
SUBSTITUTE SENATE BILL 5437

State of Washington

66th Legislature

2019 Regular Session

By Senate Early Learning & K-12 Education (originally sponsored by Senators Wilson, C., Palumbo, Wellman, Hunt, Saldaña, Nguyen, Randall, Das, Billig, Mullet, Darneille, Dhingra, Hasegawa, Kuderer, and Takko; by request of Office of the Governor)

1 AN ACT Relating to expanding eligibility to the early childhood
2 education and assistance program; amending RCW 43.216.505,
3 43.216.556, 43.216.555, 43.216.512, 43.216.514, 43.216.080,
4 43.216.540, and 43.216.550; reenacting and amending RCW 43.216.010;
5 adding new sections to chapter 43.216 RCW; creating a new section;
6 and providing expiration dates.

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

8 **Sec. 1.** RCW 43.216.505 and 2017 3rd sp.s. c 6 s 210 are each
9 amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout RCW 43.216.500 through 43.216.559,
12 43.216.900, and 43.216.901.

13 (1) "Advisory committee" means the advisory committee under RCW
14 43.216.520.

15 (2) "Approved programs" means those state-supported education and
16 special assistance programs which are recognized by the department as
17 meeting the minimum program rules adopted by the department to
18 qualify under RCW 43.216.500 through 43.216.550, 43.216.900, and
19 43.216.901 and are designated as eligible for funding by the
20 department under RCW 43.216.530 and 43.216.540.

1 (3) "Comprehensive" means an assistance program that focuses on
2 the needs of the child and includes education, health, and family
3 support services.

4 (4) "Eligible child" means a three to five year-old child who is
5 not age-eligible for kindergarten ((whose)), is not a participant in
6 a federal or state program providing comprehensive services, and who
7 is:

8 (a) Entitled to enrollment in the early childhood education and
9 assistance program according to RCW 43.216.556. An entitled child
10 must meet one of the following criteria:

11 (i) Have a family income ((is)) at or below one hundred ((ten))
12 thirty percent of the federal poverty level, as published annually by
13 the federal department of health and human services, and includes a
14 child whose family is eligible for public assistance((, and who is
15 not a participant in a federal or state program providing
16 comprehensive services; a child));

17 (ii) Be eligible for special education due to disability under
18 RCW 28A.155.020; ((and may include children who are eligible))

19 (iii) Meet criteria under rules adopted by the department if the
20 number of such children equals not more than ten percent of the total
21 enrollment in the early childhood program. ((Priority)) Preference
22 for enrollment in this group shall be given to children from families
23 with the lowest income, children in foster care, or to eligible
24 children from families with multiple needs; or

25 (b) Allowed for enrollment in the early childhood education and
26 assistance program according to criteria established in this chapter.
27 An allowed child must have a family income greater than one hundred
28 thirty percent but less than or equal to two hundred percent of the
29 federal poverty level.

30 (5) "Family support services" means providing opportunities for
31 parents to:

32 (a) Actively participate in their child's early childhood
33 program;

34 (b) Increase their knowledge of child development and parenting
35 skills;

36 (c) Further their education and training;

37 (d) Increase their ability to use needed services in the
38 community;

39 (e) Increase their self-reliance.

1 **Sec. 2.** RCW 43.216.556 and 2017 3rd sp.s. c 22 s 1 are each
2 amended to read as follows:

3 (1) Funding for the program of early learning established under
4 this chapter must be appropriated to the department. (~~Allocations~~
5 ~~must be made on the basis of eligible children enrolled with eligible~~
6 ~~providers.~~) The department shall distribute funding to approved
7 early childhood education and assistance program contractors on the
8 basis of eligible children enrolled.

9 (2) The program shall be implemented in phases, so that full
10 implementation is achieved in the 2022-23 school year.

11 (3) (~~For the initial phase of the early learning program in~~
12 ~~school years 2011-12 and 2012-13, the legislature shall appropriate~~
13 ~~funding to the department for implementation of the program in an~~
14 ~~amount not less than the 2009-2011 enacted budget for the early~~
15 ~~childhood education and assistance program. The appropriation shall~~
16 ~~be sufficient to fund an equivalent number of slots as funded in the~~
17 ~~2009-2011 enacted budget.~~

18 (4) ~~Beginning in the 2013-14 school year, additional funding for~~
19 ~~the program must be phased in beginning in school districts providing~~
20 ~~all-day kindergarten programs under RCW 28A.150.315.~~

21 (5)) Funding shall continue to be phased in each year until full
22 statewide implementation of the early learning program is achieved in
23 the 2022-23 school year, at which time any ((eligible)) entitled
24 child ((shall be)) is entitled to be enrolled in the program.

25 ((+6)) (4) School districts and approved community-based early
26 learning providers may contract with the department to provide
27 services under the program. The department shall collaborate with
28 school districts, community-based providers, and educational service
29 districts to promote an adequate supply of approved providers.

30 **Sec. 3.** RCW 43.216.555 and 2018 c 155 s 4 are each amended to
31 read as follows:

32 (1) (~~Beginning September 1, 2011,~~) An early learning program to
33 provide voluntary preschool opportunities for children three and four
34 years of age shall be implemented according to the funding and
35 implementation plan in RCW 43.216.556. The program must offer a
36 comprehensive program of early childhood education and family
37 support, including parental involvement and health information,
38 screening, and referral services, based on family need. Participation
39 in the program is voluntary. On a space available basis, the program

1 may allow enrollment of children who are not otherwise eligible by
2 assessing a fee.

3 (2) The program shall be implemented by utilizing the program
4 standards and eligibility criteria in the early childhood education
5 and assistance program in RCW 43.216.500 through 43.216.550.

6 (3) (a) (~~Beginning in the 2015-16 school year,~~) The program
7 implementation in this section shall prioritize early childhood
8 education and assistance programs located in low-income neighborhoods
9 within high-need geographical areas.

10 (b) Following the priority in (a) of this subsection, preference
11 shall be given to programs meeting at least one of the following
12 characteristics:

13 (i) Programs offering an extended day program for early care and
14 education;

15 (ii) Programs offering services to children diagnosed with a
16 special need; or

17 (iii) Programs offering services to children involved in the
18 child welfare system.

19 (4) The secretary shall adopt rules for the following program
20 components, as appropriate and necessary during the phased
21 implementation of the program, consistent with early achievers
22 program standards established in RCW 43.216.085:

23 (a) Minimum program standards;

24 (b) Approval of program providers; and

25 (c) Accountability and adherence to performance standards.

26 (5) The department has administrative responsibility for:

27 (a) Approving and contracting with providers according to rules
28 developed by the secretary under this section;

29 (b) In partnership with school districts, monitoring program
30 quality and assuring the program is responsive to the needs of
31 eligible children;

32 (c) Assuring that program providers work cooperatively with
33 school districts to coordinate the transition from preschool to
34 kindergarten so that children and their families are well-prepared
35 and supported; and

36 (d) Providing technical assistance to contracted providers.

37 **Sec. 4.** RCW 43.216.512 and 2018 c 155 s 2 are each amended to
38 read as follows:

1 (1) ~~((The department shall adopt rules that allow the inclusion~~
2 ~~of children in the early childhood education and assistance program~~
3 ~~whose family income is above one hundred ten percent of the federal~~
4 ~~poverty level if the number of such children equals not more than~~
5 ~~twenty-five percent of total statewide enrollment.~~

6 ~~(2) Children included in)~~ An allowed child as described in RCW
7 43.216.505 who is eligible for the early childhood education and
8 assistance program ((under this section)) must be ((homeless or
9 impacted by specific developmental or environmental risk factors that
10 are linked by research to school performance. "Homeless" means
11 without a fixed, regular, and adequate nighttime residence as set
12 forth in the federal McKinney-Vento homeless assistance act, P.L.
13 100-77, July 22, 1987, 101 Stat. 482, and runaway and homeless youth
14 act, P.L. 93-415, Title III, September 7, 1974, 88 Stat. 1129.

15 ~~(3))~~ enrolled, as space is available, by the department
16 according to a system of risk factors and priority points adopted in
17 rule. The priority system must consider risk factors that have
18 disproportionate effects on kindergarten readiness, including:

19 (a) Child welfare system involvement;

20 (b) Developmental delay or disability that does not meet the
21 eligibility criteria for special education described in RCW
22 28A.155.020;

23 (c) Domestic violence;

24 (d) English as a second language;

25 (e) Expulsion from an early learning setting;

26 (f) A parent who is or has been incarcerated;

27 (g) A parent with a substance use disorder or mental health
28 treatment need; and

29 (h) Homelessness. "Homelessness" means without a fixed, regular,
30 and adequate nighttime residence as set forth in the federal
31 McKinney-Vento homeless assistance act, P.L. 100-77, July 22, 1987,
32 101 Stat. 482, and runaway and homeless youth act, P.L. 93-415, Title
33 III, September 7, 1974, 88 Stat. 1129.

34 (2) Children included in the early childhood education and
35 assistance program under this section are not ((to be)) considered
36 ((eligible children as defined in RCW 43.216.505 and are not
37 considered)) to be part of the state-funded entitlement required in
38 RCW 43.216.556.

1 **Sec. 5.** RCW 43.216.514 and 2018 c 155 s 3 are each amended to
2 read as follows:

3 (1) The department shall prioritize children for enrollment in
4 the early childhood education and assistance program who are
5 ~~((eligible))~~ entitled for enrollment in the early childhood education
6 and assistance program pursuant to RCW ~~((43.216.505))~~ 43.216.556.

7 (2) As space is available, allowed children as described in RCW
8 43.216.505 may be included in the early childhood education and
9 assistance program pursuant to RCW 43.216.512. ~~((Priority within this~~
10 ~~group must be given to children who are experiencing homelessness,~~
11 ~~child welfare system involvement, or a developmental delay or~~
12 ~~disability that does not meet the eligibility criteria for special~~
13 ~~education adopted under RCW 28A.155.020.))~~

14 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.216
15 RCW to read as follows:

16 (1) The department shall develop recommendations related to
17 differential slot rates for the early childhood education and
18 assistance program based on variable factors that may contribute to
19 costs for providers when working to achieve positive child outcomes.
20 When developing the recommendations, the department must:

21 (a) Consider, at a minimum, variations by geographic region,
22 contractor type, child risk factors, and teacher credentials;

23 (b) Evaluate advantages and disadvantages of linking early
24 childhood education and assistance program rates and other child care
25 subsidy rates; and

26 (c) Review the department-designated subsidy regions and adjust
27 regional boundaries as necessary to reflect regional economic
28 conditions.

29 (2) The department must submit the recommendations and a report
30 on the results of the regional subsidy boundary review to the
31 governor and the legislature by September 1, 2020.

32 (3) This section expires December 1, 2020.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.216
34 RCW to read as follows:

35 (1) Subject to amounts appropriated for this specific purpose,
36 the department shall establish a pilot project to implement a state-
37 funded birth to three early childhood education and assistance

1 program to eligible children under thirty-six months old. The pilot
2 project must start by January 1, 2020, and conclude June 30, 2023.

3 (2) The department may adopt rules to implement the pilot project
4 and may waive or adapt pilot project requirements when necessary to
5 allow for the operation of the birth to three early childhood
6 education and assistance program. The department shall consider early
7 head start rules and regulations when developing the provider and
8 family eligibility requirements and program requirements. Any
9 deviations from early head start standards, rules, or regulations
10 must be identified and explained by the department in the annual
11 report that it must submit to the governor and legislature under
12 subsection (7) of this section.

13 (3) (a) The pilot project programs must be delivered through child
14 care centers and family home providers who meet minimum licensing
15 standards and are enrolled in early achievers.

16 (b) The department must determine minimum early achievers ratings
17 scores for programs participating in the pilot project.

18 (4) The department shall select up to ten pilot project locations
19 during the first year of the pilot project. Each pilot project
20 location may have up to three classrooms per location. When selecting
21 and approving pilot project locations, the department shall attempt
22 to select a combination of rural, urban, and suburban locations. The
23 department shall prioritize locations with programs currently
24 operating early head start, head start, or the early childhood
25 education and assistance program.

26 (5) To be eligible for the birth to three early childhood
27 education and assistance program, a child's family income must be at
28 or below one hundred thirty percent of the federal poverty level and
29 the child must be under thirty-six months old.

30 (6) During the pilot project, the department shall begin an
31 evaluation to analyze quality and performance measures. In the third
32 year of the pilot project, the department shall analyze child and
33 parent outcomes.

34 (7) (a) Beginning November 1, 2020, and each November 1st
35 thereafter, the department shall submit an annual report to the
36 governor and legislature that includes a status update that describes
37 implementation of the pilot project, including a description of the
38 participating programs and number of children and families that have
39 been served.

1 (b) By November 1, 2024, the department shall submit a complete
2 final report that describes:

3 (i) The department's findings from the evaluation under
4 subsection (6) of this section;

5 (ii) Recommendations for modifying or expanding the birth to
6 three early childhood education and assistance program over the next
7 five years; and

8 (iii) Recommendations for eligibility requirements for families
9 and providers.

10 (8) This section expires December 31, 2024.

11 **Sec. 8.** RCW 43.216.080 and 2017 c 178 s 2 are each amended to
12 read as follows:

13 (1) The foundation of quality in the early care and education
14 system in Washington is the quality rating and improvement system
15 entitled the early achievers program. In an effort to build on the
16 existing quality framework, enhance access to quality care for
17 children, and strengthen the entire early care and education systems
18 in the state, it is important to integrate the efforts of state and
19 local governments, school districts, institutions of higher education
20 as defined in RCW 28B.10.016, and nonprofit organizations.

21 (2) Local governments, school districts, institutions of higher
22 education as defined in RCW 28B.10.016, and nonprofit organizations
23 are encouraged to collaborate with the department when establishing
24 and strengthening early learning programs for residents.

25 (3) Local governments, school districts, institutions of higher
26 education as defined in RCW 28B.10.016, and nonprofit organizations
27 may contribute funds to the department for the following purposes:

28 (a) Initial investments to build capacity and quality in local
29 early care and education programming;

30 (b) Reductions in copayments charged to parents or caregivers;

31 (c) To expand access and eligibility in the early childhood
32 education and assistance program.

33 (4) Funds contributed to the department by local governments,
34 school districts, institutions of higher education as defined in RCW
35 28B.10.016, and nonprofit organizations must be deposited in the
36 early start account established in RCW (~~(43.215.195)~~) 43.216.165.

37 (5) Children enrolled in the early childhood education and
38 assistance program with funds contributed in accordance with
39 subsection (3)(c) of this section are not considered to be eligible

1 children as defined in RCW (~~(43.215.405)~~) 43.216.505 and are not
2 considered to be part of the state-funded entitlement required in RCW
3 (~~(43.215.456)~~) 43.216.556.

4 **Sec. 9.** RCW 43.216.010 and 2017 3rd sp.s. c 6 s 201 are each
5 reenacted and amended to read as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Agency" means any person, firm, partnership, association,
9 corporation, or facility that provides child care and early learning
10 services outside a child's own home and includes the following
11 irrespective of whether there is compensation to the agency:

12 (a) "Child day care center" means an agency that regularly
13 provides early childhood education and early learning services for a
14 group of children for periods of less than twenty-four hours;

15 (b) "Early learning" includes but is not limited to programs and
16 services for child care; state, federal, private, and nonprofit
17 preschool; child care subsidies; child care resource and referral;
18 parental education and support; and training and professional
19 development for early learning professionals;

20 (c) "Family day care provider" means a child care provider who
21 regularly provides early childhood education and early learning
22 services for not more than twelve children in the provider's home in
23 the family living quarters;

24 (d) "Nongovernmental private-public partnership" means an entity
25 registered as a nonprofit corporation in Washington state with a
26 primary focus on early learning, school readiness, and parental
27 support, and an ability to raise a minimum of five million dollars in
28 contributions;

29 (e) "Service provider" means the entity that operates a community
30 facility.

31 (2) "Agency" does not include the following:

32 (a) Persons related to the child in the following ways:

33 (i) Any blood relative, including those of half-blood, and
34 including first cousins, nephews or nieces, and persons of preceding
35 generations as denoted by prefixes of grand, great, or great-great;

36 (ii) Stepfather, stepmother, stepbrother, and stepsister;

37 (iii) A person who legally adopts a child or the child's parent
38 as well as the natural and other legally adopted children of such

1 persons, and other relatives of the adoptive parents in accordance
2 with state law; or

3 (iv) Spouses of any persons named in (a)(i), (ii), or (iii) of
4 this subsection, even after the marriage is terminated;

5 (b) Persons who are legal guardians of the child;

6 (c) Persons who care for a neighbor's or friend's child or
7 children, with or without compensation, where the person providing
8 care for periods of less than twenty-four hours does not conduct such
9 activity on an ongoing, regularly scheduled basis for the purpose of
10 engaging in business, which includes, but is not limited to,
11 advertising such care;

12 (d) Parents on a mutually cooperative basis exchange care of one
13 another's children;

14 (e) Nursery schools that are engaged primarily in early childhood
15 education with preschool children and in which no child is enrolled
16 on a regular basis for more than four hours per day;

17 (f) Schools, including boarding schools, that are engaged
18 primarily in education, operate on a definite school year schedule,
19 follow a stated academic curriculum, and accept only school age
20 children;

21 (g) Seasonal camps of three months' or less duration engaged
22 primarily in recreational or educational activities;

23 (h) Facilities providing child care for periods of less than
24 twenty-four hours when a parent or legal guardian of the child
25 remains on the premises of the facility for the purpose of
26 participating in:

27 (i) Activities other than employment; or

28 (ii) Employment of up to two hours per day when the facility is
29 operated by a nonprofit entity that also operates a licensed child
30 care program at the same facility in another location or at another
31 facility;

32 (i) Any entity that provides recreational or educational
33 programming for school age children only and the entity meets all of
34 the following requirements:

35 (i) The entity utilizes a drop-in model for programming, where
36 children are able to attend during any or all program hours without a
37 formal reservation;

38 (ii) The entity does not assume responsibility in lieu of the
39 parent, unless for coordinated transportation;

- 1 (iii) The entity is a local affiliate of a national nonprofit;
2 and
- 3 (iv) The entity is in compliance with all safety and quality
4 standards set by the associated national agency;
- 5 (j) A program operated by any unit of local, state, or federal
6 government;
- 7 (k) A program located within the boundaries of a federally
8 recognized Indian reservation, licensed by the Indian tribe;
- 9 (l) A program located on a federal military reservation, except
10 where the military authorities request that such agency be subject to
11 the licensing requirements of this chapter;
- 12 (m) A program that offers early learning and support services,
13 such as parent education, and does not provide child care services on
14 a regular basis.
- 15 (3) "Applicant" means a person who requests or seeks employment
16 in an agency.
- 17 (4) "Conviction information" means criminal history record
18 information relating to an incident which has led to a conviction or
19 other disposition adverse to the applicant.
- 20 (5) "Department" means the department of children, youth, and
21 families.
- 22 (6) "Early achievers" means a program that improves the quality
23 of early learning programs and supports and rewards providers for
24 their participation.
- 25 (7) "Early childhood education and assistance program contractor"
26 means an organization that provides early childhood education and
27 assistance program services under a signed contract with the
28 department.
- 29 (8) "Early childhood education and assistance program provider"
30 means an organization that provides site level, direct, and high
31 quality early childhood education and assistance program services
32 under the direction of an early childhood education and assistance
33 program contractor.
- 34 (9) "Early start" means an integrated high quality continuum of
35 early learning programs for children birth-to-five years of age.
36 Components of early start include, but are not limited to, the
37 following:
- 38 (a) Home visiting and parent education and support programs;
39 (b) The early achievers program described in RCW 43.216.085;

1 (c) Integrated full-day and part-day high quality early learning
2 programs; and

3 (d) High quality preschool for children whose family income is at
4 or below (~~one~~) two hundred (~~ten~~) percent of the federal poverty
5 level.

6 (10) "Education data center" means the education data center
7 established in RCW 43.41.400, commonly referred to as the education
8 research and data center.

9 (11) "Employer" means a person or business that engages the
10 services of one or more people, especially for wages or salary to
11 work in an agency.

12 (12) "Enforcement action" means denial, suspension, revocation,
13 modification, or nonrenewal of a license pursuant to RCW
14 43.216.325(1) or assessment of civil monetary penalties pursuant to
15 RCW 43.216.325(3).

16 (13) "Extended day program" means an early childhood education
17 and assistance program that offers early learning education for at
18 least ten hours per day, a minimum of two thousand hours per year, at
19 least four days per week, and operates year-round.

20 (14) "Full day program" means an early childhood education and
21 assistance program that offers early learning education for a minimum
22 of one thousand hours per year.

23 (15) "Low-income child care provider" means a person who
24 administers a child care program that consists of at least eighty
25 percent of children receiving working connections child care subsidy.

26 (16) "Low-income neighborhood" means a district or community
27 where more than twenty percent of households are below the federal
28 poverty level.

29 (17) "Negative action" means a court order, court judgment, or an
30 adverse action taken by an agency, in any state, federal, tribal, or
31 foreign jurisdiction, which results in a finding against the
32 applicant reasonably related to the individual's character,
33 suitability, and competence to care for or have unsupervised access
34 to children in child care. This may include, but is not limited to:

35 (a) A decision issued by an administrative law judge;

36 (b) A final determination, decision, or finding made by an agency
37 following an investigation;

38 (c) An adverse agency action, including termination, revocation,
39 or denial of a license or certification, or if pending adverse agency

1 action, the voluntary surrender of a license, certification, or
2 contract in lieu of the adverse action;

3 (d) A revocation, denial, or restriction placed on any
4 professional license; or

5 (e) A final decision of a disciplinary board.

6 (18) "Nonconviction information" means arrest, founded
7 allegations of child abuse, or neglect pursuant to chapter 26.44 RCW,
8 or other negative action adverse to the applicant.

9 (19) "Nonschool age child" means a child who is age six years or
10 younger and who is not enrolled in a public or private school.

11 (20) "Part day program" means an early childhood education and
12 assistance program that offers early learning education for at least
13 two and one-half hours per class session, at least three hundred
14 twenty hours per year, for a minimum of thirty weeks per year.

15 (21) "Private school" means a private school approved by the
16 state under chapter 28A.195 RCW.

17 (22) "Probationary license" means a license issued as a
18 disciplinary measure to an agency that has previously been issued a
19 full license but is out of compliance with licensing standards.

20 (23) "Requirement" means any rule, regulation, or standard of
21 care to be maintained by an agency.

22 (24) "School age child" means a child who is five years of age
23 through twelve years of age and is attending a public or private
24 school or is receiving home-based instruction under chapter 28A.200
25 RCW.

26 (25) "Secretary" means the secretary of the department.

27 (26) "Washington state preschool program" means an education
28 program for children three-to-five years of age who have not yet
29 entered kindergarten, such as the early childhood education and
30 assistance program.

31 **Sec. 10.** RCW 43.216.540 and 1994 c 166 s 10 are each amended to
32 read as follows:

33 For the purposes of RCW (~~(28A.215.100)~~) 43.216.500 through
34 (~~((28A.215.200 and 28A.215.900 through 28A.215.908))~~) 43.216.550,
35 43.216.900, and 43.216.901, the department may award state support
36 under RCW (~~(28A.215.100)~~) 43.216.500 through (~~((28A.215.160))~~)
37 43.216.530 to increase the numbers of eligible children assisted by
38 the federal or state-supported early childhood programs in this
39 state. Priority shall be given to those geographical areas which

1 include a high percentage of families qualifying under the
2 (~~"eligible child" criteria~~) description of entitled child
3 established in RCW 43.215.505. The overall program funding level
4 shall be based on an average grant per child consistent with state
5 appropriations made for program costs: PROVIDED, That programs
6 addressing special needs of selected groups or communities shall be
7 recognized in the department's rules.

8 **Sec. 11.** RCW 43.216.550 and 1994 c 166 s 11 are each amended to
9 read as follows:

10 The department may solicit gifts, grants, conveyances, bequests
11 and devises for the use or benefit of the early childhood state
12 education and assistance program established by RCW (~~(28A.215.100)~~)
13 43.216.500 through (~~(28A.215.200 and 28A.215.900 through~~
14 ~~28A.215.908)~~) 43.216.550, 43.216.900, and 43.216.901. The department
15 shall actively solicit support from business and industry and from
16 the federal government for the state early childhood education and
17 assistance program and shall assist local programs in developing
18 partnerships with the community for eligible children.

--- END ---