
SENATE BILL 5775

State of Washington

60th Legislature

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By Senators Kauffman, Rasmussen, Zarelli, Berkey, Oemig, McAuliffe, Shin and Kohl-Welles

Read first time 01/31/2007. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to special education; amending RCW 28A.155.010,
2 28A.155.020, 28A.155.030, 28A.155.040, 28A.155.050, 28A.155.060,
3 28A.155.065, 28A.155.070, 28A.155.070, 28A.155.080, 28A.155.090,
4 28A.155.100, 28A.155.115, 28A.155.140, and 28A.155.160; providing an
5 effective date; and providing an expiration date.

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

7 **Sec. 1.** RCW 28A.155.010 and 1995 c 77 s 7 are each amended to read
8 as follows:

9 It is the purpose of RCW 28A.155.010 through ((28A.155.100))
10 28A.155.160, 28A.160.030, and 28A.150.390 to ensure that all children
11 with disabilities as defined in RCW 28A.155.020 shall have the
12 opportunity for an appropriate education at public expense as
13 guaranteed to them by the Constitution of this state and applicable
14 federal laws.

15 **Sec. 2.** RCW 28A.155.020 and 1995 c 77 s 8 are each amended to read
16 as follows:

17 There is established in the office of the superintendent of public

1 instruction an administrative section or unit for the education of
2 children with ~~((disabling conditions))~~ disabilities who require special
3 education.

4 ~~((Children))~~ Students with disabilities are those children whether
5 enrolled in school or ~~((out of school))~~ not who ~~((are temporarily or~~
6 ~~permanently retarded in normal educational processes by reason of~~
7 ~~physical or mental disability, or by reason of emotional maladjustment,~~
8 ~~or by reason of other disability, and those children who have specific~~
9 ~~learning and language disabilities resulting from perceptual-motor~~
10 ~~disabilities, including problems in visual and auditory perception and~~
11 ~~integration))~~ through an evaluation process are determined eligible for
12 special education due to a disability.

13 In accordance with part B of the federal individuals with
14 disabilities education improvement act and any other federal or state
15 laws relating to the provision of special education services, the
16 superintendent of public instruction shall require each school district
17 in the state to insure an appropriate educational opportunity for all
18 children with disabilities between the ages of three and twenty-one,
19 but when the twenty-first birthday occurs during the school year, the
20 educational program may be continued until the end of that school year.
21 The superintendent of public instruction, by rule, shall establish for
22 the purpose of excess cost funding, as provided in RCW 28A.150.390,
23 28A.160.030, and 28A.155.010 through ~~((28A.155.100))~~ 28A.155.160,
24 functional definitions of special education, the various types of
25 disabling conditions, and eligibility criteria for special education
26 programs for ~~((students))~~ children with disabilities, including
27 referral procedures, use of aversive interventions, the education
28 curriculum and statewide or district-wide assessments, parent and
29 district requests for special education due process hearings, and
30 procedural safeguards. For the purposes of RCW 28A.155.010 through
31 ~~((28A.155.100))~~ 28A.155.160, an appropriate education is defined as an
32 education directed to the unique needs, abilities, and limitations of
33 the children with disabilities who are enrolled either full time or
34 part time in a school district. School districts are strongly
35 encouraged to provide parental training in the care and education of
36 the children and to involve parents in the classroom.

37 Nothing in this section shall prohibit the establishment or
38 continuation of existing cooperative programs between school districts

1 or contracts with other agencies approved by the superintendent of
2 public instruction, which can meet the obligations of school districts
3 to provide education for children with disabilities, or prohibit the
4 continuation of needed related services to school districts by the
5 department of social and health services.

6 This section shall not be construed as in any way limiting the
7 powers of local school districts set forth in RCW 28A.155.070.

8 ~~((No child shall be removed from the jurisdiction of juvenile court
9 for training or education under RCW 28A.155.010 through 28A.155.100
10 without the approval of the superior court of the county.))~~

11 **Sec. 3.** RCW 28A.155.030 and 1995 c 77 s 9 are each amended to read
12 as follows:

13 The superintendent of public instruction shall ~~((appoint))~~ employ
14 an administrative officer of the division. The administrative officer,
15 under the direction of the superintendent of public instruction, shall
16 coordinate and supervise the program of special education for eligible
17 children with disabilities in the school districts of the state. He or
18 she shall ~~((cooperate with the educational service district
19 superintendents and local school district superintendents and with all
20 other interested school officials in ensuring that all))~~ ensure that
21 school districts provide an appropriate educational opportunity for all
22 children with disabilities in need of special education and related
23 services and shall ~~((cooperate))~~ coordinate with the state secretary of
24 social and health services and with county and regional officers on
25 cases where ~~((medical examination or other attention is needed))~~
26 related services are available for children with disabilities.

27 **Sec. 4.** RCW 28A.155.040 and 1995 c 77 s 10 are each amended to
28 read as follows:

29 The board of directors of each school district, for the purpose of
30 compliance with the provisions of RCW 28A.150.390, 28A.160.030, and
31 28A.155.010 through ~~((28A.155.100))~~ 28A.155.160 and chapter 28A.190
32 RCW, shall cooperate with the superintendent of public instruction and
33 with the administrative officer and shall provide an appropriate
34 educational opportunity ~~((and give other appropriate aid and special
35 attention))~~ to children with disabilities, as defined in RCW
36 28A.155.020, in regular or special school facilities within the

1 district or shall contract for such services with other agencies as
2 provided in RCW 28A.155.060 or shall participate in an interdistrict
3 arrangement in accordance with RCW 28A.335.160 and 28A.225.220 and/or
4 28A.225.250 and 28A.225.260.

5 In carrying out their responsibilities under this chapter, school
6 districts severally or jointly with the approval of the superintendent
7 of public instruction are authorized to (~~establish, operate,~~) support
8 and/or contract for residential schools and/or homes approved by the
9 department of social and health services for aid and special attention
10 to (~~children~~) students with disabilities.

11 The cost of board and room in facilities approved by the department
12 of social and health services shall be provided by the department of
13 social and health services for those students with disabilities
14 eligible for such aid under programs of the department. The cost of
15 approved board and room shall be provided for those students with
16 disabilities not eligible under programs of the department of social
17 and health services but deemed in need of the same by the
18 superintendent of public instruction: PROVIDED, That no school
19 district shall be financially responsible for special (~~aid~~) education
20 programs for students who are attending residential schools operated by
21 the department of social and health services: PROVIDED FURTHER, That
22 the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through
23 28A.155.100 shall not preclude the extension by the superintendent of
24 public instruction of special education opportunities to (~~children~~)
25 students with disabilities in residential schools operated by the
26 department of social and health services.

27 **Sec. 5.** RCW 28A.155.050 and 1995 c 77 s 11 are each amended to
28 read as follows:

29 Any child (~~who is not able to attend school and~~) who is eligible
30 for special education services through special excess cost aid programs
31 authorized under RCW 28A.155.010 through (~~28A.155.100~~) 28A.155.160
32 shall be given such (~~aid at home or at such other place~~) services in
33 the least restrictive environment as determined by the (~~board of~~
34 ~~directors of~~) student's individualized education program (IEP) team in
35 the school district in which such (~~child~~) student resides. Any
36 school district (~~within which such a child resides~~) required to
37 provide such services shall thereupon be granted regular apportionment

1 of state and county school funds and, in addition, allocations from
2 state excess funds made available for such special services for such
3 period of time as such special ~~((aid))~~ education program is given:
4 PROVIDED, That should such ~~((child))~~ student or any other ~~((child))~~
5 student with disabilities attend and participate in a special ~~((aid))~~
6 education program operated by another school district in accordance
7 with the provisions of RCW 28A.225.210, 28A.225.220, and/or
8 28A.225.250, such regular apportionment shall be granted to the
9 receiving school district, and such receiving school district shall be
10 reimbursed by the district in which such student resides in accordance
11 with rules adopted by the superintendent of public instruction for the
12 entire approved excess cost not reimbursed from such regular
13 apportionment.

14 **Sec. 6.** RCW 28A.155.060 and 2006 c 263 s 915 are each amended to
15 read as follows:

16 For the purpose of carrying out the provisions of RCW 28A.155.020
17 through 28A.155.050, the board of directors of every school district
18 shall be authorized to contract with agencies approved by the
19 superintendent of public instruction for operating special education
20 programs for students with disabilities. Approval standards for such
21 agencies shall conform substantially with those ~~((promulgated for~~
22 ~~approval))~~ of special education ~~((aid))~~ programs in the common schools.

23 **Sec. 7.** RCW 28A.155.065 and 2006 c 269 s 2 are each amended to
24 read as follows:

25 (1) By September 1, 2009, each school district shall provide or
26 contract for early intervention services to all eligible children with
27 disabilities from birth to three years of age. Eligibility shall be
28 determined according to Part C of the federal individuals with
29 disabilities education improvement act or other applicable federal and
30 state laws, and as specified in the Washington Administrative Code
31 adopted by the state lead agency. School districts shall provide or
32 contract for early intervention services in partnership with local
33 birth-to-three lead agencies and birth-to-three providers. Services
34 provided under this section shall not supplant services or funding
35 currently provided in the state for early intervention services to
36 eligible children with disabilities from birth to three years of age.

1 The state-designated birth-to-three lead agency shall be payor of last
2 resort for birth-to-three early intervention services provided under
3 this section.

4 (2) The services in this section are not part of the state's
5 program of basic education pursuant to Article IX of the state
6 Constitution.

7 **Sec. 8.** RCW 28A.155.070 and 1995 c 77 s 13 are each amended to
8 read as follows:

9 Special educational ~~((and training))~~ programs provided by the state
10 and the school districts thereof for ~~((children))~~ students with
11 disabilities may be extended to include ~~((children))~~ students of
12 preschool age. School districts which extend such special programs to
13 children of preschool age shall be entitled to the regular
14 apportionments from state and county school funds, as provided by law,
15 and in addition to allocations from state excess cost funds made
16 available for such special services for those children with
17 disabilities who are given such special services.

18 **Sec. 9.** RCW 28A.155.070 and 2006 c 269 s 3 are each amended to
19 read as follows:

20 Special educational ~~((and training))~~ programs provided by the state
21 and the school districts thereof for ~~((children))~~ students with
22 disabilities shall be extended to include ~~((children))~~ students of
23 preschool age. School districts shall be entitled to the regular
24 apportionments from state and county school funds, as provided by law,
25 and in addition to allocations from state excess cost funds made
26 available for such special services for those ~~((children))~~ students
27 with disabilities who are given such special services.

28 **Sec. 10.** RCW 28A.155.080 and 1995 c 77 s 14 are each amended to
29 read as follows:

30 Where a child with disabilities as defined in RCW 28A.155.020 has
31 been denied the opportunity of ~~((an))~~ a special educational program by
32 a local school district ~~((superintendent under the provisions of RCW
33 28A.225.010, or for any other reason there shall be an affirmative
34 showing by the school district superintendent in a writing directed to~~

1 ~~the parents or guardian of such a child within ten days of such~~
2 ~~decision that~~

3 ~~(1) No agency or other school district with whom the district may~~
4 ~~contract under RCW 28A.155.040 can accommodate such child, and~~

5 ~~(2) Such child will not benefit from an alternative educational~~
6 ~~opportunity as permitted under RCW 28A.155.050.)~~) there shall be a
7 right of appeal by the parent or guardian of such child to the
8 superintendent of public instruction pursuant to procedures established
9 by the superintendent and in accordance with RCW 28A.155.090 and part
10 B of the federal individuals with disabilities education improvement
11 act.

12 **Sec. 11.** RCW 28A.155.090 and 1995 c 77 s 15 are each amended to
13 read as follows:

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

17 (1) Assist school districts in the formation of ~~((total school))~~
18 programs to meet the needs of children with disabilities;

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

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

24 (4) Assist, upon request, the parent or guardian of any child with
25 disabilities in the placement of any child with disabilities who is
26 eligible for but not receiving special educational ~~((aid))~~ services for
27 children with disabilities;

28 (5) Approve school district and agency programs as being eligible
29 for special excess cost financial aid to ~~((children))~~ students with
30 disabilities;

31 ~~((Adjudge, upon appeal by a parent or guardian of a child with~~
32 ~~disabilities who is not receiving an educational program, whether the~~
33 ~~decision of a local school district superintendent under RCW~~
34 ~~28A.155.080 to exclude such child with disabilities was justified by~~
35 ~~the available facts and))~~ Consistent with the provisions of RCW
36 28A.150.390, 28A.160.030, and 28A.155.010 through ((28A.155.100. If
37 the superintendent of public instruction shall decide otherwise he or

1 ~~she shall apply sanctions as provided in RCW 28A.155.100 until such~~
2 ~~time as the school district assures compliance with the provisions of~~
3 ~~RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100))~~
4 28A.155.160, and part B of the federal individuals with disabilities
5 education improvement act, administer administrative hearings and other
6 procedures to ensure procedural safeguards of children with
7 disabilities; and

8 (7) Promulgate such rules as are necessary to implement part B of
9 the federal individuals with disabilities education improvement act or
10 other federal law providing for special education services for children
11 with disabilities and the several provisions of RCW 28A.150.390,
12 28A.160.030, and 28A.155.010 through ((~~28A.155.100~~)) 28A.155.160 and to
13 ensure ((~~educational opportunities within the common school system for~~
14 ~~all children with disabilities who are not institutionalized~~))
15 appropriate access to and participation in the general education
16 curriculum and participation in statewide assessments for all students
17 with disabilities.

18 **Sec. 12.** RCW 28A.155.100 and 1990 c 33 s 128 are each amended to
19 read as follows:

20 The superintendent of public instruction is hereby authorized and
21 directed to establish appropriate sanctions to be applied to any school
22 district of the state failing to comply with the provisions of RCW
23 28A.150.390, 28A.160.030, and 28A.155.010 through ((~~28A.155.100~~))
24 28A.155.060 and 28A.155.080 through 28A.155.160 to be applied beginning
25 upon the effective date thereof, which sanctions shall include
26 withholding of any portion of state aid to such district until such
27 time as compliance is assured.

28 **Sec. 13.** RCW 28A.155.115 and 1996 c 135 s 3 are each amended to
29 read as follows:

30 (1) Each student shall be assessed individually to determine the
31 appropriate learning media for the student including but not limited to
32 Braille.

33 (2) No student may be denied the opportunity for instruction in
34 Braille reading and writing solely because the student has some
35 remaining vision.

1 (3) This section does not require the exclusive use of Braille if
2 there are other special education services to meet the student's
3 educational needs. The provision of special education or other
4 services does not preclude Braille use or instruction.

5 (4) If a student's individualized learning media assessment
6 indicates that Braille is an appropriate learning medium, instruction
7 in Braille shall be provided as a part of such student's educational
8 curriculum and if such student has an individualized education program,
9 such instruction shall be provided as part of that program.

10 (5) If Braille will not be provided to a student, the reason for
11 not incorporating it in the student's individualized education program
12 shall be documented in ~~((such plan))~~ writing and provided to the parent
13 or guardian. If no individualized education program exists, such
14 documentation, signed by the parent or guardian, shall be placed in the
15 student's file.

16 **Sec. 14.** RCW 28A.155.140 and 1991 c 116 s 4 are each amended to
17 read as follows:

18 School districts may use curriculum-based assessment procedures as
19 measures for developing academic early ~~((intervention programs))~~
20 intervening services, as defined under part B of the federal
21 individuals with disabilities education improvement act, and curriculum
22 planning: PROVIDED, That the use of curriculum-based assessment
23 procedures shall not deny a student the right to ~~((an))~~ use of other
24 assessments to determine eligibility or participation in ~~((learning~~
25 ~~disabilities))~~ special education programs as provided by RCW
26 28A.155.010 through ~~((28A.155.100))~~ 28A.155.160.

27 **Sec. 15.** RCW 28A.155.160 and 1997 c 104 s 3 are each amended to
28 read as follows:

29 Notwithstanding any other provision of law, the office of the
30 superintendent of public instruction, the department of early learning,
31 the Washington state school for the deaf, the Washington state school
32 for the blind, school districts, educational service districts, and all
33 other state and local government educational agencies and the
34 department of services for the blind, the department of social and
35 health services, and all other state and local government agencies
36 concerned with the care, education, or habilitation or rehabilitation

1 of children with disabilities may enter into interagency cooperative
2 agreements for the purpose of providing assistive technology devices
3 and services to children with disabilities. Such arrangements may
4 include but are not limited to interagency agreements for the
5 acquisition, including joint funding, maintenance, loan, sale, lease,
6 or transfer of assistive technology devices and for the provision of
7 assistive technology services including but not limited to assistive
8 technology assessments and training.

9 For the purposes of this section, "assistive device" means any
10 item, piece of equipment, or product system, whether acquired
11 commercially off-the-shelf, modified, or customized, that is used to
12 increase, maintain, or improve functional capabilities of children with
13 disabilities. The term "assistive technology service" means any
14 service that directly assists a child with a disability in the
15 selection, acquisition, or use of an assistive technology device.
16 Assistive technology service includes:

17 (1) The evaluation of the needs of a child with a disability,
18 including a functional evaluation of the child in the child's customary
19 environment;

20 (2) Purchasing, leasing, or otherwise providing for the acquisition
21 of assistive technology devices by children with disabilities;

22 (3) Selecting, designing, fitting, customizing, adapting, applying,
23 retaining, repairing, or replacing of assistive technology devices;

24 (4) Coordinating and using other therapies, interventions, or
25 services with assistive technology devices, such as those associated
26 with existing education and rehabilitation plans and programs;

27 (5) Training or technical assistance for a child with a disability
28 or if appropriate, the child's family; and

29 (6) Training or technical assistance for professionals, including
30 individuals providing education and rehabilitation services, employers,
31 or other individuals who provide services to, employ, or are otherwise
32 substantially involved in the major life functions of children with
33 disabilities.

34 NEW SECTION. **Sec. 16.** Section 8 of this act expires September 1,
35 2009.

1 NEW SECTION. **Sec. 17.** Section 9 of this act takes effect
2 September 1, 2009.

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