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**HOUSE BILL 1404**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Vick, Stonier, Lekanoff, Steele, Pollet, Dolan, and Young

Read first time 01/27/21. Referred to Committee on Education.

1 AN ACT Relating to facilitating equity in programs for highly  
2 capable students; amending RCW 28A.185.020, 28A.185.030, 28A.185.050,  
3 28A.160.160, 28A.300.042, 28A.300.770, and 28B.10.032; adding a new  
4 section to chapter 28A.185 RCW; adding a new section to chapter  
5 28A.300 RCW; and adding a new section to chapter 28A.415 RCW.

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

7 **Sec. 1.** RCW 28A.185.020 and 2017 3rd sp.s. c 13 s 412 are each  
8 amended to read as follows:

9 ~~((1))~~) The legislature finds that, for highly capable students,  
10 access to accelerated learning and enhanced instruction is access to  
11 a basic education. There are multiple definitions of highly capable,  
12 from intellectual to academic to artistic. The research literature  
13 strongly supports using multiple criteria to identify highly capable  
14 students, and therefore, the legislature does not intend to prescribe  
15 a single method. Instead, the legislature intends to ~~((allocate~~  
16 ~~funding based on 5.0 percent of each school district's population~~  
17 ~~and))~~ authorize school districts to identify through the use of  
18 multiple, objective criteria those students most highly capable and  
19 eligible to receive accelerated learning and enhanced instruction in  
20 the program offered by the district. ~~((District practices for~~  
21 ~~identifying the most highly capable students must prioritize~~

1 equitable identification of low-income students. Access to  
2 accelerated learning and enhanced instruction through the program for  
3 highly capable students does not constitute an individual entitlement  
4 for any particular student.

5 ~~(2) Supplementary funds provided by the state for the program for  
6 highly capable students under RCW 28A.150.260 shall be categorical  
7 funding to provide services to highly capable students as determined  
8 by a school district under RCW 28A.185.030.)~~

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.185  
10 RCW to read as follows:

11 (1) The legislature intends to allocate state funding for basic  
12 education programs for highly capable students based on five percent  
13 of each school district's student population.

14 (2) Funds provided by the state for the state basic education  
15 program for highly capable students under RCW 28A.150.260 shall be  
16 categorical funding to provide services to highly capable students as  
17 determined by a school district under RCW 28A.185.030. However,  
18 school districts must use a portion of the funds provided under this  
19 subsection to deliver professional development in accordance with  
20 section 9(2) of this act.

21 (3) Funds provided by the state for student transportation to and  
22 from school includes transportation to and from programs for highly  
23 capable students as defined in RCW 28A.160.160, and must be expended  
24 in accordance with chapter 28A.160 RCW.

25 (4) Subject to the availability of amounts appropriated for this  
26 specific purpose, each school district must conduct universal  
27 screenings in accordance with RCW 28A.185.030 to find students who  
28 need further assessment for potential gifted program placement.

29 **Sec. 3.** RCW 28A.185.030 and 2009 c 380 s 4 are each amended to  
30 read as follows:

31 ~~((Local))~~ (1) School districts may establish and operate, either  
32 separately or jointly, programs for highly capable students. Such  
33 authority shall include the right to employ and pay special  
34 instructors and to operate such programs jointly with a public  
35 institution of higher education. ~~((Local))~~

36 (2) School districts ~~((which))~~ that establish and operate  
37 programs for highly capable students shall adopt identification  
38 procedures and provide educational opportunities as follows:

1        ~~((1))~~ (a) In accordance with rules adopted by the  
2 superintendent of public instruction, school districts shall  
3 implement procedures for ~~((nomination))~~ referral, screening,  
4 assessment ~~((and))~~, selection, and placement of their most highly  
5 capable students. ~~((Nominations shall))~~

6        (i) Referrals must be based upon data from teachers, other staff,  
7 parents, students, and members of the community.

8        (ii) Subject to the availability of amounts appropriated for this  
9 specific purpose, each school district must conduct universal  
10 screenings for each student at least once, in or before second and  
11 sixth grade, to find students who need further assessment to  
12 determine whether the student is eligible for potential placement in  
13 a program for highly capable students. The district must use a  
14 portion of the funds appropriated to provide the screenings within  
15 the school day and at the school the student attends.

16        (iii) Assessments ~~((shall))~~ for highly capable program services  
17 must be based upon a review of each student's capability as shown by  
18 multiple criteria intended to reveal, from a wide variety of sources  
19 and data, each student's unique needs and capabilities. Assessments  
20 must be conducted within the school day and at the school the student  
21 attends.

22        (iv) Selection and placements shall be made by a ~~((broadly based~~  
23 ~~committee of professionals,))~~ multidisciplinary selection committee  
24 after consideration of the results of the multiple criteria  
25 assessment. The committee members must have at least five hours of  
26 course work or professional development addressing the needs and  
27 characteristics of highly capable students. Students selected  
28 pursuant to procedures outlined in this section shall be provided, to  
29 the extent feasible, an educational opportunity that takes into  
30 account each student's unique needs and capabilities, and the limits  
31 of the resources and program options available to the district,  
32 including those options that can be developed or provided using funds  
33 allocated by the superintendent of public instruction for that  
34 specific purpose.

35        (b) In addition to the criteria listed in (a) of this subsection,  
36 district practices for identifying the most highly capable students  
37 must prioritize equitable identification of low-income students.

38        ~~((2))~~ (3) When a student, including a student who is a child of  
39 a military family in transition, has been assessed or enrolled as

1 highly capable by a sending school, the receiving school shall  
2 initially honor placement of the student into a like program.

3 (a) The receiving school shall determine whether the district's  
4 program is a like program when compared to the sending school's  
5 program; and

6 (b) The receiving school may conduct subsequent assessments to  
7 determine appropriate placement and continued enrollment in the  
8 program.

9 ~~((3) Students selected pursuant to procedures outlined in this  
10 section shall be provided, to the extent feasible, an educational  
11 opportunity which takes into account each student's unique needs and  
12 capabilities and the limits of the resources and program options  
13 available to the district, including those options which can be  
14 developed or provided by using funds allocated by the superintendent  
15 of public instruction for that purpose.))~~

16 (4) Access to accelerated learning and enhanced instruction  
17 through a program for highly capable students does not constitute an  
18 individual entitlement for any particular student.

19 (5) For a student who is a child of a military family in  
20 transition, the definitions in Article II of RCW 28A.705.010 apply to  
21 subsection ~~((2))~~ (3) of this section.

22 **Sec. 4.** RCW 28A.185.050 and 2002 c 234 s 1 are each amended to  
23 read as follows:

24 (1) In order to ensure that school districts are meeting the  
25 requirements of an approved program for highly capable students, the  
26 superintendent of public instruction shall monitor highly capable  
27 programs at least once every five years. Monitoring shall begin  
28 during the 2002-03 school year.

29 (2) Any program review and monitoring under this section may be  
30 conducted concurrently with other program reviews and monitoring  
31 conducted by the office of the superintendent of public instruction.  
32 In its review, the office shall monitor program components that  
33 include but need not be limited to the process used by the district  
34 to identify and reach out to highly capable students with diverse  
35 talents and from diverse backgrounds, assessment data and other  
36 indicators to determine how well the district is meeting the academic  
37 needs of highly capable students, and district expenditures used to  
38 enrich or expand opportunities for these students.

1       (3) Beginning June 30, 2003, and every five years thereafter, the  
2 office of the superintendent of public instruction shall submit a  
3 report to the education committees of the house of representatives  
4 and the senate that provides the following:

5       (a) A brief description of the various instructional programs  
6 offered to highly capable students; and

7       (b) Relevant data to the programs for highly capable students  
8 collected under RCW 28A.300.042.

9       (4) The superintendent of public instruction may adopt rules  
10 under chapter 34.05 RCW to implement this section.

11       **Sec. 5.** RCW 28A.160.160 and 2009 c 548 s 305 are each amended to  
12 read as follows:

13       For purposes of RCW 28A.160.150 through 28A.160.190, except where  
14 the context shall clearly indicate otherwise, the following  
15 definitions apply:

16       (1) "Eligible student" means any student served by the  
17 transportation program of a school district or compensated for  
18 individual transportation arrangements authorized by RCW 28A.160.030  
19 whose route stop is outside the walk area for a student's school,  
20 except if the student to be transported is disabled under RCW  
21 28A.155.020 and is either not ambulatory or not capable of protecting  
22 his or her own welfare while traveling to or from the school or  
23 agency where special education services are provided, in which case  
24 no mileage distance restriction applies.

25       (2) "Superintendent" means the superintendent of public  
26 instruction.

27       (3) (a) "To and from school" means the transportation of students  
28 for the following purposes:

29       ~~((a))~~ (i) Transportation to and from route stops and schools;

30       ~~((b))~~ (ii) Transportation to and from schools pursuant to an  
31 interdistrict agreement pursuant to RCW 28A.335.160;

32       ~~((c))~~ (iii) Transportation of students between schools and  
33 learning centers for instruction specifically required by statute;  
34 ~~(and~~

35       ~~(d))~~ (iv) Transportation to and from programs for students  
36 enrolled in programs for highly capable students. School districts  
37 may not require parents to provide transportation of highly capable  
38 students to and from programs for highly capable students; and

1       (v) Transportation of students with disabilities to and from  
2 schools and agencies for special education services.

3       (b) Academic extended day transportation for the instructional  
4 program of basic education under RCW 28A.150.220 shall be considered  
5 part of transportation of students "to and from school" for the  
6 purposes of this section. Transportation for field trips may not be  
7 considered part of transportation of students "to and from school"  
8 under this section.

9       (4) "Transportation services" for students living within the walk  
10 area includes the coordination of walk-to-school programs, the  
11 funding of crossing guards, and matching funds for local and state  
12 transportation projects intended to mitigate hazardous walking  
13 conditions. Priority for transportation services shall be given to  
14 students in grades kindergarten through five.

15       (5) As used in this section, "walk area" means that area around a  
16 school with an adequate roadway configuration to provide students  
17 access to school with a walking distance of less than one mile.  
18 Mileage must be measured along the shortest roadway or maintained  
19 public walkway where hazardous conditions do not exist. The hazardous  
20 conditions must be documented by a process established in rule by the  
21 superintendent of public instruction and must include roadway,  
22 environmental, and social conditions. Each elementary school shall  
23 identify walk routes within the walk area.

24       **Sec. 6.** RCW 28A.300.042 and 2016 c 72 s 501 are each amended to  
25 read as follows:

26       (1) ~~((Beginning with the 2017-18 school year, and using the~~  
27 ~~phase-in provided in subsection (2) of this section,))~~ The  
28 superintendent of public instruction must collect and school  
29 districts must submit all student-level data using the United States  
30 department of education 2007 race and ethnicity reporting guidelines,  
31 including the subracial and subethnic categories within those  
32 guidelines, with the following modifications:

33       (a) Further disaggregation of the Black category to differentiate  
34 students of African origin and students native to the United States  
35 with African ancestors;

36       (b) Further disaggregation of countries of origin for Asian  
37 students;

1 (c) Further disaggregation of the White category to include  
2 subethnic categories for Eastern European nationalities that have  
3 significant populations in Washington; and

4 (d) For students who report as multiracial, collection of their  
5 racial and ethnic combination of categories.

6 (2) Beginning with the 2017-18 school year, school districts  
7 shall collect student-level data as provided in subsection (1) of  
8 this section for all newly enrolled students, including transfer  
9 students. When the students enroll in a different school within the  
10 district, school districts shall resurvey the newly enrolled students  
11 for whom subracial and subethnic categories were not previously  
12 collected. School districts may resurvey other students.

13 (3) All student data-related reports required of the  
14 superintendent of public instruction in this title must be  
15 disaggregated by at least the following subgroups of students: White,  
16 Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific  
17 Islander/Hawaiian Native, low income, highly capable, transitional  
18 bilingual, migrant, special education, and students covered by  
19 section 504 of the federal rehabilitation act of 1973, as amended (29  
20 U.S.C. Sec. 794).

21 (4) All student data-related reports prepared by the  
22 superintendent of public instruction regarding student suspensions  
23 and expulsions as required under this title are subject to  
24 disaggregation by subgroups including:

- 25 (a) Gender;
- 26 (b) Foster care;
- 27 (c) Homeless, if known;
- 28 (d) School district;
- 29 (e) School;
- 30 (f) Grade level;
- 31 (g) Behavior infraction code, including:
  - 32 (i) Bullying;
  - 33 (ii) Tobacco;
  - 34 (iii) Alcohol;
  - 35 (iv) Illicit drug;
  - 36 (v) Fighting without major injury;
  - 37 (vi) Violence without major injury;
  - 38 (vii) Violence with major injury;
  - 39 (viii) Possession of a weapon; and

1 (ix) Other behavior resulting from a short-term or long-term  
2 suspension, expulsion, or interim alternative education setting  
3 intervention;

4 (h) Intervention applied, including:

5 (i) Short-term suspension;

6 (ii) Long-term suspension;

7 (iii) Emergency expulsion;

8 (iv) Expulsion;

9 (v) Interim alternative education settings;

10 (vi) No intervention applied; and

11 (vii) Other intervention applied that is not described in this  
12 subsection (4) (h);

13 (i) Number of days a student is suspended or expelled, to be  
14 counted in half or full days; and

15 (j) Any other categories added at a future date by the data  
16 governance group.

17 (5) All student data-related reports required of the  
18 superintendent of public instruction regarding student suspensions  
19 and expulsions as required in RCW 28A.300.046 are subject to cross-  
20 tabulation at a minimum by the following:

21 (a) School and district;

22 (b) Race, low income, highly capable, special education,  
23 transitional bilingual, migrant, foster care, homeless, students  
24 covered by section 504 of the federal rehabilitation act of 1973, as  
25 amended (29 U.S.C. Sec. 794), and categories to be added in the  
26 future;

27 (c) Behavior infraction code; and

28 (d) Intervention applied.

29 (6) The K-12 data governance group shall develop the data  
30 protocols and guidance for school districts in the collection of data  
31 as required under this section, and the office of the superintendent  
32 of public instruction shall modify the statewide student data system  
33 as needed. The office of the superintendent of public instruction  
34 shall also incorporate training for school staff on best practices  
35 for collection of data (~~on student race and ethnicity~~) under this  
36 section in other training or professional development related to data  
37 provided by the office.

38 **Sec. 7.** RCW 28A.300.770 and 2018 c 266 s 105 are each amended to  
39 read as follows:



1       (1) The superintendent of public instruction must disseminate  
2 guidance on referral, screening, assessment, selection, and placement  
3 best practices for programs for highly capable students. The guidance  
4 must be regularly updated and aligned with evidence-based practices.

5       (2) The superintendent of public instruction must require school  
6 districts to have identification procedures for their highly capable  
7 programs that are clearly stated and implemented by school districts  
8 using the following criteria:

9       (a) Districts must use multiple objective criteria to identify  
10 students who are ((among)) the most highly capable. Multiple pathways  
11 for qualifications must be available and no single criterion may  
12 disqualify a student from identification;

13       (b) Highly capable selection decisions must ((be based on  
14 ~~consideration of criteria benchmarked on~~)) consider the use of local  
15 norms, but local norms may not be used as a more restrictive criteria  
16 than national norms at the same percentile;

17       (c) Subjective measures such as teacher recommendations or report  
18 card grades may not be used to screen out a student from assessment.  
19 These data points may be used alongside other criteria during  
20 selection to support identification, but may not be used to  
21 disqualify a student from being identified; and

22       (d) To the extent practicable, screening and assessments must be  
23 given in the native language of the student. If native language  
24 screening and assessments are not available, a nonverbal screening  
25 and assessment must be used.

26       ((~~(2) The superintendent of public instruction must disseminate~~  
27 ~~guidance on referral, screening, assessment, selection, and placement~~  
28 ~~best practices for highly capable programs. The guidance must be~~  
29 ~~regularly updated and aligned with evidence-based practices.~~))

30       NEW SECTION. Sec. 8. A new section is added to chapter 28A.300  
31 RCW to read as follows:

32       The superintendent of public instruction shall designate at least  
33 two full-time equivalent professional staff and at least one 0.5  
34 support staff for the following purposes:

35       (1) Providing technical assistance and guidance to school  
36 districts regarding school district programs for highly capable  
37 students; and

1 (2) Collecting and analyzing data related to school district  
2 programs for highly capable students used in the report required  
3 under RCW 28A.185.050.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 28A.415  
5 RCW to read as follows:

6 (1) School districts must use a portion of the funds provided  
7 under section 2 of this act to provide a minimum of two hours of  
8 annual professional development for principals and counselors  
9 regarding recognition of students who may qualify for programs for  
10 highly capable students, why highly capable students need special  
11 services, and the best practices for providing these services. School  
12 districts must ensure that the principals and counselors attend this  
13 mandated training.

14 (2)(a) Subject to the availability of amounts appropriated for  
15 this specific purpose, each school district must provide additional  
16 professional development.

17 (b) The professional development must include all certificated  
18 and classified instructional staff, principals, and counselors, and  
19 may include other school and school district staff.

20 (c) For teachers teaching students in a general education  
21 classroom who are also admitted to a program for highly capable  
22 students, the professional development must be job-embedded as  
23 defined in RCW 28A.415.434.

24 **Sec. 10.** RCW 28B.10.032 and 1987 c 525 s 233 are each amended to  
25 read as follows:

26 (1) The state's public and private institutions of higher  
27 education offering teacher preparation programs and school districts  
28 are encouraged to explore ways to facilitate faculty exchanges, and  
29 other cooperative arrangements, to generate increased awareness and  
30 understanding by higher education faculty of the common school  
31 teaching experience and increased awareness and understanding by  
32 common school faculty of the teacher preparation programs.

33 (2) Teacher preparation programs must include information on  
34 recognizing students who may qualify for programs for highly capable  
35 students, why highly capable students need special services, and the  
36 best practices for providing these services.

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