

SENATE BILL REPORT

SB 6800

As of February 3, 2010

Title: An act relating to discrimination in public schools.

Brief Description: Regarding discrimination in public schools.

Sponsors: Senators Kline, McAuliffe, Jacobsen and Gordon.

Brief History:

Committee Activity: Early Learning & K-12 Education: 2/03/10.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Staff: Juliana Roe (786-7438)

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 as to 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.

Under current law, sex discrimination in public schools is specifically prohibited pursuant to RCW 28A.640.101. Any person aggrieved by a violation of this chapter, or aggrieved by the violation of any regulation or guideline adopted pursuant to this chapter, has a right of action in superior court for civil damages and such equitable relief as determined by the court. OSPI can enforce and obtain compliance with this chapter and related regulations and guidelines using various means, including the termination of all or part of state apportionment or categorical moneys, the termination of specified programs in which violations may be flagrant within the offending school district, the institution of a mandatory

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affirmative action program within the offending school district, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved. The common school provisions in Chapter 28A RCW do not include specific acknowledgment of the right to be free from discrimination because of race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation, 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, nor do any common school provisions specifically direct OSPI to monitor and enforce compliance with these laws.

The Office of the Education Ombudsman (OEO) is charged with solving conflict and disputes between Washington families and public schools pursuant to RCW 43.06B. It provides consultation, coaching, facilitation, and mediation services to students and schools. If the OEO is unable to resolve an issue regarding an alleged civil rights violation, it can refer the aggrieved person to the Human Rights Commission (HRC). Under RCW 49.60, the Washington Law Against Discrimination created the 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: OSPI has the authority to monitor, investigate, and prepare complaints for victims of discrimination in public schools based on violations of either state or federal civil rights laws. Complaints prepared by OSPI must be submitted to the HRC for enforcement.

Appropriation: None.

Fiscal Note: Requested on January 28, 2010.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill was derived from the recommendations of the Committee. It has become clear that OSPI only has authority to monitor and investigate sex discrimination, but not other civil rights violations. The HRC should remain the enforcer of civil rights laws, but OSPI should be allowed to monitor and

prepare complaints to be provided to the HRC for violations of state and federal civil rights laws. There is no reason for OSPI to get into the enforcement business.

This is a great bill that can be improved upon. Certain complaints, such as employment issues, would be better handled by other state or federal agencies than by OSPI. While OSPI should have the authority to review a complaint and refer it to another agency, it does not have the legal staff to prepare complaints on behalf of aggrieved persons. We want this bill to reflect current resources and strengths of the agency.

Persons Testifying: PRO: Senator Kline, prime sponsor; Erin Jones, OSPI; Christie Perkins, Washington State Special Education Coalition.