

SENATE BILL REPORT

E2SHB 3026

As Reported by Senate Committee On:
Early Learning & K-12 Education, February 24, 2010
Ways & Means, March 1, 2010

Title: An act relating to school districts' compliance with state and federal civil rights laws.

Brief Description: Regarding school district compliance with state and federal civil rights laws.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Santos, Quall, Chase, Upthegrove, Kenney, Hunt, Nelson, Lias, McCoy, Hudgins, Simpson and Darneille).

Brief History: Passed House: 2/13/10, 59-35.

Committee Activity: Early Learning & K-12 Education: 2/18/10, 2/22/10, 2/24/10 [DPA-WM, DNP, w/oRec].

Ways & Means: 2/27/10, 3/01/10 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators McAuliffe, Chair; Kauffman, Vice Chair, Early Learning; Oemig, Vice Chair, K-12; Gordon, Hobbs and McDermott.

Minority Report: Do not pass.

Signed by Senators King, Ranking Minority Member; Brandland and Holmquist.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Juliana Roe (786-7438)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Hobbs, Keiser, Kline, Kohl-Welles, McDermott, Murray, Oemig, Pridemore, Regala and Rockefeller.

Minority Report: Do not pass.

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.

Signed by Senators Zarelli, Ranking Minority Member; Hewitt and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland, Carrell, Honeyford and Parlette.

Staff: Elise Greef (786-7708)

Background: The 2008 Legislature commissioned five studies, by way of 2SHB 2722 (2008), and four provisos in the 2008 supplemental operating budget that analyzed the differences in academic achievement and educational outcomes among various subgroups of students. These differences are referred to as the achievement gap. In 2009 the Legislature created the Achievement Gap Oversight and Accountability Committee (Committee), by way of 2SSB 5973, to synthesize findings and recommendations from the 2008 studies into an implementation plan, and recommend policies and strategies in specified areas to the Office of Superintendent of Public Instruction (OSPI), Professional Educator Standards Board (PESB), and the State Board of Education to close the achievement gap. The Committee has since provided the Legislature with a list of recommendations on how to close the achievement gap, including the recommendations that OSPI be given legal authority to take affirmative steps to ensure that school districts comply with state and federal civil rights laws; and that the chapter on sexual equality, RCW 28A.640, be updated to include other federal and state protected classes.

Discrimination on the basis of sex is prohibited in Washington public schools. Aggrieved persons can file a complaint with the district superintendent, who must respond in writing within 30 days, setting forth whether the district denies the allegations or acknowledges the validity of the allegations and provides the nature of the corrective actions deemed necessary. An aggrieved person can appeal the superintendent's decision to the school board. The school board must schedule a hearing for the appeal and render a written decision. An aggrieved person can appeal the school board's decision to OSPI. OSPI can enforce and obtain compliance by appropriate order which may include the termination of all or part of moneys to the offending district, termination of specified programs, institution of corrective action, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved.

Under RCW 49.60, the Washington Law Against Discrimination created the Human Rights Commission (HRC) with powers to eliminate and prevent discrimination. Any person claiming to be aggrieved by an alleged unfair practice may file a complaint with the HRC. The HRC may then investigate complaints and issue written findings of fact as well as findings as to whether there exists reasonable cause to believe that an unfair practice has been, or is being, committed. Upon a finding of reasonable cause, the HRC staff must endeavor to eliminate the unfair practice by conference, conciliation, and persuasion. If an agreement is reached, the HRC issues an order setting forth the terms of the agreement. If no agreement is reached, the HRC requests the appointment of an administrative law judge (ALJ) to hear the complaint. An ALJ may award damages, require that wrongful conduct cease and desist, and order affirmative action so as to effectuate the purposes of the chapter. There is a right of judicial review from the ALJ's order.

Alternatively, a complainant may file a civil suit against the alleged wrongdoer. Relief may be in the form of an injunction against further violations, the recovery of actual damages, and reasonable attorneys' fees.

Summary of Bill (Recommended Amendments): Discrimination is prohibited in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

OSPI must develop rules and guidelines to eliminate discrimination. OSPI must monitor local school districts' compliance, and must establish a compliance timetable, rules, and guidelines for enforcement. OSPI has the authority to enforce and obtain compliance with the provisions of this chapter and other state laws prohibiting discrimination by appropriate order. The order may include termination of all or part of federal financial assistance or state apportionment or categorical monies to the offending school district, termination of specified programs, institution of corrective action, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved.

Aggrieved persons have a right of action in superior court for civil damages.

The act is null and void if it is not funded in the omnibus appropriations budget.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): OSPI's authority to enforce and obtain compliance is limited to state and not federal laws.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended Amendments): The requirement that OSPI post information on its website and issue a statewide press release is removed.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: There is a null and void clause if it is not funded in the omnibus appropriations act.

Staff Summary of Public Testimony on Engrossed Second Substitute House Bill (Early Learning & K-12 Education): PRO: The Achievement Gap Accountability and Oversight Committee (Committee) discovered during a presentation to the Committee that OSPI does not have authority to enforce compliance with discrimination other than sex discrimination. An entire statute is devoted to sex equality, but no other civil rights. This bill parallels existing law and establishes a new section on discrimination. The bill does not create any new protected classes as these are all already protected. OSPI already must monitor and enforce complaints in order for Washington to receive federal funds. OSPI signs a document

to this effect. Therefore, OSPI is effectively already enforcing civil rights laws. Students learn self confidence from how they are being perceived and how they are being treated. If protected groups are left out, we are telling them that they are second class citizens.

This fiscal note is astonishing. If OSPI is already monitoring and enforcing compliance with sex equality, then it should not cost more to add other protected classes to those within OSPI's enforcement powers. The fiscal note shows a subjective estimation. If there is no discrimination in schools, then there is no liability and no need for such a large fiscal note.

The problem with current laws is that federal laws do not provide incentives for compliance and cases take many years to resolve. Schools may be in compliance in many ways, but often do not comply with civil rights laws and these problems are swept under the rug.

This bill takes a logical step; it brings all civil rights to the same level of enforcement and compliance. There is no doubt that this type of law is needed. Racial disparity is a continuing problem in schools. This bill fills an important gap in enforcement of civil rights. It gives parents an option other than litigation and gives OSPI enforcement power.

Many students are discriminated against by students and teachers alike in public schools. Further, there is poor communication between staff and students and their families. There is also a lack of policy and procedure to be followed in civil rights cases.

There is a shared goal of ensuring that discrimination is eliminated in schools. OSPI has increased staffing of the Office of Equity and Civil Rights. We believe we can achieve compliance with school districts through persuasion and assistance. This legislation affirms the process that OSPI currently pursues and utilizes. However, the fiscal note is large. This bill explicitly grants new legal authority to OSPI and there is anticipation that aggrieved persons will sue the state or districts. The reality is that there are large legal costs associated with this bill.

CON: This bill has a problem with duplication of services and avenues for access of litigation. We have a problem trying to determine why there is a provision regarding websites and the nexus between the achievement gap and discrimination. Where is this nexus?

In order to make something like this happen we need resources. If you want to provide children with the best possible resources, you have to appropriately fund this bill to provide for the possible litigation to follow. You should look at other avenues of approaching this issue. OSPI should not be in a police role, but rather a supportive role. There should be a nonpunitive approach to the situation. You should look at SB 6800 for a better approach.

Persons Testifying (Early Learning & K-12 Education): PRO: Representative Santos, prime sponsor; Drew Vernon, Peggy Johnson, Susannah Lowe, Adam Caldwell, Susan Fish, citizens; Robert Harkins, OSPI; Lynne Tucker, NW Exceptional Children; Shankar Narayan, ACLU; Jennifer Allen, Planned Parenthood and Safe Schools.

CON: Randy Hathaway, Washington School Personnel Association; Barbara Mertens, WSSDA.

Staff Summary of Public Testimony on Recommended Amendments (Ways & Means):

PRO: This legislation does require an amendment, which a member of your Committee has agreed to sponsor, to clarify that the authority of OSPI is to enforce compliance with Washington State antidiscrimination laws, not federal laws. The underlying legislation does not create any new protected classes. The House budget includes an appropriation of \$133,000 for the administration of this statute for this biennium. There is a duplication of costs added by the Attorney General's Office in the fiscal note that needs to be backed out. Additional activity on the part of OSPI should be minimal since OSPI already provides some enforcement assistance to school districts. This bill is not a large and burdensome leap that adds to OSPI a lot of enforcement they're not already doing. It takes the logical step of bringing into line OSPI's ability to enforce against all kinds of discrimination with authority they already have in the area of sex discrimination. This law is needed. Currently, parents' only recourse is to sue; this allows people to pursue an avenue that is short of litigation. Much work has been done to improve the bill.

CON: The bill expands the duties of OSPI and the fiscal note clearly explains that, if you are going to establish another arm of bureaucracy, it will cost money. The bill's remedy is to take money away from school districts when they are already strapped and the punishment would punish all students. The bill you have had in the Senate (SB 6800) that directs OSPI to refer complaints to the appropriate investigative agencies accomplishes the goal this legislation has set out to do. The bill uses funds that could be used to balance the budget. It duplicates existing laws and agencies already set up to deal with these issues. The school districts are highly concerned about the achievement gap and support actions that narrow that gap. Section 5, which allows an aggrieved person a right of action in superior court, is of particular concern. The ability to proceed immediately to superior court bypasses current law that directs many of these claims to administrative agencies prior to proceeding to court. Section 5 could inadvertently eliminate these valuable requirements. The cost of litigating a claim in court rather than through an administrative agency is significantly higher. School districts will have to bear these higher legal costs regardless of whether the claims have merit. Districts will not be able to recoup legal costs even when claims are frivolous. We believe the estimated fiscal impact to districts reported on the fiscal note is low. Districts believe public schools should be free of discrimination but we believe Section 5 needs to be deleted.

Persons Testifying (Ways & Means): PRO: Representative Santos, prime sponsor; Shankar Narayan, American Civil Liberties Union of Washington.

CON: Barbara Mertons, Washington Association of School Administrators, School Superintendents, Central Office Administrators; Randy Hathaway, Washington School Personnel Association; Carlos Chavez, special legal counsel to Issaquah and Lake Washington School Districts.