

SENATE BILL REPORT SB 5237

As of January 16, 2023

Title: An act relating to establishing complaint procedures to address noncompliance with certain state education laws.

Brief Description: Establishing complaint procedures to address noncompliance with certain state education laws.

Sponsors: Senators Wilson, C., Wellman and Hunt.

Brief History:

Committee Activity: Early Learning & K-12 Education: 1/16/23.

Brief Summary of Bill

- Directs the Office of the Superintendent of Public Instruction (OSPI) to establish procedures to investigate and address complaints alleging noncompliance with state laws concerning civil rights; harassment, intimidation, and bullying; certain curriculum requirements; the use of restraint or isolation on a student; and student discipline.
- Requires school districts to submit compliance action plans if OSPI finds noncompliance with any of these state laws and allows OSPI to impose certain consequences.
- Specifies that violation of a school district director's oath of office includes willful or negligent noncompliance with these state laws and may be the basis for a recall of the elected official.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Staff: Ailey Kato (786-7434)

Background: Existing Complaint Procedures. Current state law includes certain complaint

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.

procedures regarding issues related to:

- school safety and security staff;
- instructional materials used by school districts;
- physical abuse or sexual misconduct by a certificated employee;
- harassment, intimidation, or bullying; and
- discrimination.

Other state and federal agencies also address discrimination complaints. Local school district policies and procedures may also include complaint procedures concerning staff or programs.

School Board Member's Oath of Office and Recall. Every school director must take an oath or affirmation to support the federal and state constitutions and faithfully discharge the duties of the office according to the best of their ability.

A voter may demand the recall of an elected public official by preparing a written charge that the official has committed an act of malfeasance, an act of malfeasance while in office, violated the oath of the office, or has been guilty of any two or more acts specified in the Constitution as grounds for a recall.

Summary of Bill: Complaint Procedures. The Office of the Superintendent of Public Instruction (OSPI) must establish procedures to investigate two types of complaints alleging noncompliance with state law:

- individual complaints, which impacts an individual student and involves an issue that has not been resolved by existing complaint procedures; and
- broad complaints, which impacts an entire student body or group of students.

The purpose of the complaint procedures is to secure equitable resolutions to justifiable complaints related to alleged noncompliance with state laws concerning:

- civil rights including discrimination and sexual harassment;
- harassment, intimidation, and bullying;
- curriculum requirements, including comprehensive sexual health education and tribal history, and the policies and procedures related to the selection or deletion of instructional materials;
- the use of restraint or isolation on a student; or
- student discipline.

Anyone may file a complaint with OSPI against a local superintendent, school board, or school board member. Before a person may file an individual complaint, the person must exhaust existing complaint procedures established under state law and local policy and procedure.

Upon receipt of the complaint, OSPI must conduct a prompt and thorough investigation into the allegations in the complaint.

Compliance Action Plans. If OSPI finds noncompliance with state law, the local superintendent and school board must adopt and submit a compliance action plan to OSPI.

The plan must include:

- a description of the changes in existing policies, structures, agreements, processes, and practices needed to come into compliance with state law; and
- the timeline for coming into compliance.

Compliance action plans must be developed in collaboration with OSPI, school staff, parents, unions, students, impacted communities, and other representatives of the local community. Before adopting and submitting a plan, the local school board must conduct a public hearing to allow public comment. OSPI must provide assistance and publish guidelines as needed, and plans must be developed in accordance with state collective bargaining laws.

Consequences for Willful Noncompliance with State Law. If OSPI finds willful noncompliance with state law, the school district must conduct at least two additional public hearings, and OSPI may impose any of the following consequences:

- require the school district to adopt or readopt policies and procedures to come into compliance;
- find that a superintendent committed any act of unprofessional conduct and may be held accountable under rules adopted by the Professional Educator Standards Board; and
- withhold up to 20 percent of state funds for the basic education allocation, with prior written notice, and redirect those funds to support the compliance action plan.

These complaint procedures do not change any existing authority OSPI has to enforce compliance with state law including health and safety requirements.

OSPI Rules. OSPI must adopt rules regarding the complaint procedures, timelines, compliance action plans, and consequences. OSPI may adopt rules to allow for an expedited process when the complaint relates to an immediate health or safety concern.

School Board Member's Oath of Office and Recall. In addition to supporting the federal and state constitutions, the school board member's oath or affirmation must include that they support the laws of the state of Washington.

The definition for violation of the oath of office, as it applies to the recall of an elected official, is amended to include a school director's willful or negligent noncompliance with state law.

"Willful" means nonaccidental action or inaction by a local superintendent, school board, or school board member that they knew or reasonably should have known would result in noncompliance with state law. "Negligent" means the failure to exercise ordinary care, and

they knew or reasonably should have known that failure to exercise ordinary care would result in noncompliance with state law.

Appropriation: None.

Fiscal Note: Requested on January 10, 2023.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Families and children have shared stories that school districts are intentionally not complying with state law, which is problematic and negatively impacts students. All children need access to responsive, safe, and healthy learning environments. Local school boards are in the best position to quickly respond to student needs, but local control is not absolute, especially if their actions are harming students. This bill gives power to families and protects students. Some superintendents are not certificated, so it may be difficult for the Professional Educator Standards Board to develop consequences. OSPI may have a conflict of interest when administering the complaint procedure because the complaints could reveal systemic failures. This bill is not about denying rights to school boards and superintendents; it is about protecting and helping students, especially students who are transgender. Schools need to be held accountable.

CON: This bill would punish school districts and superintendents for not implementing certain things that parents have made clear that they do not want. One size does not fit all, and local school districts should be aligned with local values. Local control is absolute. This bill codifies government overreach into school districts and renders school districts impotent. The bill changes the office of elected school board members by changing the oath to say that they must support state laws. Local school boards are the closest to the governed and represent the consent of the governed. They act as a check and a balance. The laws that are the focus of this bill are cherry-picked. There is no evidence that school districts are not implementing state law.

OTHER: All officials must follow all state laws all of the time. At the same, the needs of the separately elected officials must be balanced, and they shouldn't be pre-judged as a class. OSPI has the authority to adopt rules about the process, and it's not clear what that process will be. Complaints should be filed with school districts first. Superintendents have to wear many hats and address many issues. Sometimes things slip through the cracks and that could be perceived as willful noncompliance, but they are not acting willfully. The required public hearings and the withholding of state funds are an overreach, and redirecting funds could negatively impact students.

Persons Testifying: PRO: Senator Claire Wilson, Prime Sponsor; Julie Salvi, Washington Education Association; Jillian Baer; Jake Vela, League of Education Voters; Kristin

Murphy, Office of Superintendent of Public Instruction (OSPI); Zackary Turner, PESB.

CON: Julie Barrett, Conservative Ladies of Washington; Laurie Layne; Andy Cilley, Parent; Jeannie Magdua, Conservative Ladies of Washington; Val Mullen; Aaron Lang; Rachel Buck.

OTHER: Eric Sobotta, Reardan-Edwall School District; Mike Hoover, Washington State School Directors' Association; Liv Finne, Washington Policy Center; Jim Kowalkowski, Rural Education Center.

Persons Signed In To Testify But Not Testifying: No one.



Proposed Amendments to SB 5237

PSSB 5237

Wilson

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Effect:

- Adds to the definition of a "broad complaint" to include a complaint that impacts an entire school or an entire school district.
- Changes the term "individual complaint" to "limited complaint."
- Requires a person to exhaust existing complaint procedures if procedures exist before filing a broad or individual complaint, not just an individual complaint.
- Removes the word "justifiable" to describe the complaints.
- Specifies that anyone residing within the boundaries of the school district or who has a student enrolled in the school district may file a complaint.
- Directs OSPI to consult with the State Board of Education (SBE) to build a connection between the rules adopted and SBE's rules on basic education compliance for complaints regarding noncompliance with curriculum requirements.
- Explains that for complaints in which individual students may be identified, the public hearing and materials prepared for such hearing must adhere to nondisclosure of personally identifiable information consistent with state and federal student privacy laws.
- Specifies that a member of a board of directors may be subject to recall and discharge for willful or negligent noncompliance with state law and removes the section of the bill that amended the definition of "violation of the oath of office" in the statute outlining recall procedures.
- Adds an appeals process following a final OSPI decision and specifies that an administrative law judge of the Office of Administrative Hearings will hear and determine the appeal and an appeal of that decision shall be to the superior court.

Social Control in Small-Scale Societies

- Small-scale groups: **norms** are main instrument for establishing proper behavior
 - Implicitly supported by value/belief systems, specific decisions often made by consensus
- Punishment for norm violation **Ridicule and shaming**
 - Goal?: restore normal social relations (as important or more important than punishment itself)
 - **Ostracism** for serious offenders
 - Capital punishment extremely rare

1 AN ACT Relating to establishing complaint procedures to address
2 noncompliance with certain state education laws; amending RCW
3 28A.343.360; adding new sections to chapter 28A.300 RCW; adding a new
4 section to chapter 28A.410 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature acknowledges and
7 supports the importance of local control for school district
8 governance. Local school boards and superintendents are in the best
9 position to effectively and quickly respond to the needs of their
10 communities. However, local control is not absolute and must also be
11 balanced against the need to ensure all students have access to a
12 healthy, safe learning environment that celebrates and protects their
13 diversity and civil rights. There are certain areas of state law
14 which are critically important to ensuring every student has equal
15 access to this type of supportive and responsive learning
16 environment.

17 (2) The legislature is aware that some school districts are
18 intentionally not complying with certain requirements in state law
19 and that this noncompliance is negatively impacting students. School
20 board members and superintendents are uniquely responsible for
21 ensuring that their school district is in compliance with those state

1 laws and members of the school district should have a mechanism to
2 hold those individuals accountable if state laws are not followed.

3 (3) The legislature therefore intends to establish complaint
4 procedures for parents and community members to address noncompliance
5 with certain state laws that are necessary for protecting the health,
6 safety, and civil rights of students in order to ensure every student
7 has access to a positive learning environment.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300
9 RCW to read as follows:

10 The definitions in this section apply throughout sections 3
11 through 6 of this act unless the context clearly requires otherwise.

12 (1) "Broad complaint" means a complaint that impacts an entire
13 student body, an entire school, or an entire school district.

14 (2) "Limited complaint" means a complaint that impacts one or
15 more individual students.

16 (3) "Negligent" means the failure to exercise ordinary care by a
17 local superintendent, a local school district board of directors, or
18 a member of a board of directors and they knew or reasonably should
19 have known that the failure to exercise ordinary care would result in
20 noncompliance with state law as defined in this section.

21 (4) "Noncompliance with state law" means action or inaction by a
22 local superintendent, a local school district board of directors, or
23 a member of a board of directors that results in noncompliance with
24 state laws concerning:

25 (a) Civil rights including discrimination as described in RCW
26 28A.640.010 and 28A.642.010 and "sexual harassment" as defined in RCW
27 28A.640.020;

28 (b) "Harassment, intimidation, and bullying" as defined in RCW
29 28A.600.477;

30 (c) Curriculum requirements as described in RCW 28A.150.230,
31 28A.300.475, and 28A.320.170, and the policies and procedures related
32 to the selection or deletion of instructional materials as described
33 in RCW 28A.320.230;

34 (d) The use of restraint or isolation on a student as described
35 in RCW 28A.600.485; or

36 (e) Student discipline as described in chapter 28A.600 RCW.

37 (5) "Willful" means nonaccidental action or inaction by a local
38 superintendent, a local school district board of directors, or a
39 member of a board of directors that they knew or reasonably should

1 have known would result in noncompliance with state law as defined in
2 this section.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.300
4 RCW to read as follows:

5 (1) The office of the superintendent of public instruction must
6 establish procedures to investigate and address two types of
7 complaints alleging noncompliance with state law:

8 (a) Limited complaints; and

9 (b) Broad complaints.

10 (2) The purpose of the complaint procedures is to secure
11 equitable resolutions to complaints relating to alleged noncompliance
12 with the state laws listed in section 2(4) of this act.

13 (3)(a) Anyone residing within the boundaries of the school
14 district or who has a student enrolled in the school district may
15 file a limited or broad complaint with the office of the
16 superintendent of public instruction alleging noncompliance with a
17 state law listed in section 2(4) of this act.

18 (b) Limited and broad complaints may be filed against a local
19 superintendent, a local school district board of directors, or a
20 member of a board of directors.

21 (c) Before a person may file a complaint with the office of the
22 superintendent of public instruction, the person must exhaust
23 existing complaint procedures if procedures exist including
24 procedures established under state law including but not limited to
25 RCW 28A.320.124, 28A.320.230, 28A.410.090, 28A.600.477, 28A.640.020,
26 and 28A.642.030, and local policy and procedure.

27 (4)(a) The office of the superintendent of public instruction
28 must adopt rules regarding the complaint procedures, timelines,
29 compliance action plans, and consequences established under this
30 section and sections 4 and 5 of this act.

31 (b) The office of the superintendent of public instruction must
32 consult with the state board of education to build a connection
33 between the rules adopted under this subsection and the state board
34 of education's rules on basic education compliance established under
35 RCW 28A.150.220 for complaints regarding noncompliance with
36 curriculum requirements as described in section 2(4)(c) of this act.

37 (c) The office of the superintendent of public instruction may
38 adopt rules to allow for an expedited process when the complaint
39 relates to an immediate health or safety concern.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.300

2 RCW to read as follows:

3 (1) Upon receipt of a complaint filed under section 3 of this
4 act, the office of the superintendent of public instruction must
5 conduct a prompt and thorough investigation into the allegations in
6 the complaint.

7 (2) (a) If the office of the superintendent of public instruction
8 finds noncompliance with state law, the local district superintendent
9 and local school district board of directors must adopt and submit a
10 compliance action plan to the office of the superintendent of public
11 instruction. Unless otherwise required by subsection (4) of this
12 section, the plan must be submitted under a timeline as required by
13 the office of the superintendent of public instruction.

14 (b) A compliance action plan must be developed in collaboration
15 with the office of the superintendent of public instruction,
16 administrators, teachers, and other staff, parents, unions
17 representing any employees within the school district, students,
18 impacted communities, and other representatives of the local
19 community.

20 (c) The office of the superintendent of public instruction must
21 provide a school district with assistance in developing its plan and
22 must develop and publish guidelines for the development of compliance
23 action plans as needed.

24 (d) Before adopting and submitting a compliance action plan to
25 the office of the superintendent of public instruction, the local
26 school board must conduct a public hearing to allow for public
27 comment on the proposed compliance action plan. For complaints in
28 which individual students may be identified, the public hearing and
29 materials prepared for such hearing must adhere to nondisclosure of
30 personally identifiable information consistent with state and federal
31 student privacy laws.

32 (3) A compliance action plan must include the following:

33 (a) A description of the changes in the school district's or
34 school's existing policies, structures, agreements, processes, and
35 practices needed to come into compliance with state law; and

36 (b) The timeline for coming into compliance with state law.

37 (4) Compliance action plans must be developed in accordance with
38 chapters 41.56 and 41.59 RCW where applicable.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.300

2 RCW to read as follows:

3 (1) If the office of the superintendent of public instruction
4 investigates a complaint under this act and finds willful
5 noncompliance with state law, the school district must conduct at
6 least two public hearings in addition to the public hearing under
7 section 4(2)(d) of this act:

8 (a) One public hearing must take public comment on the willful
9 noncompliance with state law and the actions the public thinks are
10 needed to come into compliance;

11 (b) One public hearing must present the progress on the
12 compliance action plan after it has been submitted to the office of
13 the superintendent of public instruction and take public comment on
14 this progress; and

15 (c) Additional public hearings with public comment must be
16 conducted every six months until the office of the superintendent of
17 public instruction finds that the school district has come into
18 compliance with state law.

19 (2) For complaints in which individual students may be
20 identified, the public hearings and materials prepared for such
21 hearings must adhere to nondisclosure of personally identifiable
22 information consistent with state and federal student privacy laws.

23 (3) If the office of the superintendent of public instruction
24 finds willful noncompliance with state law, the office of the
25 superintendent of public instruction may impose any of the following
26 consequences:

27 (a) Require the school district to adopt or readopt policies and
28 procedures to come into compliance with state law;

29 (b) Find that a superintendent committed an act of unprofessional
30 conduct under section 6 of this act and may be held accountable for
31 such conduct under rules established under section 6 of this act; and

32 (c) Withhold up to 20 percent of state funds for the basic
33 education allocation and redirect these funds to support the
34 compliance action plan required in section 4 of this act until the
35 office of the superintendent of public instruction finds that the
36 school district has come into compliance with state law. Written
37 notice of the intent to withhold and redirect state funds, with
38 reasons stated for this action, must be made to the school district
39 by the office of the superintendent of public instruction before any
40 portion of the state allocation is withheld and redirected.

1 (4) A member of a board of directors may be subject to recall and
2 discharge for willful or negligent noncompliance with state law under
3 RCW 29A.56.110.

4 (5) Sections 3 and 4 of this act and this section do not change
5 any existing authority the office of the superintendent of public
6 instruction has to enforce compliance with state law including health
7 and safety requirements.

8 (6) The complainant or school district may file a notice of
9 appeal with the office of the superintendent of public instruction
10 within 30 days of the final decision. An administrative law judge of
11 the office of administrative hearings will hear and determine the
12 appeal. Appeal proceedings must be conducted pursuant to chapter
13 34.05 RCW. An appeal of the administrative law judge's determination
14 or order shall be to the superior court. The superior court's
15 decision is subject only to discretionary review under the rules of
16 appellate procedure.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 28A.410
18 RCW to read as follows:

19 The professional educator standards board must adopt rules that
20 makes a superintendent's willful noncompliance with state law an act
21 of unprofessional conduct and provides that a superintendent, whether
22 certificated or not, may be held accountable for such conduct under
23 rules established under this section. It is a defense if the
24 superintendent can show that they were actively attempting to bring
25 the school district into compliance with state law.

26 **Sec. 7.** RCW 28A.343.360 and 1990 c 33 s 314 are each amended to
27 read as follows:

28 Every person elected or appointed to the office of school
29 director, before entering upon the discharge of the duties thereof,
30 shall take an oath or affirmation to support the Constitution of the
31 United States and the state of Washington and the laws of the state
32 of Washington and to faithfully discharge the duties of the office
33 according to the best of his or her ability. In case any official has
34 a written appointment or commission, the official's oath or
35 affirmation shall be endorsed thereon and sworn to before any officer
36 authorized to administer oaths. School officials are hereby
37 authorized to administer all oaths or affirmations pertaining to
38 their respective offices without charge or fee. All oaths of office,

1 when properly made, shall be filed with the county auditor. Every
2 person elected to the office of school director shall begin his or
3 her term of office at the first official meeting of the board of
4 directors following certification of the election results.

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