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**SECOND SUBSTITUTE HOUSE BILL 1305**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Pollet, Stonier, Ortiz-Self, Alvarado, Orwall, Leavitt, Senn, Bergquist, Bateman, Taylor, Reeves, Davis, Doglio, Santos, Reed, Kloba, and Fosse)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to improving access to and provision of a free  
2 appropriate public education for students with disabilities; amending  
3 RCW 28A.225.330, 28A.155.010, 28A.155.020, 28A.155.040, 28A.155.060,  
4 28A.155.090, and 28A.155.100; adding new sections to chapter 28A.155  
5 RCW; creating a new section; providing an effective date; and  
6 providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) If the parent of a student makes a  
9 request for the student to be evaluated for a disability or for  
10 eligibility for special education services, a school district must  
11 provide the parent with a document describing the referral request  
12 and initial special education evaluation processes, including  
13 relevant deadlines and parental consent requirements. The document  
14 must be based on the template created as required under section 2 of  
15 this act.

16 (2) Within 22 calendar days after receipt of a referral request  
17 for special education services, a school district must: (a) Decide  
18 whether to conduct an initial evaluation to determine whether the  
19 student is eligible for special education services; and (b) notify  
20 the parent of the referred student of the district's decision, using  
21 multiple communication channels.

1 (3) If a school district has decided to evaluate the student for  
2 special education services, the school district must comply with the  
3 following procedures and deadlines for obtaining parental consent to  
4 evaluate, for evaluating the student, and for the eligibility  
5 determination:

6 (a) At the same time as it makes the notification under  
7 subsection (2) of this section, the school district must provide the  
8 student's parent with a document that informs the parent about the  
9 evaluation activities it plans to conduct, and that includes  
10 instructions for how and when to provide parental consent to  
11 evaluate. The document must be based on the template created as  
12 required under section 2 of this act.

13 (b) (i) Except as provided in (b) (ii) of this subsection (3), or  
14 as provided in rule, the school district must, within 60 calendar  
15 days of receiving a parent's consent to evaluate the student, conduct  
16 an evaluation and determine whether the student is eligible for  
17 special education services.

18 (ii) When the evaluation activities include student observations  
19 in the classroom or school setting, the 60 calendar days for  
20 conducting the evaluation following receipt of a parent's consent to  
21 evaluate may be suspended during school holidays of a week or longer.

22 (c) The office of the superintendent of public instruction shall  
23 adopt a rule permitting a school district to exceed the time limits  
24 under (b) of this subsection (3) when conducting a quality evaluation  
25 warrants additional time, for example: Due to the complexity of the  
26 student's diagnoses; the availability of specialists; barriers to  
27 coordination of multiple specialists; or barriers to scheduling in-  
28 person observations when these observations are an agreed-to  
29 evaluation activity.

30 (4) When enrolling a student who has attended school in another  
31 school district and who was referred for an initial evaluation for  
32 special education services but who does not have an individualized  
33 education program, the receiving school district must continue the  
34 process of determining the student's eligibility for special  
35 education services where the transferring school district stopped.

36 NEW SECTION. **Sec. 2.** (1) The office of the superintendent of  
37 public instruction shall collaborate with the office of the education  
38 ombuds to create a template for school districts to use to meet the  
39 requirement in section 1 (1) and (3) of this act related to providing

1 to parents: (a) Information about the initial special education  
2 evaluation process; and (b) instructions for how and when to provide  
3 parental consent to evaluate.

4 (2) The template must be translated as for limited English  
5 proficient parent groups described in section 4(2) of this act. The  
6 template and its translations must be made publicly available on the  
7 website of the office of the superintendent of public instruction.

8 NEW SECTION. **Sec. 3.** (1) With regard to parent participation in  
9 individualized education program team meetings, a school district  
10 must provide prior notification to parents about the accommodations  
11 available for persons with disabilities who are in need of  
12 communication assistance or accommodations to fully participate in  
13 the meeting, including the option to record audio under certain  
14 circumstances. Examples of "persons with disabilities who are in need  
15 of communication assistance or accommodations" are persons with  
16 hearing or speech disabilities and persons with limited English  
17 proficiency.

18 (2) School district staff, including related services staff, may  
19 participate in an individualized education program team meeting if  
20 they have knowledge or special expertise regarding the student,  
21 including knowledge of resources or services available to the  
22 student.

23 NEW SECTION. **Sec. 4.** (1) School districts may use oral  
24 interpreter services, written translation services, and other  
25 language access services available for contract through the  
26 department of enterprise services to comply with Title II of the  
27 Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et  
28 seq., and Title IV of the civil rights act of 1964, 42 U.S.C. Sec.  
29 2000d, et seq.

30 (2) School districts shall provide written translation of  
31 documents for each limited English proficient parent group that  
32 constitutes at least five percent of the school's total parent  
33 population or 1,000 persons, whichever is less.

34 NEW SECTION. **Sec. 5.** (1) As needed to inform the activities  
35 described in subsection (2) of this section, the office of the  
36 superintendent of public instruction may collect and analyze  
37 information about the implementation of the processes for predue

1 process hearing resolution and mediation that have been adopted in  
2 rule by the office of the superintendent of public instruction. At a  
3 minimum, the information must include: Reasons why disputes are not  
4 resolved through these processes; and incentives that could be  
5 provided or process improvements that could be made to ensure that  
6 the parties comply with required elements of the processes and engage  
7 in the processes in good faith.

8 (2) Based on the information collected and analyzed under  
9 subsection (1) of this section, the office of the superintendent of  
10 public instruction may develop, or revise, and publish guidance on  
11 best practices for resolving disputes through the predue process  
12 hearing resolution process and the mediation process.

13 (3) As used in this section, "due process hearing" means a due  
14 process hearing held in accordance with the federal individuals with  
15 disabilities education act, 20 U.S.C. Sec. 1400 et seq.

16 NEW SECTION. **Sec. 6.** (1) Any public entity in Washington  
17 responsible for providing special education, related services, or  
18 both to students with disabilities in accordance with Part B of the  
19 federal individuals with disabilities education act, 20 U.S.C. Sec.  
20 1400 et seq., must comply with the provisions of this chapter to the  
21 same extent as school districts.

22 (2) Any in-state private entity, in which a Washington student is  
23 placed or referred by a public entity in Washington responsible for  
24 providing special education, related services, or both to students  
25 with disabilities in accordance with Part B of the federal  
26 individuals with disabilities education act, 20 U.S.C. Sec. 1400 et  
27 seq., must comply with the provisions of this chapter to the same  
28 extent as school districts.

29 (3) Any out-of-state private entity, in which a Washington  
30 student is placed or referred by a public entity in Washington  
31 responsible for providing special education, related services, or  
32 both to students with disabilities in accordance with Part B of the  
33 federal individuals with disabilities education act, Title 20 U.S.C.  
34 Sec. 1400 et seq., must comply with the provisions of Part B of the  
35 federal individuals with disabilities education act, 20 U.S.C. Sec.  
36 1400 et seq.

37 NEW SECTION. **Sec. 7.** (1) Subject to the availability of amounts  
38 appropriated for this specific purpose, the office of the

1 superintendent of public instruction shall distribute funding to  
2 educational service districts for the purpose of making school  
3 psychologists and other providers with expertise in each category of  
4 disability under Part B of the federal individuals with disabilities  
5 education act, 20 U.S.C. Sec. 1400 et seq., available to conduct  
6 initial special education evaluations and reevaluations for special  
7 education.

8 (2) Each educational service district must determine its regional  
9 need for special education evaluators as described in subsection (1)  
10 of this section. At the time and in the manner required by the office  
11 of the superintendent of public instruction, each educational service  
12 district shall submit a proposal describing its regional need and  
13 requesting funding to address that need.

14 (3) The office of the superintendent of public instruction must  
15 prioritize proposals submitted as required under subsection (2) of  
16 this section and may fund all or part of each proposal, subject to  
17 availability of amounts appropriated for this specific purpose.

18 (4) This section expires August 1, 2029.

19 **Sec. 8.** RCW 28A.225.330 and 2022 c 78 s 3 are each amended to  
20 read as follows:

21 (1) When enrolling a student who has attended school in another  
22 school district, the school enrolling the student may request the  
23 parent and the student to briefly indicate in writing whether or not  
24 the student has:

25 (a) Any history of placement in special educational programs;

26 (b) Any past, current, or pending disciplinary action;

27 (c) Any history of violent behavior, or behavior listed in RCW  
28 13.04.155;

29 (d) Any unpaid fines or fees imposed by other schools; and

30 (e) Any health conditions affecting the student's educational  
31 needs.

32 (2) The school enrolling the student shall request the student's  
33 permanent record including records of disciplinary action, history of  
34 violent behavior or behavior listed in RCW 13.04.155, attendance,  
35 immunization records, ~~((and))~~ academic performance from the school  
36 the student previously attended, and special education referral  
37 requests, documentation of whether a special education eligibility  
38 decision is pending and the deadline for making the decision, special

1 education evaluation decisions, special education evaluations, and  
2 individualized education programs.

3 (3) Upon request, school districts shall furnish a set of  
4 unofficial educational records to a parent or guardian of a student  
5 who is transferring out of state and who meets the definition of a  
6 child of a military family in transition under Article II of RCW  
7 28A.705.010. School districts may charge the parent or guardian the  
8 actual cost of providing the copies of the records.

9 (4) If information is requested under subsection (2) of this  
10 section, the information shall be transmitted within two school days  
11 after receiving the request and the records shall be sent as soon as  
12 possible. The records of a student who meets the definition of a  
13 child of a military family in transition under Article II of RCW  
14 28A.705.010 shall be sent within 10 days after receiving the request.  
15 Any school district or district employee who releases the information  
16 in compliance with this section is immune from civil liability for  
17 damages unless it is shown that the school district employee acted  
18 with gross negligence or in bad faith. The professional educator  
19 standards board shall provide by rule for the discipline under  
20 chapter 28A.410 RCW of a school principal or other chief  
21 administrator of a public school building who fails to make a good  
22 faith effort to assure compliance with this subsection.

23 (5) Any school district or district employee who releases the  
24 information in compliance with federal and state law is immune from  
25 civil liability for damages unless it is shown that the school  
26 district or district employee acted with gross negligence or in bad  
27 faith.

28 (6) (a) A school may not prevent students who are the subject of a  
29 dependency proceeding pursuant to chapter 13.34 RCW from enrolling if  
30 there is incomplete information as enumerated in subsection (1) of  
31 this section during the 10 business days that the department of  
32 children, youth, and families has to obtain that information under  
33 RCW 74.13.631.

34 (b) If the student who is the subject of a dependency proceeding  
35 is subject to an order in a federally recognized tribal court that is  
36 the equivalent of a shelter care or dependency order pursuant to  
37 chapter 13.34 RCW, or the student is eligible for benefits under the  
38 federal foster care system as defined in RCW 28B.117.020, the school  
39 may not prevent the student from enrolling if there is incomplete  
40 information as enumerated in subsection (1) of this section during

1 the 10 business days from the date the equivalent order is entered or  
2 from a date determined by the state agency responsible for  
3 implementing the unaccompanied refugee minors program.

4 (c) Upon enrollment of a student who is the subject of a  
5 dependency proceeding, the school district must make reasonable  
6 efforts to obtain and assess that child's educational history in  
7 order to meet the child's unique needs within two business days.

8 (7) For the purposes of this section, "students who are the  
9 subject of a dependency proceeding" has the same meaning as in RCW  
10 28A.150.510.

11 **Sec. 9.** RCW 28A.155.010 and 2007 c 115 s 1 are each amended to  
12 read as follows:

13 It is the purpose of RCW 28A.155.010 through 28A.155.160,  
14 sections 1 through 7 of this act, 28A.160.030, and 28A.150.390 to  
15 ensure that all children with disabilities as defined in RCW  
16 28A.155.020 shall have the opportunity for an appropriate education  
17 at public expense as guaranteed to them by the Constitution of this  
18 state and applicable federal laws.

19 **Sec. 10.** RCW 28A.155.020 and 2015 c 206 s 2 are each amended to  
20 read as follows:

21 There is established in the office of the superintendent of  
22 public instruction an administrative section or unit for the  
23 education of children with disabilities who require special  
24 education.

25 Students with disabilities are those children whether enrolled in  
26 school or not who through an evaluation process are determined  
27 eligible for special education due to a disability.

28 In accordance with part B of the federal individuals with  
29 disabilities education improvement act and any other federal or state  
30 laws relating to the provision of special education services, the  
31 superintendent of public instruction shall require each school  
32 district in the state to insure an appropriate educational  
33 opportunity for all children with disabilities between the ages of  
34 three and twenty-one, but when the twenty-first birthday occurs  
35 during the school year, the educational program may be continued  
36 until the end of that school year. The superintendent of public  
37 instruction, by rule, shall establish for the purpose of excess cost  
38 funding, as provided in RCW 28A.150.390, 28A.160.030, (~~and~~)

1 28A.155.010 through 28A.155.160, and sections 1 through 7 of this  
2 act, functional definitions of special education, the various types  
3 of disabling conditions, and eligibility criteria for special  
4 education programs for children with disabilities, including referral  
5 procedures, use of positive behavior interventions, the education  
6 curriculum and statewide or district-wide assessments, parent and  
7 district requests for special education due process hearings, and  
8 procedural safeguards. For the purposes of RCW 28A.155.010 through  
9 28A.155.160 and sections 1 through 7 of this act, an appropriate  
10 education is defined as an education directed to the unique needs,  
11 abilities, and limitations of the children with disabilities who are  
12 enrolled either full time or part time in a school district. School  
13 districts are strongly encouraged to provide parental training in the  
14 care and education of the children and to involve parents in the  
15 classroom.

16 Nothing in this section shall prohibit the establishment or  
17 continuation of existing cooperative programs between school  
18 districts or contracts with other agencies approved by the  
19 superintendent of public instruction, which can meet the obligations  
20 of school districts to provide education for children with  
21 disabilities, or prohibit the continuation of needed related services  
22 to school districts by the department of social and health services.

23 This section shall not be construed as in any way limiting the  
24 powers of local school districts set forth in RCW 28A.155.070.

25 **Sec. 11.** RCW 28A.155.040 and 2007 c 115 s 4 are each amended to  
26 read as follows:

27 The board of directors of each school district, for the purpose  
28 of compliance with the provisions of RCW 28A.150.390, 28A.160.030,  
29 (~~and~~) 28A.155.010 through 28A.155.160, and sections 1 through 7 of  
30 this act and chapter 28A.190 RCW, shall cooperate with the  
31 superintendent of public instruction and with the administrative  
32 officer and shall provide an appropriate educational opportunity to  
33 children with disabilities, as defined in RCW 28A.155.020, in regular  
34 or special school facilities within the district or shall contract  
35 for such services with other agencies as provided in RCW 28A.155.060  
36 or shall participate in an interdistrict arrangement in accordance  
37 with RCW 28A.335.160 and 28A.225.220 and/or 28A.225.250 and  
38 28A.225.260.



1 In carrying out their responsibilities under this chapter, school  
2 districts severally or jointly with the approval of the  
3 superintendent of public instruction are authorized to support and/or  
4 contract for residential schools and/or homes approved by the  
5 department of social and health services for aid and special  
6 attention to students with disabilities.

7 The cost of board and room in facilities approved by the  
8 department of social and health services shall be provided by the  
9 department of social and health services for those students with  
10 disabilities eligible for such aid under programs of the department.  
11 The cost of approved board and room shall be provided for those  
12 students with disabilities not eligible under programs of the  
13 department of social and health services but deemed in need of the  
14 same by the superintendent of public instruction: PROVIDED, That no  
15 school district shall be financially responsible for special  
16 education programs for students who are attending residential schools  
17 operated by the department of social and health services: PROVIDED  
18 FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, (~~and~~)  
19 28A.155.010 through 28A.155.100, and sections 1 through 7 of this act  
20 shall not preclude the extension by the superintendent of public  
21 instruction of special education opportunities to students with  
22 disabilities in residential schools operated by the department of  
23 social and health services.

24 **Sec. 12.** RCW 28A.155.060 and 2007 c 115 s 6 are each amended to  
25 read as follows:

26 For the purpose of carrying out the provisions of RCW 28A.155.020  
27 through 28A.155.050 and sections 1 through 7 of this act, the board  
28 of directors of every school district shall be authorized to contract  
29 with agencies approved by the superintendent of public instruction  
30 for operating special education programs for students with  
31 disabilities. Approval standards for such agencies shall conform  
32 substantially with those of special education programs in the common  
33 schools.

34 **Sec. 13.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to  
35 read as follows:

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

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

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

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

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

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

14 (6) Consistent with the provisions of RCW 28A.150.390,  
15 28A.160.030, (~~and~~) 28A.155.010 through 28A.155.160, and sections 1  
16 through 7 of this act, and part B of the federal individuals with  
17 disabilities education improvement act, administer administrative  
18 hearings and other procedures to ensure procedural safeguards of  
19 children with disabilities; and

20 (7) Promulgate such rules as are necessary to implement part B of  
21 the federal individuals with disabilities education improvement act  
22 or other federal law providing for special education services for  
23 children with disabilities and the several provisions of RCW  
24 28A.150.390, 28A.160.030, (~~and~~) 28A.155.010 through 28A.155.160,  
25 and sections 1 through 7 of this act and to ensure appropriate access  
26 to and participation in the general education curriculum and  
27 participation in statewide assessments for all students with  
28 disabilities.

29 **Sec. 14.** RCW 28A.155.100 and 2007 c 115 s 12 are each amended to  
30 read as follows:

31 The superintendent of public instruction is hereby authorized and  
32 directed to establish appropriate sanctions to be applied to any  
33 school district of the state failing to comply with the provisions of  
34 RCW 28A.150.390, 28A.160.030, (~~and~~) 28A.155.010 through 28A.155.060  
35 (~~and~~), 28A.155.080 through 28A.155.160, and sections 1 through 7 of  
36 this act to be applied beginning upon the effective date thereof,  
37 which sanctions shall include withholding of any portion of state aid  
38 to such district until such time as compliance is assured.

1        NEW SECTION.    **Sec. 15.**    Sections 1 through 7 of this act are each  
2 added to chapter 28A.155 RCW.

3        NEW SECTION.    **Sec. 16.**    Section 1 of this act takes effect August  
4 1, 2025.

5        NEW SECTION.    **Sec. 17.**    If specific funding for the purposes of  
6 this act, referencing this act by bill or chapter number, is not  
7 provided by June 30, 2023, in the omnibus appropriations act, this  
8 act is null and void.

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