
SENATE BILL 5315

State of Washington

68th Legislature

2023 Regular Session

By Senators C. Wilson, Billig, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, Pedersen, and Valdez; by request of Superintendent of Public Instruction

Read first time 01/12/23. Referred to Committee on Early Learning & K-12 Education.

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 approval, monitoring, and
4 investigating school district contracts with nonpublic agencies
5 operating 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 or out-of-state agency that contracts with a school district
33 to provide a program of special education for students with
34 disabilities.

35 (2) The office of the superintendent of public instruction must
36 create a master contract to govern the placement of students
37 receiving special education services with nonpublic agencies. The
38 contract must include, at a minimum:

1 (a) A description of the administrative and financial agreements
2 between the school district and the nonpublic agency to provide
3 special education services, including provisions for recordkeeping
4 and documentation of services provided to ensure that students have
5 the opportunity to make appropriate educational progress and receive
6 appropriate credit towards earning a diploma;

7 (b) A list of each qualified staff member providing special
8 education services and a copy of the license or credential that
9 qualifies each staff member to provide those services;

10 (c) A description of the financial safeguards in place to track
11 revenues and expenditures associated with contracted placements to
12 ensure that funds are used to provide special education services to
13 students;

14 (d) A description of the nonpublic agency's responsibilities and
15 processes for data collection and reporting for students;

16 (e) Acknowledgment that the nonpublic agency must comply with all
17 emergency response protocols and isolation and restraint procedures
18 as provided in each student's individualized education program and
19 RCW 28A.600.485;

20 (f) Acknowledgment that the nonpublic agency must notify the
21 school district and the office of the superintendent of public
22 instruction of any program, staffing, or facility changes that may
23 affect the agency's ability to provide contracted services; and

24 (g) Acknowledgment that the nonpublic agency must comply with all
25 relevant state and federal laws that are applicable to the school
26 district.

27 (3) The office of the superintendent of public instruction and
28 the contracting school district must conduct a joint on-site visit of
29 the nonpublic agency before approving a contract under this section,
30 and either the office of the superintendent of public instruction or
31 the contracting school district must conduct at least one on-site
32 visit annually thereafter while the contract is in effect. When
33 conducting an on-site visit, the office of the superintendent of
34 public instruction and the contracting school district must ensure
35 that all facilities, staffing levels, and procedural safeguards are
36 sufficient to provide a safe and appropriate learning environment for
37 all students served under the contract, and verify that the nonpublic
38 agency is in compliance with all contract requirements.

39 (4) The office of the superintendent of public instruction may
40 approve a contract under this section for a period of up to three

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

4 (a) Fails to comply with all contract requirements or fails to
5 maintain approval standards;

6 (b) Violates the rights of students eligible for special
7 education services; or

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

10 (5) The office of the superintendent of public instruction, in
11 consultation with school districts and other state agencies, must
12 engage in rule making to create the nonpublic agency master contract
13 and approval standards required under this section.

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

16 A ~~((school that is required to develop an))~~ student's
17 individualized education program ((as required by federal law)) must
18 include ~~((within the plan))~~ procedures for notification of a parent
19 or guardian regarding the use of restraint or isolation. If a student
20 is served by a nonpublic agency, the student's individualized
21 education program must also specify any additional procedures
22 required to ensure the nonpublic agency fully complies with RCW
23 28A.600.485.

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

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

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

34 (b) "Restraint" means physical intervention or force used to
35 control a student, including the use of a restraint device to
36 restrict a student's freedom of movement. It does not include
37 appropriate use of a prescribed medical, orthopedic, or therapeutic
38 device when used as intended, such as to achieve proper body

1 position, balance, or alignment, or to permit a student to safely
2 participate in activities.

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

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

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

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

30 (b) Restraint or isolation of any student is permitted only when
31 reasonably necessary to control spontaneous behavior that poses an
32 imminent likelihood of serious harm(~~(, as defined in RCW~~
33 ~~70.96B.010)~~). Restraint or isolation must be closely monitored to
34 prevent harm to the student, and must be discontinued as soon as the
35 likelihood of serious harm has dissipated. Each school district shall
36 adopt a policy providing for the least amount of restraint or
37 isolation appropriate to protect the safety of students and staff
38 under such circumstances.

39 (4) Following the release of a student from the use of restraint
40 or isolation, the school must implement follow-up procedures. These

1 procedures must include: (a) Reviewing the incident with the student
2 and the parent or guardian to address the behavior that precipitated
3 the restraint or isolation and the appropriateness of the response;
4 and (b) reviewing the incident with the staff member who administered
5 the restraint or isolation to discuss whether proper procedures were
6 followed and what training or support the staff member needs to help
7 the student avoid similar incidents.

8 (5) Any school employee, resource officer, or school security
9 officer who uses isolation or restraint on a student during school-
10 sponsored instruction or activities must inform the building
11 administrator or building administrator's designee as soon as
12 possible, and within two business days submit a written report of the
13 incident to the district office. The written report must include, at
14 a minimum, the following information:

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

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

18 (c) A description of the activity that led to the restraint or
19 isolation;

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

22 (e) Whether the student or staff was physically injured during
23 the restraint or isolation incident and any medical care provided;
24 and

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

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

37 (7) (a) Beginning January 1, 2016, and by January 1st annually,
38 each school district shall summarize the written reports received
39 under subsection (5) of this section and submit the summaries to the
40 office of the superintendent of public instruction. For each school,

1 the school district shall include the number of individual incidents
2 of restraint and isolation, the number of students involved in the
3 incidents, the number of injuries to students and staff, and the
4 types of restraint or isolation used.

5 (b) No later than (~~ninety~~) 90 days after receipt, the office of
6 the superintendent of public instruction shall publish to its website
7 the data received by the districts. The office of the superintendent
8 of public instruction may use this data to investigate the training,
9 practices, and other efforts used by schools and districts to reduce
10 the use of restraint and isolation. The office of the superintendent
11 of public instruction may also use this data to determine if a
12 nonpublic agency is in compliance with all contract obligations and
13 approval standards, as authorized in RCW 28A.155.060.

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

16 (1) Beginning December 1, 2023, the office of the superintendent
17 of public instruction must annually submit a report to the education
18 committees of the legislature regarding student placements at
19 nonpublic agencies. A summary of the report, including a link to the
20 full report content, must also be posted on the office of the
21 superintendent of public instruction's website. The report must
22 include:

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

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

28 (c) The rate at which students receiving special education
29 services from nonpublic agencies return to their resident school
30 districts;

31 (d) Data on restraint and isolation incidents, discipline, and
32 attendance; and

33 (e) Any corrective action or change in a nonpublic agency's
34 contract approval status, as ordered by the office of the
35 superintendent of public instruction.

36 (2) The data published under subsection (1) of this section must
37 be disaggregated by nonpublic agency when it is possible to do so
38 without disclosing, directly or indirectly, a student's personally

1 identifiable information as protected under the family educational
2 rights and privacy act.

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

5 (1)(a) A safety and security staff training program is
6 established. The program must be jointly developed by the educational
7 service districts, but may be administered primarily by one or more
8 educational service districts. The program must meet the requirements
9 of this section.

10 (b) When developing the safety and security staff training
11 program, the educational service districts should engage with the
12 state school safety center established in RCW 28A.300.630 and the
13 school safety and student well-being advisory committee established
14 in RCW 28A.300.635.

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

17 (a) Constitutional and civil rights of children in schools,
18 including state law governing search and interrogation of youth in
19 schools;

20 (b) Child and adolescent development;

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

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

23 (e) Educational rights of students with disabilities, the
24 relationship of disability to behavior, and best practices for
25 interacting with students with disabilities;

26 (f) Bias free policing and cultural competency, including best
27 practices for interacting with students from particular backgrounds,
28 including English learner, LGBTQ, immigrant, female, and nonbinary
29 students;

30 (g) Local and national disparities in the use of force and
31 arrests of children;

32 (h) Collateral consequences of arrest, referral for prosecution,
33 and court involvement;

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

37 (j) De-escalation techniques when working with youth or groups of
38 youth;

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

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

6 (m) Restorative justice principles and practices.

7 (3) The educational service districts must provide, or arrange
8 for the delivery of, classroom training on the subjects listed in
9 subsection (2) of this section. At a minimum, classroom trainings on
10 each subject must be provided annually, remotely, synchronously or
11 asynchronously, and by at least one educational service district.
12 Classroom training may be provided on a fee-for-service basis and
13 should be self-supporting. Classroom training may be provided to
14 nonpublic agencies located in Washington that contract with school
15 districts to provide a program of special education to students with
16 disabilities.

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

24 (5) The educational service districts must develop and publish
25 guidelines for on-the-job training and check-in training that include
26 recommendations for identifying and recruiting experienced safety and
27 security staff to provide the trainings, suggested activities during
28 on-the-job trainings, and best practices for meaningful check-in
29 trainings. The guidelines for check-in training must also include
30 recommended frequency, possible topics of discussion, and options for
31 connecting virtually.

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

34 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of
36 the state government and its existing public institutions, and takes
37 effect immediately.

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