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**SUBSTITUTE HOUSE BILL 1305**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** House Education (originally sponsored by Representatives Pollet, Stonier, Ortiz-Self, Alvarado, Orwall, Leavitt, Senn, Bergquist, Bateman, Taylor, Reeves, Davis, Doglio, Santos, Reed, Kloba, and Fosse)

READ FIRST TIME 02/13/23.

1 AN ACT Relating to improving access to and provision of a free  
2 appropriate public education for students with disabilities; amending  
3 RCW 28A.225.330, 28A.155.010, 28A.155.020, 28A.155.040, 28A.155.050,  
4 28A.155.060, 28A.155.090, 28A.155.100, and 28A.155.140; adding new  
5 sections to chapter 28A.155 RCW; and providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** (1) If the parent of a student makes a  
8 request for the student to be evaluated for a disability or for  
9 eligibility for special education services, a school district must  
10 provide the parent with a document describing the referral request  
11 and initial special education evaluation processes, including  
12 relevant deadlines and parental consent requirements. The document  
13 must be based on the template created as required under section 2 of  
14 this act.

15 (2) Within 22 calendar days after receipt of a referral request  
16 for special education services, a school district must: (a) Decide  
17 whether to conduct an initial evaluation to determine whether the  
18 student is eligible for special education services; and (b) notify  
19 the parent of the referred student of the district's decision, using  
20 multiple communication channels.

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

6 (a) At the same time as it makes the notification under  
7 subsection (2) of this section, the school district must provide the  
8 student's parent with a document that informs the parent about the  
9 evaluation activities it plans to conduct, and that includes  
10 instructions for how and when to provide parental consent to  
11 evaluate. The document must be based on the template created as  
12 required under section 2 of this act.

13 (b) (i) Except as provided in (b) (ii) of this subsection (3), or  
14 as provided in rule, the school district must, within 40 calendar  
15 days of receiving a parent's consent to evaluate the student, conduct  
16 an evaluation and determine whether the student is eligible for  
17 special education services.

18 (ii) When the evaluation activities include student observations  
19 in the classroom or school setting, the 40 calendar days for  
20 conducting the evaluation following receipt of a parent's consent to  
21 evaluate may be suspended during school holidays of a week or longer.

22 (c) The office of the superintendent of public instruction shall  
23 adopt a rule permitting a school district to exceed the time limits  
24 under (b) of this subsection (3) when conducting a quality evaluation  
25 warrants additional time, for example: Due to the complexity of the  
26 student's diagnoses; the availability of specialists; barriers to  
27 coordination of multiple specialists; or barriers to scheduling in-  
28 person observations when these observations are an agreed-to  
29 evaluation activity.

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

36 NEW SECTION. **Sec. 2.** (1) The office of the superintendent of  
37 public instruction shall collaborate with the office of the education  
38 ombuds to create a template for school districts to use to meet the  
39 requirement in section 1 (1) and (3) of this act related to providing

1 to parents: (a) Information about the initial special education  
2 evaluation process; and (b) instructions for how and when to provide  
3 parental consent to evaluate.

4 (2) The template must be translated as for limited English  
5 proficient parent groups described in section 5(2) of this act. The  
6 template and its translations must be made publicly available on the  
7 website of the office of the superintendent of public instruction.

8 NEW SECTION. **Sec. 3.** (1) With regard to parent participation in  
9 individualized education program team meetings, a school district  
10 must provide prior notification to parents about the accommodations  
11 available for persons with disabilities who are in need of  
12 communication assistance or accommodations to fully participate in  
13 the meeting, including the option to record audio under certain  
14 circumstances. Examples of "persons with disabilities who are in need  
15 of communication assistance or accommodations" are persons with  
16 hearing or speech disabilities and persons with limited English  
17 proficiency.

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

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

32 (4) School district staff, including related services staff, may  
33 participate in an individualized education program team meeting if  
34 they have knowledge or special expertise regarding the student.

35 NEW SECTION. **Sec. 4.** Within 30 calendar days of the  
36 determination that a student is eligible for special education  
37 services, a school district must have held an initial individualized  
38 education program team meeting and commenced provision of special

1 education and related services in accordance with the student's  
2 individualized education program.

3 NEW SECTION. **Sec. 5.** (1) School districts may use oral  
4 interpreter services, written translation services, and other  
5 language access services available for contract through the  
6 department of enterprise services to comply with Title II of the  
7 Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et  
8 seq., and Title IV of the civil rights act of 1964, 42 U.S.C. Sec.  
9 2000d, et seq.

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

14 NEW SECTION. **Sec. 6.** (1) The school district has the burden of  
15 proof and the burden of production whenever it is a party to a due  
16 process hearing regarding the identification of, evaluation of,  
17 reevaluation of, classification of, educational placement of,  
18 disciplinary action of, or provision of a free appropriate public  
19 education to, a student with a disability.

20 (2) In a due process hearing, evidence showing that a student has  
21 not failed or been retained in a course or grade, and is advancing  
22 from grade to grade, does not create the presumption that the school  
23 has provided the student with a free appropriate public education as  
24 required by the federal individuals with disabilities education act,  
25 20 U.S.C. Sec. 1400 et seq.

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

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

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

37 (b) "Qualified interpreter" has the same meaning as in RCW  
38 28A.183.010.

1        NEW SECTION.        **Sec. 7.**        (1) In order to improve their  
2 instructional program for students who are blind, have low vision,  
3 are deaf, or are hard of hearing, school districts are authorized to  
4 enter into consultation and service agreements with the state school  
5 for the blind and the Washington center for deaf and hard of hearing  
6 youth.

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

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

15        NEW SECTION.        **Sec. 8.**        (1) Any public entity in Washington  
16 responsible for providing special education, related services, or  
17 both to students with disabilities in accordance with part B of the  
18 federal individuals with disabilities education act, 20 U.S.C. Sec.  
19 1400 et seq., must comply with the provisions of this chapter to the  
20 same extent as school districts.

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

28        NEW SECTION.        **Sec. 9.**        (1) Subject to the availability of amounts  
29 appropriated for this specific purpose, the office of the  
30 superintendent of public instruction shall distribute up to  
31 \$10,000,000 per biennium to educational service districts for the  
32 purpose of making school psychologists and other providers with  
33 expertise in each category of disability under part B of the federal  
34 individuals with disabilities education act, 20 U.S.C. Sec. 1400 et  
35 seq., available to conduct initial special education evaluations and  
36 reevaluations for special education.

37        (2) Each educational service district must determine its regional  
38 need for special education evaluators as described in subsection (1)

1 of this section. At the time and in the manner required by the office  
2 of the superintendent of public instruction, each educational service  
3 district shall submit a proposal describing its regional need and  
4 requesting funding to address that need.

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

9 (4) This section expires August 1, 2029.

10 **Sec. 10.** RCW 28A.225.330 and 2022 c 78 s 3 are each amended to  
11 read as follows:

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

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

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

18 (c) Any history of violent behavior, or behavior listed in RCW  
19 13.04.155;

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

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

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

32 (3) Upon request, school districts shall furnish a set of  
33 unofficial educational records to a parent or guardian of a student  
34 who is transferring out of state and who meets the definition of a  
35 child of a military family in transition under Article II of RCW  
36 28A.705.010. School districts may charge the parent or guardian the  
37 actual cost of providing the copies of the records.

38 (4) If information is requested under subsection (2) of this  
39 section, the information shall be transmitted within two school days

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

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

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

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

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

38 (7) For the purposes of this section, "students who are the  
39 subject of a dependency proceeding" has the same meaning as in RCW  
40 28A.150.510.

1       **Sec. 11.** RCW 28A.155.010 and 2007 c 115 s 1 are each amended to  
2 read as follows:

3       It is the purpose of RCW (~~(28A.155.010 through 28A.155.160,)~~)  
4 28A.160.030(~~(7)~~) and 28A.150.390 and this chapter to ensure that all  
5 children with disabilities as defined in RCW 28A.155.020 shall have  
6 the opportunity for an appropriate education at public expense as  
7 guaranteed to them by the Constitution of this state and applicable  
8 federal laws.

9       **Sec. 12.** RCW 28A.155.020 and 2015 c 206 s 2 are each amended to  
10 read as follows:

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

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

18       In accordance with part B of the federal individuals with  
19 disabilities education improvement act and any other federal or state  
20 laws relating to the provision of special education services, the  
21 superintendent of public instruction shall require each school  
22 district in the state to insure an appropriate educational  
23 opportunity for all children with disabilities between the ages of  
24 three and twenty-one, but when the twenty-first birthday occurs  
25 during the school year, the educational program may be continued  
26 until the end of that school year. The superintendent of public  
27 instruction, by rule, shall establish for the purpose of excess cost  
28 funding, as provided in RCW 28A.150.390, 28A.160.030, and  
29 (~~(28A.155.010 through 28A.155.160)~~) this chapter, functional  
30 definitions of special education, the various types of disabling  
31 conditions, and eligibility criteria for special education programs  
32 for children with disabilities, including referral procedures, use of  
33 positive behavior interventions, the education curriculum and  
34 statewide or district-wide assessments, parent and district requests  
35 for special education due process hearings, and procedural  
36 safeguards. For the purposes of (~~(RCW 28A.155.010 through~~  
37 ~~28A.155.160)~~) this chapter, an appropriate education is defined as an  
38 education directed to the unique needs, abilities, and limitations of  
39 the children with disabilities who are enrolled either full time or

1 part time in a school district. School districts are strongly  
2 encouraged to provide parental training in the care and education of  
3 the children and to involve parents in the classroom.

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

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

13 **Sec. 13.** RCW 28A.155.040 and 2007 c 115 s 4 are each amended to  
14 read as follows:

15 The board of directors of each school district, for the purpose  
16 of compliance with the provisions of RCW 28A.150.390, 28A.160.030,  
17 and (~~28A.155.010 through 28A.155.160 and~~) chapter 28A.190 RCW and  
18 this chapter, shall cooperate with the superintendent of public  
19 instruction and with the administrative officer and shall provide an  
20 appropriate educational opportunity to children with disabilities, as  
21 defined in RCW 28A.155.020, in regular or special school facilities  
22 within the district or shall contract for such services with other  
23 agencies as provided in RCW 28A.155.060 or shall participate in an  
24 interdistrict arrangement in accordance with RCW 28A.335.160 and  
25 28A.225.220 and/or 28A.225.250 and 28A.225.260.

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

32 The cost of board and room in facilities approved by the  
33 department of social and health services shall be provided by the  
34 department of social and health services for those students with  
35 disabilities eligible for such aid under programs of the department.  
36 The cost of approved board and room shall be provided for those  
37 students with disabilities not eligible under programs of the  
38 department of social and health services but deemed in need of the  
39 same by the superintendent of public instruction: PROVIDED, That no

1 school district shall be financially responsible for special  
2 education programs for students who are attending residential schools  
3 operated by the department of social and health services: PROVIDED  
4 FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and  
5 (~~28A.155.010 through 28A.155.100~~) this chapter shall not preclude  
6 the extension by the superintendent of public instruction of special  
7 education opportunities to students with disabilities in residential  
8 schools operated by the department of social and health services.

9 **Sec. 14.** RCW 28A.155.050 and 2007 c 115 s 5 are each amended to  
10 read as follows:

11 Any child who is eligible for special education services through  
12 special excess cost aid programs authorized under (~~RCW 28A.155.010  
13 through 28A.155.160~~) this chapter shall be given such services in  
14 the least restrictive environment as determined by the student's  
15 individualized education program (IEP) team in the school district in  
16 which such student resides. Any school district required to provide  
17 such services shall thereupon be granted regular apportionment of  
18 state and county school funds and, in addition, allocations from  
19 state excess funds made available for such special services for such  
20 period of time as such special education program is given: PROVIDED,  
21 That should such student or any other student with disabilities  
22 attend and participate in a special education program operated by  
23 another school district in accordance with the provisions of RCW  
24 28A.225.210, 28A.225.220, and/or 28A.225.250, such regular  
25 apportionment shall be granted to the receiving school district, and  
26 such receiving school district shall be reimbursed by the district in  
27 which such student resides in accordance with rules adopted by the  
28 superintendent of public instruction for the entire approved excess  
29 cost not reimbursed from such regular apportionment.

30 **Sec. 15.** RCW 28A.155.060 and 2007 c 115 s 6 are each amended to  
31 read as follows:

32 For the purpose of carrying out the provisions of (~~RCW  
33 28A.155.020 through 28A.155.050~~) this chapter, the board of  
34 directors of every school district shall be authorized to contract  
35 with agencies approved by the superintendent of public instruction  
36 for operating special education programs for students with  
37 disabilities. Approval standards for such agencies shall conform

1 substantially with those of special education programs in the common  
2 schools.

3 **Sec. 16.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to  
4 read as follows:

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

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

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

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

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

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

21 (6) Consistent with the provisions of RCW 28A.150.390,  
22 28A.160.030, and ((28A.155.010 through 28A.155.160)) this chapter,  
23 and part B of the federal individuals with disabilities education  
24 improvement act, administer administrative hearings and other  
25 procedures to ensure procedural safeguards of children with  
26 disabilities; and

27 (7) Promulgate such rules as are necessary to implement part B of  
28 the federal individuals with disabilities education improvement act  
29 or other federal law providing for special education services for  
30 children with disabilities and the several provisions of RCW  
31 28A.150.390, 28A.160.030, and ((28A.155.010 through 28A.155.160))  
32 this chapter and to ensure appropriate access to and participation in  
33 the general education curriculum and participation in statewide  
34 assessments for all students with disabilities.

35 **Sec. 17.** RCW 28A.155.100 and 2007 c 115 s 12 are each amended to  
36 read as follows:

37 The superintendent of public instruction is hereby authorized and  
38 directed to establish appropriate sanctions to be applied to any

1 school district of the state failing to comply with the provisions of  
2 RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.060 and  
3 (~~28A.155.080 through 28A.155.160~~) this chapter to be applied  
4 beginning upon the effective date thereof, which sanctions shall  
5 include withholding of any portion of state aid to such district  
6 until such time as compliance is assured.

7 **Sec. 18.** RCW 28A.155.140 and 2007 c 115 s 14 are each amended to  
8 read as follows:

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

17 NEW SECTION. **Sec. 19.** Sections 1 through 9 of this act are each  
18 added to chapter 28A.155 RCW.

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