

## **Proposed Substitute House Bill 1436 (H-1158.1) - Representative Pollet**

### **Original Bill:**

- Increases excess cost multipliers for special education students gradually through 2027-28 to:
  - 1.2140 for kindergarten through age 21 (K-21) students 80 percent or more in a general education setting,
  - 1.1923 for K-21 students spending less than 80 percent in a general education setting,
  - 1.1900 for pre-kindergarten (Pre-K) students.
- Removes the 13.5 percent enrollment limit for special education funding.
- Removes community impact costs from the special education safety net.
- Authorizes school districts to apply to the Office of the Superintendent of Public Instruction (OSPI) for additional special education funding beyond state excess cost allocations.
- Requires the OSPI to review disproportionality data and assist schools with inclusionary teaching.

### **Proposed Substitute House Bill (H-11581) compared to the Original Bill:**

- Changes the increases to excess cost multipliers for special education students to the following:
  - For K-21 students spending 80 percent or more of the school day in a general education setting:
    - for the 2023-24 school year, 1.03;
    - for the 2024-25 school year, 1.0385;
    - for the 2025-26 school year, 1.05;
    - beginning in the 2026-27 school year, 1.059.
  - For K-21 students spending less than 80 percent of the school day in a general education setting:
    - for the 2023-24 school year, 1.015;
    - for the 2024-25 school year, 1.0225;
    - for the 2025-26 school year, 1.034;
    - beginning in the 2026-27 school year, 1.043.
- Increases to multiplier for Pre-K students are removed
- The threshold for high-need individuals to access the special education safety net is reduced from 2.3 to 2.2 times the average per pupil expenditure (APPE).
- Codifies the use of basic education allocations for special education purposes and requires the OSPI to redirect up to 50 percent of a school district's special education students' basic education allocations for special education if special education expenditures exceeded revenues in the previous year.
- Requires the Joint Legislative Audit and Review Committee (JLARC) to prepare a report and conduct a performance audit of the state's special education system on several topics, including recommendations for funding formulas changes. The JLARC is required to consult with several entities, including the OSPI and State Auditor, in its work. Use of contractors for the work is authorized if necessary.
- The following provisions in the original bill are also changed or removed:
  - The intent statement is revised to remove policies not included in the proposed substitute.
  - Community impact costs are reinstated for consideration in safety net awards.
  - Provision allowing school districts to apply for additional special education funding is removed.
  - Requirements for the OSPI to review data for disproportionate identification of students and assist school districts to support inclusionary teaching practices are removed.

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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: H-1158.1/23

ATTY/TYPIST: CC:eab

BRIEF DESCRIPTION: Funding special education.

1 AN ACT Relating to special education funding; amending RCW  
2 28A.150.390 and 28A.150.392; adding a new section to chapter 28A.150  
3 RCW; creating new sections; providing an effective date; and  
4 providing an expiration date.

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

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

10 The legislature also finds that a cap or enrollment limit on the  
11 number of students receiving special education services that generate  
12 state special education funding is not consistent with the state's  
13 duty to provide a free appropriate public education. An enrollment  
14 limit that fails to provide equity for all students with disabilities  
15 affects all students in public schools.

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

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

8 The legislature finds that the documented prevalence of  
9 disabilities amongst children, particularly amongst vulnerable  
10 populations and communities with disparately poor health outcomes and  
11 access to health services, indicates that the state should improve  
12 access to evaluations for disabilities.

13 The legislature finds that special education is fully part of the  
14 state's statutory program of basic education that is deemed by the  
15 legislature to implement Article IX, section 1 of the state  
16 Constitution.

17 The legislature, therefore, intends to fully fund special  
18 education services by removing the 13.5 percent cap, eliminating the  
19 cap entirely in the 2027-28 school year, and increasing the tiered  
20 special education multipliers for elementary and secondary students,  
21 thereby giving every school district a funding increase.

22 The legislature intends to require a comprehensive study of  
23 funding and services for students with disabilities completed prior  
24 to the 2025 legislative session to understand if the state is  
25 appropriately identifying students with disabilities, identify  
26 funding and service gaps, and ensure that funding provided by the  
27 state to school districts, charter schools, and other entities for  
28 services are being used to meet the needs of students with  
29 disabilities.

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

32 (1) The superintendent of public instruction shall submit to each  
33 regular session of the legislature during an odd-numbered year a  
34 programmed budget request for special education programs for students  
35 with disabilities. Funding for programs operated by local school  
36 districts shall be on an excess cost basis from appropriations  
37 provided by the legislature for special education programs for  
38 students with disabilities and shall take account of state funds

1 accruing through RCW 28A.150.260 (4)(a), (5), (6), and (8) and  
2 28A.150.415.

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

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

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

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

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

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

23 ~~(II) 0.995 for))~~ .:

24 (I) In the 2023-24 school year, 1.03;

25 (II) In the 2024-25 school year, 1.0385;

26 (III) In the 2025-26 school year, 1.05;

27 (IV) Beginning in the 2026-27 school year, 1.059; or

28 (B) For students eligible for and receiving special education and  
29 reported to be in the general education setting for less than  
30 ~~((eighty)) 80 percent of the school day:~~

31 (I) In the 2023-24 school year, 1.015;

32 (II) In the 2024-25 school year, 1.0225;

33 (III) In the 2025-26 school year, 1.034;

34 (IV) Beginning in the 2026-27 school year, 1.043.

35 (ii) ~~((If))~~ Through the 2026-27 school year, if the enrollment  
36 percent exceeds ~~((thirteen and five-tenths percent))~~ the funded  
37 enrollment limit, the excess cost allocation calculated under (b)(i)  
38 of this subsection must be adjusted by multiplying the allocation by  
39 ~~((thirteen and five-tenths percent))~~ the funded enrollment limit  
40 divided by the enrollment percent.

1 (3) As used in this section:

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

7 (b) "Basic education enrollment" means enrollment of resident  
8 students including nonresident students enrolled under RCW  
9 28A.225.225 and students from nonhigh districts enrolled under RCW  
10 28A.225.210 and excluding students residing in another district  
11 enrolled as part of an interdistrict cooperative program under RCW  
12 28A.225.250.

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

19 (d) "Funded enrollment limit" means:

20 (i) Through the 2022-23 school year, 13.5 percent;

21 (ii) In the 2023-24 school year, 14 percent;

22 (iii) In the 2024-25 school year, 14.5 percent;

23 (iv) In the 2025-26 and 2026-27 school years, 15 percent;

24 (v) Beginning in the 2027-28 school year, all students eligible  
25 for and receiving special education must generate excess cost  
26 allocations under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) One staff member from the office of the superintendent of  
38 public instruction;

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



1 (c) One or more representatives from school districts or  
2 educational service districts knowledgeable of special education  
3 programs and funding.

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

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.150  
11 RCW to read as follows:

12 (1) It is the policy of the state that for purposes of state  
13 funding allocations, students eligible for and receiving special  
14 education generate the full basic education allocation under RCW  
15 28A.150.260 and, as a class, are to receive the benefits of this  
16 allocation for the entire school day, as defined in RCW 28A.150.203,  
17 whether the student is placed in the general education setting or  
18 another setting.

19 (2) The superintendent of public instruction must maintain a full  
20 cost method of excess cost accounting to account for expenditures  
21 beyond amounts provided through the special education funding formula  
22 under RCW 28A.150.390. This method of accounting must shift the  
23 following portions of a school district's general apportionment  
24 revenue for students eligible for and receiving special education to  
25 the school district's special education program for expenditure.

26 (a) A percentage of a school district's base allocation as  
27 defined in RCW 28A.150.390(3) for students eligible for and receiving  
28 special education based on their percentage of time served in a  
29 special education setting;

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

38 (3) Unless otherwise prohibited by law, nothing in this section  
39 prohibits school districts from using other funding and state

1 allocations above the amounts provided under RCW 28A.150.390 and  
2 subsection (2) of this section to serve students eligible for and  
3 receiving special education.

4 NEW SECTION. **Sec. 5.** (1) The joint legislative audit and review  
5 committee, in collaboration with the state auditor, must prepare a  
6 report and conduct a performance audit of the state's system of  
7 providing special education services to students with disabilities.  
8 The joint legislative audit and review committee may contract with  
9 third parties to perform any aspect of the report and audit. The  
10 report and audit must address:

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

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

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

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

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

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

38 (2) To develop the appropriate scope, define study questions, and  
39 select one or more contractors to complete the performance audit and

1 report, the joint legislative audit and review committee and state  
2 auditor shall consult with the office of the superintendent of public  
3 instruction, the office of the education ombuds, organizations  
4 representing and serving students with disabilities, the Washington  
5 state special education advisory council, and labor organizations  
6 representing educators providing educational services to students  
7 with disabilities in developing study questions and choosing  
8 appropriate contractors.

9 (3) The report and performance audit required by this section  
10 must include charter schools and state-tribal education compact  
11 schools to the same extent as school districts.

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

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

18 NEW SECTION. **Sec. 6.** Sections 2 through 4 of this act take  
19 effect September 1, 2023.

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