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**HOUSE BILL 1305**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Pollet, Stonier, Ortiz-Self, Alvarado, Orwall, Leavitt, Senn, Bergquist, Bateman, Taylor, Reeves, Davis, Doglio, Santos, Reed, Kloba, and Fosse

Read first time 01/13/23. Referred to Committee on Education.

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.** The definition in this section applies  
8 throughout this chapter unless the context clearly requires  
9 otherwise.

10 "Business day" means Monday through Friday, except for federal  
11 holidays and school holidays as defined in RCW 28A.150.050, including  
12 days that no students are in attendance at school for instructional  
13 purposes.

14 NEW SECTION. **Sec. 2.** (1) If the parent of a student makes a  
15 request for the student to be evaluated for a disability or for  
16 eligibility for special education services, a school district must  
17 provide the parent with a document describing the referral request  
18 and initial special education evaluation processes, including  
19 relevant deadlines and parental consent requirements. The document

1 must be based on the template created as required under section 3 of  
2 this act.

3 (2) Within 15 business days after receipt of a referral request  
4 for special education services, a school district must decide whether  
5 to conduct an initial evaluation to determine whether the student is  
6 eligible for special education services.

7 (3) Within five business days after making its evaluation  
8 decision under subsection (2) of this section, a school district must  
9 notify the parent of the referred student of the district's decision,  
10 using multiple communication channels.

11 (4) If a school district has decided to evaluate the student for  
12 special education services, the school district must comply with the  
13 following procedures and deadlines for obtaining parental consent to  
14 evaluate, for evaluating the student, and for the eligibility  
15 determination:

16 (a) If the parent of the student requested an evaluation of the  
17 student as part of a referral request for special education services,  
18 then the parent is presumed to have consented to the evaluation and  
19 the school district must conduct an evaluation and determine whether  
20 the student is eligible for special education services within 25  
21 business days, except as provided in rule, of making its evaluation  
22 decision under subsection (2) of this section; or

23 (b) If someone other than the parent of the student made the  
24 referral request for special education services or if the parent of  
25 the student did not specifically request an evaluation of the student  
26 as part of a referral request, then the school district must:

27 (i) At the same time as it makes the notification under  
28 subsection (3) of this section, provide the student's parent with a  
29 document describing how and when to provide parental consent to  
30 evaluate. The document must be based on the template created as  
31 required under section 3 of this act; and

32 (ii) Within 25 business days, except as provided in rule, of  
33 receiving a parent's written or oral consent to evaluate the student,  
34 conduct an evaluation and determine whether the student is eligible  
35 for special education services.

36 (5) When enrolling a student who has attended school in another  
37 school district and who was referred for an initial evaluation for  
38 special education services but who does not have an individualized  
39 education program, the receiving school district must continue the

1 process of determining the student's eligibility for special  
2 education services where the transferring school district stopped.

3 NEW SECTION. **Sec. 3.** The office of the superintendent of public  
4 instruction shall collaborate with the office of the education ombuds  
5 to create a template for school districts to use to meet the  
6 requirement in section 2 (1) and (4) of this section related to  
7 providing initial special education evaluation process information to  
8 parents. The template must be translated as for limited English  
9 proficient parent groups described in section 7(2) of this act. The  
10 template and its translations must be made publicly available on the  
11 website of the office of the superintendent of public instruction.

12 NEW SECTION. **Sec. 4.** (1) With regard to parent participation in  
13 individualized education program team meetings, a school district  
14 must provide prior notification to parents about the accommodations  
15 available for persons with disabilities who are in need of  
16 communication assistance or accommodations to fully participate in  
17 the meeting, including the option to record audio under certain  
18 circumstances. Examples of "persons with disabilities who are in need  
19 of communication assistance or accommodations" are persons with  
20 hearing or speech disabilities and persons with limited English  
21 proficiency.

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

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

36 (4) Administrative and legal staff whose presence at an  
37 individualized education program team meeting does not serve the  
38 educational needs of a student are barred from attending the meeting.

1        NEW SECTION.        **Sec. 5.**        Within 30 calendar days of the  
2 determination that a student is eligible for special education  
3 services, a school district must have held an initial individualized  
4 education program team meeting and commenced provision of special  
5 education and related services in accordance with the student's  
6 individualized education program.

7        NEW SECTION.        **Sec. 6.**        (1) School districts may use oral  
8 interpreter services, written translation services, and other  
9 language access services available for contract through the  
10 department of enterprise services to comply with Title II of the  
11 Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et  
12 seq., and Title IV of the civil rights act of 1964, 42 U.S.C. Sec.  
13 2000d, et seq.

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

18        NEW SECTION.        **Sec. 7.**        (1) The school district has the burden of  
19 proof and the burden of production whenever it is a party to a due  
20 process hearing regarding the identification of, evaluation of,  
21 reevaluation of, classification of, educational placement of,  
22 disciplinary action of, or provision of a free appropriate public  
23 education to, a student with a disability.

24        (2) In a due process hearing, evidence showing that a student has  
25 not failed or been retained in a course or grade, and is advancing  
26 from grade to grade, does not create the presumption that the school  
27 has provided the student with a free appropriate public education as  
28 required by the federal individuals with disabilities education act,  
29 20 U.S.C. Sec. 1400 et seq.

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

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

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

4 (b) "Qualified interpreter" has the same meaning as in RCW  
5 28A.183.010.

6 NEW SECTION. **Sec. 8.** (1) In order to improve their  
7 instructional program for students who are blind, have low vision,  
8 are deaf, or are hard of hearing, school districts are authorized to  
9 enter into consultation and service agreements with the state school  
10 for the blind and the Washington center for deaf and hard of hearing  
11 youth.

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

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

20 NEW SECTION. **Sec. 9.** (1) Any public entity in Washington  
21 responsible for providing special education, related services, or  
22 both to students with disabilities in accordance with part B of the  
23 federal individuals with disabilities education act, 20 U.S.C. Sec.  
24 1400 et seq., must comply with the provisions of this chapter to the  
25 same extent as school districts.

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

33 NEW SECTION. **Sec. 10.** (1) Subject to the availability of  
34 amounts appropriated for this specific purpose, the office of the  
35 superintendent of public instruction shall distribute up to  
36 \$10,000,000 per biennium to educational service districts for the  
37 purpose of making school psychologists and other providers with

1 expertise in each category of disability under part B of the federal  
2 individuals with disabilities education act, 20 U.S.C. Sec. 1400 et  
3 seq., available to conduct initial special education evaluations and  
4 reevaluations for special education.

5 (2) Each educational service district must determine its regional  
6 need for special education evaluators as described in subsection (1)  
7 of this section. At the time and in the manner required by the office  
8 of the superintendent of public instruction, each educational service  
9 district shall submit a proposal describing its regional need and  
10 requesting funding to address that need.

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

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

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

18 (1) When enrolling a student who has attended school in another  
19 school district, the school enrolling the student may request the  
20 parent and the student to briefly indicate in writing whether or not  
21 the student has:

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

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

24 (c) Any history of violent behavior, or behavior listed in RCW  
25 13.04.155;

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

27 (e) Any health conditions affecting the student's educational  
28 needs.

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

38 (3) Upon request, school districts shall furnish a set of  
39 unofficial educational records to a parent or guardian of a student

1 who is transferring out of state and who meets the definition of a  
2 child of a military family in transition under Article II of RCW  
3 28A.705.010. School districts may charge the parent or guardian the  
4 actual cost of providing the copies of the records.

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

19 (5) Any school district or district employee who releases the  
20 information in compliance with federal and state law is immune from  
21 civil liability for damages unless it is shown that the school  
22 district or district employee acted with gross negligence or in bad  
23 faith.

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

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

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

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

8 **Sec. 12.** RCW 28A.155.010 and 2007 c 115 s 1 are each amended to  
9 read as follows:

10 It is the purpose of RCW (~~(28A.155.010 through 28A.155.160,)~~)  
11 28A.160.030(~~(7)~~) and 28A.150.390 and this chapter to ensure that all  
12 children with disabilities as defined in RCW 28A.155.020 shall have  
13 the opportunity for an appropriate education at public expense as  
14 guaranteed to them by the Constitution of this state and applicable  
15 federal laws.

16 **Sec. 13.** RCW 28A.155.020 and 2015 c 206 s 2 are each amended to  
17 read as follows:

18 There is established in the office of the superintendent of  
19 public instruction an administrative section or unit for the  
20 education of children with disabilities who require special  
21 education.

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

25 In accordance with part B of the federal individuals with  
26 disabilities education improvement act and any other federal or state  
27 laws relating to the provision of special education services, the  
28 superintendent of public instruction shall require each school  
29 district in the state to insure an appropriate educational  
30 opportunity for all children with disabilities between the ages of  
31 three and twenty-one, but when the twenty-first birthday occurs  
32 during the school year, the educational program may be continued  
33 until the end of that school year. The superintendent of public  
34 instruction, by rule, shall establish for the purpose of excess cost  
35 funding, as provided in RCW 28A.150.390, 28A.160.030, and  
36 (~~(28A.155.010 through 28A.155.160)~~) this chapter, functional  
37 definitions of special education, the various types of disabling  
38 conditions, and eligibility criteria for special education programs



1 for children with disabilities, including referral procedures, use of  
2 positive behavior interventions, the education curriculum and  
3 statewide or district-wide assessments, parent and district requests  
4 for special education due process hearings, and procedural  
5 safeguards. For the purposes of (~~RCW 28A.155.010 through~~  
6 ~~28A.155.160~~) this chapter, an appropriate education is defined as an  
7 education directed to the unique needs, abilities, and limitations of  
8 the children with disabilities who are enrolled either full time or  
9 part time in a school district. School districts are strongly  
10 encouraged to provide parental training in the care and education of  
11 the children and to involve parents in the classroom.

12 Nothing in this section shall prohibit the establishment or  
13 continuation of existing cooperative programs between school  
14 districts or contracts with other agencies approved by the  
15 superintendent of public instruction, which can meet the obligations  
16 of school districts to provide education for children with  
17 disabilities, or prohibit the continuation of needed related services  
18 to school districts by the department of social and health services.

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

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

23 The board of directors of each school district, for the purpose  
24 of compliance with the provisions of RCW 28A.150.390, 28A.160.030,  
25 and (~~28A.155.010 through 28A.155.160 and~~) chapter 28A.190 RCW and  
26 this chapter, shall cooperate with the superintendent of public  
27 instruction and with the administrative officer and shall provide an  
28 appropriate educational opportunity to children with disabilities, as  
29 defined in RCW 28A.155.020, in regular or special school facilities  
30 within the district or shall contract for such services with other  
31 agencies as provided in RCW 28A.155.060 or shall participate in an  
32 interdistrict arrangement in accordance with RCW 28A.335.160 and  
33 28A.225.220 and/or 28A.225.250 and 28A.225.260.

34 In carrying out their responsibilities under this chapter, school  
35 districts severally or jointly with the approval of the  
36 superintendent of public instruction are authorized to support and/or  
37 contract for residential schools and/or homes approved by the  
38 department of social and health services for aid and special  
39 attention to students with disabilities.

1 The cost of board and room in facilities approved by the  
2 department of social and health services shall be provided by the  
3 department of social and health services for those students with  
4 disabilities eligible for such aid under programs of the department.  
5 The cost of approved board and room shall be provided for those  
6 students with disabilities not eligible under programs of the  
7 department of social and health services but deemed in need of the  
8 same by the superintendent of public instruction: PROVIDED, That no  
9 school district shall be financially responsible for special  
10 education programs for students who are attending residential schools  
11 operated by the department of social and health services: PROVIDED  
12 FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and  
13 (~~28A.155.010 through 28A.155.100~~) this chapter shall not preclude  
14 the extension by the superintendent of public instruction of special  
15 education opportunities to students with disabilities in residential  
16 schools operated by the department of social and health services.

17 **Sec. 15.** RCW 28A.155.050 and 2007 c 115 s 5 are each amended to  
18 read as follows:

19 Any child who is eligible for special education services through  
20 special excess cost aid programs authorized under (~~RCW 28A.155.010~~  
21 ~~through 28A.155.160~~) this chapter shall be given such services in  
22 the least restrictive environment as determined by the student's  
23 individualized education program (IEP) team in the school district in  
24 which such student resides. Any school district required to provide  
25 such services shall thereupon be granted regular apportionment of  
26 state and county school funds and, in addition, allocations from  
27 state excess funds made available for such special services for such  
28 period of time as such special education program is given: PROVIDED,  
29 That should such student or any other student with disabilities  
30 attend and participate in a special education program operated by  
31 another school district in accordance with the provisions of RCW  
32 28A.225.210, 28A.225.220, and/or 28A.225.250, such regular  
33 apportionment shall be granted to the receiving school district, and  
34 such receiving school district shall be reimbursed by the district in  
35 which such student resides in accordance with rules adopted by the  
36 superintendent of public instruction for the entire approved excess  
37 cost not reimbursed from such regular apportionment.

1       **Sec. 16.** RCW 28A.155.060 and 2007 c 115 s 6 are each amended to  
2 read as follows:

3       For the purpose of carrying out the provisions of ((RCW  
4 ~~28A.155.020 through 28A.155.050~~) this chapter, the board of  
5 directors of every school district shall be authorized to contract  
6 with agencies approved by the superintendent of public instruction  
7 for operating special education programs for students with  
8 disabilities. Approval standards for such agencies shall conform  
9 substantially with those of special education programs in the common  
10 schools.

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

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

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

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

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

23       (4) Assist, upon request, the parent or guardian of any child  
24 with disabilities in the placement of any child with disabilities who  
25 is eligible for but not receiving special educational services for  
26 children with disabilities;

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

29       (6) Consistent with the provisions of RCW 28A.150.390,  
30 28A.160.030, and ((~~28A.155.010 through 28A.155.160~~) this chapter,  
31 and part B of the federal individuals with disabilities education  
32 improvement act, administer administrative hearings and other  
33 procedures to ensure procedural safeguards of children with  
34 disabilities; and

35       (7) Promulgate such rules as are necessary to implement part B of  
36 the federal individuals with disabilities education improvement act  
37 or other federal law providing for special education services for  
38 children with disabilities and the several provisions of RCW  
39 28A.150.390, 28A.160.030, and ((~~28A.155.010 through 28A.155.160~~))

1 this chapter and to ensure appropriate access to and participation in  
2 the general education curriculum and participation in statewide  
3 assessments for all students with disabilities.

4 **Sec. 18.** RCW 28A.155.100 and 2007 c 115 s 12 are each amended to  
5 read as follows:

6 The superintendent of public instruction is hereby authorized and  
7 directed to establish appropriate sanctions to be applied to any  
8 school district of the state failing to comply with the provisions of  
9 RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.060 and  
10 (~~28A.155.080 through 28A.155.160~~) this chapter to be applied  
11 beginning upon the effective date thereof, which sanctions shall  
12 include withholding of any portion of state aid to such district  
13 until such time as compliance is assured.

14 **Sec. 19.** RCW 28A.155.140 and 2007 c 115 s 14 are each amended to  
15 read as follows:

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

24 NEW SECTION. **Sec. 20.** Sections 1 through 10 of this act are  
25 each added to chapter 28A.155 RCW.

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