

RCW 28A.300.690 Special education—Authorized entities. (1) The office of the superintendent of public instruction may authorize private schools approved by the state board of education under RCW 28A.305.130, other private in-state entities, and any out-of-state entities to contract with school districts under RCW 28A.155.060 to provide special education and related services to students with disabilities. For authorized entities with multiple locations, the office of the superintendent of public instruction must approve each location independently.

(2) The office of the superintendent of public instruction shall establish a process for private schools approved by the state board of education under RCW 28A.305.130 to apply for authorization or reauthorization for a period of up to five years and for other entities to apply for authorization or reauthorization for a period of up to three years.

(3) To qualify for authorization or reauthorization, an applicant must, at a minimum, meet the following requirements:

(a) Offer a program of basic education that will provide:

(i) Opportunities for students to meet the goals of RCW 28A.150.210, in accordance with an individual assessment of student strengths and needs as determined by the placing school districts, and any other requirements established by contract; and

(ii) Opportunities for students in grades nine through 12 to either meet high school graduation requirements under RCW 28A.230.090 or to earn a high school equivalency certificate under RCW 28B.50.536 or laws of the state in which the applicant is located;

(b) Maintain applicable facility licenses and applicable agency approvals of the state in which the applicant is located;

(c) Employ or contract with teachers and related services staff who meet the licensing requirements of the state in which the applicant is located;

(d) Meet applicable fire codes of the local fire marshal or the fire marshal of the state in which the applicant is located;

(e) Meet applicable health and safety standards of the local jurisdiction and state in which the applicant is located;

(f) Demonstrate through audits that the applicant 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 education and related services to students placed in the authorized entity by the school district;

(g) Demonstrate that the applicant has procedures in place that address staff employment and contracting, including checking personal and professional references, conducting state and federal criminal background checks, and conducting regular staff evaluations that address staff competencies;

(h) Maintain a policy of nondiscrimination and provide procedural safeguards for students and their families; and

(i) Pass an on-site inspection conducted by the office of the superintendent of public instruction that confirms that the health and safety of the facilities, the staffing qualifications and levels, and the procedural safeguards are sufficient to provide a safe and appropriate learning environment for students.

(4) The office of the superintendent of public instruction must prohibit authorized entities from charging tuition or fees to students placed in the authorized entity by a school district.

(5) As used in this section, the term "authorized entity" means a private school approved by the state board of education under RCW 28A.305.130, another private in-state entity, or any out-of-state entity, that has been authorized by the office of the superintendent of public instruction to contract with a school district to provide a program of special education for students with disabilities. [2023 c 436 § 3.]

Finding—Intent—2023 c 436: "(1) (a) (i) 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.

(ii) 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:

(A) 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;

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

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

(iii) 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 (a) (ii) of this subsection:

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

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

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

(iv) The federal implementing regulations of the federal individuals with disabilities education act require the state to monitor implementation of the individuals with disabilities education act to improve educational results and functional outcomes for all students with disabilities. The state must use indicators to measure school district performance, identify areas of noncompliance, and use appropriate enforcement mechanisms, such as technical assistance, corrective action, or withholding funds.

(b) The legislature acknowledges that it has not codified the federal requirements. Therefore, the legislature intends to codify the duty and authority of the superintendent of public instruction to establish standards for authorizing, monitoring, and investigating private schools approved by the state board of education under RCW 28A.305.130, other private in-state entities, and any out-of-state entities, that contract with school districts to provide special education and related services to students with disabilities. The

legislature also intends to codify the requirement that these standards must ensure that any students with disabilities placed in the authorized entities by school districts have the same rights, protections, and access to special education and related services that they would have if served by school districts.

(2) (a) (i) The federal implementing regulations of the federal individuals with disabilities education act specify that, when a school district or other public agency has placed a student with disabilities in a private school or facility, responsibility for compliance with the federal individuals with disabilities education act remains with the school district or other public agency and with the office of the superintendent of public instruction.

(ii) State statute permits school districts to contract with entities authorized by the office of the superintendent of public instruction to operate special education programs for students with disabilities and specifies that the approval standards must conform substantially to those of special education programs in the school districts.

(iii) Rules of the office of the superintendent of public instruction specify the minimum elements of the written contract that must be made between a school district and an authorized entity. In addition, these rules specify that the school district remains responsible for ensuring that any student placed in an authorized entity is provided a free appropriate public education in conformance with the individualized education program developed by the school district.

(b) The legislature intends to codify the responsibilities of school districts placing students with disabilities in authorized entities, including specifying minimum contract and parent notification requirements.

(3) In addition, the legislature intends to ensure accountability is properly exercised and shared by directing the state auditor to conduct a performance audit of the system for overseeing the authorized entities that provide special education services to students with disabilities, as well as requiring school districts contracting with these authorized entities to report concerns about education overbilling to the office of the superintendent of public instruction and the office of the state auditor." [2023 c 436 § 1.]