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HOUSE BILL 1436

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State of Washington

68th Legislature

2023 Regular Session

By Representatives Pollet and Berry; by request of Superintendent of Public Instruction

1 AN ACT Relating to special education funding; amending RCW  
2 28A.150.390 and 28A.150.392; adding new sections to chapter 28A.155  
3 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that students  
6 receiving special education services are entitled, under both federal  
7 and state law, to a full and appropriate education that enables their  
8 full participation. Further, the legislature finds that special  
9 education is fully part of the state's statutory program of basic  
10 education that is deemed by the legislature to implement Article IX,  
11 section 1 of the state Constitution.

12 The legislature also finds that capping the number of students  
13 receiving disability services that a school district may receive  
14 state funding for is not consistent with the state's duty to provide  
15 a full and appropriate education. The legislature further finds that  
16 school districts have been paying for special education services with  
17 local funding, creating an inequitable situation for school districts  
18 and students. The legislature supports a system of funding that does  
19 not leave school districts liable to generate local funding to meet  
20 their obligation to provide special education services.

1 The legislature finds that along with reliable and sufficient  
2 state funding, supporting students receiving special education  
3 services to be in the least restrictive environment possible is  
4 crucial to their success. A recent large-scale study found that  
5 students who spend at least 80 percent of their day in a general  
6 education setting improved their reading scores by 24 points and math  
7 scores by 18 points compared to peers with similar disabilities.  
8 Building on investments made in the past few years, the legislature  
9 further finds that professional development in support of  
10 inclusionary practices within a multitiered system of supports is  
11 needed to continue making progress towards greater student inclusion  
12 in Washington state.

13 The legislature, therefore, intends to fully fund special  
14 education services in Washington state by removing the 13.5 percent  
15 cap and increase the special education multipliers, including the  
16 prekindergarten multiplier and the tiered K-12 multiplier, to give  
17 every school district a funding increase. The removal of the cap will  
18 make it unnecessary for school districts to apply for community  
19 impact relief through safety net funding. Further, the legislature  
20 directs the office of the superintendent of public instruction to  
21 create a new funding system to address still prevalent funding gaps  
22 in school districts with extraordinary high costs.

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

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

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

36 (a) A district's annual average headcount enrollment of students  
37 ages three and four and those five year olds not yet enrolled in  
38 kindergarten who are eligible for and receiving special education,  
39 multiplied by the district's base allocation per full-time equivalent

1 student, multiplied by ~~((1.15))~~ the special education cost multiplier  
2 rate of:

3 (i) For the 2023-24 school year, 1.1600;

4 (ii) For the 2024-25 school year, 1.1700;

5 (iii) For the 2025-26 school year, 1.1800;

6 (iv) Beginning in the 2026-27 school year, 1.1900;

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

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

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

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

20 ~~(II) 0.995 for))~~ :

21 (A) For the 2023-24 school year, 1.1610;

22 (B) For the 2024-25 school year, 1.1784;

23 (C) For the 2025-26 school year, 1.1961;

24 (D) Beginning in the 2026-27 school year, 1.2140; or

25 (ii) For students eligible for and receiving special education  
26 and reported to be in the general education setting for less than  
27 ~~((eighty))~~ 80 percent of the school day:

28 (A) For the 2023-24 school year, 1.1459;

29 (B) For the 2024-25 school year, 1.1631;

30 (C) For the 2025-26 school year, 1.1805;

31 (D) Beginning in the 2026-27 school year, 1.1923.

32 ~~((ii) If the enrollment percent exceeds thirteen and five-tenths~~  
33 ~~percent, the excess cost allocation calculated under (b) (i) of this~~  
34 ~~subsection must be adjusted by multiplying the allocation by thirteen~~  
35 ~~and five-tenths percent divided by the enrollment percent.))~~

36 (3) As used in this section:

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

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

3 (b) "Basic education enrollment" means enrollment of resident  
4 students including nonresident students enrolled under RCW  
5 28A.225.225 and students from nonhigh districts enrolled under RCW  
6 28A.225.210 and excluding students residing in another district  
7 enrolled as part of an interdistrict cooperative program under RCW  
8 28A.225.250.

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

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

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

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

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

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

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

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

37 (d) In the determination of need, the committee shall require  
38 that districts demonstrate that they are maximizing their eligibility  
39 for all state revenues related to services for students eligible for

1 special education and all federal revenues from federal impact aid,  
2 medicaid, and the individuals with disabilities education act-Part B  
3 and appropriate special projects. Awards associated with (e) (~~and~~  
4 ~~(f)~~) of this subsection shall not exceed the total of a district's  
5 specific determination of need.

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

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

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

25 ~~((h))~~ (g) The maximum allowable indirect cost for calculating  
26 safety net eligibility may not exceed the federal restricted indirect  
27 cost rate for the district plus one percent.

28 ~~((i))~~ (h) Safety net awards shall be adjusted based on the  
29 percent of potential medicaid eligible students billed as calculated  
30 by the superintendent of public instruction in accordance with  
31 chapter 318, Laws of 1999.

32 ~~((j))~~ (i) Safety net awards must be adjusted for any audit  
33 findings or exceptions related to special education funding.

34 (3) The superintendent of public instruction shall adopt such  
35 rules and procedures as are necessary to administer the special  
36 education funding and safety net award process. By December 1, 2018,  
37 the superintendent shall review and revise the rules to achieve full  
38 and complete implementation of the requirements of this subsection  
39 and subsection (4) of this section including revisions to rules that  
40 provide additional flexibility to access community impact awards.

1 Before revising any standards, procedures, or rules, the  
2 superintendent shall consult with the office of financial management  
3 and the fiscal committees of the legislature. In adopting and  
4 revising the rules, the superintendent shall ensure the application  
5 process to access safety net funding is streamlined, timelines for  
6 submission are not in conflict, feedback to school districts is  
7 timely and provides sufficient information to allow school districts  
8 to understand how to correct any deficiencies in a safety net  
9 application, and that there is consistency between awards approved by  
10 school district and by application period. The office of the  
11 superintendent of public instruction shall also provide technical  
12 assistance to school districts in preparing and submitting special  
13 education safety net applications.

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

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

24 (a) One staff member from the office of the superintendent of  
25 public instruction;

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

28 (c) One or more representatives from school districts or  
29 educational service districts knowledgeable of special education  
30 programs and funding.

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

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.155  
38 RCW to read as follows:

1 (1) School districts may apply to the office of the  
2 superintendent of public instruction for funding beyond regular  
3 special education allocations under RCW 28A.150.390. Funding shall be  
4 capped at the difference between a school district's prior year  
5 expenditures for special education services and the total prior year  
6 funding accrued through special education appropriations under RCW  
7 28A.150.390, including the full cost method of excess cost accounting  
8 pursuant to section 501(1)(k), chapter 372, Laws of 2006.

9 (2) Funding under subsection (1) of this section must be based on  
10 legitimate identified and quantifiable factors, which justify  
11 extraordinary costs associated with providing special education  
12 services. Supplemental contracts may not be counted in these excess  
13 costs.

14 (3) To receive funds under this section, a school district must  
15 access the professional development network provided in section 5(2)  
16 of this act and utilize supports around disproportionate  
17 identification and inclusionary practices.

18 (4) The office of the superintendent of public instruction shall  
19 promulgate rules and establish the process and criteria for  
20 additional funding in this section.

21 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.155  
22 RCW to read as follows:

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

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

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