



Meeting Projected Central Services Costs for the Attorney General's Office

2024 Supplemental Operating Budget Decision Package

Recommendation Summary

The Office of Superintendent of Public Instruction (OSPI) requests a maintenance level increase to cover additional expenses due to the Washington State Attorney General's Office (AGO). These costs are related to pending litigation which defends Washington's statutory implementation of the Individuals with Disabilities Education Act (IDEA) and OSPI's oversight of Northwest School of Innovative Learning (NW SOIL), a Nonpublic Agency serving students with disabilities. OSPI and the AGO believe costs related to litigating this matter will exceed our historical appropriation when compared to historical spend.

Fiscal Details (Funding, FTEs, Revenue, Objects)

Operating Expenditures	FY 2024	FY 2025	FY 2026	FY 2027
Fund 001	\$465,000	\$0	\$0	\$0
Total Expenditures	\$465,000	\$0	\$0	\$0
Biennial Totals	\$465,000		\$0	
Staffing	FY 2024	FY 2025	FY 2026	FY 2027
FTEs	0.0	0.0	0.0	0.0
Average Annual	0.0		0.0	
Revenue	FY 2024	FY 2025	FY 2026	FY 2027
	0	0	0	0
Total Revenue	0	0	0	0
Biennial Totals	0		0	
Object of Expenditure	FY 2024	FY 2025	FY 2026	FY 2027
Obj. E	\$465,000	\$0	\$0	\$0

Package Description

What is the problem, opportunity, or priority you are addressing with the request?

Allocations for Central Services (services provided by other state agencies to OSPI) are included in OSPI's annual appropriation for Agency Administration from the General Fund-State. In the current biennium, OSPI's biennial allocation for AGO costs is \$1,476,000 (see [2023-25 enacted budgets](#) for more information). AGO and OSPI project the additional need of \$465,000 specifically for litigation of upcoming cases.

OSPI supports over 300 school districts, state-tribal education compact schools, and charter schools across Washington state to ensure all students have access to a high-quality public education, including special education services as required by the federal Individuals with Disabilities Education Act (IDEA) and Washington state law. Across those schools, approximately 143,000 students receive special education services.

In accordance with the IDEA and Washington state law, OSPI "require[s] each school district in the state to insure an appropriate educational opportunity for all children with disabilities between the ages of three and twenty-one" (RCW 28A.155.020). When a student turns 21 during the school year, "the educational program may be continued until the end of that school year" (RCW 28A.155.020). The IDEA requires the provision of special education for students between the ages of 3 and 21, inclusive (20 U.S.C. § 1412(a)(1)(A)). However, the IDEA's requirement does not extend to students between the ages of 18 and 21, inclusive, if the state does not provide "free public education" to students in that same age range (20 U.S.C. § 1412(a)(1)(B)(i)).

In *N.D. v. Reykdal*, Plaintiffs have filed a putative class action alleging that education services provided in the community and technical college system give rise to an obligation to provide special education services to students until they turn 22 years of age. OSPI is defending RCW 28A.155.020 as being in compliance with IDEA.

Separately, a Nonpublic Agency (NPA) is an entity authorized by OSPI to contract with a school district to provide a program of special education services for students whose Individualized Education Program (IEP) teams have determined would be better served by an NPA. The decision to place a student in an NPA for services is made at the local level by a student's family and educators through the IEP process.

In the actions of Northwest School of Innovative Learning (NW SOIL), one of Washington's approved NPAs, OSPI is defending its decision and authority to grant provisional approval that precludes NW SOIL from admitting additional students until it can demonstrate compliance with specified requirements that will help to ensure that the students in their care are receiving the services to which they are entitled in a safe environment.

This package is being presented as a joint request with OSPI, to defend the three cases as they all concern various facets of Washington's law designed to provide students with disabilities the educational services to which they are entitled, in a safe environment. For purposes of this package request, failure to mount a robust defense is assumed to lead to significant state

financial liability and could impact the health and safety of the students served by Nonpublic Agencies.

What is your proposed solution?

Increase OSPI's maintenance level funding to address the additional work performed on behalf of the agency by the AGO in the upcoming fiscal year.

What are you purchasing and how does it solve the problem?

The AGO believes the litigation costs for upcoming cases will require approximately 1.3 full-time equivalent (FTE) of AAG staffing, 1.5 FTE Paralegal, and 0.40 FTE Management Analyst 5. These additional funds will purchase the time necessary to litigate the case.

What alternatives did you explore and why was this option chosen?

No alternatives were considered, due to the legal requirement for OSPI to utilize the AGO for legal representation. Since OSPI does not have a role in determining when legal action is taken against the agency, OSPI has no role in determining these costs.

Performance Measures

Performance outcomes:

If funded, this request will allow the AGO to be paid for the work performed through the Central Service allocation provided to OSPI.

Assumptions and Calculations

Expansion or alteration of a current program or service:

This is not an expansion or alternation of a current program or service.

Detailed assumptions and calculations:

The requested investment is based on salary and benefit projections provided for the AGO for the following positions: 1.3 FTE AAG, 1.5 FTE of Paralegal, and 0.40 FTE Management Analyst 5. The total staffing costs are projected to be \$465,000 in fiscal year 2024.

Workforce assumptions:

N/A

How our Proposal Impacts Equity in the State

NPAs serve vulnerable students whose IEP teams have determined would be better served by an NPA. OSPI's oversight and corrective action is designed to protect these students and their right to education from qualified individuals in a safe environment.

Strategic and Performance Outcomes

Strategic framework:

This budget proposal supports the following goals in the OSPI Strategic Plan:

- Goal 1 (Equitable Access to Strong Foundations): Increase student access to and participation in high-quality early learning and elementary by amplifying and building on inclusive, asset-based policies and practices.
- Goal 4 (A Committed, Unified, and Customer-Focused OSPI): Support school districts through consistent, timely, and meaningful funding and supports that center the needs of students. Agency operations are unified in facilitating services and resources in alignment with the commitments in our strategic goals.

Other Collateral Connections

Intergovernmental:

This request is in direct response to OSPI's projected increase in AGO services. *N.D. v. Reykdal* has the potential to affect school districts and the scope and extent to which special education services are required between a student's 21st and 22nd birthday.

Stakeholder response:

N/A

Legal or administrative mandates:

This proposal is in response to litigation needs in the cases identified below, and in defense of RCW 28A.155.020 and OSPI's authority over NPAs in RCW 28A.300.040:

- *N.D. v. Reykdal*
- *BHC Fairfax/NW SOIL v. OSPI*, Thurston County Superior Court
- *BHC Fairfax/NW SOIL v. OSPI*, Office of Administrative Hearings

Changes from current law:

None.

State workforce impacts:

None.

State facilities impacts:

None.

Puget Sound recovery:

N/A