

E2SSB 5311 - H COMM AMD

By Committee on Appropriations

NOT CONSIDERED 01/02/2024

1 Strike everything after the enacting clause and insert the
2 following:

3

4

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

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

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

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

1 The legislature finds that the documented prevalence of
2 disabilities amongst children, particularly amongst vulnerable
3 populations and communities with disparately poor health outcomes
4 and access to health services, indicates that the state should
5 improve access to evaluations for disabilities.

6 The legislature finds that special education is fully part of
7 the state's statutory program of basic education that is deemed by
8 the legislature to implement Article IX, section 1 of the state
9 Constitution.

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

15 The legislature intends to require a comprehensive study of
16 funding and services for students with disabilities completed prior
17 to the 2025 legislative session to understand if the state is
18 appropriately identifying students with disabilities, identify
19 funding and service gaps, and ensure that funding provided by the
20 state to school districts, charter schools, and other entities for
21 services are being used to meet the needs of students with
22 disabilities.

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

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

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

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

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

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

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

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

21 ~~(II) 0.995 for))~~;

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

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

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

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

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

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

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

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

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

33 (ii) ~~((If))~~ Through the 2026-27 school year, if the enrollment
34 percent exceeds ~~((thirteen and five tenths percent))~~ the funded

1 enrollment limit, the excess cost allocation calculated under (b)(i)
2 of this subsection must be adjusted by multiplying the allocation by
3 (~~thirteen and five tenths percent~~) the funded enrollment limit
4 divided by the enrollment percent.

5 (3) As used in this section:

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

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

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

23 (d) "Funded enrollment limit" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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
9 cost needs of one or more individual students eligible for and
10 receiving special education served in residential schools as defined
11 in RCW ((~~28A.190.020~~)) 28A.190.005, programs for juveniles under the
12 department of corrections, and programs for juveniles operated by
13 city and county jails to the extent they are providing a secondary
14 program of 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

1 process to access safety net funding is streamlined, timelines for
2 submission are not in conflict, feedback to school districts is
3 timely and provides sufficient information to allow school districts
4 to understand how to correct any deficiencies in a safety net
5 application, and that there is consistency between awards approved
6 by school district and by application period. The office of the
7 superintendent of public instruction shall also provide technical
8 assistance to school districts in preparing and submitting special
9 education safety net applications.

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

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

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

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

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

27 (6) Beginning in the ((2019-20)) 2023-24 school year, a high-
28 need student is eligible for safety net awards from state funding
29 under subsection (2)(e) and (g) of this section if the student's
30 individualized education program costs exceed two and ((three)) two-
31 tenths times the average per-pupil expenditure as defined in Title
32 20 U.S.C. Sec. 7801, the every student succeeds act of 2015.

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

3 Beginning July 1, 2025:

4 (1) It is the policy of the state that for purposes of state
5 funding allocations, students eligible for and receiving special
6 education generate the full basic education allocation under RCW
7 28A.150.260 and, as a class, are to receive the benefits of this
8 allocation for the entire school day, as defined in RCW 28A.150.203,
9 whether the student is placed in the general education setting or
10 another setting.

11 (2) The superintendent of public instruction must maintain a
12 full cost method of excess cost accounting to account for
13 expenditures beyond amounts provided through the special education
14 funding formula under RCW 28A.150.390. This method of accounting
15 must shift the following portions of a school district's general
16 apportionment revenue for students eligible for and receiving
17 special education to the school district's special education program
18 for expenditure.

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

23 (b) To the extent that state special education expenditures in
24 the previous year exceeded state funding provided for that year
25 under RCW 28A.150.390, 28A.150.392, and methods for redirecting
26 general apportionment revenue based on the students' percentage of
27 time served in a special education setting, up to 50 percent of the
28 school district's base allocation as defined in RCW 28A.150.390(3)
29 for students eligible for and receiving special education combining
30 portions under (a) of this subsection.

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

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

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

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

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

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

1 (a) The prevalence of disabilities and whether the provisions
2 and funding for evaluating students and providing services reflects
3 the prevalence of disabilities, including whether any populations
4 are 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
11 who do not have disabilities or in excess of districts' costs to
12 serve 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
18 that 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,
31 and select one or more contractors to complete the performance audit
32 and report, the joint legislative audit and review committee and
33 state auditor shall consult with the office of the superintendent of
34 public instruction, the office of the education ombuds,

1 organizations representing and serving students with disabilities,
2 the Washington state special education advisory council, and labor
3 organizations representing educators providing educational services
4 to students with disabilities in developing study questions and
5 choosing appropriate contractors. To address the study questions,
6 the joint legislative audit and review committee and the state
7 auditor may conduct the audit at a sample of school districts as
8 needed.

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

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

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

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

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

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

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13 NEW SECTION. **Sec. 8.** Section 4 of this act takes effect July
14 1, 2025.

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

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EFFECT: Strikes all provisions of the underlying bill and
replaces with the special education funding policies in Engrossed
Substitute House Bill 1436, which does the following:

- Increases special education excess cost multipliers for kindergarten through age 21 (K-21) over four school years to 1.059 for students who spend at least 80 percent of the school day in a general education setting, and 1.043 for those who spend less than 80 percent by the 2026-27 school year.
- Increases the enrollment limit for special education funding over several years until the 2027-28 school year, when the limit is removed.
- Reduces the threshold for high-need individuals to access the special education safety net from 2.3 to 2.2 times the average per-pupil expenditure.
- Requires the Office of the Superintendent of Public Instruction to review data for disproportionate identification of students and assist school districts to support inclusionary teaching practices.

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- Beginning July 2025, requires up to 50 percent of a special education student's base education allocation to be used for special education if district special education expenditures exceeded revenues in the previous year.
- Requires the Joint Legislative Audit and Review Committee and the State Auditor to conduct a performance audit of the state's special education system.

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