
Education Committee

E2SSB 5315

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 Summary of Engrossed Second Substitute Bill

- Expands and codifies duties of the Superintendent of Public Instruction with regard to approving, monitoring, and investigating nonpublic agencies that contract with school districts to provide special education programs for students with disabilities.
- Directs school districts to conduct annual on-site visits of nonpublic agencies.
- Requires the Office of the Superintendent of Public Instruction (OSPI) to develop a complaint process for reporting of noncompliance or violations of student rights at nonpublic agencies.
- Requires the OSPI to report annually to the Legislature regarding student placements at nonpublic agencies and post the report on its website.

Hearing Date: 3/20/23

Staff: Megan Wargacki (786-7194).

Background:

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

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.

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 of the state failing to comply with specified state laws related to the provision of special education services, including withholding state aid until compliance is assured.

Nonpublic Agencies.

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 individualized education programs (IEPs) whose needs are not being met by their 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.

Through its implementing regulations, the federal Individuals with Disabilities Education Act (IDEA) requires each state education agency (the SPI in Washington) to ensure that each student with a disability who is placed in or referred to a nonpublic agency by a public school is provided special education in conformance with the student's IEP, and is provided, at no cost to the parents, an education that meets the federal requirements that apply to school districts. Among other things, federal law also requires the SPI to monitor the compliance of nonpublic agencies.

State statute authorizes school district boards of directors to contract with nonpublic 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 SPI has adopted rules governing the provision of educational services to students with disabilities 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 being 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, restraint and isolation reports, and 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.
- The state must also: monitor compliance of NPA rules through procedures such as written reports, on-site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a student eligible for special education services; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

Approved Private Schools.

The State Board of Education (SBE) has numerous responsibilities prescribed in statute, including to approve private schools carrying out a program for students in kindergarten through twelfth grade.

Private schools must: (1) have health and safety inspections of the school buildings; (2) with some exceptions, provide instruction by Washington certificated teachers (or by an individual supervised by a certificated teacher or administrator who meets certain minimum qualifications); (3) meet instruction time requirements (a minimum of 180 days per year or at least 1,000 hours for students in grades 1 through 12 and 450 hours for kindergarten students); and (4) meet subject area requirements.

A private school must annually file with the SBE a statement certifying that the minimum requirements are being met, noting any deviations.

Summary of 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 nonpublic agencies that contract with school districts to provide special education programs for students with disabilities. It is specified that these standards must ensure that any student served by a nonpublic agency has the same rights and protections 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.

Definition. "Nonpublic agency" is defined to mean a private in-state or any out-of-state agency that contracts with a school district to provide a program of special education for students with disabilities, and includes the subcategory of "nonpublic agency school" which means an in-state private school approved by the State Board of Education (SBE) that contracts with a school district to provide a program of special education for students with disabilities.

Approval. The OSPI is required to create an application process to approve nonpublic agencies that contract with school districts to provide special education services to students with disabilities. Nonpublic agency schools may be approved for a period of up to five years and all other nonpublic agencies may be approved for a period of up to three years.

To qualify for approval a nonpublic agency must, at a minimum, meet the following requirements:

1. acknowledge that it can meet all contract elements described below;
2. obtain approval by the SBE to operate as a private school or, for nonpublic agencies that operate a program of education within a nonschool facility, comply with facility licensing requirements;
3. employ or contract with at least one certificated teacher with a special education endorsement, other certificated teachers who meet state standards, and related services staff that meet the state licensing requirements for their profession;
4. meet applicable fire codes of the local or state fire marshal and applicable health and safety standards;
5. demonstrate through audits that it is financially stable and has accounting systems that allow for separation of school district funds, including financial safeguards in place to track revenues and expenditures associated with contracted placements to ensure that funds are used to provide special education services to students;
6. demonstrate that it has procedures in place that address staff hiring and evaluation; and
7. maintain a policy of nondiscrimination and provide procedural safeguards for students eligible for special education services and their families.

Before approving an application, the OSPI must conduct an on-site visit to ensure that a nonpublic agency's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment.

The OSPI may suspend, revoke, or refuse to renew its approval of a nonpublic agency if the nonpublic agency: fails to maintain approval standards or fails to comply with all school district contract elements described below; violates the rights of students eligible for special education services; or refuses to implement any corrective actions ordered by the OSPI.

The OSPI must notify the SBE if any nonpublic agency school is investigated for

noncompliance, is directed to complete corrective action, or fails to maintain approval under this section.

Complaint Process. The OSPI is directed to develop and publish on its website a complaint process for individuals to report noncompliance or violations of student rights at nonpublic agencies. The OSPI must use the complaint process to identify and address patterns of misconduct at nonpublic agencies, including issuing corrective action or revoking approval under this section.

Contracts. The contract requirements for a school district that chooses to contract with an approved nonpublic agency are codified and modified. A written contract must establish the responsibilities of the school district and nonpublic agency and set forth the rights of students receiving special education services. The contract must include ten elements, at a minimum, which include:

- a description of the services to be provided and the total contract cost;
- a copy of the license or credential that qualifies each staff member to provide those services;
- acknowledgment that the nonpublic agency must comply with all relevant state and federal laws that are applicable to the school district; and
- acknowledgment that the school district must provide the OSPI with the opportunity to review the contract and related documentation upon request.

Site Visit. School districts are required to conduct an annual on-site visit to ensure that a nonpublic agency's facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment and meet the unique needs of the student being served.

School District Responsibilities. School district responsibilities for students with disabilities placed in or referred to a nonpublic agency are codified and modified. School districts are responsible for ensuring that the student being served is: (1) provided a free appropriate public education; (2) provided with special education and related services at no cost to the student's parents and in conformance with an individualized education program as required by law, including evaluations and individualized education program meetings that meet all applicable requirements; (3) provided with an opportunity to participate in state and district assessments and an opportunity to fulfill the requirements to receive a Washington state diploma; and (4) provided at least the minimum instructional hours and days that school districts are required to provide.

Isolation and Restraint. School districts are directed to provide to the parents or guardians of a student being served by a nonpublic agency a summary of the school district and nonpublic agency's responsibilities and processes for reporting incidents of student isolation and restraint and a copy of the complaint procedure.

The requirement that a nonpublic agency that contracts with a public school comply with

limitations on the use of isolation or restraint during school-sponsored instruction or activities, as well as follow-up procedures, is codified. It is added that the individualized education program of a student served by a nonpublic agency must specify any additional procedures required to ensure that the nonpublic agency fully complies with student isolation and restraint requirements. It is specified that the OSPI may use summaries of written incident reports received by school districts to determine if a nonpublic agency is in compliance with approval standards and contract obligations.

Report. Beginning December 1, 2023, the OSPI must annually submit a report to the Legislature regarding student placements at nonpublic agencies and post the report on its website. The report must include: (1) the academic progress of students receiving special education services from nonpublic agencies; (2) the graduation rates of students who have received special education services from nonpublic agencies; (3) the rate at which students receiving special education services from nonpublic agencies return to their resident school districts; data on restraint and isolation incidents, discipline, and attendance; and (4) any corrective action or change in a nonpublic agency's approval status, as ordered by the OSPI. The data must be disaggregated by nonpublic agency when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected by federal law.

Appropriation: None.

Fiscal Note: Requested on March 10, 2023.

Effective Date: The bill contains an emergency clause and takes effect immediately.