

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

**WAC 392-140-600 Special education safety net—Applicable provisions.** The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net awards of state special education funds and Individuals with Disabilities Education Act (IDEA) federal funds for the 2012-13 school year and thereafter. Beginning with the ((2010-11)) 2018-19 school year award cycle, the office of the superintendent of public instruction shall make award determinations for safety net funding in August of each year, except that the superintendent of public instruction shall make award determinations for state safety net funding in July of each school year for the Washington state school for the blind and for the center for childhood deafness and hearing loss. Determinations on ((school district)) local education agency eligibility for state safety net awards shall be based on analysis of actual expenditure data from the current school year.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-60105 Definition—High need student.** For purposes of special education safety net awards, high need student means a student eligible for special education services whose ((properly formulated)) Individualized Education Program (IEP) costs as calculated on worksheet C exceed a multiple of the statewide average per pupil expenditures (APPE) as defined in section ((9101)) 7801 of the ((Elementary and Secondary Education)) Every Student Succeeds Act of ((1965)) 2015.

(1) For federal special education safety net funding, the multiple of the statewide average per pupil expenditures shall be at least three times the statewide average; and

(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the multiple of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-60110 Definition—Community impact.** For the purpose of state special education safety net funding, community impact refers to ((school district or charter school)) local education agency identified and quantifiable factor(s) beyond the control of the ((district or charter school)) local education agency which justify disproportional and extraordinary costs associated with the provision of special education services ((in the district or charter school)) for an

increased number of students with disabilities located within the local education agency based upon current attributes of that local education agency that are not related to local education agency philosophy, staffing decisions, or service delivery choices (i.e., demographic, environmental, sociological, or other facts that can be described and calculated in an application consistent with WAC 392-140-617). Local education agencies below the thirteen and one-half percent funding index are not eligible for community impact safety net funds.

NEW SECTION

**WAC 392-140-60115 Definition—High need student served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails.** For the purpose of state special education safety net award, high need student described in this section means a student eligible for special education services served in residential schools as defined in RCW 28A.190.020, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails whose individualized education program costs (as calculated on worksheet C) exceed the threshold established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*.

NEW SECTION

**WAC 392-140-60120 Definition—Capacity for funding.** For the purpose of state special education safety net funding, potential capacity for funding exists when an applicant's net special education expenditures exceed total resources available demonstrating a fiscal capacity in excess of all available revenue to the applicant for special education services, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue. Local education agencies with demonstrated capacity and approved applications may access safety net award regardless of the percentage of the local education agency's enrollment of students with disabilities. Beginning in 2019-2020, applicants must either submit verification of medicaid billing for each high need student application, if applicable, or receive a deduction calculated by office of the superintendent of public instruction as a percentage of the billing rates published by the health care authority to compensate for the local education agency's decision not to pursue medicaid reimbursement.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-602 Special education safety net—Eligible applicants.** (1) An individual school district of the state of Washington is eligible to apply for special education safety net awards on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net awards. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net awards individually.

(3) The Washington state center for childhood deafness and hearing loss and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

(4) Individual charter schools are eligible to apply for special education safety net awards under WAC 392-140-616.

(5) Tribal compact schools are eligible to apply for special education safety net award under WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-605 Special education safety net—Application types, certification, worksheets.** Application for safety net awards shall be made on Form SPI 1381 - Certification published by the office of the superintendent of public instruction. Applications will be considered and awards made according to the schedule published in the annual *Safety Net Bulletin*.

(1) ~~((School districts and charter schools))~~ Local education agencies may make application for safety net awards ~~((in two categories))~~ in the following categories, except that the same students may not be submitted in more than one category:

(a) High need student(s) ((and/or));

(b) High need student(s) served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails; or

(c) Community impact factors.

(2) The applicant for ~~((either or both categories))~~ any category of safety net awards shall certify that:

(a) Differences in costs attributable to ~~((district or charter school))~~ local education agency philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 and 392-140-617;

(c) The application provides true, accurate, and complete information;

(d) The applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the ~~((award))~~ conditional decision letter, and certifies that federal medicaid has been billed for all services to eligible students consistent with RCW 28A.150.392 ~~((+1)-(e))~~ (2)(i) or consents to receive a deduction calculated by the office of the superintendent of public instruction as a percentage of the billing rates published by the health care authority to compensate for the local education agency's decision not to pursue medicaid reimbursement, if applicable;

(e) The applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding in an efficient manner;

~~(f) ((The applicant's special education program is operated in a reasonably efficient manner;~~

~~(g) Indirect costs included for purposes of determining safety net awards do not exceed the allowable federally restricted indirect rate plus one percent;~~

~~(h) Any))~~ All available state and federal funding is insufficient to address the request for additional funds;

~~((+i))~~ (g) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

~~((+j))~~ (h) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by ~~((a properly formulated IEP))~~ an individualized education program.

~~((+2))~~ (3) Worksheet A shall be included with the application and must demonstrate the applicant's capacity for safety net awards. Worksheet A is used to determine a maximum amount of safety net award eligibility. Award amounts may be less than the maximum potential amount of safety net award eligibility determined on worksheet A.

~~((+3))~~ (4) All high need student applications shall include worksheets ~~(("A" and "C" and))~~ A and C, the Summary of Applications for High Need Individual Students form published in the safety net application, the individualized education programs applicable during the application period, and certification of standards and criteria pursuant to WAC 392-140-616.

~~((+4))~~ (5) All community impact applications shall include worksheet A, the community impact application, all supporting documentation, and certification of standards and criteria pursuant to WAC 392-140-617.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-609 Special education safety net—Standards and criteria—~~((Properly formulated))~~ IEPs.** A sample of individualized edu-

cation programs ((IEPs) which are properly formulated are those IEPs that at a minimum meet all of the following criteria:

~~(1) The IEPs comply with federal and state procedural requirements.~~

~~(2) The delivery of specially designed instruction identified on the IEP also complies with state and federal requirements consistent with WAC 392-172A-01155 or as amended.~~

~~(3) The provision of special education services is consistent with areas of need identified in the student's evaluation and/or reevaluation made pursuant to chapter 392-172A WAC or as amended)) will be reviewed for each applying local education agency (if the local education agency has not had individualized education programs reviewed through the Washington integrated system of monitoring (WISM) process within the last two years). Individualized education programs will be reviewed in areas to be determined by the office of superintendent of public instruction and published in the annual Safety Net Bulletin. Areas to be reviewed will be the same for all applications for the school year. Sample sizes will be determined based on data collected by the office of superintendent of public instruction demonstrating local education agency compliance history and statewide areas of needed improvement.~~

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-616 Special education safety net—Standards—High need student applications.** For applicants requesting safety net awards to meet the needs of an eligible high need (~~special education~~) student, the applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

~~(1) ((The IEP for the eligible special education student is properly formulated consistent with WAC 392-14-609))~~ (a) The reviewed individualized education program demonstrates compliance with federal and state procedural requirements, in the office of superintendent of public instruction-selected applicable reviewed areas; or

(b) The local education agency has corrected any noncompliance identified through general supervision processes, including monitoring or during a review of a sample of individualized education programs; and

(2) Costs eligible for safety net consideration are associated with providing direct special education and related services identified in ~~((a properly formulated IEP))~~ implementation of an individualized education program and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the applicant is providing services which incur costs exceeding:

(a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state safety net awards.

(b) Threshold amounts shall be adjusted pro rata for eligible students not served by the applicant on all nine enrollment count dates (October through June). For example, for a student served six of

the nine count dates, the threshold amount shall be reduced to two-thirds of the full amount.

(4) The state safety net oversight committee shall adapt the ~~((high need student application))~~ worksheet A for the Washington state school for the blind ~~((and))~~, the Washington state center for childhood deafness and hearing loss, and tribal compact schools.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

**WAC 392-140-617 Special education safety net—Standards—Community impact applications.** For applicants requesting state safety net awards to meet the extraordinary costs associated with communities that draw a larger number of families with ~~((children))~~ students in need of special education services, the applicant must meet the standards of WAC 392-140-605 ~~((+1))~~ (2)(a) through ~~((+j))~~ (h) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the ~~((district's or charter school's))~~ local education agency's special education enrollment to be disproportional by ~~((category of disability or))~~ the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the applicant is not the result of ~~((district or charter school))~~ local education agency philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an adverse documentable fiscal impact upon the applicant's special education program.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need.** Applications for safety net funds shall demonstrate capacity for safety net awards as follows:

(1) Application worksheet ~~(("A"))~~ A shall demonstrate a fiscal capacity in excess of all available revenue to the applicant for special education, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue.

(2) Awards shall not exceed the potential capacity for safety net funding on the worksheet ~~(("A."))~~ A.

(3) Beginning with the 2007-08 school year, worksheets submitted with safety net applications must reflect the full cost method of accounting, pursuant to section 501 (1)(k), chapter 372, Laws of 2006.

(4) The safety net oversight committee may revise the applicant's worksheet ~~(("A"))~~ A as submitted for errors or omissions or more current information.

(5) The applicant shall provide clarifying information at the request of the state oversight committee. Any information specifically

requested by the committee on a case-by-case basis during the initial review (and included with the office of superintendent of public instruction conditional award letter) and provided by the applicant within the requested timeline will be considered during final safety net application reviews. There is no obligation for the committee to request additional information and the presumption is on the applicant to submit a complete and accurate initial application.

(6) After the close of the school year, the applicant's worksheet ("A") A used to determine capacity for an award may be reviewed against the actual final school year enrollments, all available revenues, and legitimate expenditures reported by the applicant. Based upon the results of this review the safety net allocation for the school year may be adjusted or recovered if the awards or a portion of the safety net awards exceeded the demonstrated capacity for funding based upon consideration of all available revenues and legitimate expenditures.

(7) In accordance with the state of Washington *Accounting Manual for Public School Districts* and statutory federal language, potential capacity for safety net awards shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriate public education.

#### NEW SECTION

**WAC 392-140-635 Special education safety net—Special education program review—Purpose, procedures.** Special education program review reports (as per WAC 392-172A-07010) by staff of the office of superintendent of public instruction special education division may be reviewed by the state safety net oversight committee. The results of the program review may be considered by the oversight committee in determining, adjusting, or recovering safety net award.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure.** Membership of the state oversight committee shall consist of: Staff of the office of the state auditor who shall be nonvoting, and one or more representatives from (~~school districts or educational service districts~~) local education agencies and educational service districts who are knowledgeable of special education programs and funding.

(1) The (~~state director~~) office of superintendent of public instruction assistant superintendent of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(2) The state oversight committee members will be appointed by the state oversight committee manager.

(3) Members of the state oversight committee will be appointed based on their knowledge of special education program service delivery

and funding, geographical representation, size of ((district(s)-served)) local education agency, and other demographic considerations which will ensure a representative state committee.

(4) The oversight committee manager may replace a portion of the committee each year in order to ensure a representative state committee.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

**WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures.** (1) The state safety net oversight committee will review applications as deemed necessary by the office of superintendent of public instruction pursuant to WAC ((392-140-608)) 392-140-635.

(2) All applications received by the state safety net oversight committee no later than the dates published in the annual *Safety Net Bulletin* will be reviewed for completeness by the state safety net oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the annual bulletin published by the office of superintendent of public instruction. ((Incomplete applications will not be considered by the committee.))

(3) The state safety net oversight committee manager or designee will forward to the committee members electronic copies of the applications for review in a timely manner.

(4) ((The state safety net oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.

~~(5))~~ State safety net oversight committee members shall review and discuss the applicant's request for safety net awards for completeness and accuracy during meetings as scheduled and published by the office of superintendent of public instruction in the annual *Safety Net Bulletin*.

((6)) (5) The state safety net oversight committee may require that an applicant provide clarifying information before making a final recommendation. There is no requirement for the committee to request clarifying or missing information, in the event it is not provided by the applicant.

((7)) (6) State safety net oversight committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

((8)) (7) A majority vote by the state safety net oversight committee members in attendance shall be sufficient to determine the committee action.

((9) The state safety net oversight committee manager will ensure that notes are taken which summarize the discussion related to each application.))

(8) A decision summary for each application will be provided to the applicant and shall include the amount of the initial request, funding adjustments applied by the committee, the amount of any award to be made, and the reasons for the action taken by the state safety net oversight committee.



~~((10))~~ (9) Voting members of the state safety net oversight committee in attendance shall each sign the decision summary.

~~((11))~~ (10) The state safety net oversight committee manager, on behalf of the state safety net oversight committee, will notify the applicant in writing of the determination of the committee. The applicant will be provided a copy of the decision summary.

~~((12))~~ (11) All applications received by the state safety net oversight committee will be retained as per the Washington retention schedule by the office of the superintendent of public instruction for use in the evaluation of the safety net award process and to provide the office of the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

**WAC 392-140-646 Special education safety net—State oversight committee actions.** The state oversight committee shall review all safety net applications.

(1) An application reviewed during an application cycle may be:

(a) Approved;

(b) Adjusted for fiscal corrections and approved; ~~((or))~~

(c) Adjusted for individualized education program noncompliance and approved, if evidence of noncompliance correction is provided;

(d) A combination of (b) and (c) of this subsection; or

(e) Disapproved.

(2) The amount approved shall not exceed the amount ~~((for which application was made or adjusted))~~ authorized by the state oversight committee.

(3) The state oversight committee may not approve an application if there are unresolved audit issues related to special education that are material to the application. For purposes of this section, "audit" means an examination of a subrecipient to determine compliance with the state or federal laws and regulations governing the operation of a specific program and includes program audits, single audits, or any special purpose audit consistent with chapter 392-115 WAC and WAC 392-140-630. "Unresolved" means that the subrecipient has exhausted the audit resolution process described in chapter 392-115 WAC as amended.

(4) Awards approved by the state oversight committee are subject to recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-650 Special education safety net—Withdrawal of application.** If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of

the applicant charter school, tribal compact school, Washington state center for childhood deafness and hearing loss, and the Washington state school for the blind, must submit a letter requesting withdrawal to the state oversight committee manager.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

**WAC 392-140-656 Special education safety net—Request for review and reconsideration of an action.** An applicant may request review and reconsideration of an action of the state oversight committee made pursuant to WAC 392-140-646.

(1) The applicant shall make the request in writing to the oversight committee manager within twenty calendar days of the date of the state oversight committee's written determination letter to the applicant pursuant to WAC 392-140-643(~~(11)~~) (10). All requests for review and reconsideration not received within twenty days of the written determination letter will not be accepted.

(2) (~~The applicant shall request reconsideration of the original submission of the state oversight committee.~~) The request for review and reconsideration of the committee's action must be based on one or more of the following grounds:

(a) The action was outside the statutory authority of the committee;

(b) The action failed to follow prescribed procedures;

(c) The action erroneously interpreted or applied the law;

(d) The action was not supported by substantial evidence; or

(e) The action was inconsistent with the agency rules regarding safety net funding.

(3) If the office of the superintendent of public instruction finds grounds for reconsideration pursuant to subsection (2) of this section, OSPI shall request reconsideration of the action by the state oversight committee. OSPI shall state the grounds for reconsideration supported by the facts considered.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-660 Special education safety net—Approved application—Special education safety net awards.** (1) The special education safety net award for an individual (~~(district)~~) applicant shall be the (~~lesser of:~~

~~(a) The amount requested; or~~

~~(b) The) amount authorized by the state oversight committee.~~

(2) Special education safety net awards for high need students under WAC 392-140-605(1) shall use federal and state funds appropriated by the legislature consistent with RCW 28A.150.392 (1)(a).

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-675 Special education safety net—Adjustments to special education safety net award.** Final safety net award shall be adjusted based on(~~(~~

~~(1) The percent of potential medicaid eligible students billed. Potential medicaid revenue will be estimated by the office of the superintendent of public instruction based on the applicant's percent of medicaid eligible students billed and the statewide average payment per student as determined in July of the school year for which the applicant is requesting safety net awards. The office of the superintendent of public instruction shall provide Form SPI 1679 for district and charter school reporting of medicaid eligible students and shall update the district's or charter school's special education medicaid eligibility count and finalize the count for the year based upon the applicant's most recent submission of Form SPI 1679; and~~

~~(2))~~ changes in factors for which additional or revised information becomes available after the awarding of the initial safety net award.

~~((a))~~ (1) High need award and/or community impact award will be reduced or nullified when the applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

~~((b))~~ (2) An applicant's safety net award may be recovered or adjusted based on the results of the review conducted by the state auditor's office pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-140-685 Special education safety net—Recovery of state and/or federal award.** High need student state and/or federal special education safety net award and state community impact safety net award shall be recovered or award reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including, but not limited to, situations where the student leaves a school district, ~~((ceases attending a))~~ charter school, tribal compact school, Washington state center for childhood deafness and hearing loss, and the Washington state school for the blind, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school or tribal compact school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district ~~((or))~~ charter school or tribal compact school transfers the equipment to the other school district ~~((or))~~ charter school or tribal compact school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.