

FINAL BILL REPORT

ESHB 1436

PARTIAL VETO

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Synopsis as Enacted

Brief Description: Funding special education.

Sponsors: House Committee on Appropriations (originally sponsored 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).

House Committee on Appropriations

Senate Committee on Early Learning & K-12 Education

Senate Committee on Ways & Means

Background:

Special Education Funding.

The state allocates funding for a program of special education for students with disabilities using an excess cost formula, which multiplies a school district's base allocation by an excess cost multiplier.

School districts receive a tiered multiplier based on inclusion in a general education setting for special education students in kindergarten through age 21 (K-21). A multiplier of 1.0075 is provided for special education students that spend at least 80 percent of the school day in a general education setting. For students in a general education setting less than 80 percent of the time, districts receive a 0.995 multiplier. Excess cost allocations are capped at 13.5 percent of a school district's full-time student enrollment.

Prior to kindergarten, students ages 3 to 5 (Pre-K) receiving special education services receive a multiplier of 1.15. These students are not included in the 13.5 percent enrollment funding cap.

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.

Beyond allocations from excess cost multipliers, the Office of the Superintendent of Public Instruction (OSPI) may provide safety net funding if a school district has one or more high-need individual (HNI) students or is in a community impacted by large numbers of families with children eligible for special education, such as communities with group homes or military bases. For HNI awards, the school district's expenditures for the student must exceed an expenditure threshold. The threshold for a student in any district to access state safety net funds is 2.3 times the statewide average per-pupil expenditure (APPE), which equals \$37,599 in the 2022-23 school year. Most safety net awards come from state funding and cover HNI costs, while community impact awards comprise a smaller portion of the safety net.

The formulas for special education also apply to charter schools and tribal schools in state-tribal education compacts.

The K-21 students receiving special education services generate funding through both general apportionment, also referred to as the basic education allocation (BEA), and excess cost formulas. In addition to excess costs amounts, a portion of the BEA amount based on the percentage of time a student is outside a general education setting is redirected from the BEA amounts and dedicated to special education purposes by the OSPI. Additional BEA state revenues beyond the redirected amount may be used for special education by school districts, though they are not required to be.

Funding has been provided in the last two biennial operating budgets for professional development to promote the inclusion of special education students within the general education classroom.

Education Ombuds.

The Office of the Education Ombuds (OEO) was created within the Office of the Governor to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system and to advocate on behalf of students.

The Governor must appoint an Education Ombuds who is a person of recognized judgment, independence, objectivity, and integrity and who is qualified by training or experience or both in the following areas: (1) public education law and policy in Washington; (2) dispute resolution or problem resolution techniques, including mediation and negotiation; and (3) community outreach. The Education Ombuds may not be an employee of any school district, the OSPI, or the State Board of Education while serving as an education ombuds.

The Education Ombuds has eight statutory powers and duties, for example, to:

- provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;
- identify and recommend strategies for greater parent and community involvement in

- school shared decision-making processes;
- identify and recommend strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement; and
- facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system.

Summary:

Excess Cost Formulas and Safety Net.

Excess cost multipliers for special education are increased as follows:

- from 1.0075 to 1.12 for K-21 students spending 80 percent or more of the school day in a general education setting;
- from 0.995 to 1.06 for K-21 students spending less than 80 percent of the school day in a general education setting; and
- from 1.15 to 1.2 for pre-kindergarten students.

The 13.5 percent enrollment limit is increased to 15 percent.

The threshold for high-need individuals to access the special education safety net is reduced from 2.3 to 2.2 times the APPE for school districts with more the 1,000 full-time equivalent students, and 2.0 times the APPE for school districts with fewer than 1,000 full-time equivalent students.

Special Education Performance Audit.

The Joint Legislative Audit and Review Committee (JLARC) and the State Auditor (SA) are required to conduct a performance audit of the state's special education system on several topics, including options for funding formula changes and comparisons with other states. The JLARC and the SA are required to consult with several entities, including the OSPI, in their work. Use of contractors for any aspect of the work is authorized. The JLARC and the SA may select a sample of school districts to audit as needed. State and local agencies are required to provide any records within four months of a request to the JLARC and SA and notify the requestor if the request does not comply with federal privacy laws. By December 31, 2023, the JLARC and the SA are required to identify a lead agency for each component of the audit, and any aspects of the work being performed by contractors. The study's findings and recommendations must be reported to the Governor and the committees of the Legislature with jurisdiction over fiscal matters and special education by November 30, 2024.

Cost Accounting.

Two provisions pertain to accounting of special education revenues.

First, the OSPI is directed to develop an allocation and cost accounting methodology to ensure basic education general apportionment funding is prorated and allocated to a student's special education program and accounted for before calculating special education excess cost when services are provided outside of the general education setting. OSPI must report general apportionment funding prorated and allocated to a special education programs by district beginning January 1, 2024, and every odd-numbered year thereafter.

Second, in conjunction with the Special Education Performance Audit, the OSPI is required 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:

- 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.
- School districts with less than 20 percent of state general apportionment revenue allocated to special education must be allocated at 20 percent.
- If the percentage of time that a district's students receiving special education are served in the general education setting is at least 5 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.

Special Education Ombuds.

Subject to appropriation, the Education Ombuds must delegate and certify at least one Special Education Ombuds to serve each educational service district region to serve as a resource for students eligible for special education services and their parents. The duties of the Special Education Ombuds include advocating for services designed to meet students' individual needs in the least restrictive environment and assisting students and parents in the development of individualized education programs. The Education Ombuds must ensure that the Special Education Ombuds selected are appropriate to the community in which they serve and hold the same qualifications as required of the Education Ombuds. The Education Ombuds may not contract with the Superintendent of Public Instruction, or any school, school district, educational service district, or current employee of a school, school district, educational service district, or the Office of the Superintendent of Public Instruction for the provision of Special Education Ombuds services.

State Data Review and Technical Assistance.

The OSPI is required to:

- annually review data from local education agencies (LEAs) to ensure that disproportionate percentages of students are not identified for special education

- services; and
- provide technical assistance and professional development opportunities to LEAs and community partners to promote inclusionary practices and help safeguard against overidentification and disproportionality.

Votes on Final Passage:

House	94	2	
Senate	49	0	(Senate amended)
House			(House refused to concur/asked Senate to recede)
Senate	49	0	(Senate receded/amended)
House	98	0	(House concurred)

Effective: July 23, 2023

Partial Veto Summary: The Governor vetoed the section of the bill with the requirements that the Joint Legislative Audit and Review Committee (JLARC) and the State Auditor (SA) conduct a performance audit and associated accounting requirements to maintaining the percentage used to calculate the state general apportionment revenue allocated to special education at 2022-23 percentages under defined criteria.