

E2SSB 5315 - H COMM AMD
By Committee on Appropriations

NOT ADOPTED 04/12/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that the
4 federal individuals with disabilities education act, Title 20 U.S.C.
5 Sec. 1400 et seq. establishes duties for the state education agency,
6 which is the office of the superintendent of public instruction in
7 Washington, with respect to students with disabilities who are placed
8 in a private school or facility by a school district or other public
9 agency as a means of providing special education and related
10 services.

11 (b) Since 2006, the federal implementing regulations of the
12 federal individuals with disabilities education act have required
13 that the office of the superintendent of public instruction ensure
14 that a student with a disability who is placed in a private school or
15 facility by a school district or other public agency:

16 (i) Is provided special education and related services in
17 conformance with an individualized education program that meets the
18 requirements of federal law and at no cost to the student's parents;

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

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

24 (c) Since 2006, the federal implementing regulations of the
25 federal individuals with disabilities education act have required
26 that the office of the superintendent of public instruction, in
27 implementing the requirements described in (b) of this subsection
28 (1):

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

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

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

4 (2) The legislature acknowledges that it has not codified the
5 requirements described in subsection (1) of this section into state
6 statute. Therefore, the legislature intends to codify the duty and
7 authority of the superintendent of public instruction to establish
8 standards for approving, monitoring, and investigating education
9 centers, which are private schools and facilities that contract with
10 school districts to provide special education and related services to
11 students with disabilities placed in the education center by a school
12 district. The legislature also intends to codify the requirement that
13 these standards must ensure that any students with disabilities
14 placed in an education center by a school district have the same
15 rights, protections, and access to special education and related
16 services that they would have if served by a school district.

17 **Sec. 2.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to
18 read as follows:

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

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

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

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

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

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

35 (6) Establish standards for approving, monitoring, and
36 investigating education centers, as defined in RCW 28A.205.010, that
37 contract with school districts under RCW 28A.155.060 to provide
38 special education and related services to children with disabilities
39 placed in the education center by a school district. The standards

1 must ensure that any children with disabilities placed in the
2 education center by a school district have the same rights,
3 protections, and access to special education and related services
4 that they would have if served by a school district;

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

10 ~~((7))~~ (8) Promulgate such rules as are necessary to implement
11 part B of the federal individuals with disabilities education
12 improvement act or other federal law providing for special education
13 services for children with disabilities and the several provisions of
14 RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and
15 to ensure appropriate access to and participation in the general
16 education curriculum and participation in statewide assessments for
17 all students with disabilities.

18 **Sec. 3.** RCW 28A.205.010 and 2006 c 263 s 408 are each amended to
19 read as follows:

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

22 (1) ~~((As used in this chapter, unless the context thereof shall~~
23 ~~clearly indicate to the contrary:))~~

24 "Education center" means ~~((any private school operated on a~~
25 ~~profit or nonprofit basis which))~~ a private in-state school or
26 facility operated on a profit or nonprofit basis, or any out-of-state
27 school or facility, that contracts with a school district to provide
28 special education and related services to students with disabilities
29 placed in the education center by the school district and that does
30 the following:

31 (a) Is devoted to the teaching of basic academic skills,
32 including specific attention to improvement of student motivation for
33 achieving, and employment orientation~~((-))~~;

34 (b) Operates on a clinical, client centered basis. This shall
35 include, but not be limited to, performing diagnosis of individual
36 educational abilities, determination and setting of individual goals,
37 prescribing and providing individual courses of instruction therefor,
38 and evaluation of each individual client's progress in his or her
39 educational program~~((-))~~; and

1 (c) Conducts courses of instruction by (~~professionally trained~~
2 ~~personnel certificated by the Washington professional educator~~
3 ~~standards board according to rules adopted for the purposes of this~~
4 ~~chapter and providing, for certification purposes, that a year's~~
5 ~~teaching experience in an education center shall be deemed equal to a~~
6 ~~year's teaching experience in a common or private school)) licensed
7 teachers.~~

8 (2) (~~For purposes of this chapter, basic academic skills shall~~)
9 "Basic academic skills" must include the study of mathematics,
10 speech, language, reading and composition, science, history,
11 literature, and political science or civics(~~it shall not include~~
12 ~~courses of a vocational training nature and shall not include courses~~
13 ~~deemed nonessential to the accrediting or the approval of private~~
14 ~~schools under RCW 28A.305.130.~~

15 ~~(3) The superintendent of public instruction shall certify an~~
16 ~~education center only upon application and (a) determination that~~
17 ~~such school comes within the definition thereof as set forth in~~
18 ~~subsection (1) of this section and (b) demonstration on the basis of~~
19 ~~actual educational performance of such applicants' students which~~
20 ~~shows after consideration of their students' backgrounds, educational~~
21 ~~gains that are a direct result of the applicants' educational~~
22 ~~program. Such certification may be withdrawn if the superintendent~~
23 ~~finds that a center fails to provide adequate instruction in basic~~
24 ~~academic skills. No education center certified by the superintendent~~
25 ~~of public instruction pursuant to this section shall be deemed a~~
26 ~~common school under RCW 28A.150.020 or a private school for the~~
27 ~~purposes of RCW 28A.195.010 through 28A.195.050)).~~

28 NEW SECTION. Sec. 4. A new section is added to chapter 28A.205
29 RCW to read as follows:

30 (1) The office of the superintendent of public instruction may
31 approve an applicant as an education center only after a
32 determination that:

33 (a) The applicant meets the definition of an education center
34 under RCW 28A.205.010; and

35 (b) The students of the applicant have made educational gains
36 that are a direct result of the applicant's educational program,
37 where the determination is based on the actual educational
38 performance of the students, after considering each student's
39 background.

1 (2) The office of the superintendent of public instruction may
2 suspend, revoke, or refuse to renew approval of an education center
3 if the education center fails to provide adequate instruction in
4 basic academic skills, fails to adhere to federal laws, especially
5 civil rights laws, fails to comply with health and safety
6 requirements, or fails to comply with provisions of its contract with
7 a school district.

8 (3) The office of the superintendent of public instruction must
9 prohibit approved education centers from charging tuition or fees to
10 students placed in the education center by a school district.

11 (4) The office of the superintendent of public instruction must
12 encourage school districts to cooperate with education centers.

13 (5) An education center approved by the office of the
14 superintendent of public instruction under this section is not a
15 common school under RCW 28A.150.020.

16 (6) The approval of an education center that is a private school
17 in Washington approved by the state board of education under chapter
18 28A.195 RCW is limited to the program of special education and
19 related services provided to students with disabilities placed in the
20 education center by the school district.

21 **Sec. 5.** RCW 28A.155.060 and 2007 c 115 s 6 are each amended to
22 read as follows:

23 (1) For the purpose of carrying out the provisions of RCW
24 28A.155.020 through 28A.155.050, the board of directors of every
25 school district shall be authorized to contract with ((agencies
26 approved by the superintendent of public instruction for operating
27 special education programs for students with disabilities. Approval
28 standards for such agencies shall conform substantially with those of
29 special education programs in the common schools)) education centers
30 approved under subsection (2) of this section to provide special
31 education and related services to students with disabilities placed
32 in the education center by the school district.

33 (2)(a) The office of the superintendent of public instruction
34 must create an application process to approve education centers to
35 contract with school districts to provide special education and
36 related services to students with disabilities placed in the
37 education center by a school district. Education centers may be
38 approved for a period of up to three years.

1 (b) To qualify for approval, an education center must, at a
2 minimum, meet the following requirements:

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

5 (ii)(A) For an education center operating as a school, either
6 obtain approval by the state board of education under chapter 28A.195
7 RCW to operate as a private school in Washington or obtain approval
8 by the state education agency of the state in which the education
9 center is located; and (B) for education centers that operate a
10 program of education within a nonschool facility, comply with
11 facility licensing requirements of the state in which the education
12 center is located;

13 (iii) Employ or contract with: At least one licensed teacher with
14 a special education endorsement; other licensed teachers; and related
15 services staff who meet the licensing requirements for their
16 profession;

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

19 (v) Demonstrate through audits that it is financially stable and
20 has accounting systems that allow for separation of school district
21 funds, including financial safeguards in place to track revenues and
22 expenditures associated with contracted placements to ensure that
23 funds are used to provide special education services to students;

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

29 (vii) Demonstrate that staff of the education center are
30 regularly trained on the following topics:

31 (A) Constitutional and civil rights of children in schools;

32 (B) Child and adolescent development;

33 (C) Trauma-informed approaches to working with youth;

34 (D) Recognizing and responding to youth mental health issues;

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

38 (F) Cultural competency, diversity, equity, and inclusion,
39 including best practices for interacting with students from
40 particular backgrounds, including English learner, LGBTQ, immigrant,

1 female, and nonbinary students. The terms "cultural competency,"
2 "diversity," "equity," and "inclusion" have the same meanings as in
3 RCW 28A.415.443;

4 (G) De-escalation techniques when working with youth or groups of
5 youth;

6 (H) Student isolation and restraint requirements under RCW
7 28A.600.485;

8 (I) The federal family educational rights and privacy act (Title
9 20 U.S.C. Sec. 1232g) requirements including limits on access to and
10 dissemination of student records for noneducational purposes; and

11 (J) Restorative justice principles and practices; and
12 (viii) Maintain a policy of nondiscrimination and provide
13 procedural safeguards for students eligible for special education
14 services and their families.

15 (c) Before approving an application under this subsection, the
16 office of the superintendent of public instruction must conduct an
17 on-site visit to ensure that an education center's facilities,
18 staffing levels, and procedural safeguards are sufficient to provide
19 a safe and appropriate learning environment for students with
20 disabilities placed in the education center by a school district.

21 (d) The office of the superintendent of public instruction may
22 suspend, revoke, or refuse to renew its approval of an education
23 center if the education center:

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

27 (ii) Violates the rights of students with disabilities placed in
28 the education center by a school district; or

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

31 (e) The office of the superintendent of public instruction must
32 use the data collected to produce the report required under section 7
33 of this act to identify issues of noncompliance with approval
34 standards and contract elements established in subsection (3)(a) of
35 this section.

36 (f) The office of the superintendent of public instruction must
37 notify the state board of education if any education center that is
38 also a private school approved by the state board of education under
39 chapter 28A.195 RCW is investigated for noncompliance, is directed to
40 complete corrective action, or fails to maintain approval under this

1 subsection. The state board of education must notify the office of
2 the superintendent of public instruction of any unresolved concerns,
3 deficiencies, or deviations related to an education center that is
4 also a private school approved by the state board of education under
5 chapter 28A.195 RCW.

6 (g) (i) The office of the superintendent of public instruction
7 must develop and publish on its website a complaint process for
8 individuals to report noncompliance or violations of student rights
9 at education centers.

10 (ii) The office of the superintendent of public instruction must
11 use the complaint process to identify and address patterns of
12 misconduct at education centers, including issuing corrective action
13 or revoking approval under this subsection.

14 (3) (a) A school district that chooses to contract with an
15 education center as authorized under subsection (1) of this section
16 must enter into a written contract with the education center to
17 establish the responsibilities of the school district and the
18 education center and set forth the rights of students with
19 disabilities placed in the education center by the school district as
20 a means of providing special education and related services. The
21 contract must include, at a minimum, the following elements:

22 (i) The names of the parties involved and the name of the student
23 or students with disabilities placed in the education center by the
24 school district;

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

26 (iii) A description of the services to be provided, including
27 access to state learning standards adopted under RCW 28A.655.070;

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

30 (v) Acknowledgment that the education center is responsible for
31 full reimbursement to the school district of any overpayments
32 determined to have been made by the school district;

33 (vi) Acknowledgment that the education center has a list of each
34 qualified staff member providing special education and related
35 services and a copy of the license or credential that qualifies each
36 staff member to provide those services;

37 (vii) Acknowledgment that the school district and education
38 center have clearly established their respective responsibilities and
39 processes for data collection and reporting for students;

1 (viii) Acknowledgment that the education center must comply with
2 student isolation and restraint requirements under RCW 28A.600.485;

3 (ix) Acknowledgment that the education center must notify the
4 school district and the office of the superintendent of public
5 instruction of any program, staffing, or facility changes that may
6 affect the agency's ability to provide contracted services;

7 (x) Acknowledgment that the education center must comply with all
8 relevant Washington state and federal laws that are applicable to the
9 school district; and

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

14 (b) A school district contracting with an education center must
15 conduct an annual on-site visit to ensure that an education center's
16 facilities, staffing levels, and procedural safeguards are sufficient
17 to provide a safe and appropriate learning environment and meet the
18 unique needs of the students with disabilities placed in the
19 education center by the school district.

20 (c) A school district contracting with an education center must
21 remain responsible for ensuring that the students with disabilities
22 placed in the education center by the school district are:

23 (i) Provided a free appropriate public education in accordance
24 with the federal individuals with disabilities education act, Title
25 20 U.S.C. Sec. 1400 et seq. and this chapter;

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

31 (iii) Provided with an opportunity to participate in Washington
32 state and school district assessments and an opportunity to fulfill
33 the requirements to receive a Washington state diploma; and

34 (iv) Provided at least the minimum instructional hours and days
35 required under RCW 28A.150.220.

36 (d) A school district contracting with an education center must
37 report to the office of the superintendent of public instruction and
38 the office of the state auditor any concerns the school district has
39 about overbilling by an education center.

1 (e) A school district must provide the following documents to the
2 parents or guardians of the student being served by an education
3 center:

4 (i) A summary of the school district and education center's
5 responsibilities and processes for reporting incidents of student
6 isolation and restraint under RCW 28A.600.485; and

7 (ii) A copy of the complaint process published under subsection
8 (2)(g) of this section.

9 (4) For the purpose of this section, "education center" means an
10 education center, as defined in RCW 28A.205.010, approved by the
11 office of the superintendent of public instruction under subsection
12 (2) of this section.

13 **Sec. 6.** RCW 28A.155.210 and 2013 c 202 s 3 are each amended to
14 read as follows:

15 A ~~((school that is required to develop an))~~ student's
16 individualized education program ((as required by federal law)) must
17 include ~~((within the plan))~~ procedures for notification of a parent
18 or guardian regarding the use of restraint or isolation under RCW
19 28A.600.485. If a student is served by an education center under RCW
20 28A.155.060, the student's individualized education program must also
21 specify any additional procedures required to ensure the education
22 center fully complies with RCW 28A.600.485.

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 28A.155
24 RCW to read as follows:

25 (1) Beginning December 1, 2023, and in compliance with RCW
26 43.01.036, the office of the superintendent of public instruction
27 must annually submit a report to the education committees of the
28 legislature regarding student placements at education centers under
29 RCW 28A.155.060. A summary of the report, including a link to the
30 full report content, must also be posted on the office of the
31 superintendent of public instruction's website. The report must
32 include:

33 (a) The academic progress of students receiving special education
34 services from education centers, using the results of the two most
35 recent state assessments;

36 (b) The graduation rates of students who have received special
37 education services from education centers;

1 (c) The rate at which students receiving special education
2 services from education centers return to their resident school
3 districts;

4 (d) Data on student restraint and isolation incidents,
5 discipline, and attendance at education centers; and

6 (e) Any corrective action or change in an education center's
7 approval status, as ordered by the office of the superintendent of
8 public instruction.

9 (2) The data published under subsection (1) of this section must
10 be disaggregated by education center when it is possible to do so
11 without disclosing, directly or indirectly, a student's personally
12 identifiable information as protected under the federal family
13 educational rights and privacy act (Title 20 U.S.C. Sec. 1232g).

14 NEW SECTION. **Sec. 8.** The following acts or parts of acts are
15 each repealed:

16 (1) RCW 28A.205.020 (Common school dropouts—Reimbursement) and
17 1999 c 348 s 3, 1997 c 265 s 7, 1993 c 211 s 2, 1990 c 33 s 181, 1979
18 ex.s. c 174 s 1, & 1977 ex.s. c 341 s 2;

19 (2) RCW 28A.205.030 (Reentry of prior dropouts into common
20 schools, rules—Eligibility for test to earn a high school equivalency
21 certificate) and 2013 c 39 s 6;

22 (3) RCW 28A.205.040 (Fees—Rules—Priority for payment—Review of
23 records) and 2013 c 39 s 7, 2006 c 263 s 412, 1999 c 348 s 4, 1990 c
24 33 s 183, 1979 ex.s. c 174 s 2, & 1977 ex.s. c 341 s 4;

25 (4) RCW 28A.205.070 (Allocation of funds—Criteria—Duties of
26 superintendent) and 2006 c 263 s 409, 1993 c 211 s 6, 1990 c 33 s
27 185, & 1985 c 434 s 3;

28 (5) RCW 28A.205.080 (Legislative findings—Distribution of funds—
29 Cooperation with school districts) and 1997 c 265 s 8, 1993 c 211 s
30 7, 1990 c 33 s 186, & 1987 c 518 s 220; and

31 (6) RCW 28A.205.090 (Inclusion of education centers program in
32 biennial budget request—Quarterly plans—Funds—Payment) and 1993 c
33 211 s 8, 1990 c 33 s 187, & 1985 c 434 s 4.

34 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of
36 the state government and its existing public institutions, and takes
37 effect immediately."

EFFECT: Strikes all material in the underlying bill and replaces it with material that has the following effect:

(1) Changes the term "nonpublic agency" to "education center" throughout the amendment.

(2) Modifies the definition of "education center" to "a private in-state school or facility operated on a profit or nonprofit basis, or any out-of-state school or facility, that contracts with a school district [that meets specified requirements]," rather than "any private school operated on a nonprofit or for profit basis [that meets specified requirements];" and correspondingly allows courses of instruction to be conducted by licensed teachers, rather than professional trained personnel certificated by the Professional Educator Standards Board.

(3) Authorizes the Office of the Superintendent of Public Instruction (OSPI) to approve, rather than certify, education centers, and adds that the OSPI can suspend, revoke, or refuse to renew approval if an education center fails to adhere to federal laws, especially civil rights laws, fails to comply with health and safety requirements, or fails to comply with provisions of its contract with a school district.

(4) Adds that, for a private school in Washington approved by the state board of education (SBE), the OSPI may only approve as an education center the program of special education and related services provided to students with disabilities placed in the education center by the school district.

(5) Specifies that all education centers may be approved for up to three years, rather than permitting education centers that are private schools in Washington approved by the SBE to be approved for up to five years.

(6) Directs the SBE to notify the OSPI of any unresolved concerns, deficiencies, or deviations it has with an education center that is also a private school approved by the SBE.

(7) Requires that, to qualify for approval to provide special education and related services to students with disabilities placed in the education center by a school district, an applicant must demonstrate that its staff are regularly trained on 10 topics, including relevant laws, child and adolescent development, and specified best practices for working with youth (rather than permitting existing safety and security staff training to be provided to education centers located in Washington).

(8) Adds that the required contract between a school district and an education center must include acknowledgment that the education center is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;

(9) Directs a school district contracting with an education center to report to the Office of the Superintendent of Public Instruction and the Office of the State Auditor any concerns the school district has about overbilling by an education center.

(10) Directs the OSPI to use data on student academic progress, discipline, and attendance (in addition to isolation and restraint) to identify issues of education center noncompliance with approval standards and contract elements.

(11) Repeals six provisions of existing education center law related primarily to funding of the centers and enrollment of common school dropouts.

(12) Adds an intent section.

(13) Makes nonsubstantive changes, for example adding statutory citations, changing the phrase "to provide special education programs for students with disabilities" to "to provide special education and related services to students with disabilities placed in the education center by a school district," and referring more generally to requirements and standards that may be in place for out-of-state entities.

(14) Maintains the emergency clause.

--- END ---