
Education Committee

HB 2834

Brief Description: Regarding gang and hate group activity at schools and school activities.

Sponsors: Representatives Probst, Hurst, Sullivan, Hope, Quall, Chase, Kelley, Wallace, Hunt, Conway, Haigh, Kenney and Simpson; by request of Superintendent of Public Instruction.

Brief Summary of Bill

- Tasks the Office of the Superintendent of Public Instruction and others with developing rules, definitions, guidance, and model policies regarding gangs and hate groups.
- Adopts new definitions of "criminal street gang", "criminal street gang associate or member", and "gang activity".
- Allows suspension or expulsion if a student is a member or associate of a criminal street gang or member of a hate group and knowingly engages in gang or hate group activity on school grounds or while engaged in any school sponsored activity.
- Authorizes school districts to reject applications from non-resident students on grounds of criminal street gang or hate group membership or activity that raises significant concerns for safety.
- Prohibits a school district from rejecting a non-resident application to an online program unless the program requires the presence of the student on school property and there is a significant risk of disruption or significant concern for staff or student safety.
- Provides that prior history of suspension or expulsion for 10 consecutive days must be accompanied by evidence that admission of the student would be disruptive or cause safety concerns in order to constitute sufficient grounds for rejecting a non-resident application.

Hearing Date: 1/22/10

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Gangs in Schools Task Force.

In 2007, the Legislature directed the Office of the Superintendent of Public Instruction (OSPI) to convene a task force to examine how gangs are affecting school safety and to recommend methods to prevent and eliminate gangs in schools, gather intelligence on gangs, and share information about gangs.

The task force made seven recommendations in 2008 and, in its 2009 Report to the Legislature, reaffirmed these recommendations:

- Revise the statute regarding suspension and expulsion to include a definition of "gang" consistent with the criminal code definition and a definition of "gang activity" to include intimidation of staff or students.
- Establish 1000-foot "school safety zones" from which gang members can be excluded if they engage in activity that warrants concern for the safety of staff or students.
- Provide grants to districts and communities for prevention and intervention programs.
- Create a dedicated funding formula for support of transition programs to provide educational and intervention services for suspended or expelled students.
- Develop sample anti-gang school policies that include consistent discipline practices, and a mandate that all districts adopt an anti-gang policy.
- Provide support for ongoing in-state training for all agencies and providers serving gang-affected youth.
- Develop a secure information-sharing system for exchange of information on gang activity.

The 2009 Report provided the following updates on gang activity in schools:

- Gang activity in communities and schools is increasing and expanding to areas previously unaffected.
- Many students report being intimidated by gang activity at school.
- Schools report that gang recruitment of middle school students is common, and that gang issues are affecting elementary schools.
- The Healthy Youth Survey indicates that nearly 10 percent of 10th grade students are involved in gang activity, with the estimated number of gang members and associates in Washington schools at 20,000 to 30,000.
- Activity of gang-like security threat groups and extremist groups seems to be increasing, with a corresponding increase in hate group activity in and around schools.
- Students suspended and expelled for gang-associated behaviors are often left without any opportunity to continue their education, and without available intervention and alternate placements, schools may have no practical option other than the use of school exclusion.
- Schools continue to report concerns about gang activity near campus, including shootings and gang-related fights and assaults that put students and staff at risk.
- There is a high demand for gang awareness training.
- Anecdotal information seems to indicate that gangs are the most critical safety and security issue that schools are currently facing.

Throughout the Report, the task force advocated for a balanced approach to address gang problems, stating that suppression activities are essentially the treatment of the symptom rather than the causes of youth gangs and that prevention and intervention are also necessary.

School Discipline.

A student may be suspended or expelled if the student is a member of a gang and knowingly engages in gang activity on school grounds. "Gang" means a group which: (1) consists of three or more persons; (2) has identifiable leadership; and (3) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

Non-resident Students.

A district may reject applications from non-resident students whose disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership or if the student has been expelled or suspended from a public school for more than 10 consecutive days. "Gang" is defined as above. The district must provide applicants written notice of approval or denial in a timely manner. Rejections must include the reasons and the right to appeal.

Summary of Bill:

Legislative intent is expressed that the schools of this state be free of the negative influences of criminal street gangs and hate groups that are inconsistent with the maintenance of a positive and safe school climate. Several findings are made:

- that gang and hate group activity on school grounds and at school activities places staff and students at risk and interferes with schools' educational mission;
- that because of the highly mobile nature of modern gangs, no region is immune to the effects of criminal street gang activity;
- that clearly stated and consistent school policies are necessary to protect student due process rights; and
- that suppression must be combined with prevention and intervention to effect long-term reductions in gang and hate group activity.

Timeline for Development of Definitions, Rules, Policies and Procedures.

The Superintendent of Public Instruction (OSPI) is directed to convene a work group to advise with respect to the development of rules and guidance, including definitions of terms and specification of what types of conduct may be considered gang or hate group-related. The work group must include representatives of the following stakeholder groups:

- school director and administrators
- civil rights organizations
- state ethnic commissions
- the Tribal Leader Congress
- parents
- students
- law enforcement

By December 1, 2010, the results of the work group must be reported to appropriate committees of the Legislature. By that same date, the OSPI must make guidance, definitions, and draft rules available to school districts.

By January 1, 2011, the Washington State School Directors Association and the OSPI, in collaboration with the Gangs in Schools Task Force and other stakeholders, must develop and make available to school districts a model policy and procedure.

By September 1, 2011, each school district must enact an anti-gang policy or modify an existing policy. Such policies must prohibit criminal street gang and hate group activity on school property and school vehicles, at all school activities, and must outline a procedure that implements the policy in a manner consistent with all pertinent laws, rules, and guidance provided by the OSPI. Such policies and procedures must also include:

- a statement that criminal street gang and hate group activities are prohibited on school properties and at school events;
- definitions of all terms, including "criminal street gang", "gang member or associate", "gang activity", "hate group", and "hate group activity" consistent with the definitions in the school code and definitions provided in guidelines or rules adopted by the OSPI; and
- specific guidelines to be used for determining if a student falls under the definitions for the purpose of disciplinary action and an avenue for a student to appeal that determination and/or have it later removed from the student's school record.

Policies and procedures must be constructed and applied in a manner that does not discriminate on the basis of race, creed, color, national origin, religion, sex, or sexual orientation, and must be consistent with Washington's Law Against Discrimination. The superintendent must require reporting of discipline for criminal street gang and hate group conduct to monitor for disproportional impact on protected groups.

School Discipline.

Definitions

The definition of "gang" found in the school code is stricken and three new definitions added. The first two are identical to the definitions found in the criminal code:

- "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide organizations or their members or agents.
- "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

The third definition is as follows:

- "Gang activity" means *any act* that is committed for the benefit of, at the direction of, or in association with any criminal street gang, *or* is committed with the intent to promote, further, or assist in any criminal conduct by the gang, *or* is committed for one or more of the following reasons:
 1. to gain admission, prestige, or promotion within the gang;

2. to increase or maintain the gang's size, prestige, dominance, or control in any geographical area;
3. to exact revenge or retribution for the gang or any member of the gang;
4. to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
5. to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
6. to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance; arson; trafficking in stolen property; promoting prostitution; human trafficking; or promoting pornography.

This latter definition is patterned after a definition in the criminal code but is not identical. In the criminal code, "gang activity" means "any felony or misdemeanor offense", rather than "any act", that meets the above criteria.

"Hate group" and "hate group activity" are not defined. These terms are to have the definitions provided in rules or guidance by the (OSPI).

Suspension or Expulsion.

A student may be suspended or expelled, consistent with other laws and rules related to student discipline, if the student is a member or associate of a criminal street gang or member of a hate group and knowingly engages in gang or hate group activity on school grounds or while engaged in any school-sponsored activity.

Disciplinary Rules and Guidance.

The OSPI, in consultation with the Task Force on Gangs in Schools and the School Safety Advisory Committee, may adopt rules pertaining to the discipline of students for gang-related or hate group-related behavior. Such rules must include reasonable standards establishing whether a student falls under the definition of a gang or hate group member or associate, specific definitions of conduct considered gang or hate group activity, limits on disciplinary exclusions from school, and required reporting or recordkeeping. The OSPI must provide guidance to districts and update such guidance as necessary.

Non-resident Students.

School district authority to reject applications from non-resident students on grounds of gang membership is modified to allow rejection on grounds of criminal street gang or hate group membership. Activity that raises significant concerns for staff or student safety is another basis for rejection.

An application cannot be rejected solely on the basis that the student has been expelled or suspended from a public school for more than 10 consecutive days. There also must be evidence that admission of the student would present a significant risk of disruption of the educational environment or significant concern for staff or student safety.

Districts accepting applications from non-resident students for admission to an online learning program may not deny a non-resident application on any of the above bases unless the program regularly requires the presence of the student on school property and there is a significant risk of

disruption of the educational environment or a significant concern for staff or student safety caused by the student's presence.

Written notification of approval or denial must be provided in a timely manner not to exceed five school business days from receipt of the application unless extenuating circumstances exist.

Appropriation: None.

Fiscal Note: Requested January 14, 2010.

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