CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE SENATE BILL 5437**

Chapter 408, Laws of 2019

66th Legislature

2019 Regular Session

EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM--ELIGIBILITY AND PRIORITY

EFFECTIVE DATE: July 28, 2019—Except for sections 4 and 5, which are contingent.

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| Passed by the Senate April 22, 2019  Yeas 45 Nays 2  CYRUS HABIB  **President of the Senate**  Passed by the House April 11, 2019  Yeas 89 Nays 8  FRANK CHOPP  **Speaker of the House of Representatives** | 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.  BRAD HENDRICKSON  Secretary |
| Approved May 21, 2019 9:45 AM | May 21, 2019 |
| JAY INSLEE  **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SECOND SUBSTITUTE SENATE BILL 5437**

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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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Further their education and training;

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

(e) Increase their self-reliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Homelessness;

(c) Child welfare system involvement;

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

(e) Domestic violence;

(f) English as a second language;

(g) Expulsion from an early learning setting;

(h) A parent who is incarcerated;

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

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

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

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

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

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

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

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

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

(b) Homelessness;

(c) Child welfare system involvement;

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

(e) Domestic violence;

(f) English as a second language;

(g) Expulsion from an early learning setting;

(h) A parent who is incarcerated;

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

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

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

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

(b) Has received services from or participated in:

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

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

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

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

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

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

(3) This section expires December 31, 2020.

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

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

(2) As space is available, children may be included in the early childhood education and assistance program pursuant to RCW 43.216.512. Priority within this group must be given first to children ((~~who are experiencing homelessness, child welfare system involvement, or a developmental delay or disability that does not meet the eligibility criteria for special education adopted under RCW 28A.155.020~~)) with incomes up to one hundred thirty percent of the federal poverty level.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Minimum program standards;

(b) Approval of program providers; and

(c) Accountability and adherence to performance standards.

(5) The department has administrative responsibility for:

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

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

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

(d) Providing technical assistance to contracted providers.

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

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

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

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

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

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

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

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

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

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

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

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

The department may solicit gifts, grants, conveyances, bequests and devises for the use or benefit of the early childhood state education and assistance program established by RCW ((~~28A.215.100~~)) 43.216.500 through ((~~28A.215.200~~)) 43.216.550 and ((~~28A.215.900 through 28A.215.908~~)) 43.216.900 and 43.216.901. The department shall actively solicit support from business and industry and from the federal government for the state early childhood education and assistance program and shall assist local programs in developing partnerships with the community for eligible children.

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

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

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Passed by the Senate April 22, 2019.

Passed by the House April 11, 2019.

Approved by the Governor May 21, 2019.

Filed in Office of Secretary of State May 21, 2019.