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**SECOND SUBSTITUTE SENATE BILL 5315**

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

**By** Senate Ways & Means (originally sponsored by Senators C. Wilson, Billig, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, Pedersen, and Valdez; by request of Superintendent of Public Instruction)

AN ACT Relating to nonpublic agencies operating special education programs for students with disabilities; amending RCW 28A.155.090, 28A.155.060, 28A.155.210, 28A.600.485, and 28A.310.515; adding a new section to chapter 28A.155 RCW; and declaring an emergency.

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

**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) Establish standards for approving, monitoring, and investigating nonpublic agencies that contract with school districts to provide special education programs for students with disabilities as described in RCW 28A.155.060. Standards shall ensure that any student served by a nonpublic agency has the same rights and protections that they would have if served by a school district;

(7) Consistent with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160, 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)~~)) (8) 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 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.155.060 and 2007 c 115 s 6 are each amended to read as follows:

(1) For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with nonpublic agencies approved by the superintendent of public instruction for operating special education programs for students with disabilities. Approval standards for such nonpublic agencies shall conform substantially with those of special education programs in the common schools. For purposes of this section, a "nonpublic agency" means a private in-state or any out-of-state agency that contracts with a school district to provide a program of special education for students with disabilities, and includes the subcategory of "nonpublic agency school" which means a Washington state private school approved by the state board of education under RCW 28A.305.130 that contracts with a school district to provide a program of special education for students with disabilities.

(2)(a) The office of the superintendent of public instruction must create an application process to approve nonpublic agencies that contract with school districts to provide special education services to students with disabilities. Nonpublic agency schools may be approved for a period of up to five years and all other nonpublic agencies may be approved for a period of up to three years.

(b) To qualify for approval a nonpublic agency must, at a minimum, meet the following requirements:

(i) Acknowledge that it can meet all contract elements established in subsection (3)(a) of this section;

(ii) Obtain approval by the state board of education to operate as a private school or, for nonpublic agencies that operate a program of education within a nonschool facility, comply with facility licensing requirements;

(iii) Employ or contract with at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff that meet the state licensing requirements for their profession;

(iv) Meet applicable fire codes of the local or state fire marshal and applicable health and safety standards;

(v) Demonstrate through audits that it 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 special education services to students;

(vi) Demonstrate that it has procedures in place that address staff hiring and evaluation, including checking personal and professional references for employees, conducting criminal background checks in accordance with RCW 28A.400.303, and scheduling regular staff evaluations that address staff competencies;

(vii) Meet the state education requirements for hours and days of instruction; and

(viii) Maintain a policy of nondiscrimination and provide procedural safeguards for students eligible for special education services and their families.

(c) Before approving an application under this section, the office of the superintendent of public instruction must conduct an on-site visit to ensure that a nonpublic agency's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment.

(d) The office of the superintendent of public instruction may suspend, revoke, or refuse to renew its approval of a nonpublic agency if the nonpublic agency:

(i) Fails to maintain approval standards or fails to comply with all school district contract elements established in subsection (3)(a) of this section;

(ii) Violates the rights of students eligible for special education services; or

(iii) Refuses to implement any corrective actions ordered by the office of the superintendent of public instruction.

(e) The office of the superintendent of public instruction must notify the state board of education if any nonpublic agency school is investigated for noncompliance, is directed to complete corrective action, or fails to maintain approval under this section.

(f)(i) The office of the superintendent of public instruction must develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at nonpublic agencies.

(ii) The office of the superintendent of public instruction must use the complaint process to identify and address patterns of misconduct at nonpublic agencies, including issuing corrective action or revoking approval under this section.

(3)(a) A school district that chooses to contract with an approved nonpublic agency as authorized under this section must develop a written contract to establish the responsibilities of the school district and nonpublic agency and set forth the rights of students receiving special education services. The contract must include, at a minimum, the following elements:

(i) The names of the parties involved and the name of the student or students;

(ii) The locations and settings of the services to be provided;

(iii) A description of the services to be provided, including access to state learning standards;

(iv) The total contract cost and applicable charge and reimbursement systems, including billing and payment procedures;

(v) Acknowledgment that the nonpublic agency has a list of each qualified staff member providing special education services and a copy of the license or credential that qualifies each staff member to provide those services;

(vi) Acknowledgment that the school district and nonpublic agency have clearly established their respective responsibilities and processes for data collection and reporting for students;

(vii) Acknowledgment that the nonpublic agency must comply with isolation and restraint procedures as provided in RCW 28A.600.485;

(viii) Acknowledgment that the nonpublic agency must notify the school district and the office of the superintendent of public instruction of any program, staffing, or facility changes that may affect the agency's ability to provide contracted services;

(ix) Acknowledgment that the nonpublic agency must comply with all relevant state and federal laws that are applicable to the school district; and

(x) Acknowledgment that the school district must provide the office of the superintendent of public instruction with the opportunity to review the contract and related documentation upon request.

(b) A school district must conduct an annual on-site visit to ensure that a nonpublic agency's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment and meet the unique needs of the student being served.

(c) A school district remains responsible for ensuring that the student being served is:

(i) Provided a free appropriate public education;

(ii) Provided with special education and related services at no cost to the student's parents and in conformance with an individualized education program as required by law, including evaluations and individualized education program meetings that meet all applicable requirements; and

(iii) Provided with an opportunity to participate in state and district assessments and an opportunity to fulfill the requirements to receive a Washington state diploma.

(d) A school district must provide the following documents to the parents or guardians of the student being served by the nonpublic agency:

(i) A summary of the school district and nonpublic agency's responsibilities and processes for reporting incidents of isolation and restraint under RCW 28A.600.485; and

(ii) A copy of the complaint procedure in subsection (2)(f) of this section.

**Sec.**  RCW 28A.155.210 and 2013 c 202 s 3 are each amended to read as follows:

A ((~~school that is required to develop an~~)) student's individualized education program ((~~as required by federal law~~)) must include ((~~within the plan~~)) procedures for notification of a parent or guardian regarding the use of restraint or isolation. If a student is served by a nonpublic agency, the student's individualized education program must also specify any additional procedures required to ensure the nonpublic agency fully complies with RCW 28A.600.485.

**Sec.**  RCW 28A.600.485 and 2015 c 206 s 3 are each amended to read as follows:

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

(a) "Isolation" means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.

(b) "Restraint" means physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to safely participate in activities.

(c) "Restraint device" means a device used to assist in controlling a student, including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. Restraint device does not mean a seat harness used to safely transport students. This section shall not be construed as encouraging the use of these devices.

(d) "School" means a public school as defined in RCW 28A.150.010 or a nonpublic agency that contracts with a school district as authorized under RCW 28A.155.060.

(2) The provisions of this section apply to all students, including those who have an individualized education program or plan developed under section 504 of the rehabilitation act of 1973. The provisions of this section apply only to incidents of restraint or isolation that occur while a student is participating in school-sponsored instruction or activities.

(3)(a) An individualized education program or plan developed under section 504 of the rehabilitation act of 1973 must not include the use of restraint or isolation as a planned behavior intervention unless a student's individual needs require more specific advanced educational planning and the student's parent or guardian agrees. All other plans may refer to the district policy developed under subsection (3)(b) of this section. Nothing in this section is intended to limit the provision of a free appropriate public education under Part B of the federal individuals with disabilities education improvement act or section 504 of the federal rehabilitation act of 1973.

(b) Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm((~~, as defined in RCW 70.96B.010~~)). Restraint or isolation must be closely monitored to prevent harm to the student, and must be discontinued as soon as the likelihood of serious harm has dissipated. Each school district shall adopt a policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances.

(4) Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: (a) Reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and (b) reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

(5) Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information:

(a) The date and time of the incident;

(b) The name and job title of the individual who administered the restraint or isolation;

(c) A description of the activity that led to the restraint or isolation;

(d) The type of restraint or isolation used on the student, including the duration;

(e) Whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and

(f) Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

(6) The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within ((~~twenty-four~~)) 24 hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language.

(7)(a) Beginning January 1, 2016, and by January 1st annually, each school district shall summarize the written reports received under subsection (5) of this section and submit the summaries to the office of the superintendent of public instruction. For each school, the school district shall include the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used.

(b) No later than ((~~ninety~~)) 90 days after receipt, the office of the superintendent of public instruction shall publish to its website the data received by the districts. The office of the superintendent of public instruction may use this data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation. The office of the superintendent of public instruction may also use this data to determine if a nonpublic agency is in compliance with all approval standards and contract obligations, as authorized in RCW 28A.155.060.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.155 RCW to read as follows:

(1) Beginning December 1, 2023, the office of the superintendent of public instruction must annually submit a report to the education committees of the legislature regarding student placements at nonpublic agencies. A summary of the report, including a link to the full report content, must also be posted on the office of the superintendent of public instruction's website. The report must include:

(a) The academic progress of students receiving special education services from nonpublic agencies, using the results of the two most recent state assessments;

(b) The graduation rates of students who have received special education services from nonpublic agencies;

(c) The rate at which students receiving special education services from nonpublic agencies return to their resident school districts;

(d) Data on restraint and isolation incidents, discipline, and attendance; and

(e) Any corrective action or change in a nonpublic agency's approval status, as ordered by the office of the superintendent of public instruction.

(2) The data published under subsection (1) of this section must be disaggregated by nonpublic agency when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected under the family educational rights and privacy act.

**Sec.**  RCW 28A.310.515 and 2021 c 38 s 4 are each amended to read as follows:

(1)(a) A safety and security staff training program is established. The program must be jointly developed by the educational service districts, but may be administered primarily by one or more educational service districts. The program must meet the requirements of this section.

(b) When developing the safety and security staff training program, the educational service districts should engage with the state school safety center established in RCW 28A.300.630 and the school safety and student well-being advisory committee established in RCW 28A.300.635.

(2) The educational service districts must identify or develop classroom training on the following subjects:

(a) Constitutional and civil rights of children in schools, including state law governing search and interrogation of youth in schools;

(b) Child and adolescent development;

(c) Trauma-informed approaches to working with youth;

(d) Recognizing and responding to youth mental health issues;

(e) Educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities;

(f) Bias free policing and cultural competency, including best practices for interacting with students from particular backgrounds, including English learner, LGBTQ, immigrant, female, and nonbinary students;

(g) Local and national disparities in the use of force and arrests of children;

(h) Collateral consequences of arrest, referral for prosecution, and court involvement;

(i) Resources available in the community that serve as alternatives to arrest and prosecution and pathways for youth to access services without court or criminal justice involvement;

(j) De-escalation techniques when working with youth or groups of youth;

(k) State law regarding restraint and isolation in schools, including RCW 28A.600.485;

(l) The federal family educational rights and privacy act (20 U.S.C. Sec. 1232g) requirements including limits on access to and dissemination of student records for noneducational purposes; and

(m) Restorative justice principles and practices.

(3) The educational service districts must provide, or arrange for the delivery of, classroom training on the subjects listed in subsection (2) of this section. At a minimum, classroom trainings on each subject must be provided annually, remotely, synchronously or asynchronously, and by at least one educational service district. Classroom training may be provided on a fee-for-service basis and should be self-supporting. Classroom training may be provided to nonpublic agencies located in Washington that contract with school districts to provide a program of special education to students with disabilities.

(4) The educational service districts must provide to safety and security staff, upon request, documentation that the safety and security staff training series described in RCW 28A.400.345(2) has been completed. Before providing this training series documentation, completion of each component of the training series must be verified or, in the case of safety and security staff with significant prior training and experience, waived.

(5) The educational service districts must develop and publish guidelines for on-the-job training and check-in training that include recommendations for identifying and recruiting experienced safety and security staff to provide the trainings, suggested activities during on-the-job trainings, and best practices for meaningful check-in trainings. The guidelines for check-in training must also include recommended frequency, possible topics of discussion, and options for connecting virtually.

(6) For purposes of this section, the term "safety and security staff" has the same meaning as in RCW 28A.320.124.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**