

# HOUSE BILL REPORT

## ESHB 1436

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### As Passed Legislature

**Title:** An act relating to special education funding.

**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).

### Brief History:

#### Committee Activity:

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

#### Floor Activity:

Passed House: 3/2/23, 94-2.

Senate Amended.

Passed Senate: 4/12/23, 49-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/21/23, 49-0.

House Concurred.

Passed House: 4/22/23, 98-0.

Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Increases special education excess cost multipliers to: (1) 1.12 for kindergarten through age 21 (K-21) students who spend at least 80 percent of the school day in a general education setting; (2) 1.06 for those who spend less than 80 percent of the school day in a general education setting; and (3) 1.2 for pre-kindergarten students.

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*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.*

- Increases the enrollment limit for special education funding from 13.5 percent to 15 percent.
- 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 (APPE) for districts with 1,000 or more students, and 2.0 times the APPE for districts with fewer than 1,000 students.
- Requires the Office of the Superintendent of Public Instruction (OSPI) to review data for disproportionate identification of students and assist school districts to support inclusionary teaching practices.
- Requires the percentage of special education students' general apportionment allocations used for special education to stay at least at 2022-23 levels through the 2026-27 school year, with exceptions.
- Directs the OSPI to develop and report on an allocation and cost accounting methodology that ensures state general apportionment funding is allocated to a student's special education program when services are provided in an alternative setting.
- Requires the Joint Legislative Audit and Review Committee and the State Auditor to conduct a performance audit of the state's special education system.
- Directs, subject to appropriation, the delegation of one Special Education Ombuds to serve in each educational service district.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, 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:**

#### 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.

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. Currently, 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 of Engrossed Substitute Bill:**

#### 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.

#### Cost Accounting.

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.

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..

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.

#### 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) A disability is not a choice. Likewise, a school district's obligation to educate every child with disabilities is also not a choice. Capping the number of special education students that the state will fund is an unconscionable choice. In some districts, 15 to 18 percent of the total student body has disabilities, but the state will only provide funding for 13.5 percent. This is a matter of civil rights. The original bill was more generous in filling what the OSPI and school districts have estimated to be a \$500 million gap in special education funding. The length of time it takes to get an evaluation is due to the difficulty in hiring staff and paraeducators to provide the necessary services. There are fiscal realities, but hopefully the final bill will be better than the substitute bill. The enrollment cap must be ended, and the multiplier must be increased to provide additional funding for those above and below the cap, and between the multiplier and the safety net. Support this effort to provide all students with a free and appropriate education.

Students testified in support of the bill as originally written but have issues with the substitute bill. Why is one student's education funded but another's is not, simply because they may have a disability? By the time the enrollment cap phases out in the substitute bill, some students will have already graduated. Special education students work hard. The Legislature's failure requires special education students to work unreasonably hard. It is not right to not pay for a student's accommodations. Budgets are moral documents and students are watching.

Organizations supporting people with disabilities strongly support the original bill but are against the substitute bill. The original bill included additional funds and required districts to participate in efforts supporting inclusion and avoiding disproportionate identification, which are important. The substitute bill diverts up to 50 percent of basic education to special education settings when we should encourage serving these students in a general education setting. Washington is the second most likely state to put children in segregated settings. This funding structure could make that situation worse. An organization supporting the education of students with autism supports the original bill. Onsite coaching for staff working with students with disabilities and difficult behaviors is in high demand, but there is not enough funding allocated to support the training. Not enough funding results in high turnover, lawsuits, increased restraint, and isolation. Lack of funding is the root issue of many problems.

Several school district superintendents supported the original bill, but not the substitute bill. The cap on special education enrollment is unfair. The substitute bill moves in the wrong direction. The amount of funding per student provided through the multiplier is inadequate. There is appreciation for the Legislature's intent to fully fund special education this session. The substitute bill will not achieve that. Many school districts testified to a

gap between expenditures and state funding, and using local levies to fill the gap. Seattle is projecting a \$90 million gap. Olympia is projecting a \$10 million gap. Highline requires \$14.6 million this year to fully fund special education costs. The state superintendent proposed a policy that would fully fund special education. The arbitrary cap and multiplier are addressed in the substitute bill, but do not cover the full costs. Special education is not enrichment. Students eligible for special education have been increasing and many districts are above the 13.5 percent cap. Districts cannot turn students away. Costs increase each year. The Legislature should push forward on increasing the multiplier.

Several parents testified in support of the original bill but had concerns about the substitute bill. No one could in good conscience approve an enrollment cap. Think of how it would sound to limit the number of students of a particular race or ethnicity that generate funding. How do you tell students that their rights and the state's paramount duty end at 13.5 percent? The cap limits services and future social mobility and leaves human capital undeveloped. The reality is harsh for students and districts, and local levies are used to cover students above the cap. When properly funded and supported, special education students can thrive. Schools need to value all people, not just the neurotypical and able-bodied. Withholding funding creates a hostile environment for those that advocate for special needs students. Offering a substitute bill that substantially changes the bill the night before a hearing is like tactics used against parents in individualized education program meetings. Students are hurting and feel unseen. Lives are in the balance and families are in crisis. Public schools are not set up to support brilliant students with special needs. These students are segregated. There needs to be inclusion instead, allowing students to grow and learn together. Inclusion leads to better outcomes. Funding now will bring benefits for years to come. Special education funds are how the state provides basic education to students. Not funding these students violates their rights to an education. The section of the bill addressing the use of basic education dollars incentivizes school districts to segregate students. The cap is offensive. Students in eighth grade will graduate before the cap is eliminated. Do not fail these students with underfunding. Special education students cannot wait. Students struggle in postsecondary education because they are failed by the state and school districts. For one autistic student, there was not a program to support autism at the local school, and the student was segregated into a program nearly an hour away. Students and families are asking for equity, not priority.

Parents representing parent, teacher, and student associations also supported the original bill but had serious concerns about the substitute bill. Inclusion is not possible if support is cut off for any student. Students are being excluded. Any cap tells special education students they are not entitled to the same support as their peers. Disabled students are suffering. The budget must reflect the shared value that all students deserve education without distinction. The substitute bill delays necessary funding and makes education a privilege. Limiting funding for special education tells those students that they are not valued. Federal law protects students eligible for special education services. Phasing in funding does the opposite. A sixth grader would be a high school senior before full funding is available. Action needs to be taken sooner. Disability rights are human rights. Civil rights are not

optional.

Several school board directors supported the original bill but had concerns about the substitute bill. The districts support increased funding in the original bill, but the substitute bill falls short. The substitute bill is still being evaluated, but it appears to be a step backwards. Full funding is necessary for inclusion. Inclusion helps students feel they belong and develop stronger academic and social skills. The substitute bill does not do enough to support inclusionary practices and supports the status quo and leaves us behind other states. The original bill addresses the opportunity gap these students face. As one example, a student with special needs was not identified in elementary school and presented behaviors that lead to problems in school. In middle school the student was identified as needing special education services, and now thrives. Fully funding special education services helps with inclusion and could be the Legislature's legacy. Students that have qualified for special education have done so under specific categories defined by federal law. A funding cap leaves school districts legally obligated to serve students without the state funding necessary to do so. The cap implies that services for special education should be prioritized. Trust districts with the resources they need to serve students. School districts supplement state and federal funding with local funding. Enrichment funding should be used for enhancements, not special education funding.

Those representing the Special Education Advisory Council support the original bill but are against the substitute bill. Removing the cap is essential. No student should face discrimination by not receiving the services they need. Increases in the multiplier are not large enough. The diversion of basic education revenue to special education revenue encourages segregation.

The substitute bill is still being digested. The attention to special education funding is appreciated. Both the cap and multiplier are important.

The substitute bill does not solve the immediate crisis. Washington schools face a funding crisis. These issues need to be dealt with now, or at election time. Schools are in danger of closing. Marysville School District is considering dissolving if their levy fails, although McCleary was supposed to reduce reliance on local levies. The cap is one cause for this. The cap also creates an incentive to deny services. Delayed funding will not help students and will cause schools to close and districts to fail.

State funding formulas cripple small, rural island school districts by misunderstanding their costs in educating students. School closures are possible. Families will be forced to leave the area. This bill would provide modest help with the fiscal hole. Enrollment in special education is as high as 27 percent in some island districts, and schools spend over \$1 million out of their general funds.

(Opposed) None.



(Other) State and Seattle Parent Teacher Student Associations changed from pro on the original bill to other, as the substitute bill is problematic and removes key provisions of the original bill. In Seattle, students find it difficult to learn when they must wonder if they will be allowed to access their education. There is a legal obligation to educate all students with disabilities in the myriad of ways that they learn. Funding formulas limit the ability to serve some students solely based on their disability. Over half of school districts exceed the enrollment cap and spend over \$400 million from their local funds. This is an equity issue because not all districts have access to local funds. The original bill should be supported, which fixes the cap, increases the multiplier, and restores the inclusionary practices provisions.

In Thurston County, advocates for parents of students with special needs have fought for inclusion. Where inclusion is embraced, students feel supported and can reach their potential. The substitute bill is a blow to those that have invested in supporting inclusion due to the removal of inclusion training and the shifting a basic education revenue. These will encourage exclusionary settings and create anxiety for parents, students, and teachers that serve them.

**Persons Testifying:** (In support) Representative Gerry Pollet, prime sponsor; Ramona Hattendorf, The Arc of King County; Patrick Murphy, Olympia School District; Brent Jones and Ian Fogg, Seattle Public Schools; Ivan Duran, Highline Public Schools; Devony Audet; Julie Salvi, Washington Education Association; Jana Parker and Erica Hiegelke, Seattle Special Education Parent Teacher Student Association; Melissa Spiker; Kathy Mulkerin, Eliza Rankin, David Berg, and Nikki Otero-Lockwood, Washington State School Directors' Association; Jen Chong Jewell, Special Education Advisory Council for Office of the Superintendent of Public Instruction; Robert Cruickshank, Washington's Paramount Duty; Jane Fuller, San Juan County Council; Dawn Sidell, Northwest Autism Center; Molly and Olivia Mitchell; Sebrena Burr; Michele Campbell; and Eowyn Grubbs.

(Other) Samantha Fogg, Seattle Council Parent Teacher Student Association; Nancy Chamberlain, Washington State Parent Teacher Association; and Michelle O'Dell, Thurston County Developmental Disability Coalition.

**Persons Signed In To Testify But Not Testifying:** None.