

**SHB 1436** - H AMD 153

By Representative Stokesbary

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

3

4

5 "NEW SECTION. **Sec. 1.** The legislature finds that students  
6 receiving special education services are entitled, under both  
7 federal and state law, to a free appropriate public education that  
8 enables their full participation.

9 The legislature also finds that a cap or enrollment limit of  
10 13.5 percent on the number of students receiving special education  
11 services that generate state special education funding is not  
12 consistent with the state's duty to provide a free appropriate  
13 public education.

14 The legislature further finds that school districts pay for  
15 special education services with local funding, creating an  
16 inequitable situation for school districts and students. The  
17 legislature supports a system of funding that does not require  
18 school districts to generate local funding to meet their obligation  
19 to provide special education services.

20 The legislature finds that along with reliable and sufficient  
21 state funding, receiving special education services in the least  
22 restrictive environment possible is crucial to student success. A  
23 recent large-scale study found that students who spend at least 80  
24 percent of their day in a general education setting improved their  
25 reading scores by 24 points and math scores by 18 points compared to  
26 peers with similar disabilities in less inclusive settings.

27 The legislature finds that the documented prevalence of  
disabilities amongst children, particularly amongst vulnerable

1 populations and communities with disparately poor health outcomes  
2 and access to health services, indicates that the state should  
3 improve access to evaluations for disabilities.

4 The legislature finds that special education is fully part of  
5 the state's statutory program of basic education that is deemed by  
6 the legislature to implement Article IX, section 1 of the state  
7 Constitution.

8 The legislature, therefore, intends to fully fund special  
9 education services by providing advocacy support for families to  
10 help navigate the special education system, increasing the 13.5  
11 percent cap to 15 percent, and increasing the special education  
12 multipliers for elementary and secondary students and pre-  
13 kindergarten students, thereby giving every school district a  
14 funding increase.

15 The legislature intends to require a comprehensive study of  
16 funding and services for students with disabilities, to be completed  
17 prior to the 2025 legislative session, to understand if the state is  
18 appropriately identifying students with disabilities, identify  
19 funding and service gaps, and ensure that funding provided by the  
20 state to school districts, charter schools, and other entities for  
21 services are being used to meet the needs of students with  
22 disabilities.

23

24 **Sec. 2.** RCW 28A.150.390 and 2020 c 90 s 3 are each amended to  
25 read as follows:

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

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

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

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

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

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

18 ~~(I) 1.0075))~~ 1.12 for students eligible for and receiving  
19 special education and reported to be in the general education  
20 setting for ~~((eighty))~~ 80 percent or more of the school day; or

21 ~~((II) 0.995))~~

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

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

30 (3) As used in this section:

31 (a) "Base allocation" means the total state allocation to all  
32 schools in the district generated by the distribution formula under  
33 RCW 28A.150.260 (4)(a), (5), (6), and (8) and the allocation under  
34

1 RCW 28A.150.415, to be divided by the district's full-time  
2 equivalent enrollment.

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

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

15  
16 **Sec. 3.** RCW 28A.150.392 and 2019 c 387 s 2 are each amended to  
17 read as follows:

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

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

26 (2) Safety net funds shall be awarded by the state safety net  
27 oversight committee subject to the following conditions and  
28 limitations:

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

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

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

4 (d) In the determination of need, the committee shall require  
5 that districts demonstrate that they are maximizing their  
6 eligibility for all state revenues related to services for students  
7 eligible for special education and all federal revenues from federal  
8 impact aid, medicaid, and the individuals with disabilities  
9 education act-Part B and appropriate special projects. Awards  
10 associated with (e) and (f) of this subsection shall not exceed the  
11 total of a district's specific determination of need.

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

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

24 (g) The committee shall then consider the extraordinary high  
25 cost needs of one or more individual students eligible for and  
26 receiving special education served in residential schools as defined  
27 in RCW ((~~28A.190.020~~)) 28A.190.005, programs for juveniles under the  
28 department of corrections, and programs for juveniles operated by  
29 city and county jails to the extent they are providing a secondary  
30 program of education.

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

34

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

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

7 (3) The superintendent of public instruction shall adopt such  
8 rules and procedures as are necessary to administer the special  
9 education funding and safety net award process. By December 1, 2018,  
10 the superintendent shall review and revise the rules to achieve full  
11 and complete implementation of the requirements of this subsection  
12 and subsection (4) of this section including revisions to rules that  
13 provide additional flexibility to access community impact awards.  
14 Before revising any standards, procedures, or rules, the  
15 superintendent shall consult with the office of financial management  
16 and the fiscal committees of the legislature. In adopting and  
17 revising the rules, the superintendent shall ensure the application  
18 process to access safety net funding is streamlined, timelines for  
19 submission are not in conflict, feedback to school districts is  
20 timely and provides sufficient information to allow school districts  
21 to understand how to correct any deficiencies in a safety net  
22 application, and that there is consistency between awards approved  
23 by school district and by application period. The office of the  
24 superintendent of public instruction shall also provide technical  
25 assistance to school districts in preparing and submitting special  
26 education safety net applications.

27 (4) On an annual basis, the superintendent shall survey  
28 districts regarding their satisfaction with the safety net process  
29 and consider feedback from districts to improve the safety net  
30 process. Each year by December 1st, the superintendent shall prepare  
31 and submit a report to the office of financial management and the  
32 appropriate policy and fiscal committees of the legislature that  
33 summarizes the survey results and those changes made to the safety  
34 net process as a result of the school district feedback.

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

3 (a) One staff member from the office of the superintendent of  
4 public instruction;

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

7 (c) One or more representatives from school districts or  
8 educational service districts knowledgeable of special education  
9 programs and funding.

10 (6) Beginning in the ((2019-20)) 2023-24 school year, a high-  
11 need student is eligible for safety net awards from state funding  
12 under subsection (2)(e) and (g) of this section if the student's  
13 individualized education program costs exceed two and ((three)) two-  
14 tenths times the average per-pupil expenditure as defined in Title  
15 20 U.S.C. Sec. 7801, the every student succeeds act of 2015.

16  
17 NEW SECTION. Sec. 4. A new section is added to chapter 28A.310  
18 RCW to read as follows:

19 (1) Subject to amounts appropriated for this specific purpose,  
20 each educational service district shall contract for independent  
21 special education advocates.

22 (2) The role of a special education advocate is to:

23 (a) Serve as a resource for a child with disabilities who is  
24 eligible for special education due to the disability and the child's  
25 parents and family;

26 (b) Advocate on behalf of the child for a free and appropriate  
27 public education from the public school system that emphasizes special  
28 education and related services that are:

29 (i) Provided in the least restrictive environment;

30 (ii) Designed to meet the child's unique needs;

31 (iii) Appropriately ambitious and reasonably calculated to enable  
32 a child to make progress in light of the child's circumstances; and

33 (iv) Addressing the child's further education, employment, and  
34 independent living goals; and

- 1 (c) Assist parents with any one or more of the following:
- 2 (i) Preparing for a meeting to develop or update their child's
- 3 individualized education program;
- 4 (ii) Attending the individualized education program meetings to
- 5 help present the parents' concerns, negotiate components that meet the
- 6 parents' goals and requests, or otherwise assist with the
- 7 understanding and navigation of the process;
- 8 (iii) Attending an individual education program meeting on behalf
- 9 of the child to assist in writing an appropriate program when a parent
- 10 opts out or otherwise cannot attend the meeting.

11

12 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.150

13 RCW to read as follows:

- 14 Beginning July 1, 2025:
- 15 (1) It is the policy of the state that for purposes of state
  - 16 funding allocations, students eligible for and receiving special
  - 17 education generate the full basic education allocation under RCW
  - 18 28A.150.260 and, as a class, are to receive the benefits of this
  - 19 allocation for the entire school day, as defined in RCW 28A.150.203,
  - 20 whether the student is placed in the general education setting or
  - 21 another setting.
  - 22 (2) The superintendent of public instruction must maintain a
  - 23 full cost method of excess cost accounting to account for
  - 24 expenditures beyond amounts provided through the special education
  - 25 funding formula under RCW 28A.150.390. This method of accounting
  - 26 must shift the following portions of a school district's general
  - 27 apportionment revenue for students eligible for and receiving
  - 28 special education to the school district's special education program
  - 29 for expenditure.
  - 30 (a) A percentage of a school district's base allocation as
  - 31 defined in RCW 28A.150.390(3) for students eligible for and
  - 32 receiving special education based on their percentage of time served
  - 33 in a special education setting;



1 (b) To the extent that state special education expenditures in  
2 the previous year exceeded state funding provided for that year  
3 under RCW 28A.150.390, 28A.150.392, and methods for redirecting  
4 general apportionment revenue based on the students' percentage of  
5 time served in a special education setting, up to 50 percent of the  
6 school district's base allocation as defined in RCW 28A.150.390(3)  
7 for students eligible for and receiving special education combining  
8 portions under (a) of this subsection.

9 (3) Unless otherwise prohibited by law, nothing in this section  
10 prohibits school districts from using other funding and state  
11 allocations above the amounts provided under RCW 28A.150.390 and  
12 subsection (2) of this section to serve students eligible for and  
13 receiving special education.

14 (4) The legislature must review any findings and recommendations  
15 from the report and audit required under section 7 of this act and  
16 adjust formulas in this section as appropriate.

17

18 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.155  
19 RCW to read as follows:

20 (1) The superintendent of public instruction shall annually  
21 review data from local education agencies, including the percentage  
22 of students receiving special education services, to ensure there is  
23 not a disproportionate identification of students, as defined by the  
24 superintendent of public instruction in accordance with federal  
25 requirements of the individuals with disabilities education act, 20  
26 U.S.C. Sec. 1400.

27 (2) The office of the superintendent of public instruction shall  
28 provide technical assistance to school districts experiencing issues  
29 related to disproportionality and will make available professional  
30 development opportunities statewide to support local education  
31 agencies, schools, and community partners in promoting inclusionary  
32 teaching practices within a multitiered system of supports framework  
33 to help safeguard against over-identification and other issues  
34 related to disproportionality.

1        NEW SECTION.    **Sec. 7.** (1) The joint legislative audit and  
2 review committee and the state auditor must collaborate to conduct a  
3 performance audit of the state's system of providing special  
4 education services to students with disabilities. The joint  
5 legislative audit and review committee and the state auditor may  
6 divide responsibility for the work and reporting required in this  
7 section as appropriate, and contract with qualified third-party  
8 researchers or higher education institutions to perform any aspect  
9 of the report and audit. The report and audit must address:

10        (a) The prevalence of disabilities and whether the provisions  
11 and funding for evaluating students and providing services reflects  
12 the prevalence of disabilities, including whether any populations  
13 are disparately underevaluated or underserved;

14        (b) The degree to which changes in funding formulas intended to  
15 encourage increased inclusion are successful and whether the state  
16 and school districts are utilizing best practices to improve  
17 inclusion;

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

22        (d) Whether districts are appropriately accounting for and  
23 reporting use of basic education allocations for students with  
24 disabilities, including if statutory expectations for use of funds  
25 are being met;

26        (e) The amount of funding from levies or other local sources  
27 that school districts continue to utilize under current accounting  
28 methodologies in order to meet obligations to provide free and  
29 appropriate public education to students with disabilities, the  
30 degree to which funding shortfalls will continue following planned  
31 increases in multipliers, proposed changes to accounting  
32 methodologies, and the elimination of a cap on the percent of  
33 students for whom the state provides funding; and, options for  
34

1 additional changes to funding formulas to eliminate shortfalls in  
2 state funding for special education; and

3 (f) How the state may improve recruitment and retention of  
4 certificated educators, instructional aides, or paraeducators and  
5 professionals serving students with disabilities.

6 (2) To develop the appropriate scope, define study questions,  
7 and select one or more contractors to complete the performance audit  
8 and report, the joint legislative audit and review committee and  
9 state auditor shall consult with the office of the superintendent of  
10 public instruction, the office of the education ombuds,  
11 organizations representing and serving students with disabilities,  
12 the Washington state special education advisory council, and labor  
13 organizations representing educators providing educational services  
14 to students with disabilities in developing study questions and  
15 choosing appropriate contractors. To address the study questions,  
16 the joint legislative audit and review committee and the state  
17 auditor may conduct the audit at a sample of school districts as  
18 needed.

19 (3) The performance audit required by this section must include  
20 charter schools to the same extent as school districts.

21 (4) Upon request, the office of financial management and any  
22 state or local agency must provide the joint legislative audit and  
23 review committee and the state auditor with education records  
24 necessary to conduct the performance audit required under this  
25 section. The joint legislative audit and review committee and the  
26 state auditor shall be considered authorized representatives of  
27 relevant state education authorities, including the superintendent  
28 for public instruction and the department of children, youth and  
29 families, for the purpose of accessing records for this evaluation.  
30 The office of financial management and any state or local agency  
31 must provide records within four months from the date of an initial  
32 request. The office of financial management or agencies contributing  
33 data to the education research and data center must notify the joint  
34 legislative audit and review committee and the state auditor's

1 office in writing if they determine a request does not comply with  
2 the federal educational rights and privacy act, no later than  
3 twenty-one days after the initial request.

4 (5) Prior to the 2024 legislative session, the joint legislative  
5 audit and review committee and the state auditor must identify a  
6 lead agency for each element of the report and audit defined in  
7 subsection (1)(a) through (f) of this section and any aspects of the  
8 study that are being conducted by contractors. These designations  
9 must be provided to the governor and the committees of the  
10 legislature with jurisdiction over fiscal matters and special  
11 education by December 31, 2023.

12 (6) The joint legislative audit and review committee and the  
13 state auditor must, in accordance with RCW 43.01.036, report the  
14 study's findings and recommendations to the governor and the  
15 committees of the legislature with jurisdiction over fiscal matters  
16 and special education by November 30, 2024.

17 (7) This section expires August 1, 2025.

18  
19 NEW SECTION. **Sec. 8.** Sections 2 and 3 of this act take effect  
20 September 1, 2023.

21  
22 NEW SECTION. **Sec. 9.** Section 5 of this act takes effect July  
23 1, 2025.

24  
25 NEW SECTION. **Sec. 10.** If specific funding for the purposes of  
26 this act, referencing this act by bill or chapter number, is not  
27 provided by June 30, 2023, in the omnibus appropriations act, this  
28 act is null and void."

29

EFFECT: Strikes the underlying substitute bill and replaces  
with the following:

- Increases excess cost multipliers for special education students to:
  - o 1.12 for kindergarten through age 21 (K-21) students 80 percent or more in a general education setting,

- o 1.06 for K-21 students spending less than 80 percent in a general education setting,
  - o 1.2 for pre-kindergarten (Pre-K) students.
- Increases the 13.5 percent enrollment limit for special education funding to 15 percent.
- Requires educational service districts to contract for independent special education advocates, subject to appropriations.
- Adds an intent section.
- Maintains the following provisions from the substitute bill:
  - o 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.
  - o Requires up to 50 percent of a special education student's base education allocation to be used for special education if district special education expenditures exceeded revenues in the previous year, beginning July 2025.
  - o Requires the OSPI to review disproportionality data and assist schools with inclusionary teaching.
  - o Requires the Joint Legislative Audit and Review Committee and the State Auditor Office to conduct a performance audit of the state's special education system, with some revisions to the underlying language.

--- END ---