

HOUSE BILL REPORT

E2SSB 5533

As Reported by House Committee On:
Education

Title: An act relating to providing increased access to information on disciplinary actions taken against school employees.

Brief Description: Providing increased access to information on disciplinary actions taken against school employees.

Sponsors: Senate Committee on Education (originally sponsored by Senators Kohl-Welles, Johnson, McAuliffe, Carlson, Keiser, Rasmussen and Kline).

Brief History:

Committee Activity:

Education: 2/23/04, 2/26/04 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by House Committee)

- Requires school districts to exchange information regarding sexual misconduct by current and former employees.
- Requires school districts to request from the Office of the Superintendent of Public Instruction verification of the certification status and information about sexual misconduct, if any, for applicants for certificated employment.
- Prohibits school districts from hiring applicants who do not authorize a release of records.
- Prohibits agreements to suppress or expunge from documents information regarding school employee sexual misconduct.
- Limits disclosure of information obtained under an authorized release.
- Establishes a misdemeanor for the misuse of information obtained under a release.
- Directs the State Board of Education to adopt definitions for "sexual misconduct," "verbal abuse," and "physical abuse."
- Requires the Office of the Superintendent of Public Instruction to report disciplinary actions taken against certificated employees to a national database.

- Requires school districts to inform parents annually regarding their rights to school employee information under the Public Disclosure Act.
- Requires school districts to inform a parent within 48 hours of receipt of an allegation of sexual misconduct involving his or her child.
- Permits school employees to inspect their school district files after an investigation and to attach rebuttals to documents.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 11 members: Representatives Quall, Chair; McDermott, Vice Chair; Talcott, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Anderson, Cox, Haigh, Hunter, McMahan, Rockefeller and Santos.

Staff: Sydney Forrester (786-7120).

Background:

School districts are required to conduct a criminal background check on school employees. School districts are not, however, required to contact an applicant's current or former employer to obtain reference information. Some forms of school employee misconduct may not necessarily result in criminal prosecution or conviction, due, in part, to severance agreements, resignation agreements, or other agreements, and information about the misconduct may not be detected through a criminal background check.

The Public Disclosure Act requires disclosure of public records maintained by school districts regarding school district employees unless a specific exemption provides for nondisclosure. Residential addresses and phone numbers are exempt from disclosure. Other personal information about public employees is exempt to the extent disclosure would violate an employee's right to privacy. An employee's right to privacy is violated only if disclosure would be highly offensive to a reasonable person, and if it is not of legitimate concern to the public.

Summary of Amended Bill:

Prior to hiring an applicant for a certificated or classified position, a school district must obtain the applicant's written authorization for release of the applicant's records regarding sexual misconduct, if any, from the applicant's former or current school district employer.

A school district must submit the authorization with a request for the records, if any, to the appropriate school district or districts. An applicant who refuses to provide the

authorization may not be offered employment with the district.

A school district receiving such a request for records must, within 20 days, provide the hiring district with information in the applicant's personnel file regarding sexual misconduct, if any. A school district may offer conditional employment pending its review of information obtained from another school district. For all applicants for certificated employment, school districts must request from the Superintendent of Public Instruction (SPI) verification of certification status and information regarding sexual misconduct, if any.

School districts and their employees who, in good faith, release the information requested are immune from civil liability. Information received by the hiring district may be disclosed only to those directly involved in the hiring decision. Misuse of the information constitutes a misdemeanor.

School districts must, within 48 hours of receiving a report alleging sexual misconduct, notify the parents of a student who is the alleged victim, target, or recipient of the misconduct. School districts also must annually inform parents of their rights under the Public Disclosure Act to obtain information regarding school employees.

Beginning September 1, 2004, no school district may enter into an agreement to suppress or expunge from personnel files, investigative files, or other files information about sexual misconduct, verbal abuse, or physical abuse by a school employee. Information about alleged misconduct, not substantiated, may be expunged from an employee's personnel file.

At the conclusion of an investigation, school employees are permitted to review their files maintained by a school district regarding sexual misconduct, if any, and to attach rebuttals to any documents.

The State Board of Education is directed to define "sexual misconduct," "verbal abuse," and "physical abuse" for application to the employment records of certificated and classified employees. The definition must include a requirement that the school district has determined there is sufficient information to conclude the conduct occurred and that it resulted in the employee leaving the school district.

Amended Bill Compared to Engrossed Second Substitute Bill:

A requirement for parent notification is added. Clarifications are made that an employee's right to inspect his or her file is subject to existing limitations related to pending criminal investigations and pending lawsuits; that the files that may be inspected are those maintained by a school district; and that the employee has the right to inspect the files after the investigation is concluded. Files eligible for an employee's inspection are expanded to include the district-level investigative file and other files about the

employee. Technical corrections are made.

Appropriation: None.

Fiscal Note: Requested on February 20, 2004.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is a problem that many did not know existed until the Seattle Times article appeared, although these problems have been around since the 1970s. This would close some of the loopholes and reduce the number of lawsuits against school districts. The employees involved with these incidents have either been in the corrections system and then released, or have quietly left employment and then have reappeared at another district. The effects on students include attempted suicide, shame, guilt, and estrangement from family and peers, especially when the student is blamed for a popular teacher or coach leaving the school.

Offenses range from grooming behaviors and then escalate to notes, dancing, or out-of-school meetings. Usually some other staff members begin taking note of what is happening, but beyond that, nothing may happen other than a talking-to or reprimand at the local level. In many cases the student is never questioned and parents are not notified. While the employee who raised the issue may believe the case has been addressed, nothing more may be done. Mandatory reporting requirements apply to all school employees but they may not recognize they are to report about conduct of other school employees.

We are trying to close the loopholes so that children are not harmed. In the case where the school administration believes there is a problem, they may believe the behavior does not necessitate a report to law enforcement but they still want to remove the problem employee from the district. In order to get the employee to leave, the district may agree to keep the information secret in exchange for the resignation. This bill will prevent those silence agreements so that even if the employee leaves, the SPI will be informed, and the information must be disclosed if the person applies to another district. Proper due-process is in place for employees because the bill does permit expunging information about false allegations that are not substantiated.

This is a subject of trust. Parents deliver their children into the hands of people they trust. Ninety-nine percent of the time that trust is warranted and is not violated. But for a small percentage of times, that trust is violated. It's time to let it be known that if you violate that trust you will never teach or coach again in this state. We have an obligation to address this issue on behalf of all children and also on behalf of those teachers and coaches who take their positions of trust seriously.

(In support with concerns) These bills begin the process but the Legislature needs to hold these agencies accountable. It also should extend to coaches who are outside the public school system. School employees should have access to all the types of files listed in the bill.

Testimony Against: This problem has been going on for over 26 years and the Legislature should consider what this does to children and parents who have to worry about the safety of their children. It is a waste of taxpayer money to have the OSPI involved. The state and federal government should get more involved with the sexual misconduct of children. Unless we put stiff laws down we can't protect our children.

Persons Testifying: (In support) Senator Benton, prime sponsor; Senator Kohl-Welles, sponsor; Abby Rice; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Lucinda Young, Washington Education Association; and Dan Steele, Washington State School Director's Association.

(In support with concerns) M. Jeanell Malone, self/kids/teachers.

(Opposed) Michael B. Fuller, Association Against Homelessness in America.

Persons Signed In To Testify But Not Testifying: (In support) Rainer Houser, Association of Washington School Principals; Larry Davis, State Board of Education; Greg Williamson and Charlie Schreck, Office of the Superintendent of Public Instruction; and Barbara Mertens, Washington Association of School Administrators.