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**HOUSE BILL 1436**

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**State of Washington 68th Legislature 2023 Regular Session**

**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

AN ACT Relating to special education funding; amending RCW 28A.150.390 and 28A.150.392; adding new sections to chapter 28A.155 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that students receiving special education services are entitled, under both federal and state law, to a full and appropriate education that enables their full participation. Further, the legislature finds that special education is fully part of the state's statutory program of basic education that is deemed by the legislature to implement Article IX, section 1 of the state Constitution.

The legislature also finds that capping the number of students receiving disability services that a school district may receive state funding for is not consistent with the state's duty to provide a full and appropriate education. The legislature further finds that school districts have been paying for special education services with local funding, creating an inequitable situation for school districts and students. The legislature supports a system of funding that does not leave school districts liable to generate local funding to meet their obligation to provide special education services.

The legislature finds that along with reliable and sufficient state funding, supporting students receiving special education services to be in the least restrictive environment possible is crucial to their success. A recent large-scale study found that students who spend at least 80 percent of their day in a general education setting improved their reading scores by 24 points and math scores by 18 points compared to peers with similar disabilities. Building on investments made in the past few years, the legislature further finds that professional development in support of inclusionary practices within a multitiered system of supports is needed to continue making progress towards greater student inclusion in Washington state.

The legislature, therefore, intends to fully fund special education services in Washington state by removing the 13.5 percent cap and increase the special education multipliers, including the prekindergarten multiplier and the tiered K-12 multiplier, to give every school district a funding increase. The removal of the cap will make it unnecessary for school districts to apply for community impact relief through safety net funding. Further, the legislature directs the office of the superintendent of public instruction to create a new funding system to address still prevalent funding gaps in school districts with extraordinary high costs.

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

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

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

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

(i) For the 2023-24 school year, 1.1600;

(ii) For the 2024-25 school year, 1.1700;

(iii) For the 2025-26 school year, 1.1800;

(iv) Beginning in the 2026-27 school year, 1.1900;

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

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

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

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

~~(II) 0.995 for~~)):

(A) For the 2023-24 school year, 1.1610;

(B) For the 2024-25 school year, 1.1784;

(C) For the 2025-26 school year, 1.1961;

(D) Beginning in the 2026-27 school year, 1.2140; or

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

(A) For the 2023-24 school year, 1.1459;

(B) For the 2024-25 school year, 1.1631;

(C) For the 2025-26 school year, 1.1805;

(D) Beginning in the 2026-27 school year, 1.1923.

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

(3) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) School districts may apply to the office of the superintendent of public instruction for funding beyond regular special education allocations under RCW 28A.150.390. Funding shall be capped at the difference between a school district's prior year expenditures for special education services and the total prior year funding accrued through special education appropriations under RCW 28A.150.390, including the full cost method of excess cost accounting pursuant to section 501(1)(k), chapter 372, Laws of 2006.

(2) Funding under subsection (1) of this section must be based on legitimate identified and quantifiable factors, which justify extraordinary costs associated with providing special education services. Supplemental contracts may not be counted in these excess costs.

(3) To receive funds under this section, a school district must access the professional development network provided in section 5(2) of this act and utilize supports around disproportionate identification and inclusionary practices.

(4) The office of the superintendent of public instruction shall promulgate rules and establish the process and criteria for additional funding in this section.

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

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

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

**--- END ---**