

# HOUSE BILL REPORT

## E2SSB 5315

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### As Passed House - Amended:

April 20, 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.

Passed House: 4/20/23, 96-0.

### 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 authorizing, monitoring, and investigating specified entities that contract with school districts to provide special education and related services to students with disabilities.
- Modifies the required contract elements and other responsibilities of school districts and the authorized entities.
- Requires the Office of the Superintendent of Public Instruction (OSPI) to report annually to the Legislature regarding student placements at the authorized entities and post the report on its website.

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*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.*

- Directs the State Auditor to conduct a performance audit of the authorization, monitoring, and investigation of the authorized entities and contracting school districts and to report to the Governor and the Legislature by November 30, 2026.

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## 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).

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## 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 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.

**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 authorizing, monitoring, and investigating private schools approved by the State Board of Education (SBE), other private in-state entities, and any out-of-state entities, that contract with school districts to provide special education and related services to students with disabilities (authorized entities). These standards must ensure that any students placed in authorized entities 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 nonpublic agencies are modified and codified as described below. The term "nonpublic agency" is changed to "authorized entity."

Authorization.

The OSPI may authorize private schools approved by the SBE, other private in-state entities, and any out-of-state entities to contract with school districts to provide special education and related services to students with disabilities. For authorized entities with multiple locations, the OSPI must approve each location independently.

The OSPI must establish a process for private schools approved by the SBE to apply for authorization or reauthorization for a period of up to five years and for other entities to apply for authorization or reauthorization for a period of up to three years. To qualify for authorization or reauthorization, an applicant must, at a minimum, meet the following requirements:

- offer a program of basic education that will provide opportunities for students to meet basic education goals and graduation requirements;
- 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;
- 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 special education, the OSPI must develop and publish a complaint process for individuals to report noncompliance with local, state, or federal laws or violation of students rights by authorized entities. The webpage may include additional instructions for submitting complaints to the resident school district and for using the special education community complaint processes, when applicable.

When an authorized entity notifies the OSPI about major program changes, the OSPI must review the changes with affected school districts to determine whether the entity remains authorized to provide the contracted services.

The OSPI must monitor and investigate authorized entities and contracting school districts to ensure compliance using information and data gathered during on-site visits, submitted through the complaint processes, and provided by authorized entities and school districts. The OSPI must use this process to identify and address patterns of misconduct, including issuing corrective action or revoking an entity's authorization to contract with school districts.

The OSPI may suspend, revoke, or refuse to renew the authorization of an entity if the entity: fails to maintain authorization standards; violates the rights of students placed in the authorized entity 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 private school authorized by the OSPI that is also approved by the SBE is investigated for noncompliance, is directed to complete corrective action, or fails to maintain authorization. The SBE must notify the OSPI of any unresolved concerns, deficiencies, or deviations related to a private school authorized by the OSPI that is also approved by the SBE.

#### Contracts.

A school district that chooses to contract with an authorized entity must enter into a written contract to establish the responsibilities of the school district and the authorized entity and

set forth the rights of students with disabilities placed in the authorized entity by the school district as a means of providing special education and related services. The contract must include 16 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 basic education goals and graduation requirements;
- a schedule, of at least once per academic term, for the authorized entity to provide to the school district student progress reports that describe how the student is meeting personalized learning outcomes;
- acknowledgement that the authorized entity is responsible for full reimbursement to the school district of any overpayments determined to have been made by the school district;
- acknowledgement that the authorized entity 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;
- an agreement by the authorized entity to employ or contract with at least one licensed teacher with a special education endorsement;
- acknowledgement that staff of the authorized entity are regularly trained on eight specified topics;
- acknowledgement that the school district and authorized entity have clearly established their respective responsibilities and processes for student data collection and reporting;
- acknowledgement that the authorized entity will promptly submit to the school district any complaints it receives;
- acknowledgement that the authorized entity must comply with student isolation and restraint requirements;
- acknowledgement that the authorized entity must comply with all relevant Washington state and federal laws that are applicable to the school district; and
- acknowledgement that the school district must provide the OSPI with the opportunity to review the contract and related documentation upon request.

#### Site Visits.

A school district that contracts with an authorized entity must conduct an annual on-site visit to confirm 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. A contracting school district may arrange for another school district to complete the annual on-site visit on its behalf, so long as the school district conducting the on-site visit provides a written report to the contracting school district that documents the results of the on-site visit and any concerns about the learning environment.

#### Other School District Responsibilities.

A school district contracting with an authorized entity is responsible for ensuring that the students with disabilities placed in the authorized entity 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.

A school district contracting with an authorized entity must report to the OSPI and the Office of the State Auditor any concerns the school district has about overbilling by an authorized entity.

A school district contracting with an authorized entity must provide to the parents or guardians of a student placed in the authorized entity by the school district: a summary of the school district's and authorized entity's responsibilities and processes for reporting incidents of student isolation and restraint; and a copy of the complaint procedure developed by the OSPI.

It is added that the IEP of a student placed in an authorized entity must specify any additional procedures required to ensure that the authorized entity fully complies with student isolation and restraint requirements.

#### Annual Legislative Report.

Beginning December 1, 2023, the OSPI must annually submit a report to the Legislature regarding student placements at authorized entities and post the report on its website. The report must include: (1) the academic progress of students receiving special education services from authorized entities; (2) the graduation rates of students who have received special education services from authorized entities; (3) the rate at which students receiving special education services from authorized entities return to their resident school districts; (4) data on student restraint and isolation incidents, discipline, and attendance at authorized entities; and (5) any corrective action or change in an authorized entity's authorization status, as ordered by the OSPI. The data must be disaggregated by each authorized entity when it is possible to do so without disclosing, directly or indirectly, a student's personally identifiable information as protected by federal law.

#### Performance Audit.

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

**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.