**5315-S2.E AMH APP H1881.1 - NOT FOR FLOOR USE**

**E2SSB 5315** - H COMM AMD

By Committee on Appropriations

**NOT ADOPTED 04/12/2023**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  (1)(a) The legislature finds that the federal individuals with disabilities education act, Title 20 U.S.C. Sec. 1400 et seq. establishes duties for the state education agency, which is the office of the superintendent of public instruction in Washington, with respect to students with disabilities who are placed in a private school or facility by a school district or other public agency as a means of providing special education and related services.

(b) Since 2006, the federal implementing regulations of the federal individuals with disabilities education act have required that the office of the superintendent of public instruction ensure that a student with a disability who is placed in a private school or facility by a school district or other public agency:

(i) Is provided special education and related services in conformance with an individualized education program that meets the requirements of federal law and at no cost to the student's parents;

(ii) Is provided an education that meets the standards that apply to education provided by a school district or other public agency; and

(iii) Has all of the rights of a student with a disability who is served by a school district or other public agency.

(c) Since 2006, the federal implementing regulations of the federal individuals with disabilities education act have required that the office of the superintendent of public instruction, in implementing the requirements described in (b) of this subsection (1):

(i) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(ii) Disseminate copies of applicable standards to each private school and facility to which a school district or other public agency placed a student with a disability; and

(iii) Provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

(2) The legislature acknowledges that it has not codified the requirements described in subsection (1) of this section into state statute. Therefore, the legislature intends to codify the duty and authority of the superintendent of public instruction to establish standards for approving, monitoring, and investigating education centers, which are private schools and facilities that contract with school districts to provide special education and related services to students with disabilities placed in the education center by a school district. The legislature also intends to codify the requirement that these standards must ensure that any students with disabilities placed in an education center by a school district have the same rights, protections, and access to special education and related services that they would have if served by a school district.

**Sec.**  RCW 28A.155.090 and 2007 c 115 s 11 are each amended to read as follows:

The superintendent of public instruction shall have the duty and authority, through the administrative section or unit for the education of children with disabling conditions, to:

(1) Assist school districts in the formation of programs to meet the needs of children with disabilities;

(2) Develop interdistrict cooperation programs for children with disabilities as authorized in RCW 28A.225.250;

(3) Provide, upon request, to parents or guardians of children with disabilities, information as to the special education programs for students with disabilities offered within the state;

(4) Assist, upon request, the parent or guardian of any child with disabilities in the placement of any child with disabilities who is eligible for but not receiving special educational services for children with disabilities;

(5) Approve school district and agency programs as being eligible for special excess cost financial aid to students with disabilities;

(6) Establish standards for approving, monitoring, and investigating education centers, as defined in RCW 28A.205.010, that contract with school districts under RCW 28A.155.060 to provide special education and related services to children with disabilities placed in the education center by a school district. The standards must ensure that any children with disabilities placed in the education center by a school district have the same rights, protections, and access to special education and related services that they would have if served by a school district;

(7) Consistent with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160, and part B of the federal individuals with disabilities education improvement act, administer administrative hearings and other procedures to ensure procedural safeguards of children with disabilities; and

((~~(7)~~)) (8) Promulgate such rules as are necessary to implement part B of the federal individuals with disabilities education improvement act or other federal law providing for special education services for children with disabilities and the several provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and to ensure appropriate access to and participation in the general education curriculum and participation in statewide assessments for all students with disabilities.

**Sec.**  RCW 28A.205.010 and 2006 c 263 s 408 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((~~As used in this chapter, unless the context thereof shall clearly indicate to the contrary:~~))

"Education center" means ((~~any private school operated on a profit or nonprofit basis which~~)) a private in-state school or facility operated on a profit or nonprofit basis, or any out-of-state school or facility, that contracts with a school district to provide special education and related services to students with disabilities placed in the education center by the school district and that does the following:

(a) Is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation((~~.~~));

(b) Operates on a clinical, client centered basis. This shall include, but not be limited to, performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction therefor, and evaluation of each individual client's progress in his or her educational program((~~.~~)); and

(c) Conducts courses of instruction by ((~~professionally trained personnel certificated by the Washington professional educator standards board according to rules adopted for the purposes of this chapter and providing, for certification purposes, that a year's teaching experience in an education center shall be deemed equal to a year's teaching experience in a common or private school~~)) licensed teachers.

(2) ((~~For purposes of this chapter, basic academic skills shall~~)) "Basic academic skills" must include the study of mathematics, speech, language, reading and composition, science, history, literature, and political science or civics((~~; it shall not include courses of a vocational training nature and shall not include courses deemed nonessential to the accrediting or the approval of private schools under RCW 28A.305.130.~~

~~(3) The superintendent of public instruction shall certify an education center only upon application and (a) determination that such school comes within the definition thereof as set forth in subsection (1) of this section and (b) demonstration on the basis of actual educational performance of such applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program. Such certification may be withdrawn if the superintendent finds that a center fails to provide adequate instruction in basic academic skills. No education center certified by the superintendent of public instruction pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050~~)).

NEW SECTION. **Sec.**  A new section is added to chapter 28A.205 RCW to read as follows:

(1) The office of the superintendent of public instruction may approve an applicant as an education center only after a determination that:

(a) The applicant meets the definition of an education center under RCW 28A.205.010; and

(b) The students of the applicant have made educational gains that are a direct result of the applicant's educational program, where the determination is based on the actual educational performance of the students, after considering each student's background.

(2) The office of the superintendent of public instruction may suspend, revoke, or refuse to renew approval of an education center if the education center fails to provide adequate instruction in basic academic skills, fails to adhere to federal laws, especially civil rights laws, fails to comply with health and safety requirements, or fails to comply with provisions of its contract with a school district.

(3) The office of the superintendent of public instruction must prohibit approved education centers from charging tuition or fees to students placed in the education center by a school district.

(4) The office of the superintendent of public instruction must encourage school districts to cooperate with education centers.

(5) An education center approved by the office of the superintendent of public instruction under this section is not a common school under RCW 28A.150.020.

(6) The approval of an education center that is a private school in Washington approved by the state board of education under chapter 28A.195 RCW is limited to the program of special education and related services provided to students with disabilities placed in the education center by the school district.

**Sec.**  RCW 28A.155.060 and 2007 c 115 s 6 are each amended to read as follows:

(1) For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with ((~~agencies approved by the superintendent of public instruction for operating special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those of special education programs in the common schools~~)) education centers approved under subsection (2) of this section to provide special education and related services to students with disabilities placed in the education center by the school district.

(2)(a) The office of the superintendent of public instruction must create an application process to approve education centers to contract with school districts to provide special education and related services to students with disabilities placed in the education center by a school district. Education centers may be approved for a period of up to three years.

(b) To qualify for approval, an education center must, at a minimum, meet the following requirements:

(i) Acknowledge that it can meet all contract elements established in subsection (3)(a) of this section;

(ii)(A) For an education center operating as a school, either obtain approval by the state board of education under chapter 28A.195 RCW to operate as a private school in Washington or obtain approval by the state education agency of the state in which the education center is located; and (B) for education centers that operate a program of education within a nonschool facility, comply with facility licensing requirements of the state in which the education center is located;

(iii) Employ or contract with: At least one licensed teacher with a special education endorsement; other licensed teachers; and related services staff who meet the licensing requirements for their profession;

(iv) Meet applicable fire codes of the local or state fire marshal and applicable health and safety standards;

(v) Demonstrate through audits that it is financially stable and has accounting systems that allow for separation of school district funds, including financial safeguards in place to track revenues and expenditures associated with contracted placements to ensure that funds are used to provide special education services to students;

(vi) Demonstrate that it has procedures in place that address staff hiring and contracting, including checking personal and professional references for employees, conducting criminal background checks in accordance with RCW 28A.400.303, and scheduling regular staff evaluations that address staff competencies;

(vii) Demonstrate that staff of the education center are regularly trained on the following topics:

(A) Constitutional and civil rights of children in schools;

(B) Child and adolescent development;

(C) Trauma-informed approaches to working with youth;

(D) Recognizing and responding to youth mental health issues;

(E) Educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities;

(F) Cultural competency, diversity, equity, and inclusion, including best practices for interacting with students from particular backgrounds, including English learner, LGBTQ, immigrant, female, and nonbinary students. The terms "cultural competency," "diversity," "equity," and "inclusion" have the same meanings as in RCW 28A.415.443;

(G) De-escalation techniques when working with youth or groups of youth;

(H) Student isolation and restraint requirements under RCW 28A.600.485;

(I) The federal family educational rights and privacy act (Title 20 U.S.C. Sec. 1232g) requirements including limits on access to and dissemination of student records for noneducational purposes; and

(J) Restorative justice principles and practices; and

(viii) Maintain a policy of nondiscrimination and provide procedural safeguards for students eligible for special education services and their families.

(c) Before approving an application under this subsection, the office of the superintendent of public instruction must conduct an on-site visit to ensure that an education center's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment for students with disabilities placed in the education center by a school district.

(d) The office of the superintendent of public instruction may suspend, revoke, or refuse to renew its approval of an education center if the education center:

(i) Fails to maintain approval standards or fails to comply with all school district contract elements established in subsection (3)(a) of this section;

(ii) Violates the rights of students with disabilities placed in the education center by a school district; or

(iii) Refuses to implement any corrective actions ordered by the office of the superintendent of public instruction.

(e) The office of the superintendent of public instruction must use the data collected to produce the report required under section 7 of this act to identify issues of noncompliance with approval standards and contract elements established in subsection (3)(a) of this section.

(f) The office of the superintendent of public instruction must notify the state board of education if any education center that is also a private school approved by the state board of education under chapter 28A.195 RCW is investigated for noncompliance, is directed to complete corrective action, or fails to maintain approval under this subsection. The state board of education must notify the office of the superintendent of public instruction of any unresolved concerns, deficiencies, or deviations related to an education center that is also a private school approved by the state board of education under chapter 28A.195 RCW.

(g)(i) The office of the superintendent of public instruction must develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at education centers.

(ii) The office of the superintendent of public instruction must use the complaint process to identify and address patterns of misconduct at education centers, including issuing corrective action or revoking approval under this subsection.

(3)(a) A school district that chooses to contract with an education center as authorized under subsection (1) of this section must enter into a written contract with the education center to establish the responsibilities of the school district and the education center and set forth the rights of students with disabilities placed in the education center by the school district as a means of providing special education and related services. The contract must include, at a minimum, the following elements:

(i) The names of the parties involved and the name of the student or students with disabilities placed in the education center by the school district;

(ii) The locations and settings of the services to be provided;

(iii) A description of the services to be provided, including access to state learning standards adopted under RCW 28A.655.070;

(iv) The total contract cost and applicable charge and reimbursement systems, including billing and payment procedures;

(v) Acknowledgment that the education center is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;

(vi) Acknowledgment that the education center has a list of each qualified staff member providing special education and related services and a copy of the license or credential that qualifies each staff member to provide those services;

(vii) Acknowledgment that the school district and education center have clearly established their respective responsibilities and processes for data collection and reporting for students;

(viii) Acknowledgment that the education center must comply with student isolation and restraint requirements under RCW 28A.600.485;

(ix) Acknowledgment that the education center must notify the school district and the office of the superintendent of public instruction of any program, staffing, or facility changes that may affect the agency's ability to provide contracted services;

(x) Acknowledgment that the education center must comply with all relevant Washington state and federal laws that are applicable to the school district; and

(xi) Acknowledgment that the school district must provide the office of the superintendent of public instruction with the opportunity to review the contract and related documentation upon request.

(b) A school district contracting with an education center must conduct an annual on-site visit to ensure that an education center's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment and meet the unique needs of the students with disabilities placed in the education center by the school district.

(c) A school district contracting with an education center must remain responsible for ensuring that the students with disabilities placed in the education center by the school district are:

(i) Provided a free appropriate public education in accordance with the federal individuals with disabilities education act, Title 20 U.S.C. Sec. 1400 et seq. and this chapter;

(ii) Provided with special education and related services at no cost to the student's parents and in conformance with an individualized education program as required by law, including evaluations and individualized education program team meetings that meet all applicable requirements;

(iii) Provided with an opportunity to participate in Washington state and school district assessments and an opportunity to fulfill the requirements to receive a Washington state diploma; and

(iv) Provided at least the minimum instructional hours and days required under RCW 28A.150.220.

(d) A school district contracting with an education center must report to the office of the superintendent of public instruction and the office of the state auditor any concerns the school district has about overbilling by an education center.

(e) A school district must provide the following documents to the parents or guardians of the student being served by an education center:

(i) A summary of the school district and education center's responsibilities and processes for reporting incidents of student isolation and restraint under RCW 28A.600.485; and

(ii) A copy of the complaint process published under subsection (2)(g) of this section.

(4) For the purpose of this section, "education center" means an education center, as defined in RCW 28A.205.010, approved by the office of the superintendent of public instruction under subsection (2) of this section.

**Sec.**  RCW 28A.155.210 and 2013 c 202 s 3 are each amended to read as follows:

A ((~~school that is required to develop an~~)) student's individualized education program ((~~as required by federal law~~)) must include ((~~within the plan~~)) procedures for notification of a parent or guardian regarding the use of restraint or isolation under RCW 28A.600.485. If a student is served by an education center under RCW 28A.155.060, the student's individualized education program must also specify any additional procedures required to ensure the education center fully complies with RCW 28A.600.485.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.155 RCW to read as follows:

(1) Beginning December 1, 2023, and in compliance with RCW 43.01.036, the office of the superintendent of public instruction must annually submit a report to the education committees of the legislature regarding student placements at education centers under RCW 28A.155.060. A summary of the report, including a link to the full report content, must also be posted on the office of the superintendent of public instruction's website. The report must include:

(a) The academic progress of students receiving special education services from education centers, using the results of the two most recent state assessments;

(b) The graduation rates of students who have received special education services from education centers;

(c) The rate at which students receiving special education services from education centers return to their resident school districts;

(d) Data on student restraint and isolation incidents, discipline, and attendance at education centers; and

(e) Any corrective action or change in an education center's approval status, as ordered by the office of the superintendent of public instruction.

(2) The data published under subsection (1) of this section must be disaggregated by education center when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected under the federal family educational rights and privacy act (Title 20 U.S.C. Sec. 1232g).

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 28A.205.020 (Common school dropouts—Reimbursement) and 1999 c 348 s 3, 1997 c 265 s 7, 1993 c 211 s 2, 1990 c 33 s 181, 1979 ex.s. c 174 s 1, & 1977 ex.s. c 341 s 2;

(2) RCW 28A.205.030 (Reentry of prior dropouts into common schools, rules—Eligibility for test to earn a high school equivalency certificate) and 2013 c 39 s 6;

(3) RCW 28A.205.040 (Fees—Rules—Priority for payment—Review of records) and 2013 c 39 s 7, 2006 c 263 s 412, 1999 c 348 s 4, 1990 c 33 s 183, 1979 ex.s. c 174 s 2, & 1977 ex.s. c 341 s 4;

(4) RCW 28A.205.070 (Allocation of funds—Criteria—Duties of superintendent) and 2006 c 263 s 409, 1993 c 211 s 6, 1990 c 33 s 185, & 1985 c 434 s 3;

(5) RCW 28A.205.080 (Legislative findings—Distribution of funds—Cooperation with school districts) and 1997 c 265 s 8, 1993 c 211 s 7, 1990 c 33 s 186, & 1987 c 518 s 220; and

(6) RCW 28A.205.090 (Inclusion of education centers program in biennial budget request—Quarterly plans—Funds—Payment) and 1993 c 211 s 8, 1990 c 33 s 187, & 1985 c 434 s 4.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Correct the title.

EFFECT: Strikes all material in the underlying bill and replaces it with material that has the following effect:

(1) Changes the term "nonpublic agency" to "education center" throughout the amendment.

(2) Modifies the definition of "education center" to "a private in-state school or facility operated on a profit or nonprofit basis, or any out-of-state school or facility, that contracts with a school district [that meets specified requirements]," rather than "any private school operated on a nonprofit or for profit basis [that meets specified requirements];" and correspondingly allows courses of instruction to be conducted by licensed teachers, rather than professional trained personnel certificated by the Professional Educator Standards Board.

(3) Authorizes the Office of the Superintendent of Public Instruction (OSPI) to approve, rather than certify, education centers, and adds that the OSPI can suspend, revoke, or refuse to renew approval if an education center fails to adhere to federal laws, especially civil rights laws, fails to comply with health and safety requirements, or fails to comply with provisions of its contract with a school district.

(4) Adds that, for a private school in Washington approved by the state board of education (SBE), the OSPI may only approve as an education center the program of special education and related services provided to students with disabilities placed in the education center by the school district.

(5) Specifies that all education centers may be approved for up to three years, rather than permitting education centers that are private schools in Washington approved by the SBE to be approved for up to five years.

(6) Directs the SBE to notify the OSPI of any unresolved concerns, deficiencies, or deviations it has with an education center that is also a private school approved by the SBE.

(7) Requires that, to qualify for approval to provide special education and related services to students with disabilities placed in the education center by a school district, an applicant must demonstrate that its staff are regularly trained on 10 topics, including relevant laws, child and adolescent development, and specified best practices for working with youth (rather than permitting existing safety and security staff training to be provided to education centers located in Washington).

(8) Adds that the required contract between a school district and an education center must include acknowledgment that the education center is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;

(9) Directs a school district contracting with an education center to report to the Office of the Superintendent of Public Instruction and the Office of the State Auditor any concerns the school district has about overbilling by an education center.

(10) Directs the OSPI to use data on student academic progress, discipline, and attendance (in addition to isolation and restraint) to identify issues of education center noncompliance with approval standards and contract elements.

(11) Repeals six provisions of existing education center law related primarily to funding of the centers and enrollment of common school dropouts.

(12) Adds an intent section.

(13) Makes nonsubstantive changes, for example adding statutory citations, changing the phrase "to provide special education programs for students with disabilities" to "to provide special education and related services to students with disabilities placed in the education center by a school district," and referring more generally to requirements and standards that may be in place for out-of-state entities.

(14) Maintains the emergency clause.