
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5315

State of Washington

68th Legislature

2023 Regular Session

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

READ FIRST TIME 02/23/23.

1 AN ACT Relating to nonpublic agencies operating special education
2 programs for students with disabilities; amending RCW 28A.155.090,
3 28A.155.060, 28A.155.210, 28A.600.485, and 28A.310.515; adding a new
4 section to chapter 28A.155 RCW; and declaring an emergency.

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

6 **Sec. 1.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to
7 read as follows:

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

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

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

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

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

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

3 (6) Establish standards for approving, monitoring, and
4 investigating nonpublic agencies that contract with school districts
5 to provide special education programs for students with disabilities
6 as described in RCW 28A.155.060. Standards shall ensure that any
7 student served by a nonpublic agency has the same rights and
8 protections that they would have if served by a school district;

9 (7) Consistent with the provisions of RCW 28A.150.390,
10 28A.160.030, and 28A.155.010 through 28A.155.160, and part B of the
11 federal individuals with disabilities education improvement act,
12 administer administrative hearings and other procedures to ensure
13 procedural safeguards of children with disabilities; and

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

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

24 (1) For the purpose of carrying out the provisions of RCW
25 28A.155.020 through 28A.155.050, the board of directors of every
26 school district shall be authorized to contract with nonpublic
27 agencies approved by the superintendent of public instruction for
28 operating special education programs for students with disabilities.
29 Approval standards for such nonpublic agencies shall conform
30 substantially with those of special education programs in the common
31 schools. For purposes of this section, a "nonpublic agency" means a
32 private in-state or any out-of-state agency that contracts with a
33 school district to provide a program of special education for
34 students with disabilities, and includes the subcategory of
35 "nonpublic agency school" which means a Washington state private
36 school approved by the state board of education under RCW 28A.305.130
37 that contracts with a school district to provide a program of special
38 education for students with disabilities.

1 (2) (a) The office of the superintendent of public instruction
2 must create an application process to approve nonpublic agencies that
3 contract with school districts to provide special education services
4 to students with disabilities. Nonpublic agency schools may be
5 approved for a period of up to five years and all other nonpublic
6 agencies may be approved for a period of up to three years.

7 (b) To qualify for approval a nonpublic agency must, at a
8 minimum, meet the following requirements:

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

11 (ii) Obtain approval by the state board of education to operate
12 as a private school or, for nonpublic agencies that operate a program
13 of education within a nonschool facility, comply with facility
14 licensing requirements;

15 (iii) Employ or contract with at least one certificated teacher
16 with a special education endorsement, other certificated teachers who
17 meet state standards, and related services staff that meet the state
18 licensing requirements for their profession;

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

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

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

31 (vii) Maintain a policy of nondiscrimination and provide
32 procedural safeguards for students eligible for special education
33 services and their families.

34 (c) Before approving an application under this section, the
35 office of the superintendent of public instruction must conduct an
36 on-site visit to ensure that a nonpublic agency's facilities,
37 staffing levels, and procedural safeguards are sufficient to provide
38 a safe and appropriate learning environment.

1 (d) The office of the superintendent of public instruction may
2 suspend, revoke, or refuse to renew its approval of a nonpublic
3 agency if the nonpublic agency:

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

7 (ii) Violates the rights of students eligible for special
8 education services; or

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

11 (e) The office of the superintendent of public instruction must
12 notify the state board of education if any nonpublic agency school is
13 investigated for noncompliance, is directed to complete corrective
14 action, or fails to maintain approval under this section.

15 (f)(i) The office of the superintendent of public instruction
16 must develop and publish on its website a complaint process for
17 individuals to report noncompliance or violations of student rights
18 at nonpublic agencies.

19 (ii) The office of the superintendent of public instruction must
20 use the complaint process to identify and address patterns of
21 misconduct at nonpublic agencies, including issuing corrective action
22 or revoking approval under this section.

23 (3)(a) A school district that chooses to contract with an
24 approved nonpublic agency as authorized under this section must
25 develop a written contract to establish the responsibilities of the
26 school district and nonpublic agency and set forth the rights of
27 students receiving special education services. The contract must
28 include, at a minimum, the following elements:

29 (i) The names of the parties involved and the name of the student
30 or students;

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

32 (iii) A description of the services to be provided, including
33 access to state learning standards;

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

36 (v) Acknowledgment that the nonpublic agency has a list of each
37 qualified staff member providing special education services and a
38 copy of the license or credential that qualifies each staff member to
39 provide those services;

1 (vi) Acknowledgment that the school district and nonpublic agency
2 have clearly established their respective responsibilities and
3 processes for data collection and reporting for students;

4 (vii) Acknowledgment that the nonpublic agency must comply with
5 isolation and restraint procedures as provided in RCW 28A.600.485;

6 (viii) Acknowledgment that the nonpublic agency must notify the
7 school district and the office of the superintendent of public
8 instruction of any program, staffing, or facility changes that may
9 affect the agency's ability to provide contracted services;

10 (ix) Acknowledgment that the nonpublic agency must comply with
11 all relevant state and federal laws that are applicable to the school
12 district; and

13 (x) Acknowledgment that the school district must provide the
14 office of the superintendent of public instruction with the
15 opportunity to review the contract and related documentation upon
16 request.

17 (b) A school district must conduct an annual on-site visit to
18 ensure that a nonpublic agency's facilities, staffing levels, and
19 procedural safeguards are sufficient to provide a safe and
20 appropriate learning environment and meet the unique needs of the
21 student being served.

22 (c) A school district remains responsible for ensuring that the
23 student being served is:

24 (i) Provided a free appropriate public education;

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

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

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

35 (d) A school district must provide the following documents to the
36 parents or guardians of the student being served by the nonpublic
37 agency:

38 (i) A summary of the school district and nonpublic agency's
39 responsibilities and processes for reporting incidents of isolation
40 and restraint under RCW 28A.600.485; and

1 (ii) A copy of the complaint procedure in subsection (2)(f) of
2 this section.

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

5 A ~~((school that is required to develop an))~~ student's
6 individualized education program ((as required by federal law)) must
7 include ~~((within the plan))~~ procedures for notification of a parent
8 or guardian regarding the use of restraint or isolation. If a student
9 is served by a nonpublic agency, the student's individualized
10 education program must also specify any additional procedures
11 required to ensure the nonpublic agency fully complies with RCW
12 28A.600.485.

13 **Sec. 4.** RCW 28A.600.485 and 2015 c 206 s 3 are each amended to
14 read as follows:

15 (1) The definitions in this subsection apply throughout this
16 section unless the context clearly requires otherwise.

17 (a) "Isolation" means restricting the student alone within a room
18 or any other form of enclosure, from which the student may not leave.
19 It does not include a student's voluntary use of a quiet space for
20 self-calming, or temporary removal of a student from his or her
21 regular instructional area to an unlocked area for purposes of
22 carrying out an appropriate positive behavior intervention plan.

23 (b) "Restraint" means physical intervention or force used to
24 control a student, including the use of a restraint device to
25 restrict a student's freedom of movement. It does not include
26 appropriate use of a prescribed medical, orthopedic, or therapeutic
27 device when used as intended, such as to achieve proper body
28 position, balance, or alignment, or to permit a student to safely
29 participate in activities.

30 (c) "Restraint device" means a device used to assist in
31 controlling a student, including but not limited to metal handcuffs,
32 plastic ties, ankle restraints, leather cuffs, other hospital-type
33 restraints, pepper spray, tasers, or batons. Restraint device does
34 not mean a seat harness used to safely transport students. This
35 section shall not be construed as encouraging the use of these
36 devices.

1 (d) "School" means a public school as defined in RCW 28A.150.010
2 or a nonpublic agency that contracts with a school district as
3 authorized under RCW 28A.155.060.

4 (2) The provisions of this section apply to all students,
5 including those who have an individualized education program or plan
6 developed under section 504 of the rehabilitation act of 1973. The
7 provisions of this section apply only to incidents of restraint or
8 isolation that occur while a student is participating in school-
9 sponsored instruction or activities.

10 (3)(a) An individualized education program or plan developed
11 under section 504 of the rehabilitation act of 1973 must not include
12 the use of restraint or isolation as a planned behavior intervention
13 unless a student's individual needs require more specific advanced
14 educational planning and the student's parent or guardian agrees. All
15 other plans may refer to the district policy developed under
16 subsection (3)(b) of this section. Nothing in this section is
17 intended to limit the provision of a free appropriate public
18 education under Part B of the federal individuals with disabilities
19 education improvement act or section 504 of the federal
20 rehabilitation act of 1973.

21 (b) Restraint or isolation of any student is permitted only when
22 reasonably necessary to control spontaneous behavior that poses an
23 imminent likelihood of serious harm(~~(, as defined in RCW~~
24 ~~70.96B.010)~~). Restraint or isolation must be closely monitored to
25 prevent harm to the student, and must be discontinued as soon as the
26 likelihood of serious harm has dissipated. Each school district shall
27 adopt a policy providing for the least amount of restraint or
28 isolation appropriate to protect the safety of students and staff
29 under such circumstances.

30 (4) Following the release of a student from the use of restraint
31 or isolation, the school must implement follow-up procedures. These
32 procedures must include: (a) Reviewing the incident with the student
33 and the parent or guardian to address the behavior that precipitated
34 the restraint or isolation and the appropriateness of the response;
35 and (b) reviewing the incident with the staff member who administered
36 the restraint or isolation to discuss whether proper procedures were
37 followed and what training or support the staff member needs to help
38 the student avoid similar incidents.

39 (5) Any school employee, resource officer, or school security
40 officer who uses isolation or restraint on a student during school-

1 sponsored instruction or activities must inform the building
2 administrator or building administrator's designee as soon as
3 possible, and within two business days submit a written report of the
4 incident to the district office. The written report must include, at
5 a minimum, the following information:

6 (a) The date and time of the incident;

7 (b) The name and job title of the individual who administered the
8 restraint or isolation;

9 (c) A description of the activity that led to the restraint or
10 isolation;

11 (d) The type of restraint or isolation used on the student,
12 including the duration;

13 (e) Whether the student or staff was physically injured during
14 the restraint or isolation incident and any medical care provided;
15 and

16 (f) Any recommendations for changing the nature or amount of
17 resources available to the student and staff members in order to
18 avoid similar incidents.

19 (6) The principal or principal's designee must make a reasonable
20 effort to verbally inform the student's parent or guardian within
21 (~~twenty-four~~) 24 hours of the incident, and must send written
22 notification as soon as practical but postmarked no later than five
23 business days after the restraint or isolation occurred. If the
24 school or school district customarily provides the parent or guardian
25 with school-related information in a language other than English, the
26 written report under this section must be provided to the parent or
27 guardian in that language.

28 (7)(a) Beginning January 1, 2016, and by January 1st annually,
29 each school district shall summarize the written reports received
30 under subsection (5) of this section and submit the summaries to the
31 office of the superintendent of public instruction. For each school,
32 the school district shall include the number of individual incidents
33 of restraint and isolation, the number of students involved in the
34 incidents, the number of injuries to students and staff, and the
35 types of restraint or isolation used.

36 (b) No later than (~~ninety~~) 90 days after receipt, the office of
37 the superintendent of public instruction shall publish to its website
38 the data received by the districts. The office of the superintendent
39 of public instruction may use this data to investigate the training,
40 practices, and other efforts used by schools and districts to reduce

1 the use of restraint and isolation. The office of the superintendent
2 of public instruction may also use this data to determine if a
3 nonpublic agency is in compliance with all approval standards and
4 contract obligations, as authorized in RCW 28A.155.060.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.155
6 RCW to read as follows:

7 (1) Beginning December 1, 2023, the office of the superintendent
8 of public instruction must annually submit a report to the education
9 committees of the legislature regarding student placements at
10 nonpublic agencies. A summary of the report, including a link to the
11 full report content, must also be posted on the office of the
12 superintendent of public instruction's website. The report must
13 include:

14 (a) The academic progress of students receiving special education
15 services from nonpublic agencies, using the results of the two most
16 recent state assessments;

17 (b) The graduation rates of students who have received special
18 education services from nonpublic agencies;

19 (c) The rate at which students receiving special education
20 services from nonpublic agencies return to their resident school
21 districts;

22 (d) Data on restraint and isolation incidents, discipline, and
23 attendance; and

24 (e) Any corrective action or change in a nonpublic agency's
25 approval status, as ordered by the office of the superintendent of
26 public instruction.

27 (2) The data published under subsection (1) of this section must
28 be disaggregated by nonpublic agency when it is possible to do so
29 without disclosing, directly or indirectly, a student's personally
30 identifiable information as protected under the family educational
31 rights and privacy act.

32 **Sec. 6.** RCW 28A.310.515 and 2021 c 38 s 4 are each amended to
33 read as follows:

34 (1)(a) A safety and security staff training program is
35 established. The program must be jointly developed by the educational
36 service districts, but may be administered primarily by one or more
37 educational service districts. The program must meet the requirements
38 of this section.

1 (b) When developing the safety and security staff training
2 program, the educational service districts should engage with the
3 state school safety center established in RCW 28A.300.630 and the
4 school safety and student well-being advisory committee established
5 in RCW 28A.300.635.

6 (2) The educational service districts must identify or develop
7 classroom training on the following subjects:

8 (a) Constitutional and civil rights of children in schools,
9 including state law governing search and interrogation of youth in
10 schools;

11 (b) Child and adolescent development;

12 (c) Trauma-informed approaches to working with youth;

13 (d) Recognizing and responding to youth mental health issues;

14 (e) Educational rights of students with disabilities, the
15 relationship of disability to behavior, and best practices for
16 interacting with students with disabilities;

17 (f) Bias free policing and cultural competency, including best
18 practices for interacting with students from particular backgrounds,
19 including English learner, LGBTQ, immigrant, female, and nonbinary
20 students;

21 (g) Local and national disparities in the use of force and
22 arrests of children;

23 (h) Collateral consequences of arrest, referral for prosecution,
24 and court involvement;

25 (i) Resources available in the community that serve as
26 alternatives to arrest and prosecution and pathways for youth to
27 access services without court or criminal justice involvement;

28 (j) De-escalation techniques when working with youth or groups of
29 youth;

30 (k) State law regarding restraint and isolation in schools,
31 including RCW 28A.600.485;

32 (l) The federal family educational rights and privacy act (20
33 U.S.C. Sec. 1232g) requirements including limits on access to and
34 dissemination of student records for noneducational purposes; and

35 (m) Restorative justice principles and practices.

36 (3) The educational service districts must provide, or arrange
37 for the delivery of, classroom training on the subjects listed in
38 subsection (2) of this section. At a minimum, classroom trainings on
39 each subject must be provided annually, remotely, synchronously or
40 asynchronously, and by at least one educational service district.

1 Classroom training may be provided on a fee-for-service basis and
2 should be self-supporting. Classroom training may be provided to
3 nonpublic agencies located in Washington that contract with school
4 districts to provide a program of special education to students with
5 disabilities.

6 (4) The educational service districts must provide to safety and
7 security staff, upon request, documentation that the safety and
8 security staff training series described in RCW 28A.400.345(2) has
9 been completed. Before providing this training series documentation,
10 completion of each component of the training series must be verified
11 or, in the case of safety and security staff with significant prior
12 training and experience, waived.

13 (5) The educational service districts must develop and publish
14 guidelines for on-the-job training and check-in training that include
15 recommendations for identifying and recruiting experienced safety and
16 security staff to provide the trainings, suggested activities during
17 on-the-job trainings, and best practices for meaningful check-in
18 trainings. The guidelines for check-in training must also include
19 recommended frequency, possible topics of discussion, and options for
20 connecting virtually.

21 (6) For purposes of this section, the term "safety and security
22 staff" has the same meaning as in RCW 28A.320.124.

23 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect immediately.

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