

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5315**

Chapter 436, Laws of 2023

68th Legislature  
2023 Regular Session

SPECIAL EDUCATION—NONPUBLIC AGENCIES

EFFECTIVE DATE: July 23, 2023

Passed by the Senate April 21, 2023  
Yeas 48 Nays 1

DENNY HECK

**President of the Senate**

Passed by the House April 20, 2023  
Yeas 96 Nays 0

Laurie Jinkins

**Speaker of the House of  
Representatives**

Approved May 11, 2023 10:04 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5315** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

**Secretary**

FILED

May 11, 2023

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5315

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

**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, and 28A.155.210; adding a new section to chapter 28A.300  
4 RCW; adding new sections to chapter 28A.155 RCW; creating new  
5 sections; and providing an expiration date.

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

7            NEW SECTION.    **Sec. 1.**    (1)(a)(i) The legislature finds that the  
8 federal individuals with disabilities education act, Title 20 U.S.C.  
9 Sec. 1400 et seq., establishes duties for the state education agency,  
10 which is the office of the superintendent of public instruction in  
11 Washington, with respect to students with disabilities who are placed  
12 in a private school or facility by a school district or other public  
13 agency as a means of providing special education and related  
14 services.

15            (ii) Since 2006, the federal implementing regulations of the  
16 federal individuals with disabilities education act have required  
17 that the office of the superintendent of public instruction ensure  
18 that a student with a disability who is placed in a private school or  
19 facility by a school district or other public agency:

1 (A) Is provided special education and related services in  
2 conformance with an individualized education program that meets the  
3 requirements of federal law and at no cost to the student's parents;

4 (B) Is provided an education that meets the standards that apply  
5 to education provided by a school district or other public agency;  
6 and

7 (C) Has all of the rights of a student with a disability who is  
8 served by a school district or other public agency.

9 (iii) Since 2006, the federal implementing regulations of the  
10 federal individuals with disabilities education act have required  
11 that the office of the superintendent of public instruction, in  
12 implementing the requirements described in (a)(ii) of this  
13 subsection:

14 (A) Monitor compliance through procedures such as written  
15 reports, on-site visits, and parent questionnaires;

16 (B) Disseminate copies of applicable standards to each private  
17 school and facility to which a school district or other public agency  
18 has placed a student with a disability; and

19 (C) Provide an opportunity for those private schools and  
20 facilities to participate in the development and revision of state  
21 standards that apply to them.

22 (iv) The federal implementing regulations of the federal  
23 individuals with disabilities education act require the state to  
24 monitor implementation of the individuals with disabilities education  
25 act to improve educational results and functional outcomes for all  
26 students with disabilities. The state must use indicators to measure  
27 school district performance, identify areas of noncompliance, and use  
28 appropriate enforcement mechanisms, such as technical assistance,  
29 corrective action, or withholding funds.

30 (b) The legislature acknowledges that it has not codified the  
31 federal requirements. Therefore, the legislature intends to codify  
32 the duty and authority of the superintendent of public instruction to  
33 establish standards for authorizing, monitoring, and investigating  
34 private schools approved by the state board of education under RCW  
35 28A.305.130, other private in-state entities, and any out-of-state  
36 entities, that contract with school districts to provide special  
37 education and related services to students with disabilities. The  
38 legislature also intends to codify the requirement that these  
39 standards must ensure that any students with disabilities placed in  
40 the authorized entities by school districts have the same rights,

1 protections, and access to special education and related services  
2 that they would have if served by school districts.

3 (2) (a) (i) The federal implementing regulations of the federal  
4 individuals with disabilities education act specify that, when a  
5 school district or other public agency has placed a student with  
6 disabilities in a private school or facility, responsibility for  
7 compliance with the federal individuals with disabilities education  
8 act remains with the school district or other public agency and with  
9 the office of the superintendent of public instruction.

10 (ii) State statute permits school districts to contract with  
11 entities authorized by the office of the superintendent of public  
12 instruction to operate special education programs for students with  
13 disabilities and specifies that the approval standards must conform  
14 substantially to those of special education programs in the school  
15 districts.

16 (iii) Rules of the office of the superintendent of public  
17 instruction specify the minimum elements of the written contract that  
18 must be made between a school district and an authorized entity. In  
19 addition, these rules specify that the school district remains  
20 responsible for ensuring that any student placed in an authorized  
21 entity is provided a free appropriate public education in conformance  
22 with the individualized education program developed by the school  
23 district.

24 (b) The legislature intends to codify the responsibilities of  
25 school districts placing students with disabilities in authorized  
26 entities, including specifying minimum contract and parent  
27 notification requirements.

28 (3) In addition, the legislature intends to ensure accountability  
29 is properly exercised and shared by directing the state auditor to  
30 conduct a performance audit of the system for overseeing the  
31 authorized entities that provide special education services to  
32 students with disabilities, as well as requiring school districts  
33 contracting with these authorized entities to report concerns about  
34 education overbilling to the office of the superintendent of public  
35 instruction and the office of the state auditor.

36 **Sec. 2.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to  
37 read as follows:

1 The superintendent of public instruction shall have the duty and  
2 authority, through the administrative section or unit for the  
3 education of children with (~~(disabling conditions)~~) disabilities, to:

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

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

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

11 (4) Assist, upon request, the parent or guardian of any child  
12 with disabilities in the placement of any child with disabilities who  
13 is eligible for but not receiving special educational services for  
14 children with disabilities;

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

17 (6) Establish standards for authorizing, monitoring, and  
18 investigating private schools approved by the state board of  
19 education under RCW 28A.305.130, other private in-state entities, and  
20 any out-of-state entities, that contract with school districts under  
21 RCW 28A.155.060 to provide special education and related services to  
22 children with disabilities. The standards must ensure that any  
23 children with disabilities placed in authorized entities by school  
24 districts have the same rights, protections, and access to special  
25 education and related services that they would have if served by a  
26 school district;

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

32 (~~((7))~~) (8) Promulgate such rules as are necessary to implement  
33 part B of the federal individuals with disabilities education  
34 improvement act or other federal law providing for special education  
35 services for children with disabilities and the several provisions of  
36 RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and  
37 to ensure appropriate access to and participation in the general  
38 education curriculum and participation in statewide assessments for  
39 all students with disabilities.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 28A.300

2    RCW to read as follows:

3        (1) The office of the superintendent of public instruction may  
4    authorize private schools approved by the state board of education  
5    under RCW 28A.305.130, other private in-state entities, and any out-  
6    of-state entities to contract with school districts under RCW  
7    28A.155.060 to provide special education and related services to  
8    students with disabilities. For authorized entities with multiple  
9    locations, the office of the superintendent of public instruction  
10   must approve each location independently.

11       (2) The office of the superintendent of public instruction shall  
12   establish a process for private schools approved by the state board  
13   of education under RCW 28A.305.130 to apply for authorization or  
14   reauthorization for a period of up to five years and for other  
15   entities to apply for authorization or reauthorization for a period  
16   of up to three years.

17       (3) To qualify for authorization or reauthorization, an applicant  
18   must, at a minimum, meet the following requirements:

19       (a) Offer a program of basic education that will provide:

20       (i) Opportunities for students to meet the goals of RCW  
21   28A.150.210, in accordance with an individual assessment of student  
22   strengths and needs as determined by the placing school districts,  
23   and any other requirements established by contract; and

24       (ii) Opportunities for students in grades nine through 12 to  
25   either meet high school graduation requirements under RCW 28A.230.090  
26   or to earn a high school equivalency certificate under RCW 28B.50.536  
27   or laws of the state in which the applicant is located;

28       (b) Maintain applicable facility licenses and applicable agency  
29   approvals of the state in which the applicant is located;

30       (c) Employ or contract with teachers and related services staff  
31   who meet the licensing requirements of the state in which the  
32   applicant is located;

33       (d) Meet applicable fire codes of the local fire marshal or the  
34   fire marshal of the state in which the applicant is located;

35       (e) Meet applicable health and safety standards of the local  
36   jurisdiction and state in which the applicant is located;

37       (f) Demonstrate through audits that the applicant is financially  
38   stable and has accounting systems that allow for separation of school  
39   district funds, including financial safeguards in place to track  
40   revenues and expenditures associated with contracted placements to

1 ensure that funds are used to provide education and related services  
2 to students placed in the authorized entity by the school district;

3 (g) Demonstrate that the applicant has procedures in place that  
4 address staff employment and contracting, including checking personal  
5 and professional references, conducting state and federal criminal  
6 background checks, and conducting regular staff evaluations that  
7 address staff competencies;

8 (h) Maintain a policy of nondiscrimination and provide procedural  
9 safeguards for students and their families; and

10 (i) Pass an on-site inspection conducted by the office of the  
11 superintendent of public instruction that confirms that the health  
12 and safety of the facilities, the staffing qualifications and levels,  
13 and the procedural safeguards are sufficient to provide a safe and  
14 appropriate learning environment for students.

15 (4) The office of the superintendent of public instruction must  
16 prohibit authorized entities from charging tuition or fees to  
17 students placed in the authorized entity by a school district.

18 (5) As used in this section, the term "authorized entity" means a  
19 private school approved by the state board of education under RCW  
20 28A.305.130, another private in-state entity, or any out-of-state  
21 entity, that has been authorized by the office of the superintendent  
22 of public instruction to contract with a school district to provide a  
23 program of special education for students with disabilities.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.155  
25 RCW to read as follows:

26 (1) On its webpage related to special education, the office of  
27 the superintendent of public instruction must develop and publish a  
28 complaint process for individuals to report noncompliance with local,  
29 state, or federal laws or violation of students rights by authorized  
30 entities. The webpage may include additional instructions for  
31 submitting complaints to the resident school district and for using  
32 the special education community complaint processes, when applicable.

33 (2) When an authorized entity notifies the office of the  
34 superintendent of public instruction about major program changes, the  
35 office shall review the changes with affected school districts to  
36 determine whether the entity remains authorized to provide contracted  
37 services.

38 (3) The office of the superintendent of public instruction must  
39 monitor and investigate authorized entities and contracting school

1 districts to ensure compliance with the requirements of RCW  
2 28A.155.060 and section 3 of this act. In completing this duty, the  
3 office of the superintendent of public instruction must use  
4 information and data gathered during on-site visits, submitted  
5 through the complaint processes, and provided by authorized entities  
6 and school districts. The office of the superintendent of public  
7 instruction must use this process to identify and address patterns of  
8 misconduct, including issuing corrective action or revoking an  
9 entity's authorization under section 3 of this act to contract with  
10 school districts.

11 (4) The office of the superintendent of public instruction may  
12 suspend, revoke, or refuse to renew the authorization of an entity  
13 under section 3 of this act if the entity:

14 (a) Fails to maintain authorization standards under section 3 of  
15 this act;

16 (b) Violates the rights of students placed in the authorized  
17 entity by a school district;

18 (c) Fails to adhere to applicable local, state, and federal laws,  
19 including health, safety, and civil rights laws;

20 (d) Fails to comply with contract requirements under RCW  
21 28A.155.060; or

22 (e) Refuses to implement any corrective actions ordered by the  
23 office of the superintendent of public instruction.

24 (5) As used in this section, "authorized entity" and "entity" has  
25 the same meaning as in section 3 of this act.

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

28 (1) The office of the superintendent of public instruction shall  
29 notify the state board of education if any private school authorized  
30 by the office of the superintendent of public instruction under  
31 section 3 of this act that is also approved by the state board of  
32 education under chapter 28A.195 RCW is investigated for  
33 noncompliance, is directed to complete corrective action, or fails to  
34 maintain authorization.

35 (2) The state board of education shall notify the office of the  
36 superintendent of public instruction of any unresolved concerns,  
37 deficiencies, or deviations related to a private school authorized by  
38 the office of the superintendent of public instruction under section



1 3 of this act that is also approved by the state board of education  
2 under chapter 28A.195 RCW.

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

5 (1) For the purpose of carrying out the provisions of RCW  
6 28A.155.020 through 28A.155.050, the board of directors of every  
7 school district shall be authorized to contract with ((agencies  
8 approved by the superintendent of public instruction for operating  
9 special education programs for students with disabilities. Approval  
10 standards for such agencies shall conform substantially with those of  
11 special education programs in the common schools)) private schools  
12 approved by the state board of education under RCW 28A.305.130, other  
13 private in-state entities, and any out-of-state entities authorized  
14 by the office of the superintendent of public instruction under  
15 section 3 of this act to provide special education and related  
16 services to students with disabilities placed in the authorized  
17 entities by school districts.

18 (2) A school district that chooses to contract with an authorized  
19 entity must enter into a written contract to establish the  
20 responsibilities of the school district and the authorized entity,  
21 and set forth the rights of students with disabilities placed in the  
22 authorized entity by the school district as a means of providing  
23 special education and related services. The contract must include, at  
24 a minimum, the following elements:

25 (a) The names of the parties involved and the name of the student  
26 placed in the authorized entity by the school district;

27 (b) The locations and settings of the education and related  
28 services to be provided;

29 (c) (i) A description of the opportunities for the student to meet  
30 a program of basic education that meets the goals of RCW 28A.150.210,  
31 in accordance with an individual assessment of student strengths and  
32 needs initially performed by the placing school districts and updated  
33 by the authorized entity; and

34 (ii) When applicable, a description of the opportunities for the  
35 student to either meet high school graduation requirements under RCW  
36 28A.230.090 or to earn a high school equivalency certificate under  
37 RCW 28B.50.536 or laws of the state in which the authorized entity is  
38 located;

1 (d) A schedule, of at least once per academic term, for the  
2 authorized entity to provide to the school district student progress  
3 reports. The progress reports must describe how the student is  
4 meeting personalized learning outcomes;

5 (e) The total contract cost and applicable charge and  
6 reimbursement systems, including billing and payment procedures;

7 (f) Acknowledgment that the authorized entity is responsible for  
8 full reimbursement to the school district of any overpayments  
9 determined to have been made by the school district;

10 (g) Acknowledgment that the authorized entity has a list of staff  
11 members providing the education and related services and a copy of  
12 the license that qualifies each staff member to provide the services;

13 (h) An agreement by the authorized entity to employ or contract  
14 with at least one licensed teacher with a special education  
15 endorsement;

16 (i) Acknowledgment that the staff of the authorized entity are  
17 regularly trained on the following topics:

18 (i) The constitutional and civil rights of students in schools;

19 (ii) Child and adolescent development;

20 (iii) Trauma-informed approaches to working with children and  
21 youth;

22 (iv) Cultural competency, diversity, equity, and inclusion,  
23 including best practices for interacting with students from  
24 particular backgrounds, including English learner, LGBTQ, immigrant,  
25 female, and nonbinary students. For the purposes of this subsection,  
26 "cultural competency," "diversity," "equity," and "inclusion" have  
27 the same meanings as in RCW 28A.415.443;

28 (v) Student isolation and restraint requirements under RCW  
29 28A.600.485;

30 (vi) The federal family educational rights and privacy act (Title  
31 20 U.S.C. Sec. 1232g) requirements including limits on access to and  
32 dissemination of student records for noneducational purposes;

33 (vii) Recognizing and responding to student mental health issues;  
34 and

35 (viii) Educational rights of students with disabilities, the  
36 relationship of disability to behavior, and best practices for  
37 interacting with students with disabilities;

38 (j) Acknowledgment that the school district and the authorized  
39 entity have clearly established their respective responsibilities and  
40 processes for student data collection and reporting;

1 (k) Acknowledgment that the authorized entity will promptly  
2 submit to the school district any complaints it receives;

3 (l) Acknowledgment that the authorized entity will submit other  
4 information required by the school district or the office of the  
5 superintendent of public instruction;

6 (m) Acknowledgment that the authorized entity must comply with  
7 student isolation and restraint requirements under RCW 28A.600.485;

8 (n) Acknowledgment that the authorized entity will notify:

9 (i) The office of the superintendent of public instruction and  
10 every school district with which it contracts of any major program  
11 changes that occur during the authorization period, including adding  
12 or eliminating services or changing the type of programs available to  
13 students;

14 (ii) The office of the superintendent of public instruction,  
15 every school district with which it contracts, and every parent or  
16 guardian of an affected student of any conditions that would affect  
17 the authorized entity's ability to continue to provide the contracted  
18 services; and

19 (iii) The office of the superintendent of public instruction and  
20 every school district with which it contracts of any complaints it  
21 receives regarding services to students, as well as any law  
22 enforcement incident reports involving the authorized entity and its  
23 enrolled students;

24 (o) Acknowledgment that the authorized entity must comply with  
25 all relevant Washington state and federal laws that are applicable to  
26 the school district; and

27 (p) Acknowledgment that the school district must provide the  
28 office of the superintendent of public instruction with the  
29 opportunity to review the contract and related documentation upon  
30 request.

31 (3) (a) A school district that contracts with an authorized entity  
32 under this section shall conduct an annual on-site visit to confirm  
33 that the health and safety of the facilities, the staffing  
34 qualifications and levels, and the procedural safeguards are  
35 sufficient to provide a safe and appropriate learning environment for  
36 students.

37 (b) A contracting school district may arrange for another school  
38 district to complete the annual on-site visit on its behalf, so long  
39 as the school district conducting the on-site visit provides a  
40 written report to the contracting school district that documents the

1 results of the on-site visit and any concerns about the learning  
2 environment.

3 (4) Each school district contracting with an authorized entity  
4 under this section shall provide the following documents to the  
5 parents or guardians of each student placed in the authorized entity  
6 by the school district:

7 (a) A summary of the school district's and the authorized  
8 entity's responsibilities and processes for reporting incidents of  
9 student isolation and restraint under RCW 28A.600.485; and

10 (b) A copy of the complaint procedure developed by the office of  
11 the superintendent of public instruction under section 4 of this act.

12 (5) Each school district contracting with an authorized entity  
13 under this section shall report to the office of the superintendent  
14 of public instruction and the office of the Washington state auditor  
15 any concerns the school district has about overbilling by the  
16 authorized entity.

17 (6) Each school district contracting with an authorized entity  
18 under this section shall remain responsible for ensuring that the  
19 students with disabilities placed in the authorized entity are:

20 (a) Provided a free appropriate public education in accordance  
21 with the federal individuals with disabilities education act, Title  
22 20 U.S.C. Sec. 1400 et seq. and this chapter;

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

28 (c) Provided with an opportunity to participate in Washington  
29 state and school district assessments.

30 (7) As used in this section, the term "authorized entity" has the  
31 same meaning as in section 3 of this act.

32 **Sec. 7.** RCW 28A.155.210 and 2013 c 202 s 3 are each amended to  
33 read as follows:

34 A ~~((school that is required to develop an))~~ student's  
35 individualized education program ((as required by federal law)) must  
36 include ~~((within the plan))~~ procedures for notification of a parent  
37 or guardian regarding the use of restraint or isolation under RCW  
38 28A.600.485. If a student is placed in an authorized entity under RCW  
39 28A.155.060, the student's individualized education program must also

1 specify any additional procedures required to ensure the authorized  
2 entity fully complies with RCW 28A.600.485.

3 NEW SECTION. **Sec. 8.** A new section is added to chapter 28A.155  
4 RCW to read as follows:

5 (1) Beginning December 1, 2023, and in compliance with RCW  
6 43.01.036, the office of the superintendent of public instruction  
7 shall annually submit a report to the education committees of the  
8 legislature regarding placements of students with disabilities at  
9 authorized entities under RCW 28A.155.060. A summary of the report,  
10 including a link to the full report content, must also be posted on  
11 the office of the superintendent of public instruction's website. The  
12 report must include:

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

16 (b) The graduation rates of students who have received special  
17 education services from authorized entities;

18 (c) The rate at which students receiving special education  
19 services from authorized entities return to their resident school  
20 districts;

21 (d) Data on student restraint and isolation incidents,  
22 discipline, and attendance at authorized entities; and

23 (e) Any corrective action or change in an entity's authorization  
24 status, as ordered by the office of the superintendent of public  
25 instruction.

26 (2) The data published under subsection (1) of this section must  
27 be disaggregated by each authorized entity when it is possible to do  
28 so without disclosing, directly or indirectly, a student's personally  
29 identifiable information as protected under the federal family  
30 educational rights and privacy act (Title 20 U.S.C. Sec. 1232g).

31 (3) As used in this section, "authorized entity" has the same  
32 meaning as in section 3 of this act.

33 NEW SECTION. **Sec. 9.** (1) The state auditor shall conduct a  
34 performance audit of the authorization, monitoring, and investigation  
35 of authorized entities and the school districts that contract with  
36 authorized entities under RCW 28A.155.060 to provide special  
37 education and related services to students with disabilities. As  
38 appropriate, the state auditor shall make recommendations for

1 improving the system for overseeing authorized entities. The state  
2 auditor may conduct the performance audit at a sample of school  
3 districts and authorized nonpublic entities as needed.

4 (2) By November 30, 2026, and in compliance with RCW 43.01.036,  
5 the state auditor shall report the performance audit's findings and  
6 recommendations to the governor and the education committees of the  
7 legislature.

8 (3) As used in this section, "authorized entity" has the same  
9 meaning as in section 3 of this act.

10 (4) This section expires August 1, 2027.

Passed by the Senate April 21, 2023.

Passed by the House April 20, 2023.

Approved by the Governor May 11, 2023.

Filed in Office of Secretary of State May 11, 2023.

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