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**HOUSE BILL 1305**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Pollet, Stonier, Ortiz-Self, Alvarado, Orwall, Leavitt, Senn, Bergquist, Bateman, Taylor, Reeves, Davis, Doglio, Santos, Reed, Kloba, and Fosse

AN ACT Relating to improving access to and provision of a free appropriate public education for students with disabilities; amending RCW 28A.225.330, 28A.155.010, 28A.155.020, 28A.155.040, 28A.155.050, 28A.155.060, 28A.155.090, 28A.155.100, and 28A.155.140; adding new sections to chapter 28A.155 RCW; and providing an expiration date.

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

NEW SECTION. **Sec.**  The definition in this section applies throughout this chapter unless the context clearly requires otherwise.

"Business day" means Monday through Friday, except for federal holidays and school holidays as defined in RCW 28A.150.050, including days that no students are in attendance at school for instructional purposes.

NEW SECTION. **Sec.**  (1) If the parent of a student makes a request for the student to be evaluated for a disability or for eligibility for special education services, a school district must provide the parent with a document describing the referral request and initial special education evaluation processes, including relevant deadlines and parental consent requirements. The document must be based on the template created as required under section 3 of this act.

(2) Within 15 business days after receipt of a referral request for special education services, a school district must decide whether to conduct an initial evaluation to determine whether the student is eligible for special education services.

(3) Within five business days after making its evaluation decision under subsection (2) of this section, a school district must notify the parent of the referred student of the district's decision, using multiple communication channels.

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

(a) If the parent of the student requested an evaluation of the student as part of a referral request for special education services, then the parent is presumed to have consented to the evaluation and the school district must conduct an evaluation and determine whether the student is eligible for special education services within 25 business days, except as provided in rule, of making its evaluation decision under subsection (2) of this section; or

(b) If someone other than the parent of the student made the referral request for special education services or if the parent of the student did not specifically request an evaluation of the student as part of a referral request, then the school district must:

(i) At the same time as it makes the notification under subsection (3) of this section, provide the student's parent with a document describing how and when to provide parental consent to evaluate. The document must be based on the template created as required under section 3 of this act; and

(ii) Within 25 business days, except as provided in rule, of receiving a parent's written or oral consent to evaluate the student, conduct an evaluation and determine whether the student is eligible for special education services.

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

NEW SECTION. **Sec.**  The office of the superintendent of public instruction shall collaborate with the office of the education ombuds to create a template for school districts to use to meet the requirement in section 2 (1) and (4) of this section related to providing initial special education evaluation process information to parents. The template must be translated as for limited English proficient parent groups described in section 7(2) of this act. The template and its translations must be made publicly available on the website of the office of the superintendent of public instruction.

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

(2) Within five business days after receiving a request from a parent to convene an individualized education program team meeting, a school district must respond to a parent in writing with either an agreement to convene a meeting within 15 school days or an explanation for why a meeting is unnecessary. If responding that the meeting is unnecessary, the school district must also provide instructions for how and by what deadlines the parent may seek reconsideration of the school district's decision, through an informal process or through a formal appeal or complaint process.

(3) Paraeducators, and other staff employed or contracted by the school district to provide special education or related services, who provide a significant level of support to a student on a regular basis must be invited to and compensated for participation in the student's individualized education program team meetings.

(4) Administrative and legal staff whose presence at an individualized education program team meeting does not serve the educational needs of a student are barred from attending the meeting.

NEW SECTION. **Sec.**  Within 30 calendar days of the determination that a student is eligible for special education services, a school district must have held an initial individualized education program team meeting and commenced provision of special education and related services in accordance with the student's individualized education program.

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

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

NEW SECTION. **Sec.**  (1) The school district has the burden of proof and the burden of production whenever it is a party to a due process hearing regarding the identification of, evaluation of, reevaluation of, classification of, educational placement of, disciplinary action of, or provision of a free appropriate public education to, a student with a disability.

(2) In a due process hearing, evidence showing that a student has not failed or been retained in a course or grade, and is advancing from grade to grade, does not create the presumption that the school has provided the student with a free appropriate public education as required by the federal individuals with disabilities education act, 20 U.S.C. Sec. 1400 et seq.

(3) In a due process hearing related to parent participation in the adoption of an individualized education program, the superintendent of public instruction or the superintendent's designee may order the individualized education program team to reconvene with a qualified interpreter, so that the parent can fully participate in any adoption of an individualized education program.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Due process hearing" means a due process hearing held in accordance with the federal individuals with disabilities education act, 20 U.S.C. Sec. 1400 et seq.

(b) "Qualified interpreter" has the same meaning as in RCW 28A.183.010.

NEW SECTION. **Sec.**  (1) In order to improve their instructional program for students who are blind, have low vision, are deaf, or are hard of hearing, school districts are authorized to enter into consultation and service agreements with the state school for the blind and the Washington center for deaf and hard of hearing youth.

(2) The state school for the blind and the Washington center for deaf and hard of hearing youth are authorized, upon request, to participate in individualized education program team meetings convened by school districts.

(3) School districts shall notify parents of students who are blind, have low vision, are deaf, or are hard of hearing about the services available through the state school for the blind and the Washington center for deaf and hard of hearing youth.

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

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

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the office of the superintendent of public instruction shall distribute up to $10,000,000 per biennium to educational service districts for the purpose of making school psychologists and other providers with expertise in each category of disability under part B of the federal individuals with disabilities education act, 20 U.S.C. Sec. 1400 et seq., available to conduct initial special education evaluations and reevaluations for special education.

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

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

(4) This section expires August 1, 2029.

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

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

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

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

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

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

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

(2) The school enrolling the student shall request the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, special education, and academic performance from the school the student previously attended. Examples of special education records include referral requests, whether an eligibility decision is pending and the deadline for making the decision, evaluation decisions, evaluations, and individualized education programs.

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

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

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

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

(b) If the student who is the subject of a dependency proceeding is subject to an order in a federally recognized tribal court that is the equivalent of a shelter care or dependency order pursuant to chapter 13.34 RCW, or the student is eligible for benefits under the federal foster care system as defined in RCW 28B.117.020, the school may not prevent the student from enrolling if there is incomplete information as enumerated in subsection (1) of this section during the 10 business days from the date the equivalent order is entered or from a date determined by the state agency responsible for implementing the unaccompanied refugee minors program.

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

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

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

It is the purpose of RCW ((~~28A.155.010 through 28A.155.160,~~)) 28A.160.030((~~,~~)) and 28A.150.390 and this chapter to ensure that all children with disabilities as defined in RCW 28A.155.020 shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state and applicable federal laws.

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

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

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

In accordance with part B of the federal individuals with disabilities education improvement act and any other federal or state laws relating to the provision of special education services, the superintendent of public instruction shall require each school district in the state to insure an appropriate educational opportunity for all children with disabilities between the ages of three and twenty-one, but when the twenty-first birthday occurs during the school year, the educational program may be continued until the end of that school year. The superintendent of public instruction, by rule, shall establish for the purpose of excess cost funding, as provided in RCW 28A.150.390, 28A.160.030, and ((~~28A.155.010 through 28A.155.160~~)) this chapter, functional definitions of special education, the various types of disabling conditions, and eligibility criteria for special education programs for children with disabilities, including referral procedures, use of positive behavior interventions, the education curriculum and statewide or district‑wide assessments, parent and district requests for special education due process hearings, and procedural safeguards. For the purposes of ((~~RCW 28A.155.010 through 28A.155.160~~)) this chapter, an appropriate education is defined as an education directed to the unique needs, abilities, and limitations of the children with disabilities who are enrolled either full time or part time in a school district. School districts are strongly encouraged to provide parental training in the care and education of the children and to involve parents in the classroom.

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

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

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

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

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

The cost of board and room in facilities approved by the department of social and health services shall be provided by the department of social and health services for those students with disabilities eligible for such aid under programs of the department. The cost of approved board and room shall be provided for those students with disabilities not eligible under programs of the department of social and health services but deemed in need of the same by the superintendent of public instruction: PROVIDED, That no school district shall be financially responsible for special education programs for students who are attending residential schools operated by the department of social and health services: PROVIDED FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and ((~~28A.155.010 through 28A.155.100~~)) this chapter shall not preclude the extension by the superintendent of public instruction of special education opportunities to students with disabilities in residential schools operated by the department of social and health services.

**Sec.**  RCW 28A.155.050 and 2007 c 115 s 5 are each amended to read as follows:

Any child who is eligible for special education services through special excess cost aid programs authorized under ((~~RCW 28A.155.010 through 28A.155.160~~)) this chapter shall be given such services in the least restrictive environment as determined by the student's individualized education program (IEP) team in the school district in which such student resides. Any school district required to provide such services shall thereupon be granted regular apportionment of state and county school funds and, in addition, allocations from state excess funds made available for such special services for such period of time as such special education program is given: PROVIDED, That should such student or any other student with disabilities attend and participate in a special education program operated by another school district in accordance with the provisions of RCW 28A.225.210, 28A.225.220, and/or 28A.225.250, such regular apportionment shall be granted to the receiving school district, and such receiving school district shall be reimbursed by the district in which such student resides in accordance with rules adopted by the superintendent of public instruction for the entire approved excess cost not reimbursed from such regular apportionment.

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

For the purpose of carrying out the provisions of ((~~RCW 28A.155.020 through 28A.155.050~~)) this chapter, the board of directors of every school district shall be authorized to contract with agencies approved by the superintendent of public instruction for operating special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those of special education programs in the common schools.

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 28A.155.140 and 2007 c 115 s 14 are each amended to read as follows:

School districts may use curriculum‑based assessment procedures as measures for developing academic early intervening services, as defined under part B of the federal individuals with disabilities education improvement act, and curriculum planning: PROVIDED, That the use of curriculum‑based assessment procedures shall not deny a student the right to use of other assessments to determine eligibility or participation in special education programs as provided by ((~~RCW 28A.155.010 through 28A.155.160~~)) this chapter.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act are each added to chapter 28A.155 RCW.

**--- END ---**