

---

**SUBSTITUTE SENATE BILL 5315**

---

**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators C. Wilson, Billig, Hasegawa, Keiser, Kuderer, Nguyen, Nobles, Pedersen, and Valdez; by request of Superintendent of Public Instruction)

READ FIRST TIME 02/01/23.

1 AN ACT Relating to nonpublic agencies operating special education  
2 programs for students with disabilities; amending RCW 28A.155.090,  
3 28A.155.060, 28A.155.210, 28A.600.485, and 28A.310.515; adding a new  
4 section to chapter 28A.155 RCW; and declaring an emergency.

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

6 **Sec. 1.** RCW 28A.155.090 and 2007 c 115 s 11 are each amended to  
7 read as follows:

8 The superintendent of public instruction shall have the duty and  
9 authority, through the administrative section or unit for the  
10 education of children with disabling conditions, to:

11 (1) Assist school districts in the formation of programs to meet  
12 the needs of children with disabilities;

13 (2) Develop interdistrict cooperation programs for children with  
14 disabilities as authorized in RCW 28A.225.250;

15 (3) Provide, upon request, to parents or guardians of children  
16 with disabilities, information as to the special education programs  
17 for students with disabilities offered within the state;

18 (4) Assist, upon request, the parent or guardian of any child  
19 with disabilities in the placement of any child with disabilities who  
20 is eligible for but not receiving special educational services for  
21 children with disabilities;

1 (5) Approve school district and agency programs as being eligible  
2 for special excess cost financial aid to students with disabilities;

3 (6) Establish standards for approval, monitoring, and  
4 investigating school district contracts with nonpublic agencies  
5 operating special education programs for students with disabilities  
6 as described in RCW 28A.155.060. Standards shall ensure that any  
7 student served by a nonpublic agency has the same rights and  
8 protections that they would have if served by a school district;

9 (7) Consistent with the provisions of RCW 28A.150.390,  
10 28A.160.030, and 28A.155.010 through 28A.155.160, and part B of the  
11 federal individuals with disabilities education improvement act,  
12 administer administrative hearings and other procedures to ensure  
13 procedural safeguards of children with disabilities; and

14 ~~((7))~~ (8) Promulgate such rules as are necessary to implement  
15 part B of the federal individuals with disabilities education  
16 improvement act or other federal law providing for special education  
17 services for children with disabilities and the several provisions of  
18 RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.160 and  
19 to ensure appropriate access to and participation in the general  
20 education curriculum and participation in statewide assessments for  
21 all students with disabilities.

22 **Sec. 2.** RCW 28A.155.060 and 2007 c 115 s 6 are each amended to  
23 read as follows:

24 (1) For the purpose of carrying out the provisions of RCW  
25 28A.155.020 through 28A.155.050, the board of directors of every  
26 school district shall be authorized to contract with nonpublic  
27 agencies approved by the superintendent of public instruction for  
28 operating special education programs for students with disabilities.  
29 Approval standards for such nonpublic agencies shall conform  
30 substantially with those of special education programs in the common  
31 schools. For purposes of this section, a "nonpublic agency" means a  
32 private in-state or out-of-state agency that contracts with a school  
33 district to provide a program of special education for students with  
34 disabilities, and includes the subcategory of "nonpublic agency  
35 school" which means a Washington state private school approved by the  
36 state board of education under RCW 28A.305.130 that contracts with a  
37 school district to provide a program of special education for  
38 students with disabilities.

1       (2) The office of the superintendent of public instruction must  
2 create a master contract to govern the placement of students  
3 receiving special education services with nonpublic agencies. The  
4 master contract must be used by school districts to ensure uniform  
5 standards are met. A school district may adapt the master contract to  
6 include additional elements when agreed to by a nonpublic agency. The  
7 master contract must include, at a minimum:

8       (a) A description of the administrative and financial agreements  
9 between the school district and the nonpublic agency to provide  
10 special education services, including provisions for recordkeeping  
11 and documentation of services provided to ensure that students have  
12 the opportunity to make appropriate educational progress and receive  
13 appropriate credit towards earning a diploma;

14       (b) A list of each qualified staff member providing special  
15 education services and a copy of the license or credential that  
16 qualifies each staff member to provide those services;

17       (c) A description of the financial safeguards in place to track  
18 revenues and expenditures associated with contracted placements to  
19 ensure that funds are used to provide special education services to  
20 students;

21       (d) A description of the nonpublic agency's responsibilities and  
22 processes for data collection and reporting for students;

23       (e) Acknowledgment that the nonpublic agency must comply with all  
24 emergency response protocols and isolation and restraint procedures  
25 as provided in each student's individualized education program and  
26 RCW 28A.600.485;

27       (f) Acknowledgment that the nonpublic agency must notify the  
28 school district and the office of the superintendent of public  
29 instruction of any program, staffing, or facility changes that may  
30 affect the agency's ability to provide contracted services; and

31       (g) Acknowledgment that the nonpublic agency must comply with all  
32 relevant state and federal laws that are applicable to the school  
33 district.

34       (3)(a) Except as provided in (b) of this subsection, the office  
35 of the superintendent of public instruction and the contracting  
36 school district must conduct an on-site visit of the nonpublic agency  
37 within 30 days of when a student begins receiving contracted services  
38 at the nonpublic agency, and the contracting school district must  
39 conduct at least one on-site visit annually thereafter while the  
40 contract is in effect. When conducting an on-site visit, the office

1 of the superintendent of public instruction and the contracting  
2 school district must ensure that all facilities, staffing levels, and  
3 procedural safeguards are sufficient to provide a safe and  
4 appropriate learning environment for all students served under the  
5 contract, and verify that the nonpublic agency is in compliance with  
6 all contract requirements.

7 (b) Nonpublic agency schools that are approved by the state board  
8 of education under RCW 28A.305.130 may seek a five-year preapproval  
9 from the office of the superintendent of public instruction. To grant  
10 preapproval, the office of the superintendent of public instruction  
11 must visit the nonpublic agency school and determine that the  
12 facilities, staffing levels, and procedural safeguards are sufficient  
13 to provide a safe and appropriate learning environment. This visit  
14 may occur independently from an application for contract approval.  
15 Once preapproval is granted, the nonpublic agency school is exempt  
16 from on-site visit requirements from the office of the superintendent  
17 of public instruction when seeking contract approval under this  
18 section. Preapproval status may be renewed every five years with a  
19 new on-site visit by the office of the superintendent of public  
20 instruction.

21 (4) (a) The office of the superintendent of public instruction may  
22 approve a contract under this section for a period of up to three  
23 years. The office of the superintendent of public instruction may  
24 suspend, revoke, or refuse to renew its approval of a nonpublic  
25 agency contract if the nonpublic agency:

26 (i) Fails to comply with all contract requirements or fails to  
27 maintain approval standards;

28 (ii) Violates the rights of students eligible for special  
29 education services; or

30 (iii) Refuses to implement any corrective actions ordered by the  
31 office of the superintendent of public instruction.

32 (b) The superintendent of public instruction must notify the  
33 state board of education if any nonpublic agency school is  
34 investigated for noncompliance, directed to complete corrective  
35 action, or fails to maintain contract approval under this section.

36 (5) The office of the superintendent of public instruction, in  
37 consultation with school districts and other state agencies, must  
38 engage in rule making to create the master contract and approval  
39 standards required under this section. When developing the master  
40 contract, the office of the superintendent of public instruction must

1 seek to streamline requirements and reduce procedural redundancies,  
2 including coordinating with the state board of education to align  
3 requirements for nonpublic agency schools that are approved under RCW  
4 28A.305.130.

5 **Sec. 3.** RCW 28A.155.210 and 2013 c 202 s 3 are each amended to  
6 read as follows:

7 A (~~school that is required to develop an~~) student's  
8 individualized education program (as required by federal law) must  
9 include (~~within the plan~~) procedures for notification of a parent  
10 or guardian regarding the use of restraint or isolation. If a student  
11 is served by a nonpublic agency, the student's individualized  
12 education program must also specify any additional procedures  
13 required to ensure the nonpublic agency fully complies with RCW  
14 28A.600.485.

15 **Sec. 4.** RCW 28A.600.485 and 2015 c 206 s 3 are each amended to  
16 read as follows:

17 (1) The definitions in this subsection apply throughout this  
18 section unless the context clearly requires otherwise.

19 (a) "Isolation" means restricting the student alone within a room  
20 or any other form of enclosure, from which the student may not leave.  
21 It does not include a student's voluntary use of a quiet space for  
22 self-calming, or temporary removal of a student from his or her  
23 regular instructional area to an unlocked area for purposes of  
24 carrying out an appropriate positive behavior intervention plan.

25 (b) "Restraint" means physical intervention or force used to  
26 control a student, including the use of a restraint device to  
27 restrict a student's freedom of movement. It does not include  
28 appropriate use of a prescribed medical, orthopedic, or therapeutic  
29 device when used as intended, such as to achieve proper body  
30 position, balance, or alignment, or to permit a student to safely  
31 participate in activities.

32 (c) "Restraint device" means a device used to assist in  
33 controlling a student, including but not limited to metal handcuffs,  
34 plastic ties, ankle restraints, leather cuffs, other hospital-type  
35 restraints, pepper spray, tasers, or batons. Restraint device does  
36 not mean a seat harness used to safely transport students. This  
37 section shall not be construed as encouraging the use of these  
38 devices.

1        (d) "School" means a public school as defined in RCW 28A.150.010  
2 or a nonpublic agency that contracts with a school district as  
3 authorized under RCW 28A.155.060.

4        (2) The provisions of this section apply to all students,  
5 including those who have an individualized education program or plan  
6 developed under section 504 of the rehabilitation act of 1973. The  
7 provisions of this section apply only to incidents of restraint or  
8 isolation that occur while a student is participating in school-  
9 sponsored instruction or activities.

10       (3)(a) An individualized education program or plan developed  
11 under section 504 of the rehabilitation act of 1973 must not include  
12 the use of restraint or isolation as a planned behavior intervention  
13 unless a student's individual needs require more specific advanced  
14 educational planning and the student's parent or guardian agrees. All  
15 other plans may refer to the district policy developed under  
16 subsection (3)(b) of this section. Nothing in this section is  
17 intended to limit the provision of a free appropriate public  
18 education under Part B of the federal individuals with disabilities  
19 education improvement act or section 504 of the federal  
20 rehabilitation act of 1973.

21       (b) Restraint or isolation of any student is permitted only when  
22 reasonably necessary to control spontaneous behavior that poses an  
23 imminent likelihood of serious harm(~~(, as defined in RCW~~  
24 ~~70.96B.010)~~). Restraint or isolation must be closely monitored to  
25 prevent harm to the student, and must be discontinued as soon as the  
26 likelihood of serious harm has dissipated. Each school district shall  
27 adopt a policy providing for the least amount of restraint or  
28 isolation appropriate to protect the safety of students and staff  
29 under such circumstances.

30       (4) Following the release of a student from the use of restraint  
31 or isolation, the school must implement follow-up procedures. These  
32 procedures must include: (a) Reviewing the incident with the student  
33 and the parent or guardian to address the behavior that precipitated  
34 the restraint or isolation and the appropriateness of the response;  
35 and (b) reviewing the incident with the staff member who administered  
36 the restraint or isolation to discuss whether proper procedures were  
37 followed and what training or support the staff member needs to help  
38 the student avoid similar incidents.

39       (5) Any school employee, resource officer, or school security  
40 officer who uses isolation or restraint on a student during school-

1 sponsored instruction or activities must inform the building  
2 administrator or building administrator's designee as soon as  
3 possible, and within two business days submit a written report of the  
4 incident to the district office. The written report must include, at  
5 a minimum, the following information:

6 (a) The date and time of the incident;

7 (b) The name and job title of the individual who administered the  
8 restraint or isolation;

9 (c) A description of the activity that led to the restraint or  
10 isolation;

11 (d) The type of restraint or isolation used on the student,  
12 including the duration;

13 (e) Whether the student or staff was physically injured during  
14 the restraint or isolation incident and any medical care provided;  
15 and

16 (f) Any recommendations for changing the nature or amount of  
17 resources available to the student and staff members in order to  
18 avoid similar incidents.

19 (6) The principal or principal's designee must make a reasonable  
20 effort to verbally inform the student's parent or guardian within  
21 (~~twenty-four~~) 24 hours of the incident, and must send written  
22 notification as soon as practical but postmarked no later than five  
23 business days after the restraint or isolation occurred. If the  
24 school or school district customarily provides the parent or guardian  
25 with school-related information in a language other than English, the  
26 written report under this section must be provided to the parent or  
27 guardian in that language.

28 (7)(a) Beginning January 1, 2016, and by January 1st annually,  
29 each school district shall summarize the written reports received  
30 under subsection (5) of this section and submit the summaries to the  
31 office of the superintendent of public instruction. For each school,  
32 the school district shall include the number of individual incidents  
33 of restraint and isolation, the number of students involved in the  
34 incidents, the number of injuries to students and staff, and the  
35 types of restraint or isolation used.

36 (b) No later than (~~ninety~~) 90 days after receipt, the office of  
37 the superintendent of public instruction shall publish to its website  
38 the data received by the districts. The office of the superintendent  
39 of public instruction may use this data to investigate the training,  
40 practices, and other efforts used by schools and districts to reduce

1 the use of restraint and isolation. The office of the superintendent  
2 of public instruction may also use this data to determine if a  
3 nonpublic agency is in compliance with all contract obligations and  
4 approval standards, as authorized in RCW 28A.155.060.

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.155  
6 RCW to read as follows:

7 (1) Beginning December 1, 2023, the office of the superintendent  
8 of public instruction must annually submit a report to the education  
9 committees of the legislature regarding student placements at  
10 nonpublic agencies. A summary of the report, including a link to the  
11 full report content, must also be posted on the office of the  
12 superintendent of public instruction's website. The report must  
13 include:

14 (a) The academic progress of students receiving special education  
15 services from nonpublic agencies, using the results of the two most  
16 recent state assessments;

17 (b) The graduation rates of students who have received special  
18 education services from nonpublic agencies;

19 (c) The rate at which students receiving special education  
20 services from nonpublic agencies return to their resident school  
21 districts;

22 (d) Data on restraint and isolation incidents, discipline, and  
23 attendance; and

24 (e) Any corrective action or change in a nonpublic agency's  
25 contract approval status, as ordered by the office of the  
26 superintendent of public instruction.

27 (2) The data published under subsection (1) of this section must  
28 be disaggregated by nonpublic agency when it is possible to do so  
29 without disclosing, directly or indirectly, a student's personally  
30 identifiable information as protected under the family educational  
31 rights and privacy act.

32 **Sec. 6.** RCW 28A.310.515 and 2021 c 38 s 4 are each amended to  
33 read as follows:

34 (1)(a) A safety and security staff training program is  
35 established. The program must be jointly developed by the educational  
36 service districts, but may be administered primarily by one or more  
37 educational service districts. The program must meet the requirements  
38 of this section.



1 (b) When developing the safety and security staff training  
2 program, the educational service districts should engage with the  
3 state school safety center established in RCW 28A.300.630 and the  
4 school safety and student well-being advisory committee established  
5 in RCW 28A.300.635.

6 (2) The educational service districts must identify or develop  
7 classroom training on the following subjects:

8 (a) Constitutional and civil rights of children in schools,  
9 including state law governing search and interrogation of youth in  
10 schools;

11 (b) Child and adolescent development;

12 (c) Trauma-informed approaches to working with youth;

13 (d) Recognizing and responding to youth mental health issues;

14 (e) Educational rights of students with disabilities, the  
15 relationship of disability to behavior, and best practices for  
16 interacting with students with disabilities;

17 (f) Bias free policing and cultural competency, including best  
18 practices for interacting with students from particular backgrounds,  
19 including English learner, LGBTQ, immigrant, female, and nonbinary  
20 students;

21 (g) Local and national disparities in the use of force and  
22 arrests of children;

23 (h) Collateral consequences of arrest, referral for prosecution,  
24 and court involvement;

25 (i) Resources available in the community that serve as  
26 alternatives to arrest and prosecution and pathways for youth to  
27 access services without court or criminal justice involvement;

28 (j) De-escalation techniques when working with youth or groups of  
29 youth;

30 (k) State law regarding restraint and isolation in schools,  
31 including RCW 28A.600.485;

32 (l) The federal family educational rights and privacy act (20  
33 U.S.C. Sec. 1232g) requirements including limits on access to and  
34 dissemination of student records for noneducational purposes; and

35 (m) Restorative justice principles and practices.

36 (3) The educational service districts must provide, or arrange  
37 for the delivery of, classroom training on the subjects listed in  
38 subsection (2) of this section. At a minimum, classroom trainings on  
39 each subject must be provided annually, remotely, synchronously or  
40 asynchronously, and by at least one educational service district.

1 Classroom training may be provided on a fee-for-service basis and  
2 should be self-supporting. Classroom training may be provided to  
3 nonpublic agencies located in Washington that contract with school  
4 districts to provide a program of special education to students with  
5 disabilities.

6 (4) The educational service districts must provide to safety and  
7 security staff, upon request, documentation that the safety and  
8 security staff training series described in RCW 28A.400.345(2) has  
9 been completed. Before providing this training series documentation,  
10 completion of each component of the training series must be verified  
11 or, in the case of safety and security staff with significant prior  
12 training and experience, waived.

13 (5) The educational service districts must develop and publish  
14 guidelines for on-the-job training and check-in training that include  
15 recommendations for identifying and recruiting experienced safety and  
16 security staff to provide the trainings, suggested activities during  
17 on-the-job trainings, and best practices for meaningful check-in  
18 trainings. The guidelines for check-in training must also include  
19 recommended frequency, possible topics of discussion, and options for  
20 connecting virtually.

21 (6) For purposes of this section, the term "safety and security  
22 staff" has the same meaning as in RCW 28A.320.124.

23 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of  
25 the state government and its existing public institutions, and takes  
26 effect immediately.

--- END ---