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**SECOND SUBSTITUTE SENATE BILL 5315**

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**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;

31       (vii) Meet the state education requirements for hours and days of  
32 instruction; and

33       (viii) Maintain a policy of nondiscrimination and provide  
34 procedural safeguards for students eligible for special education  
35 services and their families.

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

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.

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

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

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

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

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

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

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

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

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

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

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

38       (2) The provisions of this section apply to all students,  
39 including those who have an individualized education program or plan

1 developed under section 504 of the rehabilitation act of 1973. The  
2 provisions of this section apply only to incidents of restraint or  
3 isolation that occur while a student is participating in school-  
4 sponsored instruction or activities.

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

16 (b) Restraint or isolation of any student is permitted only when  
17 reasonably necessary to control spontaneous behavior that poses an  
18 imminent likelihood of serious harm(~~(, as defined in RCW~~  
19 ~~70.96B.010)~~). Restraint or isolation must be closely monitored to  
20 prevent harm to the student, and must be discontinued as soon as the  
21 likelihood of serious harm has dissipated. Each school district shall  
22 adopt a policy providing for the least amount of restraint or  
23 isolation appropriate to protect the safety of students and staff  
24 under such circumstances.

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

34 (5) Any school employee, resource officer, or school security  
35 officer who uses isolation or restraint on a student during school-  
36 sponsored instruction or activities must inform the building  
37 administrator or building administrator's designee as soon as  
38 possible, and within two business days submit a written report of the  
39 incident to the district office. The written report must include, at  
40 a minimum, the following information:

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

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

4 (c) A description of the activity that led to the restraint or  
5 isolation;

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

8 (e) Whether the student or staff was physically injured during  
9 the restraint or isolation incident and any medical care provided;  
10 and

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

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

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

31 (b) No later than (~~ninety~~) 90 days after receipt, the office of  
32 the superintendent of public instruction shall publish to its website  
33 the data received by the districts. The office of the superintendent  
34 of public instruction may use this data to investigate the training,  
35 practices, and other efforts used by schools and districts to reduce  
36 the use of restraint and isolation. The office of the superintendent  
37 of public instruction may also use this data to determine if a  
38 nonpublic agency is in compliance with all approval standards and  
39 contract obligations, as authorized in RCW 28A.155.060.



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

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

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

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

15        (c) The rate at which students receiving special education  
16    services from nonpublic agencies return to their resident school  
17    districts;

18        (d) Data on restraint and isolation incidents, discipline, and  
19    attendance; and

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

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

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

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

35        (b) When developing the safety and security staff training  
36    program, the educational service districts should engage with the  
37    state school safety center established in RCW 28A.300.630 and the  
38    school safety and student well-being advisory committee established  
39    in RCW 28A.300.635.

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

3 (a) Constitutional and civil rights of children in schools,  
4 including state law governing search and interrogation of youth in  
5 schools;

6 (b) Child and adolescent development;

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

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

9 (e) Educational rights of students with disabilities, the  
10 relationship of disability to behavior, and best practices for  
11 interacting with students with disabilities;

12 (f) Bias free policing and cultural competency, including best  
13 practices for interacting with students from particular backgrounds,  
14 including English learner, LGBTQ, immigrant, female, and nonbinary  
15 students;

16 (g) Local and national disparities in the use of force and  
17 arrests of children;

18 (h) Collateral consequences of arrest, referral for prosecution,  
19 and court involvement;

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

23 (j) De-escalation techniques when working with youth or groups of  
24 youth;

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

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

30 (m) Restorative justice principles and practices.

31 (3) The educational service districts must provide, or arrange  
32 for the delivery of, classroom training on the subjects listed in  
33 subsection (2) of this section. At a minimum, classroom trainings on  
34 each subject must be provided annually, remotely, synchronously or  
35 asynchronously, and by at least one educational service district.  
36 Classroom training may be provided on a fee-for-service basis and  
37 should be self-supporting. Classroom training may be provided to  
38 nonpublic agencies located in Washington that contract with school  
39 districts to provide a program of special education to students with  
40 disabilities.

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

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

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

18 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of  
20 the state government and its existing public institutions, and takes  
21 effect immediately.

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