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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5311

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State of Washington

68th Legislature

2023 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Braun, Dhingra, Hunt, Kuderer, Mullet, Nguyen, Nobles, Pedersen, Torres, and C. Wilson; by request of Office of Financial Management)

READ FIRST TIME 02/23/23.

1 AN ACT Relating to special education funding formula; amending  
2 RCW 28A.150.390, 28A.150.392, and 43.06B.010; and adding a new  
3 section to chapter 28A.150 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to  
6 read as follows:

7 (1) The superintendent of public instruction shall submit to each  
8 regular session of the legislature during an odd-numbered year a  
9 programmed budget request for special education programs for students  
10 with disabilities. Funding for programs operated by local school  
11 districts shall be on an excess cost basis from appropriations  
12 provided by the legislature for special education programs for  
13 students with disabilities and shall take account of state funds  
14 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and  
15 28A.150.415.

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

18 (a) A district's annual average headcount enrollment of students  
19 ages three and four and those five year olds not yet enrolled in  
20 kindergarten who are eligible for and receiving special education,

1 multiplied by the district's base allocation per full-time equivalent  
2 student, multiplied by ~~((1.15))~~ 1.2;

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

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

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

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

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

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

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

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

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

31 (3) As used in this section:

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

37 (b) "Basic education enrollment" means enrollment of resident  
38 students including nonresident students enrolled under RCW  
39 28A.225.225 and students from nonhigh districts enrolled under RCW  
40 28A.225.210 and excluding students residing in another district

1 enrolled as part of an interdistrict cooperative program under RCW  
2 28A.225.250.

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

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

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

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

19 (2) Safety net funds shall be awarded by the state safety net  
20 oversight committee subject to the following conditions and  
21 limitations:

22 (a) The committee shall award additional funds for districts that  
23 can convincingly demonstrate that all legitimate expenditures for  
24 special education exceed all available revenues from state funding  
25 formulas.

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

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

31 (d) In the determination of need, the committee shall require  
32 that districts demonstrate that they are maximizing their eligibility  
33 for all state revenues related to services for students eligible for  
34 special education and all federal revenues from federal impact aid,  
35 medicaid, and the individuals with disabilities education act-Part B  
36 and appropriate special projects. Awards associated with (e) and (f)  
37 of this subsection shall not exceed the total of a district's  
38 specific determination of need.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Sec. 3.** RCW 43.06B.010 and 2013 c 23 s 82 are each amended to  
6 read as follows:

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

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

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

18 (ii) Dispute resolution or problem resolution techniques,  
19 including mediation and negotiation; and

20 (iii) Community outreach.

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

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

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

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

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

36 (4) If sufficient appropriations are provided, the education  
37 ombuds shall delegate and certify regional education ombuds. The  
38 education ombuds shall ensure that the regional ombuds selected are  
39 appropriate to the community in which they serve and hold the same

1 qualifications as in subsection (2)(a) of this section. The education  
2 ombuds may not contract with the superintendent of public  
3 instruction, or any school, school district, or current employee of a  
4 school, school district, or the office of the superintendent of  
5 public instruction for the provision of regional ombuds services.

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

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

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

24 (A) Provided in the least restrictive environment;

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

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

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

30 (ii) Assisting students and parents with individualized education  
31 program development, including:

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

34 (B) Attending individualized education program meetings to help  
35 present the parents' concerns, negotiate components that meet the  
36 parents' goals and requests, or otherwise assist the parent in  
37 understanding and navigating the individualized education program  
38 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. 4.**    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.

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