

HOUSE BILL REPORT

SHB 1109

As Passed House:

March 1, 2023

Title: An act relating to providing funding for school districts to conduct extraordinary numbers of special education eligibility determinations and to subsequently develop individualized education programs for the eligible students.

Brief Description: Providing funding for school districts for special education.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Senn, Stonier, Rude, Taylor, Slatter, Callan, Doglio, Orwall, Caldier, Simmons, Timmons, Reeves, Couture, Thai, Bergquist, Ortiz-Self, Pollet, Santos, Kloba and Davis).

Brief History:

Committee Activity:

Education: 1/17/23, 1/26/23 [DP];

Appropriations: 2/9/23, 2/20/23 [DPS].

Floor Activity:

Passed House: 3/1/23, 95-1.

Brief Summary of Substitute Bill

- Establishes a program to reimburse public schools up to \$3,000 for conducting an initial special education evaluation for an eligible student and up to \$3,000 for developing an individualized education program (IEP) for an eligible student, during the summers of 2023, 2024, and 2025.
- Requires, beginning July 1, 2026, the special education safety net committee to consider extraordinary costs associated with conducting extraordinarily high numbers of initial evaluations for special education services and related services, and subsequent development of IEPs for the eligible students, during a school year.

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

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass. Signed by 15 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bergquist, Callan, Eslick, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

Staff: Megan Wargacki (786-7194).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: James Mackison (786-7104).

Background:

Initial Evaluation for Special Education.

An initial evaluation is the process used to determine whether a student age 3 through 21 years has a qualifying disability and is in need of special education and related services to receive a free, appropriate public education. The school district has 35 school days from the time a student's parent provided consent for an evaluation to determine the student's eligibility for special education. School days do not include school holidays or vacation days.

The initial evaluation process must assess the student in areas of suspected disability. The student may be assessed on cognitive, behavioral, physical, or developmental factors. The school district must hold a meeting that includes qualified professionals and the student's parents to discuss the results of the evaluation and to make the eligibility determination.

Individualized Education Programs.

When a student is found eligible for special education, the school district has 30 calendar days to develop the student's individualized education program (IEP). An IEP, which is written by an IEP team, guides the delivery of special education and related services for the student.

The IEP team must include: the student's parent, at least one of the student's general education teachers; at least one special education teacher; school staff qualified to provide,

or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities, and who is knowledgeable about the general curriculum and the availability of resources; an individual who can interpret evaluation results and the related instructional implications; other individuals, at the discretion of the parent or the school, who have knowledge or special expertise regarding the student; and, if appropriate, the student.

Special Education Funding.

For each student in kindergarten through age 21 (K-21) receiving special education, the state provides the basic education allocation multiplied by either: (a) 1.0075 for students receiving special education and reported to be in the general education setting for 80 percent or more of the school day; or (b) 0.995 for students receiving special education and reported to be in the general education setting for less than 80 percent of the school day. However, the state special education 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.

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. The awarding of safety net funds is subject to, among other things, the following conditions:

1. The applicant must convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas.
2. In the determination of need, the committee must consider additional revenues available to an applicant from federal sources.
3. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

The special education safety net committee may award safety net funding to applicants for high-need individuals (HNIs) and for community characteristics that draw a large number of students eligible for special education. An HNI is eligible for a safety net award if the student's IEP costs exceed 2.3 times the average per-pupil expenditure as defined in federal law.

Summary of Substitute Bill:

Reimbursements for Costs of Special Education Initial Evaluation and Individualized Education Program Development During Three Summers.

For the following activities conducted during the months of July through September, 2023, 2024, and 2025, the Office of the Superintendent of Public Instruction (OSPI) must reimburse school districts, charter schools, and state-tribal compact schools up to:

- a. \$3,000 per eligible student for conducting an initial evaluation for special education; and
- b. \$3,000 per eligible student for development of individualized education programs (IEPs) including, if needed, assistive technology devices and services.

"Eligible student" means a student with an incomplete initial special education evaluation as of June 30 of the current year, who was referred for an initial evaluation prior to June 30 of the current year.

School districts, charter schools, and state-tribal compact schools without capacity to conduct these special education–related activities during the summer may contract for these activities to be completed by educational service districts or private organizations with expertise.

At the time and in the manner required by the OSPI, recipients of these reimbursements must submit the following information: (a) the number of hours of staff time spent conducting initial student evaluations, developing IEPs, and performing related administrative activities, disaggregated by staff type; and (b) the number of initial student evaluations conducted and IEPs developed, per month, between September 2021 and September 2024, disaggregated by student grade level or age, if in preschool.

Annually by December 1, the OSPI must report to the Legislature with a summary of the information submitted by recipients of the reimbursements and a commentary on the effectiveness of the reimbursements.

The reimbursement program expires June 20, 2026.

Safety Net Funding for Special Education Initial Evaluation and Individualized Education Program Development.

Beginning July 1, 2026, the special education safety net committee must consider extraordinary costs associated with conducting extraordinarily high numbers of initial evaluations for special education services and related services, and subsequent development of IEPs for the eligible students, during a school year.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Education):

(In support) The need for this bill arose from a concern about the gap in services

experienced by some children transitioning from the Early Services for Infants and Toddlers program to the special education programs provide by the public schools. There is also a gap in services when a student in kindergarten through twelfth grade (K-12) is identified as needing special education services during the late spring because the K-12 schools generally do not develop individualized education programs (IEPs) during the summer vacation. It is not that the schools are not permitted to do it during the summer, but they do need the resources and incentive to do it.

Children should be assessed for special education services throughout the calendar year and prior to the start of the school year whenever possible. The IEP development process can take a long time to get started at the beginning of the school year. For some students, the process to be diagnosed and qualified for special education services can take eight months.

If students could start the school year with their IEP in place, their educational experience and their academic outcomes could benefit significantly. Parents are anxious while waiting for the summer to end so that their child's IEP can be developed.

This bill will allow IEPs to be developed during the summer so that students can start the school year receiving the special education services and placements that they need. It provides funding and opportunities to deliver more seamless supports to students eligible for special education benefits. This bill will also free up the time of the special education staff during the school year. It is a short-term solution in the bill and one worth testing.

(Opposed) None.

(Other) In order to complete initial special education evaluations and develop IEPs for all eligible students during the summer, some school districts would need to employ teams of specialized staff for multiple weeks. The idea of the bill is in the best interest of students; however, it does not provide for the large volume that would need to be conducted in a large district.

Staff Summary of Public Testimony (Appropriations):

(In support) It takes a significant amount of time for 3- and 4-year-olds to receive an evaluation, and they are often prioritized after other kindergarten through twelfth grade students. A solution to the problem is adding capacity over the summer, so students have individualized education programs (IEPs) in place when they start school. COVID-19 has exacerbated the backlog for evaluations and IEP development. This bill allows districts to catch up over the summer. This bill will help all students, not just 3- and 4-year-olds.

Advocates for people with intellectual disabilities support the policy. Timely access is important when providing special education services. This bill will encourage a year-round calendar for evaluations and IEP development. Students leaving the Early Support for Infants and Toddlers program may not get an IEP in place until the spring, especially

students with a summer birthday, which creates a gap in service. This has always been a problem, but COVID-19 has made it worse. Preschool providers have reported these delays as well. This policy provides continuity of services for children with disabilities, and prevents children being left behind due to a gap in services.

School board directors support the policy and stand with the special needs community. First-hand reports confirm that IEP evaluations take a lot of time. This policy offers students the opportunity to have the services they need available at the beginning of the school year. This will help our most vulnerable children. The bill also provides funding to perform the work.

Speech language pathologists support this bill. Working with small school districts for over a decade has highlighted that focusing on early interventions is important. Timing is everything in speech development. This policy will help our youngest students with special needs and put IEPs in place before the start of a school year.

A student with autism fell through the cracks and had to be self-identified by the parent as needing special education late in the school year. He did not receive an evaluation until the following school year, and because of the timeframes allowed in evaluations, began the following year with some services not being available. This gap affected his academic growth and emotional health.

(Opposed) None.

Persons Testifying (Education): (In support) Representative Tana Senn, prime sponsor; Luckisha Phillips, Washington State School Directors' Association; Mikhail Cherniske, Office of Superintendent of Public Instruction; Julie Salvi, Washington Education Association; and Tanya Aggar, Washington State Parent Teacher Association.

(Other) Shannon Hitch, Lake Washington School District.

Persons Testifying (Appropriations): Representative Tana Senn, prime sponsor; Ramona Hattendorf, The Arc of King County; Devony Audet; Luckisha Phillips, Washington State School Directors' Association; Diana Stadden, The Arc of Washington State; and Bethany Davis, Washington Speech-Language-Hearing Association.

Persons Signed In To Testify But Not Testifying (Education): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.