

# SENATE BILL REPORT

## E2SSB 5315

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As Passed Senate, March 7, 2023

**Title:** An act relating to nonpublic agencies operating special education programs for students with disabilities.

**Brief Description:** Concerning nonpublic agencies operating special education programs for students with disabilities.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Wilson, C., Billig, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, Pedersen and Valdez; by request of Superintendent of Public Instruction).

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/19/23, 1/30/23 [DPS-WM, w/oRec].

Ways & Means: 2/09/23, 2/22/23 [DP2S, w/oRec].

**Floor Activity:** Passed Senate: 3/7/23, 48-0.

### Brief Summary of Engrossed Second Substitute Bill

- Requires the Office of the Superintendent of Public Instruction (OSPI) to establish standards for approving, monitoring, and investigating nonpublic agencies that contract with school districts to provide special education programs for students with disabilities.
- Establishes minimum nonpublic agency approval requirements and minimum school district contracting requirements.
- Requires OSPI to annually report to the Legislature regarding student placements at nonpublic agencies.
- Provides that restraint and isolation procedures and notification requirements apply to nonpublic agencies.
- Directs OSPI to develop a complaint process for individuals to report

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

noncompliance and violations of student rights at nonpublic agencies.

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## SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** That Substitute Senate Bill No. 5315 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair; Hunt and Pedersen.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Hawkins, Ranking Member; Dozier and McCune.

**Staff:** Alexandra Fairfortune (786-7416)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5315 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Braun, Torres and Wagoner.

**Staff:** Kayla Hammer (786-7305)

**Background:** Nonpublic Agencies. If a student's special education needs cannot be met by their resident school district, the district may contract with an approved nonpublic agency (NPA) to provide a program of special education and related services. Provisions directing approval processes and oversight responsibilities reside in state rule.

*Nonpublic Agency Approval Process.* NPAs must be approved by the Office of the Superintendent of Public Instruction (OSPI) and must re-apply for approval every three years. The contracting school district must conduct an on-site visit of the nonpublic agency and submit those results in the application for approval. OSPI may conduct an independent on-site visit, if appropriate, before determining whether an application will be approved.

*School District Oversight Responsibilities.* Each school district that contracts with an NPA

remains responsible for ensuring their enrolled student is provided a free appropriate public education and that the NPA is able to provide the services required to meet the unique needs of the student. A school district that places a student with an NPA must develop a written contract that includes, among other elements:

- a description of services provided, program administration, and supervision, including access to state learning standards;
- a description of the district responsibility and process of data collection and reporting for the student, including the data required under the federal Individuals with Disabilities Education Act, restraint and isolation reports to parents and OSPI, and school discipline;
- assurance that the requirements pertaining to emergency response protocols and isolation and restraint protocols are being met;
- assurance that the NPA will notify the school district or OSPI of any program changes that may affect the NPA's ability to contract, or any complaints against the NPA regarding services to students; and
- any other contract elements that may be necessary to assure compliance with state and federal rules.

*The Office of the Superintendent of Public Instruction Oversight Responsibilities.* OSPI is responsible for approving and renewing NPA contracts. OSPI must monitor compliance through written reports, on-site visits, and parent questionnaires. OSPI may suspend, revoke, or refuse to renew its approval of an NPA if the NPA fails to maintain the approval standards, violates the rights of students eligible for special education services, or refuses to implement any corrective actions ordered by OSPI. OSPI must make information regarding currently approved NPAs available on its website.

Restraint and Isolation. Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm. Restraint or isolation must be closely monitored to prevent harm to the student, and must be discontinued as soon as the likelihood of serious harm has dissipated. A student's individualized education program (IEP) may not include the use of restraint or isolation as a planned behavior intervention unless the student's individual needs require it and the student's parent or guardian agrees. Each student's IEP must include procedures for notification of a parent or guardian regarding the use of restraint and isolation.

Following the release of a student from the use of restraint or isolation, a school must implement the following procedures:

- review the incident with the student, parent or guardian, and staff member who administered the response;
- require the school employee, resource officer, or school security officer who used restraint or isolation to inform the building administrator as soon as possible and to submit a written report to the district office within two business days; and
- require the principal to make a reasonable effort to verbally inform the student's parent or guardian within 24 hours of the incident, and to send written notification as

soon as practical but no later than five business days.

By January 1st of each year, each school district must summarize all written reports pertaining to restraint and isolation incidents and submit the summary to OSPI. The district must include the following information for each school: the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraints used. OSPI must publish this data on its website within 90 days, and may use the data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation.

**Summary of Engrossed Second Substitute Bill: Nonpublic Agencies.** The term "nonpublic agency" means a private in-state or any out-of-state agency that contracts with a school district to provide a program of special education. A "nonpublic agency school" is a subcategory of nonpublic agency, and means a Washington State private school approved by the State Board of Education (SBE) that contracts with a school district to provide a program of special education for students with disabilities.

OSPI is given the duty and authority to establish standards for approving, monitoring, and investigating NPAs that contract with school districts to provide special education programs for students with disabilities. All standards must ensure that any student served by an NPA has the same rights and protections that they would have if served by a school district.

Nonpublic Agency Approval. OSPI must create an application process to approve nonpublic agencies that contract with school districts to provide special education services to students with disabilities. NPA schools may be approved for a period of up to five years, and all other NPAs may be approved for a period of up to three years.

To qualify for approval an NPA must, at a minimum, meet the following requirements:

- acknowledge that it can meet all contract elements required by state statute when contracting with a school district;
- obtain approval by the SBE to operate as a private school or, for NPAs that operate a program of education within a nonschool facility, comply with facility licensing requirements;
- employ or contract with at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff that meet the state licensing requirements for their profession;
- meet applicable fire codes and health and safety standards;
- demonstrate through audits that it is financially stable and has accounting systems that allow for separation of school district funds, including financial safeguards to track revenues and expenditures associated with student placements;
- demonstrate that it has procedures in place that address staff hiring and evaluation, including conducting reference checks, criminal background checks, and staff evaluations; and
- maintain a policy of nondiscrimination and provide procedural safeguards for

students and their families.

Before approving an NPA, OSPI must conduct an onsite visit to ensure that the NPA's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment.

OSPI may suspend, revoke, or refuse to renew its approval of an NPA if the NPA fails to maintain approval standards, fails to comply with all school district contract elements, violates the rights of students, or refuses to implement any corrective actions order by OSPI. OSPI must notify the SBE of if any NPA school is investigated for noncompliance, is directed to complete corrective action, or fails to maintain approval.

The Office of the Superintendent of Public Instruction Complaint Process. OSPI must develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at NPAs. OSPI must use the complaint process to identify and address patterns of misconduct at nonpublic agencies, including issuing corrective action or revoking NPA approval.

School District Contract. A school district that chooses to contract with an NPA must develop a written contract to establish the responsibilities of the school district and NPA and set forth the rights of the students receiving special education services. The contract must include, at a minimum, the following elements:

- the names of the parties involved and the name of the student or students;
- the locations and settings of the services to be provided;
- a description of the services to be provided, including access to state learning standards;
- the total contract cost and applicable charge and reimbursement systems, including billing and payment procedures;
- acknowledgement that the NPA has a list of each qualified staff member providing special education services and a copy of the license or credential that qualifies the staff to provide those services;
- acknowledgement that the school district and NPA have clearly established their respective responsibilities and processes for data collection and reporting for students;
- acknowledgement that the NPA must comply with isolation and restraint procedures;
- acknowledgement that the NPA must notify the school district and OSPI of any program, staffing, or facility changes that may affect the NPA's ability to provide contracted services;
- acknowledgement that the NPA must comply with all relevant state and federal laws that are applicable to the school district; and
- acknowledgement that the school district must provide OSPI with the opportunity to review the contract and related documentation upon request.

School District Responsibilities. A school district remains responsible for ensuring that the student being served is provided with a free appropriate public education, provided with

special education and related services at no cost to the student's parents and in conformance with an individualized education program, provided with an opportunity to participate in state and district assessments, provided at least the minimum state requirements for hours and days of instruction, and provided with an opportunity to fulfill the requirements to receive a state diploma.

A school district must conduct an annual onsite visit to ensure that an NPAs facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment and meet the unique needs of the student being served.

A school district must provide, to the parents or guardians of the student being served, a summary of the district and NPA responsibilities and processes for reporting incidents of isolation and restraint and a copy of the complaint procedure developed by OSPI.

*Reports.* Beginning December 1, 2023, OSPI must annually submit a report to the education committees of the Legislature regarding student placements at NPAs. The data published in the report must be disaggregated by NPA when it is possible to do so without disclosing a student's personally identifiable information. A summary of the report, including a link to the full report content, must be posted on the OSPI website. The report must include:

- the academic progress of students receiving special education services from NPAs, using the results of the two most recent state assessments;
- the graduation rates of students who have received special education services from NPAs;
- the rate at which students receiving special education services from NPAs return to their resident school districts;
- data on restraint and isolation incidents, discipline, and attendance; and
- any corrective action or change in an NPA's approval status, as ordered by OSPI.

Restraint and Isolation. If a student is served by an NPA, the student's IEP must specify any additional procedures required to ensure the NPA fully complies with restraint and isolation procedures.

The term "school" is defined within the isolation and restraint statute to mean a public school or a nonpublic agency that contracts with a school district.

OSPI may use the summarized restraint and isolation data submitted by school districts to determine if an NPA is in compliance with all contract obligations and approval standards.

Safety and Security Training. Safety and security training provided by educational service districts may be provided to NPAs located in Washington that contract with school districts to provide a program of special education to students with disabilities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Original Bill (Early Learning & K-12 Education):** *The committee recommended a different version of the bill than what was heard.* PRO: The Seattle Times recently published an article that spoke to what is happening to students with disabilities in places we expect them to be cared for. The investigations showed that Washington State failed to regulate these facilities. These schools receive millions of dollars every year without much oversight, and there have been complaints of abuse and lack of academic progress. Further reports indicate students are regressing, that staff are relying heavily on restraint and isolation, and that parents aren't receiving information they would receive from public schools. Every student has the right to educational services that are safe, supportive, and maximize access to general education settings. Expanding OSPI oversight for non-public agencies will better protect and serve students eligible for special education. Collaboration with OSPI provides a clearer picture for families on what is accessible to them and their students.

CON: There is a difference between NPAs that are approved as private schools by the State Board of Education and NPAs that are not. NPAs that are also approved by the SBE go through the rigorous approval and accreditation process and are already being closely monitored, reporting to the school board and OSPI annually. Public schools are not equipped to provide the resources that students with special needs require. NPAs providing special needs educational services are equipped with highly specialized staff that would not benefit from district training. This bill requires stringent barriers that may limit the ability of NPAs to provide faith-based or other traditional support mechanisms. Adding new layers to a system that is already working will slow down its ability to serve students and take the small personal team out of the equation.

OTHER: The changes proposed are complex and demand more attention. It is appalling what happened at NW Soil and it is unacceptable that nobody with authority submitted a complaint.

**Persons Testifying (Early Learning & K-12 Education):** PRO: Senator Claire Wilson, Prime Sponsor; Ramona Hattendorf, The Arc of King County; Christopher Willis, Orting School District; Tania May, Office of Superintendent of Public Instruction; Preston Dwoskin.

CON: Julie Barrett, Conservative Ladies of Washington; Tracy McCammant, Eaton Arrowsmith - Center for Neuroeducation; Carrie Fannin, Children's Institute for Learning Differences; Dominic Jimenez, Children's Institute for Learning Differences; Jeffrey Woolley, Dartmoor Schools; Rachel Kier, Brocks Academy; Melodee Loshbaugh, Brocks

Academy; Suzanne Hanson, Washington Federation of Independent Schools; Judy Colson; Debbie Teter.

OTHER: Marianne Bryan.

**Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):**

CON: Dr. Melodee Loshbaugh, Brock's Academy.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: A single system should remain the same across all NPAs as stated in the bill to ensure equitable special education. There are concerns in the amended language about conducting on-site visits within 30 days of a student's placement. The language needs some adjustments between organizations so that they can continue their partnership.

**Persons Testifying (Ways & Means):** PRO: Tania May, Office of Superintendent of Public Instruction; Suzanne Hanson, Washington Federation of Independent Schools.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.