

HOUSE BILL REPORT

E2SSB 5315

As Passed House - Amended:

April 12, 2023

Title: An act relating to nonpublic agencies operating special education programs for students with disabilities.

Brief Description: Concerning nonpublic agencies operating special education programs for students with disabilities.

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

Brief History:

Committee Activity:

Education: 3/20/23, 3/27/23 [DPA];

Appropriations: 4/1/23, 4/4/23 [DPA(APP w/o ED)].

Floor Activity:

Passed House: 4/12/23, 97-0.

Brief Summary of Engrossed Second Substitute Bill (As Amended by House)

- Expands and codifies the duties of the Superintendent of Public Instruction with regard to approving, monitoring, and investigating education centers that contract with school districts to provide special education and related services to students with disabilities placed in the education center by a school district.
- Modifies existing statutes governing "education centers" by, among other things, redefining the term and modifying approval requirements.
- Modifies the required elements of school districts and education center contracts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Requires the Office of the Superintendent of Public Instruction (OSPI) to report annually to the Legislature regarding student placements at education centers and post the report on its website.
- Directs the State Auditor to conduct a performance audit of the approval, monitoring, and investigation of education centers providing special education services and school districts that contract the education centers and to report to the Governor and the Legislature by November 30, 2026.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 15 members: Representatives Santos, Chair; Shavers, Vice Chair; Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bergquist, Callan, Eslick, Harris, McClintock, Ortiz-Self, Pollet, Sandlin, Steele, Stonier and Timmons.

Staff: Megan Wargacki (786-7194).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Education. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Springer, Steele, Stonier and Tharinger.

Staff: James Mackison (786-7104).

Background:

Responsibilities of the Superintendent of Public Instruction Related to Special Education.

In addition to its constitutional charge of supervising all matters pertaining to public schools, the Superintendent of Public Instruction (SPI) and its office has numerous and broad responsibilities prescribed in statute, including to:

- ensure an appropriate educational opportunity for all students with disabilities between the ages of 3 and 21;
- assist school districts in the formation of programs to meet the needs of students with disabilities;
- promulgate rules necessary to implement federal and state laws providing for special

- education to ensure appropriate access to and participation in the general education curriculum and participation in statewide assessments for all students with disabilities;
- employ an administrative officer to ensure that school districts provide an appropriate educational opportunity for all students with disabilities in need of special education; and
 - establish appropriate sanctions to be applied to any school district failing to comply with specified state laws related to the provision of special education services, including withholding state aid until compliance is assured.

Through its implementing regulations, the federal Individuals with Disabilities Education Act (IDEA) requires each state education agency (the Office of the Superintendent of Public Instruction in Washington) to ensure that each student with a disability who is placed in a private school or facility by a school district is provided special education in conformance with the student's individualized education program (IEP), and is provided, at no cost to the parents, an education that meets the requirements of the IDEA that apply to school districts. In addition, the Office of the Superintendent of Public Instruction (OSPI), in implementing these IDEA requirements, must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires.

Nonpublic Agencies.

State statute authorizes school district boards of directors to contract with agencies approved by the SPI for operating special education programs for students with disabilities and specifies that the approval standards must conform substantially with those of special education programs in the schools of the school districts (the "common schools").

Rules of the SPI define "nonpublic agencies" as private entities approved by the SPI that school districts can contract with to provide special education and related services to students with IEPs whose needs are not being met by their school district. Nonpublic agencies may be private elementary or secondary schools or facilities within Washington, or public or private out-of-state elementary or secondary schools or facilities.

The SPI has adopted rules governing the provision of educational services to students with disabilities in nonpublic agencies when the school district cannot provide an appropriate education for the student within the district. Among other things, these rules state:

- Each school district remains responsible for ensuring that the student is provided a free, appropriate public education, in compliance with the IDEA.
- School districts must ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student placed there.
- School districts' contracts with nonpublic agencies must describe the district responsibility and process of data collection and reporting, including data required under IDEA, student restraint and isolation reports, and student discipline data.
- The SPI may suspend, revoke, or refuse to renew its approval of a nonpublic agency

- if it violates the rights of students eligible for special education services, or if the nonpublic agency refuses to implement any corrective actions ordered by the SPI.
- After approval as a nonpublic agency, the private school or facility must provide annual review information to the SPI and school districts with whom they contract for the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.
 - The SPI may modify, substitute, add, or waive as necessary any requirements for nonpublic agency approval and provide an indication of a change to the approval requirements for any nonpublic agency on the published list of currently approved nonpublic agency.

Education Centers.

Education centers were established in statute in 1977. An "education center" is defined as a private school operated on a profit or nonprofit basis, which does the following: (1) is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation; (2) operates on a clinical, client-centered basis, including performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction, and evaluation of each individual client's progress in his or her educational program; and (3) conducts courses of instruction by professionally trained personnel certificated by the Professional Educator Standards Board. An education center is not a common school or a private school in Washington approved by the State Board of Education (SBE).

Only common school dropouts are eligible for enrollment in an education center for reimbursement by the OSPI.

The OSPI must certify education centers only upon application and: (1) determination that the applicant meets the definition of an education center; and (2) demonstration on the basis of actual educational performance of the applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program.

The certification may be withdrawn if the OSPI finds that an education center fails to provide adequate instruction in basic academic skills. "Basic academic skills" are defined to mean the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics, but does not include courses of a vocational training nature and must not include courses deemed nonessential to the accrediting or the approval of private schools by the State Board of Education.

Education centers were last provided state funding in fiscal year 2003. The OSPI is no longer certifying education centers.

Summary of Amended Bill:

Duties of the Superintendent of Public Instruction (SPI) are codified and expanded. The SPI is given the duty and authority to establish standards for approving, monitoring, and investigating education centers that contract with school districts to provide special education and related services to students with disabilities. It is specified that these standards must ensure that any students placed in education centers by school districts have the same rights, protections, and access to special education and related services that they would have if served by a school district.

Rules of the Office of the Superintendent of Public Instruction (OSPI) governing approval of and contracting with nonpublic agencies are modified and codified as described below.

Definitions.

The term "nonpublic agency" is changed to "education center." The definition of "education center" is modified to mean one of the following types of entities approved by the OSPI to contract with school districts to provide specific types of educational programs and related services to students whose needs are not being met by their resident school district: (1) a private school in Washington approved by the State Board of Education (SBE); (2) an out-of-state public or private school; or (3) a licensed facility, such as a hospital or mental health or behavioral health treatment facility. An education center is not a school of a school district (i.e. a common school).

Approval.

The OSPI may approve schools and facilities to operate as education centers for a period of up to three years. For schools and facilities with multiple locations, the OSPI must approve each location independently.

The OSPI must establish a process for schools and facilities to apply for approval to operate specific types of educational programs and related services as education centers. To qualify for approval or reapproval, an applicant must, at a minimum, meet the following requirements:

- offer a program of basic education that will provide: (1) opportunities for students to meet the four school district goals of education, in accordance with an individual assessment of student strengths and needs as determined by the placing school districts, and any other requirements established by contract; and (2) opportunities for students in grades nine through 12 to either meet Washington high school graduation requirements or earn a high school equivalency certificate;
- maintain applicable facility licenses and applicable agency approvals of the state in which the applicant is located;
- employ or contract with teachers and related services staff who meet the licensing requirements of the state in which the applicant is located;
- meet applicable fire codes of the local or state fire marshal of the state in which the applicant is located;

- meet applicable health and safety standards of the local jurisdiction and state in which the applicant is located;
- demonstrate through audits that the applicant is financially stable and has accounting systems that allow for separation of school district funds;
- demonstrate that the applicant has procedures in place that address staff employment, contracting, and evaluation;
- provide assurance that the applicant will meet all requirements applicable to education centers during the period of approval;
- maintain a policy of nondiscrimination and provide procedural safeguards for students and their families; and
- pass an on-site inspection conducted by the OSPI that confirms that the health and safety of the facilities, the staffing qualifications and levels, and the procedural safeguards are sufficient to provide a safe and appropriate learning environment for students.

Compliance Monitoring and Investigations.

On its webpage related to education centers, the OSPI must publish guidelines for individuals to report education centers for noncompliance with local, state, or federal laws or for violation of students rights. At a minimum, the guidelines must include instructions for submitting complaints to the resident school district and for using the special education community complaint processes, when applicable.

The OSPI must monitor and investigate education centers and the school districts contracting with education centers for compliance with education center requirements using data and other information submitted by school districts and education centers, information gathered during on-site visits, complaints, and other information and data.

The OSPI may suspend, revoke, or refuse to renew approval of an education center if the education center: fails to maintain approval standards; violates the rights of students placed in the education center by a school district; fails to adhere to applicable local, state, and federal laws; fails to comply with contract requirements; or refuses to implement any corrective actions ordered by the OSPI.

The OSPI must notify the SBE if any education center that is also a private school approved by the SBE is investigated for noncompliance, is directed to complete corrective action, or fails to maintain approval. The SBE must notify the OSPI of any unresolved concerns, deficiencies, or deviations related to an education center that is also a private school approved by the SBE.

Contracts.

Each school district that chooses to contract with an education center must enter into a written contract with the education center to establish the responsibilities of the school district and the education center and set forth the rights of students with disabilities placed in the education center by the school district. The contract must include 19 elements, at a

minimum, which include:

- a description of the services to be provided and the total contract cost;
- a description of the opportunities for the student to meet a program of basic education that meets the four school district goals of education, in accordance with an individual assessment of student strengths and needs initially performed by the placing school districts and updated by the education center, and when applicable, a description of the opportunities for the student to either meet Washington high school graduation requirements or earn a high school equivalency certificate;
- a schedule, of at least once per academic term, for the education center to provide to the school district student progress reports that describe how the student is meeting personalized learning outcomes;
- acknowledgement that the education center is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;
- acknowledgement that the education center has a list of staff members providing the education and related services and a copy of the license that qualifies each staff member to provide the services;
- acknowledgement that staff of the education center are regularly trained on six specified topics;
- acknowledgement that the school district and education center have clearly established their respective responsibilities and processes for student data collection and reporting;
- acknowledgement that the education center will promptly submit to the school district any complaints it receives;
- acknowledgement that the education center must comply with student isolation and restraint requirements; and
- acknowledgment that the school district must provide the OSPI with the opportunity to review the contract and related documentation upon request.

School districts contracting with an education center to provide special education and related services to students must additionally include the following elements into the written contract:

- an agreement by the education center to employ or contract with at least one licensed teacher with a special education endorsement;
- acknowledgment that the staff of the education center are regularly trained on recognizing and responding to student mental health issues and educational rights of students with disabilities, the relationship of disability to behavior, and best practices for interacting with students with disabilities; and
- acknowledgment that the education center must comply with all relevant Washington state and federal laws that are applicable to the school district.

School District Responsibilities.

School districts contracting with an education center are responsible for ensuring that the students with disabilities placed in the education center by the school district are: (1)

provided a free, appropriate public education in accordance with federal and state law; (2) provided with special education and related services at no cost to the student's parents and in conformance with an individualized education program (IEP) as required by law, including evaluations and IEP team meetings that meet all applicable requirements; and (3) provided with an opportunity to participate in Washington state and school district assessments.

School districts contracting with an education center must report to the OSPI and the Office of the State Auditor any concerns the school district has about overbilling by an education center.

School districts are directed to provide to the parents or guardians of a student being served by an education center a summary of the school district's and education center's responsibilities and processes for reporting incidents of student isolation and restraint and a copy of the school district's and the education center's complaint processes, and if applicable, instructions for accessing the OSPI's special education community complaint processes.

It is added that the IEP of a student served by an education center must specify any additional procedures required to ensure that the education center fully complies with student isolation and restraint requirements.

Education Center Responsibilities.

Rules of the OSPI directing nonpublic agencies to make certain notifications are modified and codified as follows:

- An education center must notify the OSPI and every school district with which it contracts of any major program changes that occur during the approval period, including adding or eliminating services or changing the type of programs available to students. The OSPI must review these program changes with affected school districts to determine whether the education center remains able to provide the contracted services.
- An education center must promptly notify the OSPI, every school district with which it contracts, and every parent or guardian of an affected student of any conditions that would affect the education center's ability to continue to provide the contracted services.
- An education center must promptly notify the OSPI and every school district with which it contracts of any complaints it receives regarding services to students, as well as any law enforcement incident reports involving the education center and its enrolled students.

Annual Legislative Report.

Beginning December 1, 2023, the OSPI must annually submit a report to the Legislature regarding student placements at education centers providing special education and related services to students with disabilities placed in the education center by school districts and

post the report on its website. The report must include: (1) the academic progress of students receiving special education services from education centers; (2) the graduation rates of students who have received special education services from education centers; (3) the rate at which students receiving special education services from education centers return to their resident school districts; (4) data on student restraint and isolation incidents, discipline, and attendance at education centers; and (5) any corrective action or change in an education center's approval status, as ordered by the OSPI. The data must be disaggregated by education center when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected by federal law.

Audit.

The State Auditor must conduct a performance audit of the approval, monitoring, and investigation of education centers and school districts that contract with education centers to provide special education and related services to students with disabilities placed in the education center by a school district. As appropriate, the State Auditor must make recommendations for improving the system for overseeing education centers that provide special education and related services. The State Auditor may conduct the performance audit at a sample of school districts and education centers as needed. By November 30, 2026, the State Auditor must report the performance audit's findings and recommendations to the Governor and the Legislature.

Other Provisions.

The OSPI must prohibit education centers from charging tuition or fees to students placed in the education center by a school district.

Eight education center statutes related primarily to funding of the centers and enrollment of common school dropouts are repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Education):

(In support) A recent investigation found glaring injustice that was impacting some of the most vulnerable students; the state is failing to regulate nonpublic agencies (NPAs) that provide special education services to students placed in the NPA by school districts. These NPAs receive millions of dollars from the state each year. Some of the students placed in the NPAs are regressing and some students are experiencing disproportionate rates of isolation and restraint. Students need safe spaces, materials, and supportive adults, who have professional development and the supports they need. It is on the state to change this

inadequate system. It requires the Office of the Superintendent of Public Instruction (OSPI) to establish an approval process for NPAs, complaint procedures, and direct responsibilities for school districts, including what districts must do to ensure that parents have the information they need.

Every student has a right to educational services that are safe, supportive, and provided in the general education setting in their neighborhood school. This is especially important for students served in NPAs. Students in NPAs are often fragile and traumatized. Many students have complex disabilities and are unable to communicate what happens to them at school. School districts should build capacity to serve all students inclusively.

The quality of NPAs is variable and families should have information about whether an NPA is appropriate for their student. Some private schools approved by the State Board of Education are NPAs. These schools offer safe environments for students that are an alternative to what school districts provide. The bill makes a distinction between NPA schools and NPA facilities. It is important for families to have information about NPAs and to be able to file complaints.

Expanding the OSPI's oversight will improve services provided in NPAs, including by requiring additional data collection and increasing reporting requirements. It will also include additional training for staff of NPAs. Having a single clearinghouse for complaints against NPAs is a great idea. Requiring the OSPI to conduct site visits should help to ensure there is continuity of care in NPAs.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) Every student has the right to receive education in a safe setting. The OSPI requested this bill to address the public interest in transparency for the process of approving and overseeing out-of-state nonpublic agencies. This bill expands oversight duties, including site visits. These functions need to be resourced adequately.

(Opposed) None.

(Other) There is ambiguity in how nonpublic agencies fit within the definition of "education centers" established in the prior committee's amendment. Independent schools are not clinical settings where students are diagnosed. Nonpublic agencies' sole role are to assist in the developments and implementation of individualized education programs. Removal of the amendatory language defining "education centers" would be supported.

Persons Testifying (Education): Senator Claire Wilson, prime sponsor; Ramona Hattendorf, The Arc of King County; Tania May, Office of Superintendent of Public Instruction; and Suzie Hanson, Washington Federation of Independent Schools.

Persons Testifying (Appropriations): (In support) Mikhail Cherniske, Office of Superintendent of Public Instruction.

(Other) Suzie Hanson, Washington Federation of the Independent Schools.

Persons Signed In To Testify But Not Testifying (Education): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.