

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5437

66th Legislature
2019 Regular Session

Passed by the Senate April 22, 2019
Yeas 45 Nays 2

President of the Senate

Passed by the House April 11, 2019
Yeas 89 Nays 8

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5437** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5437

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Wilson, C., Palumbo, Wellman, Hunt, Saldaña, Nguyen, Randall, Das, Billig, Mullet, Darneille, Dhingra, Hasegawa, Kuderer, and Takko; by request of Office of the Governor)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to expanding eligibility to the early childhood
2 education and assistance program; amending RCW 43.216.505,
3 43.216.556, 43.216.512, 43.216.512, 43.216.514, 43.216.555,
4 43.216.080, 43.216.540, and 43.216.550; adding a new section to
5 chapter 43.216 RCW; creating new sections; providing contingent
6 effective dates; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the family
9 income eligibility limit of one hundred ten percent of the federal
10 poverty level for the early childhood education and assistance
11 program hinders the state's ability to recruit and enroll qualified
12 families, particularly in rural areas of the state and in tribal
13 communities. This income barrier results in unused preschool slots
14 and growing waiting lists of children who are from low-income
15 families but who are over the established income limits. Therefore,
16 the legislature intends to keep the qualifying income for the early
17 childhood education and assistance program at one hundred ten percent
18 of the federal poverty level for the purposes of entitlement caseload
19 forecasting and allow for the flexibility to serve additional
20 children with family incomes up to two hundred percent of the federal
21 poverty level.

1 **Sec. 2.** RCW 43.216.505 and 2017 3rd sp.s. c 6 s 210 are each
2 amended to read as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout RCW 43.216.500 through 43.216.559,
5 43.216.900, and 43.216.901.

6 (1) "Advisory committee" means the advisory committee under RCW
7 43.216.520.

8 (2) "Approved programs" means those state-supported education and
9 special assistance programs which are recognized by the department as
10 meeting the minimum program rules adopted by the department to
11 qualify under RCW 43.216.500 through 43.216.550, 43.216.900, and
12 43.216.901 and are designated as eligible for funding by the
13 department under RCW 43.216.530 and 43.216.540.

14 (3) "Comprehensive" means an assistance program that focuses on
15 the needs of the child and includes education, health, and family
16 support services.

17 (4) "Eligible child" means a three to five-year old child who is
18 not age-eligible for kindergarten ((whose)), is not a participant in
19 a federal or state program providing comprehensive services, and who:

20 (a) Has a family income ((is)) at or below one hundred ten
21 percent of the federal poverty level, as published annually by the
22 federal department of health and human services((, and includes a
23 child whose family is eligible for public assistance, and who is not
24 a participant in a federal or state program providing comprehensive
25 services)); ((a child))

26 (b) Is eligible for special education due to disability under RCW
27 28A.155.020; ((and may include children who are eligible)) or

28 (c) Meets criteria under rules adopted by the department if the
29 number of such children equals not more than ten percent of the total
30 enrollment in the early childhood program. ~~Priority~~ Preference
31 for enrollment in this group shall be given to children from families
32 with the lowest income, children in foster care, or to eligible
33 children from families with multiple needs.

34 (5) "Family support services" means providing opportunities for
35 parents to:

36 (a) Actively participate in their child's early childhood
37 program;

38 (b) Increase their knowledge of child development and parenting
39 skills;

40 (c) Further their education and training;

1 (d) Increase their ability to use needed services in the
2 community;

3 (e) Increase their self-reliance.

4 **Sec. 3.** RCW 43.216.556 and 2017 3rd sp.s. c 22 s 1 are each
5 amended to read as follows:

6 (1) Funding for the program of early learning established under
7 this chapter must be appropriated to the department. (~~Allocations~~
8 ~~must be made~~) The department shall distribute funding to approved
9 early childhood education and assistance program contractors on the
10 basis of eligible children enrolled (~~with eligible providers~~).

11 (2) The program shall be implemented in phases, so that full
12 implementation is achieved in the 2022-23 school year.

13 (~~(3) (For the initial phase of the early learning program in~~
14 ~~school years 2011-12 and 2012-13, the legislature shall appropriate~~
15 ~~funding to the department for implementation of the program in an~~
16 ~~amount not less than the 2009-2011 enacted budget for the early~~
17 ~~childhood education and assistance program. The appropriation shall~~
18 ~~be sufficient to fund an equivalent number of slots as funded in the~~
19 ~~2009-2011 enacted budget.~~

20 (~~(4) Beginning in the 2013-14 school year, additional funding for~~
21 ~~the program must be phased in beginning in school districts providing~~
22 ~~all-day kindergarten programs under RCW 28A.150.315.~~

23 (~~(5)~~) Funding shall continue to be phased in each year until full
24 statewide implementation of the early learning program is achieved in
25 the 2022-23 school year, at which time any eligible child (~~shall~~
26 ~~be~~) is entitled to be enrolled in the program.

27 (~~((6))~~) (4) School districts and approved community-based early
28 learning providers may contract with the department to provide
29 services under the program. The department shall collaborate with
30 school districts, community-based providers, and educational service
31 districts to promote an adequate supply of approved providers.

32 **Sec. 4.** RCW 43.216.512 and 2018 c 155 s 2 are each amended to
33 read as follows:

34 (1) The department shall adopt rules that allow the (~~inclusion~~)
35 enrollment of children in the early childhood education and
36 assistance program, as space is available if the number of such
37 children equals not more than twenty-five percent of total statewide
38 enrollment, whose family income is:

1 (a) Above one hundred ten percent but less than or equal to one
2 hundred thirty percent of the federal poverty level ((if the number
3 of such children equals not more than twenty-five)); or

4 (b) Above one hundred thirty percent but less than or equal to
5 two hundred percent of ((total statewide enrollment)) the federal
6 poverty level if the child meets at least one of the risk factor
7 criterion described in subsection (2) of this section.

8 (2) Children ~~((included))~~ enrolled in the early childhood
9 education and assistance program ~~((under))~~ pursuant to subsection
10 (1)(b) of this section must be ((homeless or impacted by specific
11 developmental or environmental)) prioritized for available funded
12 slots according to a prioritization system adopted in rule by the
13 department that considers risk factors that ((are linked by research
14 to school performance. "Homeless" means without a fixed, regular, and
15 adequate nighttime residence as set forth in the federal McKinney-
16 Vento homeless assistance act, P.L. 100-77, July 22, 1987, 101 Stat.
17 482, and runaway and homeless youth act, P.L. 93-415, Title III,
18 September 7, 1974, 88 Stat. 1129)) have a disproportionate effect on
19 kindergarten readiness and school performance, including:

20 (a) Family income as a percent of the federal poverty level;

21 (b) Homelessness;

22 (c) Child welfare system involvement;

23 (d) Developmental delay or disability that does not meet the
24 eligibility criteria for special education described in RCW
25 28A.155.020;

26 (e) Domestic violence;

27 (f) English as a second language;

28 (g) Expulsion from an early learning setting;

29 (h) A parent who is incarcerated;

30 (i) A parent with a substance use disorder or mental health
31 treatment need; and

32 (j) Other risk factors determined by the department to be linked
33 by research to school performance.

34 (3) Children ~~((included))~~ enrolled in the early childhood
35 education and assistance program under this section are not ~~((to be))~~
36 considered eligible children as defined in RCW 43.216.505 and are not
37 considered to be part of the state-funded entitlement required in RCW
38 43.216.556.

1 **Sec. 5.** RCW 43.216.512 and 2018 c 155 s 2 are each amended to
2 read as follows:

3 (1) The department shall adopt rules that allow the ~~((inclusion))~~
4 enrollment of children in the early childhood education and
5 assistance program, as space is available if the number of such
6 children equals not more than twenty-five percent of total statewide
7 enrollment, whose family income is:

8 (a) Above one hundred ten percent but less than or equal to one
9 hundred thirty percent of the federal poverty level ~~((if the number~~
10 ~~of such children equals not more than twenty-five))~~; or

11 (b) Above one hundred thirty percent but less than or equal to
12 two hundred percent of ~~((total statewide enrollment))~~ the federal
13 poverty level if the child meets at least one of the risk factor
14 criterion described in subsection (2) of this section.

15 (2) Children ~~((included))~~ enrolled in the early childhood
16 education and assistance program ~~((under))~~ pursuant to subsection
17 (1)(b) of this section must be ~~((homeless or impacted by specific~~
18 ~~developmental or environmental))~~ prioritized for available funded
19 slots according to a prioritization system adopted in rule by the
20 department that considers risk factors that ~~((are linked by research~~
21 ~~to school performance. "Homeless" means without a fixed, regular, and~~
22 ~~adequate nighttime residence as set forth in the federal McKinney-~~
23 ~~Vento homeless assistance act, P.L. 100-77, July 22, 1987, 101 Stat.~~
24 ~~482, and runaway and homeless youth act, P.L. 93-415, Title III,~~
25 ~~September 7, 1974, 88 Stat. 1129))~~ have a disproportionate effect on
26 kindergarten readiness and school performance, including:

27 (a) Family income as a percent of the federal poverty level;

28 (b) Homelessness;

29 (c) Child welfare system involvement;

30 (d) Developmental delay or disability that does not meet the
31 eligibility criteria for special education described in RCW
32 28A.155.020;

33 (e) Domestic violence;

34 (f) English as a second language;

35 (g) Expulsion from an early learning setting;

36 (h) A parent who is incarcerated;

37 (i) A parent with a substance use disorder or mental health
38 treatment need; and

39 (j) Other risk factors determined by the department to be linked
40 by research to school performance.

1 (3) The department shall adopt rules that allow a child to enroll
2 in the early childhood education and assistance program, as space is
3 available, when the child is not eligible under RCW 43.216.505 and
4 the child turns three years old at any time during the school year
5 when the child:

6 (a) Has a family income at or below two hundred percent of the
7 federal poverty level or meets at least one risk factor criterion
8 adopted by the department in rule; and

9 (b) Has received services from or participated in:

10 (i) The early support for infants and toddlers program;

11 (ii) The early head start or a successor federal program
12 providing comprehensive services for children from birth through two
13 years of age; or

14 (iii) The birth to three early childhood education and assistance
15 program, if such a program is established.

16 (4) Children ~~((included))~~ enrolled in the early childhood
17 education and assistance program under this section are not ~~((to be))~~
18 considered eligible children as defined in RCW 43.216.505 and are not
19 considered to be part of the state-funded entitlement required in RCW
20 43.216.556.

21 NEW SECTION. Sec. 6. (1) The department of children, youth, and
22 families must consult with the state's federally recognized tribes as
23 described in chapter 43.376 RCW to explore creating a pathway or
24 funding stream within the early childhood education and assistance
25 program to address the unique characteristics of tribal nations in
26 order to substantially close the opportunity gap for tribal children.

27 (2) By December 1, 2020, the department of children, youth, and
28 families must report related recommendations to the legislature that
29 may include the modification of early childhood education and
30 assistance program eligibility criteria and performance standards.

31 (3) This section expires December 31, 2020.

32 **Sec. 7.** RCW 43.216.514 and 2018 c 155 s 3 are each amended to
33 read as follows:

34 (1) The department shall prioritize children for enrollment in
35 the early childhood education and assistance program who are eligible
36 pursuant to RCW 43.216.505.

37 (2) As space is available, children may be included in the early
38 childhood education and assistance program pursuant to RCW

1 43.216.512. Priority within this group must be given first to
2 children (~~(who are experiencing homelessness, child welfare system~~
3 ~~involvement, or a developmental delay or disability that does not~~
4 ~~meet the eligibility criteria for special education adopted under RCW~~
5 ~~28A.155.020)) with incomes up to one hundred thirty percent of the
6 federal poverty level.~~

7 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.216
8 RCW to read as follows:

9 (1) Within resources available under the federal preschool
10 development grant birth to five grant award received in December
11 2018, the department shall develop a plan for phased implementation
12 of a birth to three early childhood education and assistance program
13 pilot project for eligible children under thirty-six months old.
14 Funds to implement the pilot project may include a combination of
15 federal, state, or private sources.

16 (2) The department may adopt rules to implement the pilot project
17 and may waive or adapt early childhood education and assistance
18 program requirements when necessary to allow for the operation of the
19 birth to three early childhood education and assistance program. The
20 department shall consider early head start rules and regulations when
21 developing the provider and family eligibility requirements and
22 program requirements. Any deviations from early head start standards,
23 rules, or regulations must be identified and explained by the
24 department in its annual report under subsection (6) of this section.

25 (3)(a) Upon securing adequate funds to begin implementation, the
26 pilot project programs must be delivered through child care centers
27 and family home providers who meet minimum licensing standards and
28 are enrolled in the early achievers program.

29 (b) The department must determine minimum early achievers ratings
30 scores for programs participating in the pilot project.

31 (4) When selecting pilot project locations for service delivery,
32 the department may allow each pilot project location to have up to
33 three classrooms per location. When selecting and approving pilot
34 project locations, the department shall attempt to select a
35 combination of rural, urban, and suburban locations. The department
36 shall prioritize locations with programs currently operating early
37 head start, head start, or the early childhood education and
38 assistance program.

1 (5) To be eligible for the birth to three early childhood
2 education and assistance program, a child's family income must be at
3 or below one hundred thirty percent of the federal poverty level and
4 the child must be under thirty-six months old.

5 (6) Beginning November 1, 2020, and each November 1st thereafter
6 during pilot project activity, the department shall submit an annual
7 report to the governor and legislature that includes a status update
8 that describes the planning work completed, the status of funds
9 secured, and any implementation activities of the pilot project.
10 Implementation activity reports must include a description of the
11 participating programs and number of children and families served.

12 **Sec. 9.** RCW 43.216.555 and 2018 c 155 s 4 are each amended to
13 read as follows:

14 (1) (~~Beginning September 1, 2011,~~) An early learning program to
15 provide voluntary preschool opportunities for children ages three
16 (~~and four~~) to five years (~~of~~) old who are not age-eligible for
17 kindergarten shall be implemented according to the funding and
18 implementation plan in RCW 43.216.556. The program must offer a
19 comprehensive program of early childhood education and family
20 support, including parental involvement and health information,
21 screening, and referral services, based on family need. Participation
22 in the program is voluntary. On a space available basis, the program
23 may allow enrollment of children who are not otherwise eligible by
24 assessing a fee.

25 (2) The program shall be implemented by utilizing the program
26 standards and eligibility criteria in the early childhood education
27 and assistance program in RCW 43.216.500 through 43.216.550.

28 (3) (a) (~~Beginning in the 2015-16 school year,~~) The program
29 implementation in this section shall prioritize early childhood
30 education and assistance programs located in low-income neighborhoods
31 within high-need geographical areas.

32 (b) Following the priority in (a) of this subsection, preference
33 shall be given to programs meeting at least one of the following
34 characteristics:

35 (i) Programs offering an extended day program for early care and
36 education;

37 (ii) Programs offering services to children diagnosed with a
38 special need; or

1 (iii) Programs offering services to children involved in the
2 child welfare system.

3 (4) The secretary shall adopt rules for the following program
4 components, as appropriate and necessary during the phased
5 implementation of the program, consistent with early achievers
6 program standards established in RCW 43.216.085:

7 (a) Minimum program standards;

8 (b) Approval of program providers; and

9 (c) Accountability and adherence to performance standards.

10 (5) The department has administrative responsibility for:

11 (a) Approving and contracting with providers according to rules
12 developed by the secretary under this section;

13 (b) In partnership with school districts, monitoring program
14 quality and assuring the program is responsive to the needs of
15 eligible children;

16 (c) Assuring that program providers work cooperatively with
17 school districts to coordinate the transition from preschool to
18 kindergarten so that children and their families are well-prepared
19 and supported; and

20 (d) Providing technical assistance to contracted providers.

21 **Sec. 10.** RCW 43.216.080 and 2017 c 178 s 2 are each amended to
22 read as follows:

23 (1) The foundation of quality in the early care and education
24 system in Washington is the quality rating and improvement system
25 entitled the early achievers program. In an effort to build on the
26 existing quality framework, enhance access to quality care for
27 children, and strengthen the entire early care and education systems
28 in the state, it is important to integrate the efforts of state and
29 local governments, school districts, institutions of higher education
30 as defined in RCW 28B.10.016, and nonprofit organizations.

31 (2) Local governments, school districts, institutions of higher
32 education as defined in RCW 28B.10.016, and nonprofit organizations
33 are encouraged to collaborate with the department when establishing
34 and strengthening early learning programs for residents.

35 (3) Local governments, school districts, institutions of higher
36 education as defined in RCW 28B.10.016, and nonprofit organizations
37 may contribute funds to the department for the following purposes:

38 (a) Initial investments to build capacity and quality in local
39 early care and education programming;

1 (b) Reductions in copayments charged to parents or caregivers;

2 (c) To expand access and eligibility in the early childhood
3 education and assistance program.

4 (4) Funds contributed to the department by local governments,
5 school districts, institutions of higher education as defined in RCW
6 28B.10.016, and nonprofit organizations must be deposited in the
7 early start account established in RCW (~~((43.215.195))~~) 43.216.165.

8 (5) Children enrolled in the early childhood education and
9 assistance program with funds contributed in accordance with
10 subsection (3)(c) of this section are not considered to be eligible
11 children as defined in RCW (~~((43.215.405))~~) 43.216.505 and are not
12 considered to be part of the state-funded entitlement required in RCW
13 (~~((43.215.456))~~) 43.216.556.

14 **Sec. 11.** RCW 43.216.540 and 1994 c 166 s 10 are each amended to
15 read as follows:

16 For the purposes of RCW (~~((28A.215.100))~~) 43.216.500 through
17 (~~((28A.215.200))~~) 43.216.550 and (~~((28A.215.900 through 28A.215.908))~~)
18 43.216.900 and 43.216.901, the department may award state support
19 under RCW (~~((28A.215.100))~~) 43.216.500 through (~~((28A.215.160))~~)
20 43.216.530 to increase the numbers of eligible children assisted by
21 the federal or state-supported early childhood programs in this
22 state. Priority shall be given to those geographical areas which
23 include a high percentage of families qualifying under the "eligible
24 child" criteria. The overall program funding level shall be based on
25 an average grant per child consistent with state appropriations made
26 for program costs: PROVIDED, That programs addressing special needs
27 of selected groups or communities shall be recognized in the
28 department's rules.

29 **Sec. 12.** RCW 43.216.550 and 1994 c 166 s 11 are each amended to
30 read as follows:

31 The department may solicit gifts, grants, conveyances, bequests
32 and devises for the use or benefit of the early childhood state
33 education and assistance program established by RCW (~~((28A.215.100))~~)
34 43.216.500 through (~~((28A.215.200))~~) 43.216.550 and (~~((28A.215.900~~
35 ~~through 28A.215.908))~~) 43.216.900 and 43.216.901. The department shall
36 actively solicit support from business and industry and from the
37 federal government for the state early childhood education and

1 assistance program and shall assist local programs in developing
2 partnerships with the community for eligible children.

3 NEW SECTION. **Sec. 13.** (1) Section 5 of this act takes effect
4 only if chapter . . . (Substitute Senate Bill No. 5089), Laws of 2019
5 is enacted by the effective date of this section.

6 (2) Section 4 of this act takes effect only if section 5 of this
7 act does not take effect by the effective date of this section.

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