

# SENATE BILL REPORT

## SB 5315

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As of February 9, 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:** Senators Wilson, C., Billig, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, Pedersen and Valdez; by request of Superintendent of Public Instruction.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/19/23, 1/30/23 [DPS-WM, w/oRec].

Ways & Means: 2/09/23.

### Brief Summary of First Substitute Bill

- Requires the Office of the Superintendent of Public Instruction (OSPI) to establish standards for approval, monitoring, and investigating school district contracts with nonpublic agencies operating special education programs for students with disabilities.
- Requires OSPI to annually report to the Legislature regarding student placements at nonpublic agencies.
- Provides that restraint and isolation procedures and notification requirements apply to nonpublic agencies.
- Allows educational service districts to provide safety and security training to nonpublic agencies located in Washington.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

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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.*

**Majority Report:** That Substitute Senate Bill No. 5315 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Nobles, Vice Chair; Wilson, C., Vice Chair; Hunt and Pedersen.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Hawkins, Ranking Member; Dozier and McCune.

**Staff:** Alexandra Fairfortune (786-7416)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Kayla Hammer (786-7305)

**Background:** Nonpublic Agencies. If a student's special education needs cannot be met by their resident school district, the district may contract with an approved nonpublic agency (NPA) to provide a program of special education and related services. Provisions directing approval processes and oversight responsibilities reside in state rule.

*Nonpublic Agency Approval Process.* NPAs must be approved by the Office of the Superintendent of Public Instruction (OSPI) and must re-apply for approval every three years. The contracting school district must conduct an on-site visit of the nonpublic agency and submit those results in the application for approval. OSPI may conduct an independent on-site visit, if appropriate, before determining whether an application will be approved.

*School District Oversight Responsibilities.* Each school district that contracts with an NPA remains responsible for ensuring their enrolled student is provided a free appropriate public education and that the NPA is able to provide the services required to meet the unique needs of the student. A school district that places a student with an NPA must develop a written contract that includes, among other elements:

- a description of services provided, program administration, and supervision, including access to state learning standards;
- a description of the district responsibility and process of data collection and reporting for the student, including the data required under the federal Individuals with Disabilities Education Act, restraint and isolation reports to parents and OSPI, and school discipline;
- assurance that the requirements pertaining to emergency response protocols and isolation and restraint protocols are being met;
- assurance that the NPA will notify the school district or OSPI of any program changes that may affect the NPA's ability to contract, or any complaints against the NPA regarding services to students; and
- any other contract elements that may be necessary to assure compliance with state and federal rules.

*The Office of the Superintendent of Public Instruction Oversight Responsibilities.* OSPI is responsible for approving and renewing NPA contracts. OSPI must monitor compliance through written reports, on-site visits, and parent questionnaires. OSPI may suspend, revoke, or refuse to renew its approval of an NPA if the NPA fails to maintain the approval standards, violates the rights of students eligible for special education services, or refuses to implement any corrective actions ordered by OSPI. OSPI must make information regarding currently approved NPAs available on its website.

Restraint and Isolation. Restraint or isolation of any student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm. Restraint or isolation must be closely monitored to prevent harm to the student, and must be discontinued as soon as the likelihood of serious harm has dissipated. A student's individualized education program (IEP) may not include the use of restraint or isolation as a planned behavior intervention unless the student's individual needs require it and the student's parent or guardian agrees. Each student's IEP must include procedures for notification of a parent or guardian regarding the use of restraint and isolation.

Following the release of a student from the use of restraint or isolation, a school must implement the following procedures:

- review the incident with the student, parent or guardian, and staff member who administered the response;
- require the school employee, resource officer, or school security officer who used restraint or isolation to inform the building administrator as soon as possible and to submit a written report to the district office within two business days; and
- require the principal to make a reasonable effort to verbally inform the student's parent or guardian within 24 hours of the incident, and to send written notification as soon as practical but no later than five business days.

By January 1st of each year, each school district must summarize all written reports pertaining to restraint and isolation incidents and submit the summary to OSPI. The district must include the following information for each school: the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraints used. OSPI must publish this data on its website within 90 days, and may use the data to investigate the training, practices, and other efforts used by schools and districts to reduce the use of restraint and isolation.

Safety and Security Training. ESHB 1214 (2021) established a safety and security staff training program, to be jointly developed by educational services districts (ESDs). Classroom training on a variety of subjects, including state laws regarding restraint and isolation in schools, must be provided annually by at least one ESD and may be provided on a fee-for-service basis.

**Summary of Bill (First Substitute):** Nonpublic Agencies. The term "nonpublic agency" means a private in-state or out-of-state agency that contracts with a school district to

provide a program of special education. A "nonpublic agency school" is a subcategory of nonpublic agency, and means a Washington 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.

OSPI is given the duty and authority to establish standards for approval, monitoring, and investigating school district contracts with NPAs operating special education programs for students with disabilities. All standards must ensure that any student served by an NPA has the same rights and protections that they would have if served by a school district.

*Master Contract.* OSPI must create a master contract to govern the placement of students receiving special education services with NPAs. The master contract must be used by school districts to ensure uniform standards are met. A school district may adapt the master contract to include additional elements when agreed to by a nonpublic agency. The contract must include, at a minimum:

- a description of the administrative and financial agreements between the school district and the NPA, including provisions for recordkeeping and documentation of services;
- a list of each qualified staff member providing special education services and a copy of the license or credential that qualifies each staff member to provide those services;
- a description of the financial safeguards in place to track revenues and expenditures associated with contracted placements to ensure that funds are used to provide special education services;
- a description of the NPA's responsibilities and processes for data collection and reporting for students;
- acknowledgement that the NPA must comply with all emergency response protocols and isolation and restraint procedures as provided in each student's IEP;
- acknowledgement that the NPA must notify the school district and OSPI of any program, staffing, or facility changes that may affect the NPA's ability to provide contracted services; and
- acknowledgement that the NPA must comply with all relevant state and federal laws that are applicable to the school district.

OSPI, in consultation with school districts and other state agencies, must engage in rule-making to create the NPA master contract and approval standards. When developing the master contract, OSPI must seek to streamline requirements and reduce procedural redundancies, including coordinating with the SBE to align requirements for nonpublic agency schools.

*On-Site Visits.* OSPI and the contracting school district must conduct an on-site visit of the NPA within 30 days of when a student begins receiving contracted services at the NPA, and the contracting school district must conduct at least one on-site visit annually thereafter while the contract is in effect. When conducting an on-site visit, OSPI and the contracting school district must ensure that all facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment for all students served

under the contract, and verify that the NPA is in compliance with all contract requirements.

Nonpublic agency schools approved by the SBE may seek a five-year preapproval from OSPI that exempts them from on-site visit requirements from OSPI when seeking contract approval. To grant preapproval, OSPI must visit the nonpublic agency school and determine that the facilities, staffing levels, and procedural safeguards are sufficient to provide a safe and appropriate learning environment. This visit may occur independently from an application for contract approval. Preapproval status may be renewed every 5 years with a new on-site visit by OSPI.

*Contract Approval, Renewal, and Revocation.* OSPI may approve an NPA contract for up to three years. OSPI may suspend, revoke, or refuse to renew its approval of an NPA contract if the NPA fails to comply with contract requirements or maintain approval standards, violates the rights of students eligible for services, or refuses to implement any corrective actions ordered by OSPI. OSPI must notify the SBE if any nonpublic agency school is investigated for noncompliance, directed to complete corrective action, or fails to maintain contract approval.

*Reports.* Beginning December 1, 2023, OSPI must annually submit a report to the education committees of the Legislature regarding student placements at NPAs. The data published in the report must be disaggregated by NPA when it is possible to do so without disclosing a student's personally identifiable information. A summary of the report, including a link to the full report content, must be posted on the OSPI website. The report must include:

- the academic progress of students receiving special education services from NPAs, using the results of the two most recent state assessments;
- the graduation rates of student who have received special education services from NPAs;
- the rate at which students receiving special education services from NPAs return to their resident school districts; and
- data on restraint and isolation incidents, discipline, and attendance.

Restraint and Isolation. If a student is served by an NPA, the student's IEP must specify any additional procedures required to ensure the NPA fully complies with restraint and isolation procedures.

The term "school" is defined within the isolation and restraint statute to mean a public school or a nonpublic agency that contracts with a school district.

OSPI may use the summarized restraint and isolation data submitted by school districts to determine if an NPA is in compliance with all contract obligations and approval standards.

Safety and Security Training. Safety and security training provided by educational service districts may be provided to NPAs located in Washington that contract with school districts to provide a program of special education to students with disabilities.

**EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (First Substitute):**

- Defines the term "nonpublic agency school" as a subcategory of "nonpublic agency." The term means a Washington State private school approved by the State Board of Education that contracts with a school district to provide a program of special education for students with disabilities.
- Provides that the master contract developed by OSPI must be used by school districts to ensure uniform standards are met, but a school district may adapt the master contract to include additional elements when agreed to by a nonpublic agency. OSPI must seek to streamline requirements and reduce procedural redundancies, including coordinating with the SBE to align requirements for nonpublic agency schools.
- Requires OSPI to conduct an on-site visit of a nonpublic agency within 30 days of when a student begins receiving contracted services, rather than before contract approval, and eliminates the requirement that the visit be conducted jointly with the school district.
- Allows nonpublic agency schools approved by the SBE to get pre-approved for a five-year period, which exempts the schools from on-site visit requirements from OSPI during that time period. OSPI must conduct one site visit to grant such pre-approval.
- Requires OSPI to notify the SBE if any nonpublic agency school is investigated for noncompliance, directed to complete corrective action, or fails to maintain contract approval.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The Seattle Times recently published an article that spoke to what is happening to students with disabilities in places we expect them to be cared for. The investigations showed that Washington State failed to regulate these facilities. These schools receive millions of dollars every year without much oversight, and there have been complaints of abuse and lack of academic progress. Further reports indicate students are regressing, that staff are relying heavily on restraint and isolation, and that parents aren't receiving information they would receive from public schools. Every student has the right to educational services that are safe, supportive, and maximize access to general education settings. Expanding OSPI oversight for non-public agencies will better protect and serve students eligible for special education. Collaboration with OSPI provides a clearer picture for families on what is accessible to them and their



students.

CON: There is a difference between NPAs that are approved as private schools by the State Board of Education and NPAs that are not. NPAs that are also approved by the SBE go through the rigorous approval and accreditation process and are already being closely monitored, reporting to the school board and OSPI annually. Public schools are not equipped to provide the resources that students with special needs require. NPAs providing special needs educational services are equipped with highly specialized staff that would not benefit from district training. This bill requires stringent barriers that may limit the ability of NPAs to provide faith-based or other traditional support mechanisms. Adding new layers to a system that is already working will slow down its ability to serve students and take the small personal team out of the equation.

OTHER: The changes proposed are complex and demand more attention. It is appalling what happened at NW Soil and it is unacceptable that nobody with authority submitted a complaint.

**Persons Testifying (Early Learning & K-12 Education):** PRO: Senator Claire Wilson, Prime Sponsor; Ramona Hattendorf, The Arc of King County; Christopher Willis, Orting School District; Tania May, Office of Superintendent of Public Instruction; Preston Dwoskin.

CON: Julie Barrett, Conservative Ladies of Washington; Tracy McCammant, Eaton Arrowsmith - Center for Neuroeducation; Carrie Fannin, Children's Institute for Learning Differences; Dominic Jimenez, Children's Institute for Learning Differences; Jeffrey Woolley, Dartmoor Schools; Rachel Kier, Brocks Academy; Melodee Loshbaugh, Brocks Academy; Suzanne Hanson, Washington Federation of Independent Schools; Judy Colson; Debbie Teter.

OTHER: Marianne Bryan.

**Persons Signed In To Testify But Not Testifying (Early Learning & K-12 Education):**

CON: Dr. Melodee Loshbaugh, Brock's Academy.

**Staff Summary of Public Testimony (Ways & Means):** PRO: A single system should remain the same across all NPAs as stated in the bill to ensure equitable special education. There are concerns in the amended language about conducting on-site visits within 30 days of a student's placement. The language needs some adjustments between organizations so that they can continue their partnership.

**Persons Testifying (Ways & Means):** PRO: Tania May, Office of Superintendent of Public Instruction; Suzanne Hanson, Washington Federation of Independent Schools.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.