

# SENATE BILL REPORT

## ESHB 1436

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As Passed Senate - Amended, April 12, 2023

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

**Committee Activity:** Early Learning & K-12 Education: 3/15/23, 3/27/23 [DPA-WM].  
Ways & Means: 3/31/23, 4/04/23 [DPA (EDU)].

**Floor Activity:** Passed Senate - Amended: 4/12/23, 49-0.

### Brief Summary of Bill (As Amended by Senate)

- Increases the special education excess cost multipliers for pre-K and K-12 students.
- Increases the special education enrollment funding cap from 13.5 percent to 15 percent.
- Allows the Safety Net Oversight Committee to consider differences in program costs that are attributable to service delivery choices.
- Provides that the average per-pupil expenditure used to determine safety net award eligibility for high-need students is 2 times the average per pupil expenditure for districts with fewer than 1000 students and 2.2 times the average per pupil expenditure for districts with 1000 or more students, beginning in the 2023-24 school year.
- Requires the Office of Education Ombuds to delegate a special education

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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.*

ombuds to serve as a resource for students and their parents, subject to appropriations.

- Directs the Superintendent of Public Instruction to develop an allocation and cost accounting methodology that ensures state general apportionment funding is allocated to a student's special education program when basic education services are provided in an alternative setting and report to the Legislature.
- Requires the Office of the Superintendent of Public Instruction to review data for disproportionate identification of students and provide technical assistance and professional development opportunities to local education agencies.
- Requires the Joint Legislative Audit and Review Committee and the State Auditor to conduct a performance audit of the state's special education system.

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## SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair; Hawkins, Ranking Member; Dozier, Hunt, McCune, Mullet and Pedersen.

**Staff:** Alexandra Fairfortune (786-7416)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Early Learning & K-12 Education.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

**Staff:** Kayla Hammer (786-7305)

**Background:** Special Education Funding. The state allocates funding for a program of special education for students with disabilities. Special education is funded on an excess cost formula for up to 13.5 percent of a district's K to 12 students. This formula multiplies the district's base allocation for students enrolled in K to 12 special education by an excess

cost multiplier of either:

- 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
- 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.

Pre-K students receiving special education services, including three-, four-, and five-year-olds not yet enrolled in kindergarten, are funded based on a multiplier of 1.15 percent. These students are excluded from the 13.5 percent funded enrollment limit.

Safety Net Funding. Beyond these allocations, the Safety Net Oversight Committee, appointed by the Superintendent of Public Instruction, may award safety net funding if a district can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas, and it is maximizing its eligibility for all related state and federal revenues. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

The committee may award safety net funding to applicants for high-need individuals and for community characteristics that draw a large number of students eligible for special education. For high-need individual awards, the school district's expenditures for the student must exceed an expenditure threshold of 2.3 times the statewide average per-pupil expenditure (APPE), which equals \$37,599 in the 2022-23 school year.

**Summary of Amended Bill:** Special Education Excess Cost. The special education excess cost multipliers are increased as follows:

	Current	23-24 SY
Pre-K	1.15	1.2
K-12 Students in Gen. Ed. >80 percent	1.0075	1.12
K-12 Students in Gen. Ed. <80 percent	0.995	1.06

Enrollment Percent Cap. The K-12 special education enrollment funding cap is increased from 13.5 percent to 15 percent.

Safety Net Awards. When determining safety net award need, the Safety Net Oversight Committee is no longer required to exclude differences in program costs that are attributable to service delivery choices.

Beginning in the 2023-24 school year, a high-need student is eligible for safety net awards if the student's IEP costs exceed:

- 2 times the average per-pupil expenditure for school districts with fewer than 1000

- full-time equivalent students; or
- 2.2 times the average per-pupil expenditure for school districts with 1000 or more full-time equivalent students.

When calculating the average per-pupil expenditure for safety net eligibility purposes, safety net funding must be excluded.

Cost Accounting. The Superintendent of Public Instruction 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. Beginning January 1, 2024, and every odd-numbered year thereafter, the Superintendent of Public Instruction must provide the Legislature with an accounting of prorated general apportionment allocations provided to special education programs broken down by school district.

Special Education Ombuds. The Office of the Education Ombuds must delegate and certify at least one special education ombuds to serve each educational service district region, subject to appropriations for that purpose. A special education ombuds must be appropriate to the community in which they serve and hold the same qualifications as other education ombuds. The Office of Education Ombuds may not contract with the Superintendent of Public Instruction, a school, a school district, an educational service district, or an employee of those entities for the provision of special education ombuds services.

A special education ombuds must serve as a resource for students eligible for special education services and their parents. This includes advocating on behalf of the student for a free and appropriate public education that emphasizes special education and related services that are:

- provided in the least restrictive environment;
- designed to meet the student's unique needs;
- appropriately ambitious and reasonably calculated to enable a student to make progress in light of the student's circumstances; and
- addressing the student's further education, employment, and independent living goals.

A special education ombuds must also assist students and parents with individualized education program development, including:

- preparing for a meeting to develop or update a student's IEP;
- attending IEP meetings to help present the parent's concerns, negotiate components that meet the parent's goals and requests, or otherwise assist the parent in understanding and navigating the IEP process; and
- attending IEP meetings to assist in writing an appropriate program when a parent opts out or cannot attend.

Disproportionate Impact. The Office of the Superintendent of Public Instruction (OSPI) is

required to annually review data from local education agencies, including the percentage of students receiving special education services, to ensure there is not a disproportionate identification of students. OSPI must also provide technical assistance to school districts and professional development opportunities to local education agencies and community partners to promote inclusionary practices and help safeguard against overidentification and other issues related to disproportionality.

Report and Audit Requirement. The Joint Legislative Audit and Review Committee (JLARC) and the state auditor must conduct a performance audit of the state's special education system. JLARC and the state auditor may contract with qualified third-party researchers or higher education institutions to perform any aspect of the report and audit, and must consult with the following entities:

- OSPI;
- the Office of the Education Ombuds;
- organizations representing and serving students with disabilities;
- the Washington State Special Education Advisory Council; and
- labor organizations representing educators providing educational services to students with disabilities.

JLARC and the state auditor may conduct the audit at a sample of school districts as needed.

State and local agencies are required to provide education records within four months of a request to JLARC and state auditor and must notify the requestor within 21 days if the request does not comply with federal privacy laws. By December 31, 2023, JLARC and the state auditor are required to identify a lead agency for each component of the audit and any aspects of the work being performed by contractors, and provide these designations to the Governor and Legislature. 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.

The report and audit must address the following topics:

- the prevalence of disabilities and whether the provisions and funding for evaluating students and providing services reflects the prevalence of disabilities, including whether any populations are disparately under-evaluated or underserved;
- the degree to which changes in funding formulas intended to encourage inclusion are successful and whether the state and districts are utilizing best practices to improve inclusion;
- whether the changes in evaluation timelines or increases in the funded enrollment limit have resulted in funding for students who do not have disabilities or in excess of districts' costs;
- whether districts are appropriately accounting for and reporting use of basic education allocations for students with disabilities;
- the amount of funding from levies or other local sources that school districts continue

- to utilize under current accounting methodologies to meet obligations, the degree to which funding shortfalls will continue following planned funding changes, and options for additional funding changes; and
- how the state may improve recruitment and retention of certificated educators, instructional aides, or paraeducators and professionals serving students with disabilities.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill (Early Learning & K-12 Education):** *The committee recommended a different version of the bill than what was heard.* PRO: The enrollment funding cap is both unconscionable and unconstitutional. Students receiving special education services are served no matter what, so districts still must find funding to serve these students. Districts usually rely on levies to accomplish this, which is not equitable or fiscally responsible, and it removes money for other needy students.

CON: This bill doesn't do enough as quickly as is needed. The Senate policy represents real money for districts but the House bill falls short of meeting the state's paramount duty. This will continue district reliance on local funds to serve special education students. While the increases are helpful, it doesn't immediately address ongoing civil rights violations or the reality for students.

OTHER: Districts are seeing more and more students with exceptional needs, and are already reaching the enrollment cap. As drafted, this bill would take years to improve the funding changes that are needed now. However, there are positive aspects of the bill like eliminating the cap, offering tools to reduce disproportionality, and supporting inclusionary practices. The language about redirecting general education funding to special education programs is concerning, and there is a preference for the accounting methodology in the Senate bill.

**Persons Testifying (Early Learning & K-12 Education):** PRO: Representative Gerry Pollet, Prime Sponsor; Amy Miller; Deiman Abdi, Washington multicultural services link.

CON: Clifford Traisman, Seattle, Bellevue, Highline Public School Districts; Superintendent, Patrick Murphy, Olympia School District; Dan Steele, WA Assn of School Admin & WA Assn of School Business Officials; Tania May, Office of Superintendent of

Public Instruction; Jen Chong Jewell, Special Education Advisory Council for OSPI.

OTHER: Jeff Snell, Vancouver School Districts; Julie Salvi, Washington Education Association; Ramona Hattendorf, The Arc of King County; Mitch Denning, WA Assn of Maintenance & Operation Administrators; Samantha Fogg, Seattle Council PTSA; Tori Emerson, Washington State PTA; Cherylynne Crowther, Seattle Special Education PTSA, President; Melissa Spiker, Seattle Special Education PTSA; Michelle Whitehead; Robert Cruickshank, Washington's Paramount Duty; Jim Kowalkowski, Rural Education Center.

**Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):**

No one.

**Staff Summary of Public Testimony on Bill as Amended by Early Learning & K-12 Education (Ways & Means):** PRO: Like the policy in the bill and inclusionary practices professional development has proven beneficial and resulted in increases to inclusion in Washington classrooms. There is a lot of disproportionality that needs to be looked into and it is critical for inclusion. All kids benefit from inclusion and harm happens when education is limited. The policy in the bill is strong but the special education cap should be removed. Support the underlying policy and would recommend merging the two chambers' policy positions.

CON: Washington has areas with high concentration of special education students. The cap should be removed because it is discriminatory.

OTHER: Special education is a high priority. The House's budget is lower funding and therefore support the Senate's position.

**Persons Testifying (Ways & Means):** PRO: Ramona Hattendorf, The Arc of King County; Samantha Fogg, Seattle Council PTSA; Mikhail Cherniske, Office of Superintendent of Public Instruction; Melissa Spiker, Seattle Special Education PTSA.

CON: Jen Chong Jewell, SEAC.

OTHER: Mitch Denning, WA Assn of Maintenance & Operation Administrators.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.