

ESHB 1436 - S AMD 466
By Senator Wellman

ADOPTED 04/21/2023

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

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

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

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

20 NEW SECTION. **Sec. 2.** (1)(a) It is the intent of the legislature
21 to ensure that the state's special education funding formula does not
22 result in a limitation on services or excess cost allocations to
23 which students are entitled. To this end, the legislature
24 acknowledges that a comprehensive review of the special education
25 funding formula to examine the impacts of recent modifications and
26 the potential need for future modifications is overdue, including the
27 need to look at enrollment percent caps and minimum threshold values
28 for access to the safety net.

29 (b) The legislature also intends to examine the current
30 accounting and reporting methodologies to ensure that they continue
31 to accurately serve their purpose of providing transparency and

1 accountability and enable the legislature to oversee the state's
2 funding of the program of special education.

3 (2) The joint legislative audit and review committee and the
4 state auditor, in consultation with the office of the superintendent
5 of public instruction, must collaborate to conduct a performance
6 audit of the state's system of providing special education services
7 to students with disabilities, including a review of each funding
8 formula component used to allocate resources to school districts for
9 the program of special education and the interplay between those
10 different components. The joint legislative audit and review
11 committee and the state auditor may divide responsibility for the
12 work and reporting required in this section as appropriate, and
13 contract with qualified third-party researchers or higher education
14 institutions to perform any aspect of the report and audit. The
15 report and audit must address:

16 (a) The prevalence of disabilities and whether the provisions and
17 funding for evaluating students and providing services reflects the
18 prevalence of disabilities, including whether any populations are
19 disparately underevaluated or underserved;

20 (b) The degree to which changes in funding formulas intended to
21 encourage increased inclusion are successful and whether the state
22 and school districts are utilizing best practices to improve
23 inclusion;

24 (c) Whether the changes in evaluation timelines or increases in
25 the funded enrollment limit have resulted in funding for students who
26 do not have disabilities or in excess of districts' costs to serve
27 students with disabilities;

28 (d) Whether districts are appropriately accounting for and
29 reporting use of basic education allocations for students with
30 disabilities, including if statutory expectations for use of funds
31 are being met. As part of this review, the joint legislative audit
32 and review committee shall revisit their special education excess
33 cost accounting and reporting requirements report from February 2006
34 and determine if the special education excess cost accounting
35 methodology and requirements are still functioning as intended with
36 other changes in funding and service delivery focused on inclusion in
37 a general education setting and if additional modifications are
38 recommended;

39 (e) The amount of funding from levies or other local sources that
40 school districts continue to utilize under current accounting

1 methodologies in order to meet obligations to provide free and
2 appropriate public education to students with disabilities, the
3 degree to which funding shortfalls will continue following planned
4 increases in multipliers, proposed changes to accounting
5 methodologies, and the elimination of a cap on the percent of
6 students for whom the state provides funding; and, options for
7 additional changes to funding formulas to eliminate shortfalls in
8 state funding for special education;

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

12 (g) How the existing special education funding formula components
13 used to allocate resources to school districts in Washington address
14 the actual funding needs of school districts to fully serve all
15 students with disabilities. This review must include an examination
16 of each individual funding formula component including, but not
17 limited to, the use of multiple student weights, the funded
18 percentage cap, and safety net eligibility requirements. This review
19 must also address how the funding formula components interplay within
20 the overall funding model to address the diverse and variable needs
21 of school district special education programs; and

22 (h) How Washington's special education funding model compares to
23 different special education funding models used in other states. This
24 review and comparison must identify the strengths and weaknesses of
25 Washington's funding model as compared to other funding models and,
26 at a minimum, review past studies and findings related to
27 Washington's special education funding model. This review must
28 identify which state formulas place a cap or threshold value on the
29 number or percentage of special education students for purposes of
30 generating funding and if those states differ in other ways from the
31 states that do not have a limit, such as using tiered funding
32 formulas or an average dollar allocation per special education
33 student.

34 (3) To develop the appropriate scope, define study questions, and
35 select one or more contractors to complete the performance audit and
36 report, the joint legislative audit and review committee and state
37 auditor shall consult with the office of the superintendent of public
38 instruction, the office of the education ombuds, organizations
39 representing and serving students with disabilities, the Washington
40 state special education advisory council, and labor organizations

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

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

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

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

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

38 (8)(a) As the joint legislative audit and review committee
39 examines the current special education excess cost accounting and
40 reporting methodologies, the following methodology shall be used by

1 the superintendent of public instruction through the 2026-27 school
2 year: If a school district's percentage used to calculate the state
3 general apportionment revenue allocated to special education is lower
4 than the percentage used for the 2022-23 school year, the
5 superintendent of public instruction must allocate state general
6 apportionment revenue to special education based on the percentage
7 used in the 2022-23 school year, except as provided in (b) of this
8 subsection.

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

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

16 (iii) If a school district's percentage of time students eligible
17 for and receiving special education are served in a general education
18 setting is at least five percentage points greater than its 2022-23
19 percentage in a school year, the school district's percentage used to
20 calculate the state general apportionment revenue allocated to
21 special education may be reduced by one percentage point for that
22 school year from the 2022-23 percentage.

23 (iv) School districts with enrollments of less than 300 full-time
24 equivalent students are exempt from all provisions of this subsection
25 (8).

26 (9) This section expires December 31, 2026.

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

29 (1) The superintendent of public instruction shall submit to each
30 regular session of the legislature during an odd-numbered year a
31 programmed budget request for special education programs for students
32 with disabilities. Funding for programs operated by local school
33 districts shall be on an excess cost basis from appropriations
34 provided by the legislature for special education programs for
35 students with disabilities and shall take account of state funds
36 accruing through RCW 28A.150.260 (4) (a), (5), (6), and (8) and
37 28A.150.415.

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

1 (a) A district's annual average headcount enrollment of students
2 ages three and four and those five year olds not yet enrolled in
3 kindergarten who are eligible for and receiving special education,
4 multiplied by the district's base allocation per full-time equivalent
5 student, multiplied by ~~((1.15))~~ 1.2;

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

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

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

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

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

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

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

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

29 (ii) If the enrollment percent exceeds ~~((thirteen and five-~~
30 ~~tenths))~~ 15 percent, the excess cost allocation calculated under
31 (b)(i) of this subsection must be adjusted by multiplying the
32 allocation by ~~((thirteen and five-tenths))~~ 15 percent divided by the
33 enrollment percent.

34 (3) As used in this section:

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

1 (b) "Basic education enrollment" means enrollment of resident
2 students including nonresident students enrolled under RCW
3 28A.225.225 and students from nonhigh districts enrolled under RCW
4 28A.225.210 and excluding students residing in another district
5 enrolled as part of an interdistrict cooperative program under RCW
6 28A.225.250.

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

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

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

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

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

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

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

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

35 (d) In the determination of need, the committee shall require
36 that districts demonstrate that they are maximizing their eligibility
37 for all state revenues related to services for students eligible for
38 special education and all federal revenues from federal impact aid,
39 medicaid, and the individuals with disabilities education act-Part B

1 and appropriate special projects. Awards associated with (e) and (f)
2 of this subsection shall not exceed the total of a district's
3 specific determination of need.

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

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

16 (g) The committee shall then consider the extraordinary high cost
17 needs of one or more individual students eligible for and receiving
18 special education served in residential schools (~~as defined in RCW~~
19 ~~28A.190.020~~), programs for juveniles under the department of
20 corrections, and programs for juveniles operated by city and county
21 jails to the extent they are providing a secondary program of
22 education.

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

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

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

32 (3) The superintendent of public instruction shall adopt such
33 rules and procedures as are necessary to administer the special
34 education funding and safety net award process. By December 1, 2018,
35 the superintendent shall review and revise the rules to achieve full
36 and complete implementation of the requirements of this subsection
37 and subsection (4) of this section including revisions to rules that
38 provide additional flexibility to access community impact awards.
39 Before revising any standards, procedures, or rules, the
40 superintendent shall consult with the office of financial management

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

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

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

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

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

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

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

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

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

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

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

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

9 (1) There is hereby created the office of the education ombuds
10 within the office of the governor for the purposes of providing
11 information to parents, students, and others regarding their rights
12 and responsibilities with respect to the state's public elementary
13 and secondary education system, and advocating on behalf of
14 elementary and secondary students.

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

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

20 (ii) Dispute resolution or problem resolution techniques,
21 including mediation and negotiation; and

22 (iii) Community outreach.

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

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

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

31 (b) The senate members of the committee shall be appointed by the
32 president of the senate. Two members shall represent the majority
33 caucus and one member the minority caucus.

34 (c) The house of representatives members of the committee shall
35 be appointed by the speaker of the house of representatives. Two
36 members shall represent the majority caucus and one member the
37 minority caucus.

38 (4) If sufficient appropriations are provided, the education
39 ombuds shall delegate and certify regional education ombuds. The

1 education ombuds shall ensure that the regional ombuds selected are
2 appropriate to the community in which they serve and hold the same
3 qualifications as in subsection (2)(a) of this section. The education
4 ombuds may not contract with the superintendent of public
5 instruction, or any school, school district, or current employee of a
6 school, school district, or the office of the superintendent of
7 public instruction for the provision of regional ombuds services.

8 (5)(a) Subject to amounts appropriated for this specific purpose,
9 the education ombuds shall delegate and certify at least one special
10 education ombuds to serve each educational service district region.
11 The education ombuds shall ensure that the special education ombuds
12 selected are appropriate to the community in which they serve and
13 hold the same qualifications as in subsection (2)(a) of this section.
14 The education ombuds may not contract with the superintendent of
15 public instruction, or any school, school district, educational
16 service district, or current employee of a school, school district,
17 educational service district, or the office of the superintendent of
18 public instruction for the provision of special education ombuds
19 services.

20 (b) Special education ombuds must serve as a resource for
21 students eligible for special education services and their parents,
22 including:

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

26 (A) Provided in the least restrictive environment;

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

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

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

32 (ii) Assisting students and parents with individualized education
33 program development, including:

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

36 (B) Attending individualized education program meetings to help
37 present the parents' concerns, negotiate components that meet the
38 parents' goals and requests, or otherwise assist the parent in
39 understanding and navigating the individualized education program
40 process; and

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

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

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

13 (2) The superintendent of public instruction shall develop an
14 allocation and cost accounting methodology that ensures state general
15 apportionment funding for students who receive their basic education
16 services primarily in an alternative classroom or setting are
17 prorated and allocated to the special education program and accounted
18 for before calculating special education excess costs. Nothing in
19 this section requires districts to provide services in a manner
20 inconsistent with the students individualized education program or
21 other than in the least restrictive environment as determined by the
22 individualized education program team.

23 (3) The superintendent of public instruction shall provide the
24 legislature with an accounting of prorated general apportionment
25 allocations provided to special education programs broken down by
26 school district by January 1, 2024, and then every January 1st of
27 odd-numbered years thereafter."

ESHB 1436 - S AMD 466
By Senator Wellman

ADOPTED 04/21/2023

28 On page 1, line 1 of the title, after "funding;" strike the
29 remainder of the title and insert "amending RCW 28A.150.390,
30 28A.150.392, and 43.06B.010; adding a new section to chapter 28A.155
31 RCW; adding a new section to chapter 28A.150 RCW; creating a new
32 section; and providing an expiration date."

EFFECT: (1) Strikes all provisions from the underlying bill except those that:

(a) Direct OSPI to annually review data to ensure there is not a disproportionate identification of students;

(b) Require OSPI to provide technical assistance to school districts experiencing issues related to disproportionality and make professional development opportunities available to promote inclusionary teaching practices;

(c) Require JLARC and the State Auditor to conduct a performance audit of the state's system of providing special education.

(2) Modifies the JLARC and State Auditor performance audit provision to:

(a) Add an intent section;

(b) Require JLARC and the State Auditor to consult with OSPI when conducting the performance audit;

(c) Require JLARC and the State Auditor to examine how the existing special education funding formula components address the actual funding needs of school districts to fully serve all students with disabilities, including an examination of each individual funding component and the interplay between the funding components in the overall funding model;

(d) Require JLARC and the State Auditor to examine how Washington's special education funding model compares to different special education funding models in other states, including identifying strengths and weaknesses of the Washington model and identifying which state formulas place a cap or threshold value on the number or percentage of special education students;

(e) Require JLARC and the State Auditor to revisit prior reports to determine if special education excess cost accounting methodology and requirements are still functioning as intended and if additional modifications are recommended.

(3) Adds the special education funding policies from Engrossed Second Substitute Senate Bill 5311, which does the following:

(a) Increases the special education excess cost multipliers for pre-K and K-12 students.

(b) Increases the special education enrollment funding cap from 13.5 percent to 15 percent.

(c) Provides that the average per-pupil expenditure used to determine safety net award eligibility for high-need students is 2 times the average per pupil expenditure for districts with fewer than 1,000 students and 2.2 times the average per-pupil expenditure for districts with 1,000 or more students, beginning in the 2023-24 school year.

(d) Requires the Office of Education Ombuds to delegate special education ombuds to serve as a resource for students and their parents, subject to appropriations.

(e) Directs the Superintendent of Public Instruction to develop an allocation and cost accounting methodology that ensures state general apportionment funding is allocated to a student's special education program when basic education services are provided in an alternative setting and report to the Legislature.

(4) Requires OSPI to use the following accounting methodology through the 2026-27 school year: If a school district's percentage used to calculate the state general apportionment revenue allocated to special education is lower than the percentage used for the 2022-23 school year, OSPI must allocate state general apportionment revenue to special education based on the percentage used in the 2022-23 school year. The following exceptions apply:

(a) This requirement does not apply to school districts with more than 30 percent of state general apportionment revenue allocated to special education or school districts with enrollments of less than 300 full-time equivalent students.

(b) School districts with less than 20 percent of state general apportionment revenue allocated to special education must be allocated at 20 percent.

(c) If the percentage of time that a district's students receiving special education are served in the general education setting is at least five percent greater than in 2022-23, the percent of state general apportionment revenue allocated to special education may be reduced by one percent from the 2022-23 school year value.

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