

HOUSE BILL REPORT

SSB 5532

As Reported by House Committee On:
Education

Title: An act relating to special education.

Brief Description: Concerning special education.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Braun, Rolfes, Fortunato, Wagoner and Zeiger).

Brief History:

Committee Activity:

Education: 3/19/19, 3/26/19 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Requires school districts and educational service districts to embed the best practices for differentiating instruction and learning activities to meet each student's individual needs in any professional development provided to general education teachers.
- Makes the Office of the Education Ombuds (OEO) the lead agency responsible for providing information and training regarding the special education services and disability accommodations processes, subject to state funding.
- Requires recognition of schools with exemplary performance in serving students receiving special education services, as measured on the Washington Achievement Index.
- Provides that, if requested, a representative from the Division of Vocational Rehabilitation will attend the Individualized Education Program meetings of students in special education to assist with transition planning.
- Requires special education cooperatives to apply for program approval every five years.
- Tasks an advisory group with designing a coordinated and responsive system for meeting the needs of students with disabilities, and reporting recommendations to the Legislature.

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

- Allows five local education agencies to seek temporary waivers from certain laws in order to execute inclusive education implementation plans, and requires quarterly progress reports to the advisory group.
- Requires that the Office of the Superintendent of Public Instruction (OSPI) establish, by September 1, 2021, a technical assistance program on inclusive education practices and improving outcomes for students with disabilities.
- Directs the OSPI to identify, and report biennially on, meaningful indicators of progress toward eliminating, within 10 years, the most significant barriers to success and disparities in outcomes for students with disabilities or special needs.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 18 members: Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Bergquist, Caldier, Callan, Corry, Kilduff, Kraft, Ortiz-Self, Rude, Stonier, Thai, Valdez and Ybarra.

Staff: Megan Wargacki (786-7194).

Background:

Education and Related Services for Children with Disabilities. There are federal laws that require the provision of individualized education, related services, or accommodations to students with disabilities. The Individuals with Disabilities Education Act (IDEA) guarantees a free, appropriate, public education to children with qualifying disabilities. Section 504 of the Rehabilitation Act of 1973 requires that students with a qualifying disability receive regular or special education and related services designed to meet their individual educational needs. The Americans with Disabilities Act of 1990 also protects individuals with disabilities from discrimination.

Individualized Education Program. Special education and related services under the IDEA are provided to eligible students according to an Individualized Education Program (IEP), which is a written statement that guides a student's learning while in special education. For example, an IEP describes the amount of time that a student will spend receiving special education, any related services the student will receive, and the academic and behavioral goals and expectations for the year.

Least Restrictive Environment. The IDEA requires that special education services are provided in the least restrictive environment (LRE). The LRE means that, to the maximum extent appropriate, students with disabilities are educated with students who do not have disabilities. Removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The continuum of placement options ranges from general education classes

with or without support services or modifications to home instruction and residential care or treatment facilities.

Transition Planning. When educationally and developmentally appropriate, a student's IEP must include a transition plan to a postsecondary setting. Transition planning consists of conducting assessments to identify student needs, strengths, preferences, and interests; developing postsecondary goals or postschool visions; and identifying and coordinating transition services.

Duties of the Superintendent of Public Instruction. The Superintendent of Public Instruction has the duty and authority to: assist school districts in the formation of programs to meet the needs of students with disabilities; develop interdistrict cooperation programs for students with disabilities; approve school district and agency programs as being eligible for special excess cost financial aid to students with disabilities; ensure procedural safeguards of students with disabilities; and ensure appropriate access to and participation in the general education curriculum and participation in statewide assessments for all students with disabilities.

Special Education Advisory Council. The Special Education Advisory Council (SEAC) was established through the IDEA to advise the Office of the Superintendent of Public Instruction (OSPI) on matters related to the provision of special education and related services. The SEAC identifies unmet needs in the education of students in special education; comments publicly on proposed special education rules; and advises the OSPI on developing and implementing policies relating to the coordination of special education services.

Bilingual Education Advisory Committee. The Bilingual Education Advisory Committee serves as an advisory committee to the OSPI on matters related to policy, effective programming, and resource allocations for English learners.

Special Education Program Review. The IDEA requires: (1) the federal Department of Education (ED) to make annual determinations regarding each state's overall compliance with the IDEA; and (2) each state to make annual determinations regarding each local education association's (LEA) overall compliance with the IDEA. The levels of determination are: meets requirements, needs assistance, needs intervention, and needs substantial intervention. Due to determining that Washington "needs assistance" for two years in a row, the ED directed the OSPI to report, by February 1, 2019, on any technical assistance that the state received and on any corrective actions that the state took. In November 2019 the OSPI determined that 38 LEAs need assistance, 11 LEAs need interventions, and no LEAs need substantial intervention.

Technical Assistance on Special Education Compliance. The OSPI encourages the LEAs to access technical assistance resources to improve compliance with IDEA. In addition, LEAs may be required to access technical assistance as a part of enforcement actions related to their determination status. Technical assistance provides resources appropriate for teachers, administrators, parents, students, related services and other staff, and the general community. These resources may be used for the development of professional learning communities, peer review activities, mentoring for new personnel, staff and parent orientations, and student empowerment.

Washington Achievement Index. The Washington Achievement Index (known as the Washington School Improvement Framework) was developed to identify schools and school districts for recognition, continuous improvement, and additional state support. The State Board of Education, in cooperation with the OSPI, must annually recognize schools for exemplary performance as measured on the Washington Achievement Index.

Office of the Education Ombuds. The Office of the Education Ombuds (OEO), within the Office of the Governor, was established to be independent from the public education system. The OEO resolves complaints impartially and confidentially and works with parents, students, schools, and district staff to find collaborative solutions focused on a student's best interest. The OEO also collects data and makes public policy recommendations, promotes family engagement in education, and identifies strategies to close the achievement gap.

Summary of Amended Bill:

Professional Development. School districts and educational service districts (ESDs) must embed the best practices for differentiating instruction and learning activities to meet each student's individual needs in any professional development provided to general education teachers.

Training on Special Education Services and Disability Accommodations Processes. Subject to state funding, the Office of the Education Ombuds (OEO) must serve as the lead agency to provide information and training regarding the special education services and disability accommodations processes under the federal Individuals with Disabilities Education Act, section 504 of the federal Rehabilitation Act of 1973, and the federal Americans with Disabilities Act.

To meet this requirement, the OEO must develop a multicourse training program for students with disabilities, families of students with disabilities, ESDs and school district staff, and community and educational organizations supporting students with disabilities. The training program must address specified components such as: a free and appropriate public education, family-school relationships, and advocacy. The training program must be developed, and revised annually, in consultation with specified representatives.

For the purpose of delivering the training program, the OEO must distribute special education outreach ombuds statewide, with the goal of at least one within the boundaries of each ESD. The OEO must make the training program available to other ombuds offices within Washington, as well as nationally. The OEO may charge for the delivery of the training program or the use of developed resources.

Recognition of Schools. The State Board of Education, in cooperation with the Office of the Superintendent of Public Instruction (OSPI), must recognize schools with exemplary performance in serving students receiving special education services, as measured on the Washington Achievement Index.

Transition Planning. Beginning when a student turns 16 years old, and continuing until the student turns 21 years old or graduates high school, whichever occurs first, a representative from the Division of Vocational Rehabilitation in the Department of Social and Health Services must attend Individualized Education Program (IEP) meetings to assist students with transition planning when requested by a member of a student's IEP team. When discussing postsecondary goals or postschool vision, students and their parents must be provided information about the Washington Achieving a Better Life Experience Program (a savings plan that allows people with qualifying disabilities to save and invest, tax free, up to \$15,000 per year to use towards eligible expenses without affecting federal or state benefits).

Cooperative Programs. School districts are encouraged to participate in cooperative programs with other school districts or ESDs to provide special education and services to eligible students. Prior to the 2020-21 school year, and every five years thereafter, special education cooperatives must apply for approval from the OSPI.

Eliminating Barriers to Success. The OSPI must identify meaningful indicators of progress toward eliminating, within 10 years, the most significant barriers to success and disparities in outcomes for students with disabilities or special needs. The indicators must be quantifiable and based on data that are regularly and reliably collected statewide, for example: (1) data on educational opportunity gaps and other outcomes; (2) discipline rates and rates of restraint or isolation; and (3) use of Medicaid-funded school-based services. Beginning September 1, 2020, and by September 1 every even-numbered year thereafter, the OSPI must report to the Legislature on the state's progress toward eliminating the most significant barriers to success, and disparities in outcomes, for students with disabilities or special needs.

Special Education Advisory Group. The OSPI must convene an advisory group, with specified members, to design a coordinated and responsive system for meeting the diverse needs of students with disabilities. The duties of the advisory group are provided, for example: (1) review relevant laws, policies, and research; (2) plan for the realities of implementing inclusive education practices; (3) develop an inclusive education implementation plan template with specified components; (4) develop inclusive education best practices guidance; (5) recommend a technical assistance structure and a professional learning structure to meet the diverse needs of students with disabilities; and (6) review the feedback from the special education demonstration projects (demonstration projects), described below.

The advisory group must meet at least quarterly. The advisory group must submit four annual reports to the Legislature summarizing the advisory group's activities and the progress of the demonstration projects. The reports must recommend any changes to state laws or policies necessary to support the improvement of instructional practices and systems to meet the diverse needs of students with disabilities.

Special Education Demonstration Projects. By September 1, 2019, the OSPI must publicize a process for local education agencies (LEAs) to apply to have one or more schools designated as a demonstration project. The application deadline and minimum contents are described; for example, the application must: define the scope of the demonstration project and describe why the designation would support the school's ability to improve its instructional practices and systems to meet the diverse needs of students with disabilities;

justify each request for waiver of state statutes or administrative rules; and include written statements of support from various leaders and partners.

The OSPI, in collaboration with its Special Education Advisory Council, must develop criteria for reviewing the applications and for evaluating the need for waivers. Up to five LEAs, diverse in geography and size, must be selected, with one having a school or program that removes students receiving special education from regular classes for 80 percent or more of the school day.

Beginning in the 2020-21 school year, and for two school years thereafter, the demonstration projects must perform specified activities, such as: (1) executing an approved inclusive education implementation plan; (2) forming collaborative learning teams; (3) gathering and reporting feedback from stakeholders on the progress of the demonstration project; and (4) participating in the advisory group.

The OSPI and the State Board of Education may grant waivers of state statutes and administrative rules for the demonstration projects. Waiver requests may be denied if the waiver: is likely to result in a decrease in academic achievement; would jeopardize the receipt of state or federal funds; or would violate state or federal laws or rules that are not authorized to be waived (such as those related to public health, safety, and civil rights).

Technical Assistance. Beginning September 1, 2021, the OSPI must establish a technical assistance program to provide resources and best practice guidance on inclusive education practices and improving outcomes for students with disabilities. The components of the technical assistance program must be informed by the advisory group.

Amended Bill Compared to Substitute Bill:

Compared to the substitute bill, the amended bill:

- adds to the intent section the Legislature's findings and intent regarding inclusive education practices;
- replaces language requiring special education training for teachers, principals, and teacher candidates with language requiring school districts and educational service districts to embed the best practices for differentiating instruction and learning activities to meet each student's individual needs in any professional development provided to general education teachers;
- replaces language directing, subject to state funding, educational service districts to contract for independent special education advocates for students with disabilities and their families with language directing, subject to state funding, the Office of the Education Ombuds (OEO) to serve as the lead agency to provide information and training regarding the special education services and disability accommodations processes. Describes the content of the training program and its development process. Permits the OEO to charge for delivery or use of the training program;
- removes requirements related to: local special education advisory committees and least restrictive environment reports;
- maintains recognition of school districts performing well on indicators related to students with disabilities receiving special education services, but uses the Washington Achievement Index indicators, rather than the system wide performance

- goals or measurements; and removes language requiring that districts receive enough awards to display in each school;
- maintains the following transition planning requirements: (a) if requested, a representative from the Division of Vocational Rehabilitation must attend the Individualized Education Program meetings of students in special education to assist with transition planning; and (b) students and parents must be provided with information about the Washington Achieving a Better Life Experience Program;
 - maintains the requirement that special education cooperatives must apply for program approval every five years;
 - removes the requirement that the Office of the Superintendent of Public Instruction (OSPI) contract with a neutral party to facilitate an advisory group that must report to the Legislature with its activities and recommendations to improve outcomes for students in special education, and instead tasks the OSPI with convening an advisory group to design a coordinated and responsive system for meeting the needs of students with disabilities, and report recommendations to the Legislature;
 - allows five local education agencies to seek temporary waivers from certain laws in order to execute inclusive education implementation plans, and requires quarterly progress reports to the advisory group;
 - requires that the OSPI establish, by September 1, 2021, a technical assistance program on inclusive education practices and improving outcomes for students with disabilities; and
 - directs the OSPI to identify, and report biennially on, meaningful indicators of progress toward eliminating, within 10 years, the most significant barriers to success and disparities in outcomes for students with disabilities or special needs.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 27, 2019.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) With regard to special education, it is not only funding that is an issue; there are issues with adequacy and empowering students and their parents. Only 58 to 62 percent of special needs kids graduate, despite the fact that 90 percent have an average to above-average intelligence quotient. The state has the eighth lowest inclusion rate in the country. This bill helps parents and children navigate the education system, provides advocacy, rewards schools that do well, and tries to improve the culture. These are things that funding alone will not provide. Something needs to be done this year, not just another study.

Improving outcomes for students with disabilities who receive special education services is rooted in breaking down silos. This bill provides additional state investments into special education policy and practices. Dyslexia and related disorders are referred to as the "pipeline to prison." Children need evidence-based, structured literacy instruction from an early age.

Unfortunately, some students with dyslexia are told that they are not trying hard enough. Students should not graduate without being able to read and write.

Sections 201 and 202 should include "universal design for learning," which is critical to ensuring that every student has equitable access to curriculum, instruction, and learning. A common thread among the schools that are improving outcomes for students receiving special education students is building the capacity and knowledge of staff around universal design for learning.

Unbiased advocacy for families is needed. This bill will help families navigate the complexities of developing and supporting their child's education through access to an advocate. Many families do not have the financial ability or time to sort out the complex special education and accommodation laws. Some family members who figure out how to navigate the system end up helping other families. It can be overwhelming for a family to stand in opposition to an Individualized Education Program (IEP) team. With the guidance of an advocate, families will know what their rights and options are. Section 301 should be removed, and instead, more funding should be provided to the Office of the Education Ombuds (OEO), which already does advocacy work and sits on state-level work groups. Educational advocates are needed, but there could be a conflict of interest with the educational service districts (ESDs) responsible for hiring them. There is a concern about using advocates when parents are unavailable, as this might conflict with federal law.

Families who have children with disabilities know that, to improve outcomes, the state needs to do more to ensure that teachers are trained and that families are supported and engaged. There needs to be family engagement and accountability. This bill will help ensure that families have a consistent voice and seat at the local decision making table. The local special education advisory committee will allow school districts and families to problem-solve together, which is a best practice. Some districts have local special education advisory groups and others do not; this is an equity issue. The advisory group is lacking a special education attorney experienced in representing parents and students. Some principals look at their budgets more than the needs of the students, so maybe they should not be included on the advisory group.

There should be a culture of high expectations for children with disabilities. Teachers in general education and special education should receive additional training on how to provide a free and appropriate public education.

Data collection on least restrictive environment (LRE) should be disaggregated by student demographic groups. Although it is required, 28 percent of students with IEPs graduate without any postsecondary plan. Funding for special education should be increased. These students have challenges and need opportunities aligned with those challenges.

(Opposed) None.

(Other) Special education students are basic education students first. There is no evidence that the proposals in this bill will improve student outcomes.

The special education advocates may circumvent a conversation about the requirement for school district to provide culturally responsive, meaningful family engagement practices. Family members and the student are the only consistent members of ever changing IEP teams. There is no body overseeing the independent advocates. Special education is a complicated legal framework, and there should be standards to determine that the advocates have met minimum requirements. It is inequitable to have one advocate in each ESD due to difference in student population and geographic scope of the ESDs. There is a conflict of interest between providing services to students and being advocates for students, which means that the ESDs should not be hiring the advocates. Instead, the OEO should be expanded.

It is unclear when advocates are required and whether each student is assigned an advocate. The number of advocates needs to be increased and there should be prioritization for which families receive an advocate first. If every advocate has 100 students, there would need to be 1,600 full time advocates, which could cost \$100,000 per year. If an advocate is not available, it is unclear whether the IEP meeting would be delayed. If there is a shortage of advocates, school districts might not be able to meet federal requirements. The development of the IEP is a difficult and emotional process, it might not be in students' best interests to make this process more complicated.

The teacher training in the bill is wonderful, though principals of universal design should be added. However, this bill does not change the system. In an integrated system, the student is let in, but if they do not adapt, they get pushed back out. In an inclusive system, meets the needs of each student, but requires technical support. There could be a work group that looks at technical assistance.

This year the state funded one professional learning day, next year the state will fund two days, and by the 2020-21 school year the state will fund three days. Section 201(2) would require that one half day be used for an important issue. Some districts would have to add a half day of training or change planned training. The training should be voluntary or the state should add additional funded days for the mandated training. It would also be good to try the training out with a pilot project. The state should be careful about how it is using state provided professional days to ensure that more training is not required than funded. Adding more special education to teacher preparation programs is critically important.

Section 401 creates local special education advisory committees, which some school districts already have. The bill would expand the responsibilities of these local committees. Students succeed when families, teaches, and school districts work together. There is no research that says that a parent policy-making entity will result in better outcomes for students.

Transition planning is important, but the Division of Vocational Rehabilitation does not have enough case workers for their programs, so will not be able to help with additional transition planning without additional funding. The requirement to compile least restrictive environment information is already reported to the Office of the Superintendent of Public Instruction.

The demonstration pilots in House Bill 1454 could fit into this bill. There should be a special education teacher and a school psychiatrist on the advisory committee. There will need to be resources provided for the advisory committee to bring in outside consultants.

Persons Testifying: (In support) Senator Braun, prime sponsor; Sarah Butcher; Jana Parker, Equal Right to Representation in Education; Dianna Connelly; Susan Cobb; Beth Sigall; Glenna Gallo, Office of the Superintendent of Public Instruction; and Virginia Barry, Stand for Children.

(Other) Melissa Robertson, Issaquah School District; Jennifer Cole; Melissa Gombosky, Educational Service District 105, Evergreen School District, Vancouver School District, and Olympia School District; Kyle Rydell, Liberty School; Ramona Hattendorf, The Arc of King County; Grace Yuan, The School Alliance; and Lucinda Young, Washington Education Association.

Persons Signed In To Testify But Not Testifying: None.