

FINAL BILL REPORT

E2SSB 5315

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Synopsis as Enacted

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).

Senate Committee on Early Learning & K-12 Education
Senate Committee on Ways & Means
House Committee on Education
House Committee on Appropriations

Background: Nonpublic Agencies. If a student's special education needs cannot be met by their resident school district, the district may contract with an approved nonpublic agency (NPA) to provide a program of special education and related services. Provisions directing approval processes and oversight responsibilities reside in state rule.

Nonpublic Agency Approval Process. NPAs must be approved by the Office of the Superintendent of Public Instruction (OSPI) and must re-apply for approval every three years. The contracting school district must conduct an on-site visit of the NPA and submit those results in the application for approval. OSPI may conduct an independent on-site visit, if appropriate, before determining whether an application will be approved.

School District Oversight Responsibilities. Each school district that contracts with an NPA remains responsible for ensuring their enrolled student is provided a free appropriate public education and that the NPA is able to provide the services required to meet the unique needs of the student. A school district that places a student with an NPA must develop a written contract that includes, among other elements:

- a description of services provided, program administration, and supervision, including access to state learning standards;
- a description of the district responsibility and process of data collection and reporting

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- for the student, including the data required under the federal Individuals with Disabilities Education Act, restraint and isolation reports to parents and OSPI, and school discipline;
- assurance that the requirements pertaining to emergency response protocols and isolation and restraint protocols are being met;
 - assurance that the NPA will notify the school district or OSPI of any program changes that may affect the NPA's ability to contract, or any complaints against the NPA regarding services to students; and
 - any other contract elements that may be necessary to assure compliance with state and federal rules.

The Office of the Superintendent of Public Instruction Oversight Responsibilities. OSPI is responsible for approving and renewing NPA contracts. OSPI must monitor compliance through written reports, on-site visits, and parent questionnaires. OSPI may suspend, revoke, or refuse to renew its approval of an NPA if the NPA fails to maintain the approval standards, violates the rights of students eligible for special education services, or refuses to implement any corrective actions ordered by OSPI. OSPI must make information regarding currently approved NPAs available on its website.

Restraint and Isolation. Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm. 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. A student's individualized education program (IEP) may not include the use of restraint or isolation as a planned behavior intervention unless the student's individual needs require it and the student's parent or guardian agrees. Each student's IEP must include procedures for notification of a parent or guardian regarding the use of restraint and isolation.

Following the release of a student from the use of restraint or isolation, a school must implement the following procedures:

- review the incident with the student, parent or guardian, and staff member who administered the response;
- require the school employee, resource officer, or school security officer who used restraint or isolation to inform the building administrator as soon as possible and to submit a written report to the district office within two business days; and
- require the principal to make a reasonable effort to verbally inform the student's parent or guardian within 24 hours of the incident, and to send written notification as soon as practical but no later than five business days.

By January 1st of each year, each school district must summarize all written reports pertaining to restraint and isolation incidents and submit the summary to OSPI. The district must include the following information for each school: 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 restraints used. OSPI must publish this data

on its website within 90 days, and may use the data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation.

Summary: Authorized Entities. The term "nonpublic agency" is replaced with the term "authorized entity" which means a private school approved by the State Board of Education (SBE), another private in-state entity, or any out-of-state entity that has been authorized by OSPI to contract with a school district to provide a program of special education for students with disabilities.

OSPI is given the duty and authority to establish standards for authorizing, monitoring, and investigating authorized entities that contract with school districts to provide special education programs for students with disabilities. All standards must ensure that any student served by an authorized entity has the same rights, protections, and access to special education and related services that they would have if served by a school district.

Authorization. OSPI must create an application process to authorize entities that contract with school districts to provide special education services to students with disabilities. Private schools approved by SBE may be authorized for up to five years, and all other entities may be approved for up to three years.

To qualify for authorization an entity must, at a minimum, meet the following requirements:

- offer a program of basic education that will provide opportunities for students to meet basic education goals, in accordance with an individual assessment of student strengths and needs; and opportunities for students in grades 9-12 to either meet high school graduation requirements or a high school equivalency certificate;
- maintain applicable facility licenses and agency approvals;
- employ or contract with teachers and related services staff who meet licensing requirements;
- meet applicable fire codes and health and safety standards;
- demonstrate through audits that it is financially stable and has accounting systems that allow for separation of school district funds, including financial safeguards to track revenues and expenditures associated with student placements;
- demonstrate that it has procedures in place that address staff employment and contracting, including conducting reference checks, criminal background checks, and staff evaluations; and
- maintain a policy of nondiscrimination and provide procedural safeguards for students and their families.

Before authorizing an entity, OSPI must conduct an onsite inspection to ensure that the entity's facilities, staffing qualifications and levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment. OSPI must prohibit authorized entities from charging tuition or fees to students placed in the authorized entity by a school district.

The Office of the Superintendent of Public Instruction Complaint Process. OSPI must develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at authorized entities. The webpage may include additional instructions for submitting complaints to the resident school district and for using the special education community complaint processes, when applicable. OSPI must monitor and investigate authorized entities and contracting school districts to ensure compliance with all requirements by using information and data gathered during on-site visits, submitted through the complaint processes, and provided by entities and districts. OSPI must use this process to identify and address patterns of misconduct at authorized entities, including issuing corrective action or revoking authorization.

OSPI may suspend, revoke, or refuse to renew its authorization approval of an entity if the entity fails to maintain authorization standards, fails to comply with all school district contract elements, violates the rights of students, fails to adhere to applicable laws, fails to comply with contract requirements, or refuses to implement any corrective actions ordered by OSPI. OSPI must notify SBE if any authorized entity that is also approved by SBE as a private school is investigated for noncompliance, is directed to complete corrective action, or fails to maintain authorization. SBE must notify OSPI of any unresolved concerns, deficiencies, or deviations related to a private school authorized by OSPI.

School District Contract. A school district that chooses to contract with an authorized entity must develop a written contract to establish the responsibilities of the school district and entity and set forth the rights of the students receiving special education services. The contract must include, at a minimum, the following elements:

- the names of the parties involved and the name of the student;
- the locations and settings of the services to be provided;
- a description of the opportunities to meet basic education goals and graduation requirements;
- a schedule for the authorized entity to provide a student progress report to the school district at least once per academic term, describing how the student is meeting personalized learning outcomes;
- the total contract cost and applicable charge and reimbursement systems, including billing and payment procedures;
- acknowledgement that the authorized entity is responsible for full reimbursement to the school district of any overpayments made by the district;
- acknowledgement that the authorized entity has a list of staff members providing special education services and a copy of the license that qualifies the staff to provide those services;
- an agreement by the authorized entity to employ or contract with at least one licensed teacher with a special education endorsement;
- acknowledgement that the staff of the authorized entity are regularly trained on eight specified topics;
- acknowledgement that the school district and authorized entity have clearly established their respective responsibilities and processes for data collection and

- reporting for students;
- acknowledgement that the authorized entity must comply with isolation and restraint procedures;
- acknowledgement that the authorized entity must submit complaints to the school district, and any other required information to the school district and OSPI;
- acknowledgement of specified notification requirements;
- acknowledgement that the authorized entity must comply with all relevant state and federal laws that are applicable to the school district; and
- acknowledgement that the school district must provide OSPI with the opportunity to review the contract and related documentation upon request.

School District Responsibilities. A school district remains responsible for ensuring that the student being served is provided with a free appropriate public education, provided with special education and related services at no cost to the student's parents and in conformance with an individualized education program, and provided with an opportunity to participate in state and district assessments.

A school district must conduct an annual onsite visit to ensure that an authorized entity's facilities, staffing qualifications and levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment for students. A contracting school district may arrange for another school district to complete the annual on-site visit on its behalf, so long as the school district conducting the on-site visit provides a written report to the contracting school district that documents the results of the on-site visit and any concerns about the learning environment.

A school district must provide, to the parents or guardians of the student being served, a summary of the district and authorized entity's responsibilities and processes for reporting incidents of isolation and restraint and a copy of the complaint procedure developed by OSPI.

A school district contracting with an authorized entity must also report to OSPI and the State Auditor any concerns the school district has about overbilling by the authorized entity.

Reports. Beginning December 1, 2023, OSPI must annually submit a report to the education committees of the Legislature regarding student placements at authorized entities. The data published in the report must be disaggregated by authorized entity when it is possible to do so without disclosing a student's personally identifiable information. A summary of the report, including a link to the full report content, must be posted on the OSPI website. The report must include:

- the academic progress of students receiving special education services from authorized entities, using the results of the two most recent state assessments;
- the graduation rates of students who have received special education services from authorized entities;
- the rate at which students receiving special education services from authorized

- entities return to their resident school districts;
- data on restraint and isolation incidents, discipline, and attendance at authorized entities; and
- any corrective action or change in an authorized entity's authorization status, as ordered by OSPI.

Restraint and Isolation. If a student is served by an authorized entity, the student's IEP must specify any additional procedures required to ensure the authorized entity fully complies with restraint and isolation procedures.

Performance Audit. The State Auditor must conduct a performance audit of the authorization, monitoring, and investigation of authorized entities and contracting school districts. As appropriate, the State Auditor must make recommendations for improving the system for overseeing authorized entities. The performance audit may be conducted using a sample of school districts and authorized entities as needed. The State Auditor must report its findings and recommendations to the Governor and Legislature by November 30, 2026.

Votes on Final Passage:

Senate	48	0	
House	97	0	(House amended)
Senate			(Senate refused to concur)
House	96	0	(House receded/amended)
Senate	48	1	(Senate concurred)

Effective: July 23, 2023