

HOUSE BILL REPORT

E2SSB 5315

As Reported by House Committee On:

Education
Appropriations

Title: An act relating to nonpublic agencies operating special education programs for students with disabilities.

Brief Description: Concerning nonpublic agencies operating special education programs for students with disabilities.

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

Brief History:

Committee Activity:

Education: 3/20/23, 3/27/23 [DPA];

Appropriations: 4/1/23, 4/4/23 [DPA(APP w/o ED)].

Brief Summary of Engrossed Second Substitute Bill (As Amended By Committee)

- Expands and codifies the duties of the Superintendent of Public Instruction with regard to approving, monitoring, and investigating education centers that contract with school districts to provide special education and related services to students with disabilities placed in the education center by a school district.
- Modifies existing statutes governing "education centers" by, among other things, redefining the term and modifying approval requirements.
- Directs school districts to conduct annual on-site visits of education centers.
- Requires the Office of the Superintendent of Public Instruction (OSPI) to report annually to the Legislature regarding student placements at

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education centers and post the report on its website.

- Requires education centers to acknowledge responsibility for reimbursements of overpayments by school districts and directs school districts to report overbilling concerns to the OSPI and State Auditor.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 15 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bergquist, Callan, Eslick, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

Staff: Megan Wargacki (786-7194).

Background:

Responsibilities of the Superintendent of Public Instruction Related to Special Education.

In addition to its constitutional charge of supervising all matters pertaining to public schools, the Superintendent of Public Instruction (SPI) and its office has numerous and broad responsibilities prescribed in statute, including to:

- ensure an appropriate educational opportunity for all students with disabilities between the ages of 3 and 21;
- assist school districts in the formation of programs to meet the needs of students with disabilities;
- promulgate rules necessary to implement federal and state laws providing for special education to ensure appropriate access to and participation in the general education curriculum and participation in statewide assessments for all students with disabilities;
- employ an administrative officer to ensure that school districts provide an appropriate educational opportunity for all students with disabilities in need of special education; and
- establish appropriate sanctions to be applied to any school district of the state failing to comply with specified state laws related to the provision of special education services, including withholding state aid until compliance is assured.

Through its implementing regulations, the federal Individuals with Disabilities Education Act (IDEA) requires each state education agency (the Office of the Superintendent of Public Instruction in Washington) to ensure that each student with a disability who is placed in a private school or facility by a school district is provided special education in conformance with the student's individualized education program (IEP), and is provided, at no cost to the

parents, an education that meets the requirements of the IDEA that apply to school districts. In addition, the Office of the Superintendent of Public Instruction (OSPI), in implementing these IDEA requirements, must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires.

Nonpublic Agencies.

State statute authorizes school district boards of directors to contract with agencies approved by the SPI for operating special education programs for students with disabilities and specifies that the approval standards must conform substantially with those of special education programs in the schools of the school districts (the "common schools").

Rules of the SPI define "nonpublic agencies" as private entities approved by the SPI that school districts can contract with to provide special education and related services to students with IEPs whose needs are not being met by their school district. Nonpublic agencies may be private elementary or secondary schools or facilities within Washington, or public or private out-of-state elementary or secondary schools or facilities.

The SPI has adopted rules governing the provision of educational services to students with disabilities in nonpublic agencies when the school district cannot provide an appropriate education for the student within the district. Among other things, these rules state:

- Each school district remains responsible for ensuring that the student is provided a free, appropriate public education, in compliance with the IDEA.
- School districts must ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student placed there.
- School districts' contracts with nonpublic agencies must describe the district responsibility and process of data collection and reporting, including data required under IDEA, student restraint and isolation reports, and student discipline data.
- The SPI may suspend, revoke, or refuse to renew its approval of a nonpublic agency if it violates the rights of students eligible for special education services, or if the nonpublic agency refuses to implement any corrective actions ordered by the SPI.
- After approval as a nonpublic agency, the private school or facility must provide annual review information to the SPI and school districts with whom they contract for the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.
- The SPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval and provide an indication of a change to the approval requirements for any nonpublic agency on the published list of currently approved nonpublic agency.

Education Centers.

Education centers were established in statute in 1977. An "education center" is defined as a private school operated on a profit or nonprofit basis, which does the following: (1) is devoted to the teaching of basic academic skills, including specific attention to

improvement of student motivation for achieving, and employment orientation; (2) operates on a clinical, client-centered basis, including performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction, and evaluation of each individual client's progress in his or her educational program; and (3) conducts courses of instruction by professionally trained personnel certificated by the Professional Educator Standards Board. An education center is not a common school or a private school in Washington approved by the State Board of Education (SBE).

Only common school dropouts are eligible for enrollment in an education center for reimbursement by the OSPI.

The OSPI must certify education centers only upon application and: (1) determination that the applicant meets the definition of an education center; and (2) demonstration on the basis of actual educational performance of the applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program.

The certification may be withdrawn if the OSPI finds that an education center fails to provide adequate instruction in basic academic skills. "Basic academic skills" are defined to mean the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics, but does not include courses of a vocational training nature and must not include courses deemed nonessential to the accrediting or the approval of private schools by the State Board of Education.

Education centers were last provided state funding in fiscal year 2003. The OSPI is no longer certifying education centers.

Summary of Amended Bill:

Duties of the Superintendent of Public Instruction (SPI) are codified and expanded. The SPI is given the duty and authority to establish standards for approving, monitoring, and investigating education centers that contract with school districts to provide special education and related services to students with disabilities placed in the education center by a school district. It is specified that these standards must ensure that any student placed in the education center has the same rights, protections, and access to special education and related services that they would have if served by a school district.

Rules of the Office of the Superintendent of Public Instruction (OSPI) governing approval of and contracting with nonpublic agencies are modified and codified as described below.

Definitions.

The term "nonpublic agency" is changed to "education center." The definition of

"education center" is modified to mean 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 to provide special education and related services to students with disabilities placed in the education center by the school district and that does the following: (1) is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation; (2) operates on a clinical, client-centered basis, including performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction, and evaluation of each individual client's progress in his or her educational program; and (3) conducts courses of instruction by licensed teachers.

The definition of "basic skills" is modified; it must include the study of mathematics, speech, language, reading and composition, science, history, literature, and political science or civics.

Approval.

The OSPI is required to create an application process to approve education centers that contract with school districts to provide special education services to students with disabilities. Education centers may be approved for a period of up to three years.

The OSPI may approve an applicant as an education center only after a determination that: (1) the applicant meets the definition of an education center; and (2) the students of the applicant have made educational gains that are a direct result of the applicant's educational program, where the determination is based on the actual educational performance of the students, after considering each student's background.

An education center approved by the OSPI is not a common school of a school district. The approval of an education center that is a private school in Washington approved by the State Board of Education (SBE) is limited to the program of special education and related services provided to students with disabilities placed in the education center by the school district.

School districts are authorized to contract with education centers approved by the OSPI to provide special education and related services to students with disabilities placed in the education center by the school district. To qualify for approval an education center must, at a minimum, meet the following requirements:

- acknowledge that it can meet all contract elements described below;
- for an education center operating as a school, either obtain approval by the SBE to operate as a private school in Washington or obtain approval by the state education agency of the state in which the education center is located, and for education centers that operate a program of education within a nonschool facility, comply with facility licensing requirements of the state in which the education center is located;
- employ or contract with at least one licensed teacher with a special education endorsement, other licensed teachers, and related services staff that meet the licensing

- requirements for their profession;
- meet applicable fire codes of the local or state fire marshal and applicable health and safety standards;
- demonstrate through audits that it is financially stable and has accounting systems that allow for separation of school district funds;
- demonstrate that it has procedures in place that address staff hiring, contracting, and evaluation;
- demonstrate that staff of the education center are regularly trained on 10 topics, for example, relevant laws, child and adolescent development, and specified best practices for working with youth; and
- maintain a policy of nondiscrimination and provide procedural safeguards for students eligible for special education services and their families.

Before approving an application, the OSPI must conduct an on-site visit to ensure that an education center's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment for students with disabilities placed in the education center by a school district.

The OSPI may suspend, revoke, or refuse to renew its approval of a education center if the education center: fails to maintain approval standards or fails to comply with all school district contract elements described below; violates the rights of students with disabilities placed in the education center by a school district; refuses to implement any corrective actions ordered by the OSPI; fails to provide adequate instruction in basic academic skills; or fails to adhere to federal laws, especially civil rights laws.

The OSPI must use the data collected to produce the report described below to identify issues of noncompliance with approval standards and contract elements described below.

The OSPI must notify the SBE if any education center that is also a private school approved by the SBE is investigated for noncompliance, is directed to complete corrective action, or fails to maintain approval. The SBE must notify the OSPI of any unresolved concerns, deficiencies, or deviations related to an education center that is also a private school approved by the SBE.

Complaint Process.

The OSPI is directed to develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at education centers. The OSPI must use the complaint process to identify and address patterns of misconduct at education centers, including issuing corrective action or revoking approval.

Contracts.

A school district that chooses to contract with an education center must enter into a written contract with the education center to establish the responsibilities of the school district and the education center and set forth the rights of students with disabilities placed in the

education center by the school district as a means of providing special education and related services. The contract must include 10 elements, at a minimum, which include:

- a description of the services to be provided and the total contract cost;
- a copy of the license or credential that qualifies each staff member to provide those services;
- acknowledgment that the nonpublic agency must comply with all relevant state and federal laws that are applicable to the school district, including student isolation and restraint requirements;
- acknowledgement that the education center must notify the school district and the OSPI of any program, staffing, or facility changes that may affect the provision of contracted services; and
- acknowledgment that the school district must provide the OSPI with the opportunity to review the contract and related documentation upon request.

Annual Site Visits.

School districts are required to conduct an annual on-site visit to ensure that an education center's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment and meet the unique needs of the students with disabilities placed in the education center by the school district.

School District Responsibilities.

School districts contracting with an education center are responsible for ensuring that the students with disabilities placed in the education center by the school district are: (1) provided a free, appropriate public education in accordance with federal and state law; (2) 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 team meetings that meet all applicable requirements; (3) provided with an opportunity to participate in Washington state and school district assessments and an opportunity to fulfill the requirements to receive a Washington state diploma; and (4) provided at least the minimum instructional hours and days that school districts are required to provide.

Requirements Related to Student Isolation and Restraint.

School districts are directed to provide to the parents or guardians of a student being served by an education center a summary of the school district and education center's responsibilities and processes for reporting incidents of student isolation and restraint and a copy of the OSPI's complaint process.

It is added that the individualized education program of a student served by an education center must specify any additional procedures required to ensure that the education center fully complies with student isolation and restraint requirements.

Annual Legislative Report.

Beginning December 1, 2023, the OSPI must annually submit a report to the Legislature

regarding student placements at education centers and post the report on its website. The report must include: (1) the academic progress of students receiving special education services from education centers; (2) the graduation rates of students who have received special education services from education centers; (3) the rate at which students receiving special education services from education centers return to their resident school districts; (4) data on student restraint and isolation incidents, discipline, and attendance at education centers; and (5) any corrective action or change in an education center's approval status, as ordered by the OSPI. The data must be disaggregated by education center when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected by federal law.

Other Provisions.

The OSPI must prohibit approved education centers from charging tuition or fees to students placed in the education center by a school district. The OSPI must encourage school districts to cooperate with education centers.

Six education center statutes related primarily to funding of the centers and enrollment of common school dropouts are repealed.

Amended Bill Compared to Engrossed Second Substitute Bill:

Compared to the engrossed second substitute bill, the amended bill:

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. 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;
 9. repeals six provisions of existing education center law related primarily to funding of the centers and enrollment of common school dropouts;
 10. adds an intent section; and
 11. 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.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on March 27, 2023.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) A recent investigation found glaring injustice that was impacting some of the most vulnerable students; the state is failing to regulate nonpublic agencies (NPAs) that provide special education services to students placed in the NPA by school districts. These NPAs receive millions of dollars from the state each year. Some of the students placed in the NPAs are regressing and some students are experiencing disproportionate rates of isolation and restraint. Students need safe spaces, materials, and supportive adults, who have professional development and the supports they need. It is on the state to change this inadequate system. It requires the Office of the Superintendent of Public Instruction (OSPI) to establish an approval process for NPAs, complaint procedures, and direct responsibilities for school districts, including what districts must do to ensure that parents have the information they need.

Every student has a right to educational services that are safe, supportive, and provided in

the general education setting in their neighborhood school. This is especially important for students served in NPAs. Students in NPAs are often fragile and traumatized. Many students have complex disabilities and are unable to communicate what happens to them at school. School districts should build capacity to serve all students inclusively.

The quality of NPAs is variable and families should have information about whether an NPA is appropriate for their student. Some private schools approved by the State Board of Education are NPAs. These schools offer safe environments for students that are an alternative to what school districts provide. The bill makes a distinction between NPA schools and NPA facilities. It is important for families to have information about NPAs and to be able to file complaints.

Expanding the OSPI's oversight will improve services provided in NPAs, including by requiring additional data collection and increasing reporting requirements. It will also include additional training for staff of NPAs. Having a single clearinghouse for complaints against NPAs is a great idea. Requiring the OSPI to conduct site visits should help to ensure there is continuity of care in NPAs.

(Opposed) None.

Persons Testifying: Senator Claire Wilson, prime sponsor; Ramona Hattendorf, The Arc of King County; Tania May, Office of Superintendent of Public Instruction; and Suzie Hanson, Washington Federation of Independent Schools.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Education. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Springer, Steele, Stonier and Tharinger.

Staff: James Mackison (786-7104).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Education:

The Appropriations Committee added the following provisions:

- The required contract between a school district and an education center must include acknowledgement 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.

- A school district contracting with an education center must report to the OSPI and the Office of the State Auditor any concerns the school district has about overbilling by an education center.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Every student has the right to receive education in a safe setting. The OSPI requested this bill to address the public interest in transparency for the process of approving and overseeing out-of-state nonpublic agencies. This bill expands oversight duties, including site visits. These functions need to be resourced adequately.

(Opposed) None.

(Other) There is ambiguity in how nonpublic agencies fit within the definition of "education centers" established in the prior committee's amendment. Independent schools are not clinical settings where students are diagnosed. Nonpublic agencies' sole role are to assist in the developments and implementation of individualized education programs. Removal of the amendatory language defining "education centers" would be supported.

Persons Testifying: (In support) Mikhail Cherniske, Office of Superintendent of Public Instruction.

(Other) Suzie Hanson, Washington Federation of the Independent Schools.

Persons Signed In To Testify But Not Testifying: None.