
SUBSTITUTE HOUSE BILL 1134

State of Washington

63rd Legislature

2013 Regular Session

By House Community Development, Housing & Tribal Affairs (originally sponsored by Representatives McCoy, Santos, Appleton, Lytton, Ryu, Stanford, Roberts, Jinkins, Haigh, Freeman, and Hunt)

READ FIRST TIME 02/08/13.

1 AN ACT Relating to state-tribal education compact schools; amending
2 RCW 49.60.400; adding a new section to chapter 28A.642 RCW; adding a
3 new section to chapter 43.215 RCW; adding a new chapter to Title 28A
4 RCW; and providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) American Indian and Alaska Native students make up 2.5 percent
8 of the total student population in the state and twenty-five percent or
9 more of the student population in fifty-seven schools across the state.

10 (b) American Indian students in Washington have the highest annual
11 drop-out rate at 9.5 percent, compared to 4.6 percent of all students
12 in each of grades nine through twelve. Of the students expected to
13 graduate in 2010 because they entered the ninth grade in 2006, the
14 American Indian on-time graduation rate was only fifty-eight percent,
15 compared to 76.5 percent of all students.

16 (c) The teaching of American Indian language, culture, and history
17 are important to American Indian people and critical to the educational
18 attainment and achievement of American Indian children.

1 (d) The state-tribal education compacts authorized under this
2 chapter reaffirm the state's important commitment to government-to-
3 government relationships with the tribes that has been recognized by
4 proclamation, and in the centennial accord and the millenium agreement.
5 These state-tribal education compacts build upon the efforts
6 highlighted by the office of the superintendent of public instruction
7 in its 2012 Centennial Accord Agency Highlights, including: The Since
8 Time Immemorial (STI): Tribal Sovereignty in Washington State
9 Curriculum Project that imbeds the history surrounding sovereignty and
10 intergovernmental responsibilities into this state's classrooms; the
11 agency's regular meetings with the superintendents of the seven current
12 tribal schools, as well as the federal bureau of Indian education
13 representatives at the regional and national level on issues relating
14 to student academic achievement, accessing of funding for tribal
15 schools, and connecting tribal schools to the K-20 network; and the
16 recent establishment, in statute, of the office of native education
17 within the office of the superintendent of public instruction.

18 (e) School funding should honor tribal sovereignty and reflect the
19 government-to-government relationship between the state and the tribes,
20 however the current structure that requires negotiation of an
21 interlocal agreement between a school district and a tribal school
22 ignores tribal sovereignty and results in a siphoning of funds for
23 administration that could be better used for teaching and learning.

24 (2) The legislature further finds that:

25 (a) The need for high-quality, culturally competent early learning
26 opportunities continues to grow;

27 (b) There is a preparation gap among entering kindergartners with
28 many children, especially those from low-income homes, arriving at
29 kindergarten without the knowledge, skills, and good health necessary
30 to succeed in school;

31 (c) Upon entry into the K-12 school system, the educational
32 opportunity gap becomes more evident, with children of color and from
33 low-income homes having lower scores on math, reading, and writing
34 standardized tests, as well as lower graduation rates and higher rates
35 of dropping out of school; and

36 (d) Comprehensive, culturally competent early learning and greater
37 collaboration between the early learning and K-12 school systems will

1 ensure appropriate connections and smoother transitions for children,
2 and help eliminate or bridge gaps that might otherwise develop.

3 (3) In light of these findings, it is the intent and purpose of the
4 legislature to:

5 (a) Authorize the superintendent of public instruction to enter
6 into state-tribal education compacts; and

7 (b) Foster the development of a voluntary, high-quality, and
8 culturally competent early learning pilot program to work in
9 conjunction with, and offer a seamless transition to, schools
10 established pursuant to state-tribal education compacts.

11 NEW SECTION. **Sec. 2.** (1) The superintendent of public instruction
12 is authorized to enter into state-tribal education compacts.

13 (2) No later than six months after the effective date of this
14 section, the superintendent of public instruction shall establish an
15 application and approval process, procedures, and timelines for the
16 negotiation, approval or disapproval, and execution of state-tribal
17 education compacts.

18 (3) The process may be initiated by submission, to the
19 superintendent of public instruction, of a resolution by:

20 (a) The governing body of a tribe in the state of Washington; or

21 (b) The governing body of any of the schools in Washington that are
22 currently funded by the federal bureau of Indian affairs, whether
23 directly or through a contract or compact with an Indian tribe or a
24 tribal consortium.

25 (4) The resolution must be accompanied by an application that
26 indicates the grade or grades from kindergarten through twelve that
27 will be offered and that demonstrates that the school will be operated
28 in compliance with all applicable laws, the rules adopted thereunder,
29 and the terms and conditions set forth in the application.

30 (5) Within ninety days of receipt of a resolution and application
31 under this section, the superintendent must convene a government-to-
32 government meeting for the purpose of considering the resolution and
33 application and initiating negotiations.

34 (6) State-tribal education compacts must include provisions
35 regarding:

36 (a) Compliance;

37 (b) Notices of violation;

1 (c) Dispute resolution, which may include nonjudicial processes
2 such as mediation;

3 (d) Recordkeeping and auditing;

4 (e) The delineation of the respective roles and responsibilities;

5 (f) The term or length of the contract, and whether or not it is
6 renewable; and

7 (g) Provisions for compact termination.

8 (7) The superintendent of public instruction shall adopt such rules
9 as are necessary to implement this chapter.

10 NEW SECTION. **Sec. 3.** (1) A school that is the subject of a state-
11 tribal education compact must operate according to the terms of its
12 compact executed in accordance with section 2 of this act.

13 (2) Schools that are the subjects of state-tribal education
14 compacts are exempt from all state statutes and rules applicable to
15 school districts and school district boards of directors, except those
16 statutes and rules made applicable under this chapter and in the state-
17 tribal education compact executed under section 2 of this act.

18 (3) Each school that is the subject of a state-tribal education
19 compact must:

20 (a) Provide a curriculum and conduct an educational program that
21 satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and
22 28A.230.010 through 28A.230.195;

23 (b) Employ certificated instructional staff as required in RCW
24 28A.410.010, however such schools may hire noncertificated
25 instructional staff of unusual competence and in exceptional cases as
26 specified in RCW 28A.150.203(7);

27 (c) Comply with the employee record check requirements in RCW
28 28A.400.303 and the mandatory termination and notification provisions
29 of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

30 (d) Comply with nondiscrimination laws; and

31 (e) Be subject to and comply with legislation enacted after the
32 effective date of this section governing the operation and management
33 of schools that are the subject of a state-tribal education compact.

34 (4) No such school may engage in any sectarian practices in its
35 educational program, admissions or employment policies, or operations.

36 (5) Nothing in this chapter may limit or restrict any enrollment or
37 school choice options otherwise available under Title 28A RCW.

1 NEW SECTION. **Sec. 4.** (1) A school that is the subject of a state-
2 tribal education compact may not charge tuition except to the same
3 extent as school districts may be permitted to do so with respect to
4 out-of-state and adult students pursuant to chapter 28A.225 RCW, but
5 may charge fees for participation in optional extracurricular events
6 and activities.

7 (2) Such schools may not limit admission on any basis other than
8 age group, grade level, or capacity and must otherwise enroll all
9 students who apply.

10 (3) If capacity is insufficient to enroll all students who apply,
11 a school that is the subject of a state-tribal education compact may
12 prioritize the enrollment of tribal members and siblings of already
13 enrolled students.

14 NEW SECTION. **Sec. 5.** (1) A school that is the subject of a state-
15 tribal education compact must report student enrollment. Reporting
16 must be done in the same manner and use the same definitions of
17 enrolled students and annual average full-time equivalent enrollment as
18 is required of school districts. The reporting requirements in this
19 subsection are required for a school to receive state or federal
20 funding that is allocated based on student characteristics.

21 (2) Funding for a school that is the subject of a state-tribal
22 education compact shall be allocated by the superintendent of public
23 instruction according to the schedule established under RCW
24 28A.510.250, including general apportionment, special education,
25 categorical, and other nonbasic education moneys. Allocations must be
26 based on the statewide average staff mix ratio of all public schools
27 from the prior school year and the school's actual full-time equivalent
28 enrollment. A school that is the subject of a state-tribal education
29 compact is not eligible for enhanced small school assistance funding.
30 Such a school is eligible to apply for state grants on the same basis
31 as a school district.

32 (3) In the school's first year of operation under a compact
33 executed under section 2 of this act, amounts payable must be based on
34 the projections of first-year student enrollment established in the
35 compact. The office of the superintendent of public instruction must
36 reconcile the amounts paid in the first year of operation to the

1 amounts that would have been paid based on actual student enrollment
2 and make adjustments to the school's allocations over the course of the
3 second year of operation.

4 (4) Any moneys received by a school that is the subject of a state-
5 tribal education compact from any source that remain in the school's
6 accounts at the end of any budget year must remain in the school's
7 accounts for use by the school during subsequent budget years.

8 (5) Schools that are the subject of state-tribal education compacts
9 are encouraged to conduct early learning pilot programs developed under
10 section 8 of this act in conjunction with their school programs for
11 kindergarten and beyond.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.642
13 RCW to read as follows:

14 Nothing in this chapter prohibits schools established under chapter
15 28A.--- RCW (the new chapter created in section 9 of this act) from:

- 16 (1) Implementing a policy of Indian preference in employment; or
17 (2) Prioritizing the admission of tribal members where capacity of
18 the school's programs or facilities is not as large as demand.

19 **Sec. 7.** RCW 49.60.400 and 1999 c 3 s 1 are each amended to read as
20 follows:

21 (1) The state shall not discriminate against, or grant preferential
22 treatment to, any individual or group on the basis of race, sex, color,
23 ethnicity, or national origin in the operation of public employment,
24 public education, or public contracting.

25 (2) This section applies only to action taken after December 3,
26 1998.

27 (3) This section does not affect any law or governmental action
28 that does not discriminate against, or grant preferential treatment to,
29 any individual or group on the basis of race, sex, color, ethnicity, or
30 national origin.

31 (4) This section does not affect any otherwise lawful
32 classification that:

33 (a) Is based on sex and is necessary for sexual privacy or medical
34 or psychological treatment; or

35 (b) Is necessary for undercover law enforcement or for film, video,
36 audio, or theatrical casting; or

1 (c) Provides for separate athletic teams for each sex.

2 (5) This section does not invalidate any court order or consent
3 decree that is in force as of December 3, 1998.

4 (6) This section does not prohibit action that must be taken to
5 establish or maintain eligibility for any federal program, if
6 ineligibility would result in a loss of federal funds to the state.

7 (7) Nothing in this section prohibits schools established under
8 chapter 28A.--- RCW (the new chapter created in section 9 of this act)
9 from:

10 (a) Implementing a policy of Indian preference in employment; or

11 (b) Prioritizing the admission of tribal members where capacity of
12 the school's programs or facilities is not as large as demand.

13 (8) For the purposes of this section, "state" includes, but is not
14 necessarily limited to, the state itself, any city, county, public
15 college or university, community college, school district, special
16 district, or other political subdivision or governmental
17 instrumentality of or within the state.

18 ~~((+8))~~ (9) The remedies available for violations of this section
19 shall be the same, regardless of the injured party's race, sex, color,
20 ethnicity, or national origin, as are otherwise available for
21 violations of Washington antidiscrimination law.

22 ~~((+9))~~ (10) This section shall be self-executing. If any part or
23 parts of this section are found to be in conflict with federal law, the
24 United States Constitution, or the Washington state Constitution, the
25 section shall be implemented to the maximum extent that federal law,
26 the United States Constitution, and the Washington state Constitution
27 permit. Any provision held invalid shall be severable from the
28 remaining portions of this section.

29 NEW SECTION. Sec. 8. A new section is added to chapter 43.215 RCW
30 to read as follows:

31 (1) The department of early learning shall convene a working group
32 to develop and pilot programs of early learning from birth to
33 kindergarten that work in conjunction with, and offer a seamless
34 transition to, K-12 education programs for kindergarten and beyond in
35 schools that are the subjects of state-tribal education compacts. The
36 director of the department of early learning or a designee shall serve
37 as the chair of the working group.

1 (2) The working group shall include:

2 (a) Three representatives from tribes; and

3 (b) Three representatives selected and appointed by the director of
4 the department of early learning.

5 (3) The early learning working group shall develop recommended
6 parameters and minimum standards for the early learning pilot programs.

7 (4) The early learning working group shall also examine service
8 delivery models and make recommendations with respect to funding
9 options for enabling schools that are the subjects of state-tribal
10 education compacts to provide, or contract for the provision of, these
11 early learning services to children from birth to kindergarten.

12 (5) Recommendations under subsections (3) and (4) of this section
13 are due no later than six months after the effective date of this
14 section.

15 (6) The department of early learning, in consultation with the
16 superintendent of public instruction and any participants in a pilot
17 program under section 5(5) of this act, shall submit a preliminary
18 report to the education and early learning committees of the
19 legislature regarding the implementation and progress of the early
20 learning pilot program by December 1, 2017, with a final report due by
21 December 1, 2022. The final report must include:

22 (a) An evaluative component that analyzes and compares measurements
23 on tools, tests, and markers such as the Washington kindergarten
24 inventory of developing skills, third grade reading, and high school
25 graduation to determine whether the early learning pilot programs
26 affiliated with schools that are the subject of state-tribal education
27 compacts are effectively closing the educational opportunity gap; and

28 (b) Recommendations with respect to whether the pilot program
29 should be made permanent or expanded.

30 (7) This section expires August 1, 2023.

31 NEW SECTION. **Sec. 9.** Sections 1 through 5 of this act constitute
32 a new chapter in Title 28A RCW.

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