
SUBSTITUTE HOUSE BILL 1109

State of Washington

68th Legislature

2023 Regular Session

By House Appropriations (originally sponsored by Representatives Senn, Stonier, Rude, Taylor, Slatter, Callan, Doglio, Orwall, Caldier, Simmons, Timmons, Reeves, Couture, Thai, Bergquist, Ortiz-Self, Pollet, Santos, Kloba, and Davis)

1 AN ACT Relating to providing funding for school districts to
2 conduct extraordinary numbers of special education eligibility
3 determinations and to subsequently develop individualized education
4 programs for the eligible students; amending RCW 28A.150.392;
5 creating new sections; providing an effective date; and providing an
6 expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature acknowledges that
9 school districts and other recipients of federal individuals with
10 disabilities education act grants and state appropriations for
11 special education programs are obligated to conduct timely initial
12 student evaluations for special education and to timely develop
13 individualized education programs for eligible three-year olds
14 through 21-year olds, as provided in law. While the legislature
15 recognizes that initial student evaluations for special education are
16 not often conducted during the summer, it finds that there is no
17 exception in the individuals with disabilities education act that
18 suspends these required activities during summer breaks. Washington
19 administrative rules do not direct recipients of these funds to
20 perform the required activities during summer breaks.

1 (2) The legislature recognizes that students are referred for
2 special education initial evaluations throughout the school year,
3 including within the final weeks of the school year. When the initial
4 evaluation process is paused for summer breaks, it delays the
5 determination of whether the student is eligible for special
6 education to the following school year. This results in delayed
7 provision of special education and related services and can result in
8 reorganization of classroom assignments, both of which cause
9 unnecessary frustrations at the beginning of the school year. In
10 addition, for children under age five who rely on school districts to
11 conduct their evaluations, a delay in individualized education
12 program development and special education service provision can have
13 particularly negative impacts on child development. Finally, because
14 of adverse childhood experiences, isolation, health issues, and
15 related trauma from the COVID-19 pandemic, which resulted in reduced
16 engagement in early learning and pediatric visits and fewer children
17 identified as needing special education evaluations, it is
18 anticipated that extraordinary numbers of children need evaluations
19 and individualized education programs so that they can receive
20 special education and related services.

21 (3) Therefore, the legislature intends to provide funding for
22 public schools to conduct extraordinary numbers of initial
23 evaluations for special education and to subsequently develop
24 individualized education programs for the eligible students, first,
25 by providing reimbursements for the cost of these activities
26 conducted during the summers of 2023, 2024, and 2025, and second, by
27 expanding the uses of the special education safety net to these
28 purposes.

29 NEW SECTION. **Sec. 2.** (1) The office of the superintendent of
30 public instruction shall reimburse school districts, charter schools,
31 and state-tribal education compact schools up to:

32 (a) \$3,000 per eligible student for conducting an initial
33 evaluation for special education; and

34 (b) \$3,000 per eligible student for development of individualized
35 education programs including, if needed, assistive technology devices
36 and services.

37 (2) Reimbursements provided under this section are only for
38 activities described in subsection (1) of this section that are
39 conducted during the months of July through September.

1 (3) The office of the superintendent of public instruction shall
2 establish processes and procedures to implement this section.

3 (4) School districts, charter schools, and state-tribal education
4 compact schools without capacity to conduct the activities described
5 in subsection (1) of this section during the time frame defined in
6 subsection (2) of this section may contract for these activities to
7 be completed by educational service districts or private
8 organizations with expertise.

9 (5) (a) At the time and in the manner required by the office of
10 the superintendent of public instruction, recipients of the
11 reimbursements provided under this section must submit information as
12 required by this subsection. Recipients must submit the number of
13 hours of staff time spent conducting initial student evaluations,
14 developing individualized education programs, and performing related
15 administrative activities, disaggregated by staff type. Recipients
16 must also submit the number of initial student evaluations conducted
17 and individualized education programs developed, per month, between
18 September 2021 and September 2024, disaggregated by student grade
19 level or age, if in preschool.

20 (b) Annually by December 1st, and in compliance with RCW
21 43.01.036, the office of the superintendent of public instruction
22 must report to the appropriate committees of the legislature with a
23 summary of the information submitted under (a) of this subsection and
24 a commentary on the effectiveness of the reimbursements.

25 (6) For the purposes of this section, "eligible student" means a
26 student with an incomplete initial special education evaluation as of
27 June 30th, of the current year, who was referred for an initial
28 evaluation prior to June 30th of the current year.

29 (7) This section expires June 30, 2026.

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

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

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

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

4 (a) The committee shall award additional funds for districts that
5 can convincingly demonstrate that all legitimate expenditures for
6 special education exceed all available revenues from state funding
7 formulas.

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

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

13 (d) In the determination of need, the committee shall require
14 that districts demonstrate that they are maximizing their eligibility
15 for all state revenues related to services for students eligible for
16 special education and all federal revenues from federal impact aid,
17 medicaid, and the individuals with disabilities education act-Part B
18 and appropriate special projects. Awards associated with (e) (~~and~~),
19 (f), and (h) of this subsection shall not exceed the total of a
20 district's specific determination of need.

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

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

33 (g) The committee shall then consider the extraordinary high cost
34 needs of one or more individual students eligible for and receiving
35 special education served in residential schools as defined in RCW
36 (~~28A.190.020~~) 28A.190.005, programs for juveniles under the
37 department of corrections, and programs for juveniles operated by
38 city and county jails to the extent they are providing a secondary
39 program of education.

1 (h) Using criteria developed by the committee, the committee
2 shall then consider the extraordinary costs associated with
3 conducting extraordinarily high numbers of initial evaluations for
4 special education and related services, and subsequent development of
5 individualized education programs for the eligible students, during a
6 school year. Safety net awards under this subsection (2)(h) shall be
7 adjusted to reflect amounts awarded under (e) and (f) of this
8 subsection.

9 (i) The maximum allowable indirect cost for calculating safety
10 net eligibility may not exceed the federal restricted indirect cost
11 rate for the district plus one percent.

12 ~~((i))~~ (j) Safety net awards shall be adjusted based on the
13 percent of potential medicaid eligible students billed as calculated
14 by the superintendent of public instruction in accordance with
15 chapter 318, Laws of 1999.

16 ~~((j))~~ (k) Safety net awards must be adjusted for any audit
17 findings or exceptions related to special education funding.

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

38 (4) On an annual basis, the superintendent shall survey districts
39 regarding their satisfaction with the safety net process and consider
40 feedback from districts to improve the safety net process. Each year

1 by December 1st, the superintendent shall prepare and submit a report
2 to the office of financial management and the appropriate policy and
3 fiscal committees of the legislature that summarizes the survey
4 results and those changes made to the safety net process as a result
5 of the school district feedback.

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

8 (a) One staff member from the office of the superintendent of
9 public instruction;

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

12 (c) One or more representatives from school districts or
13 educational service districts knowledgeable of special education
14 programs and funding.

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

21 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect July 1,
22 2026.

23 NEW SECTION. **Sec. 5.** If specific funding for the purposes of
24 this act, referencing this act by bill or chapter number, is not
25 provided by June 30, 2023, in the omnibus appropriations act, this
26 act is null and void.

--- END ---