, rather than state funding formulas generally.

Professional Learning. The OSPI must calculate each school district's professional learning allocation separately from the minimum state allocation for salaries and associated fringe benefits. The professional learning allocation must be equal to the proportional increase resulting from adding professional learning days to the required minimum number of school days applied to the school district's minimum state allocation for salaries and associated fringe benefits. For programs funded on a per-pupil basis, professional learning allocations must be included in per-pupil calculations.

Federal special education allocations may be used to provide professional development to classified and certificated staff who provide educational services and supports to students with disabilities.

Audits. The State Auditor must audit each school district's special education data for the 2018-19 school year. The audit must review: special education revenues and the sources of those revenues; and special education expenditures and the object of those expenditures. The state auditor must compile and submit the data reported through the audits to the Legislature by December 1, 2020.

### **Amended Bill Compared to Engrossed Second Substitute Bill:**

The amended bill: (1) changes references to "students with disabilities" and "special education enrollment" to "students eligible for and receiving special education;" and (2) makes nonsubstantive changes, for example, moves language allowing federal special education allocations to be used to deliver professional development to certain staff from the statute that describes funding for professional learning days to a new section.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Special education is a basic education program. This bill supports the inclusion of students with disabilities. Currently, 55 percent of students with disabilities in Washington are educated in a general education classroom for the majority of the school day. For students of color, this number drops to 47 percent. The state needs to create more inclusive educational environments by providing additional support, such as professional development, or a tiered system.

School districts are unable to increase the graduation rates of students receiving special education services if the districts are not fully supported to provide the needed services. Enrollment of students with disabilities is increasing in some school districts. For some students, however funding is not adequate to cover the special education and related services needed. The state should consider the policy of the state picking up the full basic education cost of special education.

The excess cost funding formula drivers were set in the 1990s as a response to the state's recently imposed state expenditure limit. At that time, special education was the only program growing faster than the allowed limit. Hard caps for enrollment and this multiplier were based on a snapshot of data and stayed the same until the 2017-19 biennium. The shortfall being experienced today is the result of a static funding formula serving a dynamic set of students. Special education has historically been subsidized out of local funds. Recent changes to state law have lowered the amount of money that can be collected through local levies. The deficit created by this change makes it difficult for school districts to subsidize special education costs. The excess cost multiplier should be increased to 1.07, so that state funding is increased. The hope is that the multiplier can be set at a level that will address the current shortfall.

Safety net rules require school districts to expend state and local funds to access this funding. Requiring school districts to pay local funds to access state basic education funding is not what the Washington Constitution intended. The safety net threshold is not defined in the bill, so it is difficult to determine the effect of this change. Safety net determinations do not consider how program costs are wrapped around students. Areas of the state that draw

students with disabilities will still need to meet the threshold to qualify for safety net funding. Diagnosis, treatments, and programs for special education have made significant advances in the past 30 years, but policies and funding have not changed. The 1.00 multiplier is problematic. The bill improves the safety net process so that it can be a real safety net for the most profoundly impacted students and their families.

The safety net should be available for students in programs with a low student-to-staff ratio and because these programs are better for student outcomes. One of the recommendations of the safety net workgroup was to remove federal safety net funds and this recommendation is implemented in the bill. This would allow more school districts to qualify for safety net funding for high needs individuals. Provisions in this bill duplicate efforts related to special education data already provided to the OSPI.

The funding formula for institutional education programs has gone unchanged for many years. The Legislature has made positive changes to the juvenile justice system by adopting policies to put kids in the least restrictive environment. This has changed the population of students served in institutional educations and the funding formula needs a long overdue change.

This is an issue that is perennial for school districts and the Legislature. It is clear that the Legislature is committed to understanding and addressing the many facets of the special education implementation needs in the state's communities, as well as the funding drivers needed.

(Opposed) None.

(Other) Students receiving special education should be viewed as basic education students who require additional services to access learning. Special education must be fully funded so that students receiving special education inclusive educational practices should receive additional resources.

Removing the federal funds from the safety net will presumably reduce the threshold for access to the safety net. The freed-up federal dollars should be allowed, rather than required, to be used for professional development. The amount of the excess cost multiplier does not seem to provide enough funding. There needs to be additional study of the special education funding structure, but it is good to provide immediate relief in the meantime.

Everything possible should be done to promote inclusion. This bill does not resolve ongoing inequities and disparities in serving students with disabilities. The bill does not address the special education funding cap, which penalizes students based on where they live and where they learn. Some school districts do not have the ability to run a levy to generate additional funds for special education services. The bill does not address the very nature of funding students with disabilities. Not all students need the same level of support.

**Persons Testifying:** (In support) Glenna Gallo, Office of the Superintendent of Public Instruction; Grace Yuan, The School Alliance; Charlie Brown, Tacoma School District, Franklin Pierce School District, University Place School District and Bethel School District;

Lorrell Noahr, Washington Education Association; and Jessica Vavrus, Washington State School Directors' Association.

(Other) Patrick Murphy, Olympia Public Schools; Kate Davis, Highline Public Schools; JoLynn Berge, Seattle Public Schools; Dan Steele, Washington Association of School Administrators and Washington Association of School Business Officials; Melissa Gombosky, Educational Service District 105, Spokane School District, Evergreen School District, Vancouver School District and Olympia School District; Jennifer Cole; and Ramona Hattendorf, The Arc of King County.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Appropriations and without amendment by Committee on Education. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Kraft.

**Staff:** James Mackison (786-7104).

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

The House Appropriations Committee's recommendation makes the following changes:

- requires the threshold for high-cost individuals for state-funded special education safety net awards to be 2.2 times the average per-pupil expenditure defined in federal law, beginning in the 2019-20 school year;
- changes from a single excess cost multiplier of 1 to a two-tiered multiplier of 1 for special education students spending 80 percent or more of their time in a general education classroom and to 0.9823 for special education students spending less than 80 percent of their time in a general education classroom;
- revises the definition of "enrollment percent" to align with the tiered multiplier;
- reinstates language allowing federal funds to be used for the special education safety net;
- removes provisions allowing federal funds to be used for professional development for certificated and classified staff providing special education services;
- removes the special education multiplier for institutions; and
- requires school districts to demonstrate that expenditures for special education exceed all available revenues from state funding formulas, rather than from state basic education funding formulas, in order to receive safety net awards.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is a step in the right direction. Last year, districts spent approximately \$1.6 billion on special education, but only received \$1.2 billion from the state. Special education is being funded with local levies or with redirected state funds. This financial shortfall is due to a static formula being applied to a changing special education population. The current multiplier has been in place since the mid-nineties, and was formed in response to the state expenditure limit. This multiplier was based on a snapshot in time. The current safety net threshold requires school districts to use local funds, and it should not. The recent special education funding increases have made meaningful progress. The removal of federal funds is important, as it makes it easier for school districts that cannot meet the safety net threshold to access safety net awards. If school districts do not spend up to the safety net threshold, they must use other funds to make up the financial difference. There is accountability in the safety net process to ensure special education funds are expended appropriately. An excess cost multiplier of 1.07 should be considered. Also, this committee should consider adjusting safety net thresholds for salary regionalization so that it is not more difficult for districts with lower regionalization to reach the safety net threshold.

(Opposed) None.

**Persons Testifying:** Lorrell Noahr, Washington Education Association; Jennifer Ziegler, School Alliance; Melissa Gombosky, Spokane, Evergreen, and Vancouver Public Schools; and Charlie Brown, Tacoma, Federal Way, Bethel, and Franklin Pierce Schools.

**Persons Signed In To Testify But Not Testifying:** None.