

SENATE BILL REPORT

ESSB 5946

As Amended by House, June 28, 2013

Title: An act relating to strengthening student educational outcomes.

Brief Description: Strengthening student educational outcomes.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dammeier and Frockt).

Brief History:

Committee Activity: Ways & Means: 6/10/13, 6/11/13 [DPS, DNP].

Second Special Session: Passed Senate: 6/13/13, 26-22.

Passed House: 6/28/13, 69-23.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5946 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Honeyford, Capital Budget Chair; Bailey, Becker, Braun, Dammeier, Hewitt, Padden, Parlette, Ranker, Rivers, Schoesler and Tom.

Minority Report: Do not pass.

Signed by Senators Nelson, Assistant Ranking Member; Conway, Fraser, Hasegawa, Keiser and Kohl-Welles.

Staff: Susan Mielke (786-7422)

Background: State and District Responsibilities. The Superintendent of Public Instruction is an elected official of Washington State with the constitutional duty “to supervise all matters pertaining to public schools, and . . . perform such specific duties as may be prescribed by law.” There are 295 school districts in Washington, which provide the statutory delivery system for instruction to K-12 students. Each school district has a board of directors that is elected by the citizens of the district and establishes district policies that are not in conflict with other law.

Reporting. The Comprehensive Education Data and Research System (CEDARS) at Office of Superintendent of Public Instruction (OSPI) is the vehicle for collecting an array of school-district student, employee, and fiscal data to meet various state and federal reporting

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.

requirements. Currently there are no state requirements regarding what information is included on a student report card.

State Reading Assessments/Students Reading Below Grade Level. Current law requires the reading fluency and accuracy of second grade students be assessed using a grade-level equivalent oral reading passage. Students whose performance is found to be “substantially below grade level” must be accorded an intervention plan that involves the student, parents, and school. Assessing reading comprehension is optional, but strongly recommended. Scores are not reported to OSPI but are to be used by the teacher, school, and district to provide support for students who need help. Generally, in grades 3-8 and 10, student reading skills are assessed using the state's Measurements of Student Progress (MSP) assessment; unless the student has a disability and is not appropriately assessed by the MSP, then the state uses an alternate assessment. A student’s performance on the MSP is reported for individual students, schools, districts, and the state according to four performance levels defined by the Washington State Board of Education:

- Level 4: Advanced – exceeding state standard.
- Level 3: Proficient – meeting state standard.
- Level 2: Basic – not meeting state standard.
- Level 1: Below Basic – not meeting state standard.

The following table from the OSPI website shows the results from the MSP in third grade reading for 2011-12:

Performance Level	%	Number
Level 4: Advanced	32.1%	24,644
Level 3: Proficient	35.7%	27,434
Level 2: Basic	21.8%	16,731
Level 1: Below Basic	8.4%	6,430
Special Education Portfolio	–	777
No Score/Not Included	–	1,701

Recently, Washington revised its student learning standards in reading, writing, and mathematics, which are tested on the MSP, to align with the Common Core State Standards (CCSS). The CCSS are student learning standards in English language arts (ELA) and mathematics that were developed by a multistate consortium.

Washington is participating in a multistate consortium using a federal grant to develop new student assessments that are, among other things, aligned with the CCSS. The assessments will include a third grade ELA assessment. The assessments will be ready to implement in the 2014-15 school year. To continue in the consortium after the beginning of the 2014-15 school year, Washington must agree to use the consortium-developed tests to meet the accountability requirements of the federal No Child Left Behind Act, also known as the reauthorization of the Elementary and Secondary Education Act.

Learning Assistance Program. LAP provides instructional support for students who are performing below grade level in reading, writing, and mathematics. The funding allocation is based on the number of students in the school district who are eligible for free and reduced price lunch. For purposes of providing supplemental instruction, school districts must

identify those students with the greatest academic deficits. A range of specified services and activities may be supported by LAP funds, including parent outreach and support. School districts must submit an annual plan that identifies the activities to be conducted and the proposed expenditure of funds. The Legislature appropriated \$255 million in state funds for the LAP in the 2011-13 biennium.

Student Discipline. OSPI rules define a student suspension or expulsion as a denial of attendance or entry to school property for discipline purposes. A short-term suspension is for ten days or less; a long-term suspension is for longer than ten days. An expulsion is for an indefinite period of time. Each school board of directors must adopt rules regarding student conduct, discipline, and rights, including but not limited to short- and long-term suspensions. The rules must be available to students, parents, and teachers, and include a detailed description of rights, responsibilities, and authority of teachers and principals with respect to the discipline of pupils as prescribed by state statutory law, OSPI, and the rules of the school district.

Teacher Mentor Program. In 2009 the Legislature redesigned the Teacher Assistance Program to create a grant program called the Beginning Educator Support Team (BEST). The BEST, which is established only in budget proviso, must include a paid orientation; assignment of a qualified mentor; development of a professional growth plan for each beginning teacher aligned with professional certification; and release time for mentors and new teachers. The 2011-12 grant recipients included two school districts and three regional consortia serving 26 additional school districts. The 2011-13 biennial operating budget provided \$2 million for the BEST.

Professional Development. From 1993 to 2010, the Legislature provided funding for some form of learning improvement days (LIDs). In 2007 LIDs were put into statute as targeted professional development. Both the statute and appropriations act provided that LIDs are not part of the definition of basic education. Current law provides that to the extent funds are appropriated, OSPI, in cooperation with the Educational Service Districts and the Washington State School Directors' Association, must conduct an annual training meeting for certain regional and school district employees, including school district superintendents and boards of directors. Training may also be provided upon request.

Supplemental Contracts. One legislative limit on salaries is that the actual average salary in the district cannot exceed the average salary calculated based on the state allocation schedule. However, current law permits school districts to exceed this limitation by entering into a supplemental contract with the employee for additional time, responsibilities, incentives, or innovations (TRII). The supplemental contracts are sometimes called TRII contracts. TRII contracts may not cause the state to incur any present or future funding obligation.

Alternative Learning Experience (ALE) Programs. ALE programs provide a way for students to be enrolled in public education without being required to meet the in-class seat-time requirements for regular instruction. There are three primary types of ALE programs identified in statute: online learning programs; parent-partnership programs that include significant participation by parents in the design and implementation of the student's learning; and contract-based learning.

Educational progress of students enrolled in ALE programs is monitored through an individualized student learning plan (SLP). Rules adopted by the Office of Superintendent of Public Instruction (OSPI) specify the content of an SLP, which must include direct personal contact with a teacher at least once a week, estimated hours per week of learning activities by the student, and monthly progress evaluations to assure that students are making satisfactory progress.

Certain practices are prohibited for ALE programs, such as providing compensation or stipends directly to parents, providing an incentive for district staff to enroll nonresident students, and purchasing curricular activities for ALE students unless substantially similar activities are available for regularly enrolled students.

Online Learning Programs. Most of the requirements regarding ALE programs are in administrative rules adopted by OSPI. However, online learning programs were first authorized in 2005 through legislation, so some of the requirements as they pertain to online programs appear in statute. In addition, legislation enacted in 2009 requires online learning programs offered to students from multiple school districts, either directly by a school district or under contract, to be approved by OSPI. Beginning in the 2013-14 school year, all online learning programs must be approved by OSPI.

Summary of Engrossed Substitute Bill: Part I: Learning to Read, Reading to Learn

State and District Responsibilities. OSPI is responsible for providing reading and literacy benchmarks and standards, research and best-practices, intervention models, and professional development to school districts. School districts are responsible for providing reading and literacy instruction and services to students in grades K-4, based on the student need. The reading and early literacy systems provided must include screening tools to identify struggling readers, and include research-based strategies to help families assist in improving students' skills.

Professional Development. If funds are provided, OSPI must partner with educational service districts or Colleges of Education to develop and deliver research-based professional development in reading instructions for K-4th grade teachers.

Reporting. Each school must report to the district the number of K-4 students who are reading below grade level and the interventions being provide for improvement. The information must be disaggregated by subgroups of students. The school district must report the information to OSPI. OSPI must provide an annual report to the Legislature and the Educational Opportunity Gap Oversight and Accountability Committee. The report cards of students in grades K-4 must indicate whether the student is reading on grade level.

State Reading Assessments/Students Reading Below Grade Level. If the student is not reading at or above grade level then the teacher, with the support of other appropriate school personnel, must provide information on strategies that will be used to help the student improve and strategies for the student's parents to assist the student at home.

Students in Level 1. Beginning in the 2014-15 school year, if a student scores in Level 1, the lowest tier of a four-tier system, on the statewide third grade ELA assessment there must be a meeting between the student's parents, teacher, and principal of the school or the principal's designee, to discuss appropriate grade placement and recommended intensive

strategies to improve the student's reading skills. For students to be placed in fourth grade, the strategies discussed must include an intensive improvement strategy that includes a summer program or other option identified at the meeting as appropriate. The school district must implement any strategies to which the parent consents. Transitional Bilingual Instructional Program (TBIP) students are exempt unless the student has been in the TBIP program for three school years and receives a level 1 score. Special education students are exempt.

Students in Level 1 and 2. Beginning in the 2015-16 school year, a school district must implement an intensive reading and literacy improvement strategy from a menu of best practices developed by a panel of experts convened by OSPI, or an approved alternative. The required intensive strategy applies to:

- Any student who scored as Level 1 or Level 2 on the third grade statewide ELA assessment in the previous year. Reading and literacy improvement strategies for special education students that includes specially designed instruction must be provided in the individualized education program.
- Any school that has more than 40 percent of the tested students score in Level 1 or 2 on the third grade statewide ELA assessment in the previous year. In calculating a school's percentage, OSPI must exclude special education students, TBIP students unless they have been in the TBIP program for three school years and receive a Level 1 score, and any school with fewer than 10 students in grade three.
- School districts can use a strategy not on the state menu if the district can demonstrate improved outcomes for students at a level commensurate with those on the state menu. If so, then OSPI must approve the alternative strategy. Subsequent annual approval depends on continued increases in improved student outcomes.

Part II: Requiring LAP to be Evidence-Based

Program Design and Focus. LAP design is expanded to reduce disruptive behaviors in the classroom in addition to the current assistance with underachieving students. School districts implementing LAP must focus first on addressing the needs of students in grades K-4 who are deficient in reading or reading-readiness skills. The requirement to have a plan to receive LAP funds is removed. Instead, districts must report entrance and exit performance data, the amount of academic growth gained by each student, and the specific LAP practices and strategies used by each school. OSPI must compile annual and longitudinal gains for specific LAP practices and strategies to show which are the most effective. OSPI may provide technical assistance to school districts to improve the effectiveness of LAP. Specific authorization is provided to use LAP funds to employ parent- and family-engagement coordinators.

Menus of Best Practices. In addition to state menu for best practices for reading, OSPI must convene a panel of experts, to include the Washington State Institute for Public Policy (WSIPP), to develop additional menus of best practices for LAP at all grade levels in ELA and mathematics, and to reduce disruptive behaviors in the classroom. The menus will be updated annually. School districts are encouraged to use best practices on the menus before the use is required. Beginning in the 2016-17 school year, school districts must use a practice from the menu or an approved alternative. An alternative is a practice that is not on the menu but the district has received OSPI approval for the practice by being able to demonstrate increased achievement or other improved outcomes commensurate with the menu practices.

Continued use of an alternative strategy requires annual approval based on continued improvement in results.

Part III: Student Discipline

OSPI must adopt rules providing that an expulsion or suspension may not be for an indefinite period of time. Emergency expulsions must end or be converted to another corrective action within 10 school days from the removal from school. Notice and due process rights apply to the conversion. A suspension of more than 10 days or an expulsion from school is limited to one calendar year. If health or safety requires a longer time than one calendar year, the school may petition the school district superintendent or the superintendent's designee, in accordance with school district policies outlining the limited circumstances when the limit may be exceeded.

School districts must record specified data on disciplinary actions in the statewide data system using the standards established by OSPI and the K-12 Data Governance Group. The non-personally-identifiable information must be made public. School districts must meet with the student and the parents within 20 days of a long-term suspension or expulsion to discuss a plan to reengage the student in a school program. OSPI is to convene a discipline task force to develop standard definitions for causes of discretionary student disciplinary actions taken by school districts, and to develop data-collection standards for those disciplinary actions, including exclusion of a student from school. OSPI must begin collecting data based on the developed standards. Specifically declares that nothing in the act prevents a school district or law enforcement from enforcing laws to protect health and safety.

Part IV: Educator Support Program

The BEST program, which provides mentoring for beginning teachers and teachers on probation is established in statute. The provisions are based on the current program description and parameters outlined in proviso in the 2011-13 omnibus appropriations act. Subject to funding, OSPI must allocate competitive grants for BEST, giving priority to low-performing schools. If separate funds are provided, the program may also support educators on probation.

Part V: Professional Development

Legislative findings are made that school district boards of directors provide vision, direction, and oversight; and the superintendent is key to day to day administration. The Washington State School Directors' Association is directed to develop and annually implement training focused on evidence-based governance strategies to improve student achievement.

Legislative findings are made to recognize the many recent changes in state educational policies and the importance of providing training for successful implementation. Legislative intent is provided that the training to be responsive to the needs of local school districts. Requires that for the next 2 years, compensation adjustments by the school district beyond an adjustment for inflation to be in the form of targeted professional development and may include the common core state standards and the teacher/principal evaluations. Inflation will be determined each year using the Seattle Consumer Price Index for the most recently completed calendar year.

OSPI must conduct an analysis of K-12 professional development to improve the baseline understanding of policymakers regarding the level of public school resources currently expended to support professional development, the sources of funds, and the type & content of professional development purchased. The report is due to the legislative education committees by December 31, 2013. As an extension of the study and to facilitate ongoing understanding of resources expended to support professional development, beginning in the 2013-14 school year, each school district must annually report to OSPI the amounts & purposes of locally bargained compensation provided by the school district, including the type and content of the professional development purchased, and the personnel positions that receive the professional development. For the purposes of reporting, "professional development" includes both traditional forms such as seminars, conferences, courses, or training sessions and nontraditional, job-embedded forms such as dedicated time for instructional teams to examine student data, coaching and mentoring, & professional learning communities. OSPI must annually report the information to the Legislature and the Governor. OSPI may adopt rules to implement the ongoing reporting by the school districts.

Part VI: Alternative Learning Experiences (ALE)

ALE Courses. References to alternative learning experience (ALE) "programs" have been replaced with references to ALE "courses." The definition for ALE courses clarifies that grade-level coursework for grades K-8 is included. A definition of "in-person" instructional contact is added, meaning face-to-face instructional contact in a physical classroom. "Instructional contact time" is defined as instructional time with a certificated teacher, and may occur in a group setting and delivered in-person or remotely using technology. ALE courses are re-classified into three categories: (1) "online" courses, which have the same meaning as elsewhere in statute; (2) "remote" courses that are not online courses, but where the student has in-personal instructional contact time for less than 20 percent of the total weekly time of the course; and (3) "site-based" courses where the student has in-person instructional contact time at least 20 percent of the total weekly time for the course.

Districts offering or contracting to offer ALE courses must (1) report their course types and offerings annually to OSPI; (2) document the district of resident for each enrolled alternative learning experience student; and (3) beginning in the 2013-14 school year, pay costs associated with a biennial measure of student outcomes and financial audit of the district's ALE courses by the Office of the State Auditor. School districts offering an ALE course to a nonresident student must inform the student's resident school district if the student drops out of the course.

School districts must assess the educational progress of enrolled students annually, using the state assessment for the student's grade level and other annual assessments. Part-time students who are receiving home-based instruction or enrolled in a private school are not required to participate in the annual assessments.

OSPI must adopt rules for weekly direct personal contact requirements and monthly progress evaluation, with attention given to reducing documentation requirements. Additionally, OSPI must adopt rules establishing procedures to address how the counting of students must be coordinated by resident and nonresident districts for state funding so that no student is counted more than once.

Online Courses. The definition of "online" courses is expanded to encompass grade-level coursework. When enrolled in an online course, a student's primary instructional interaction must be with a certificated teacher. Students may have access to the teacher synchronously, asynchronously, or both. School districts are required to award grades for online courses resulting in high school credit. School boards of directors must release students to a nonresident district if the purpose of the transfer is for the student to enroll in an online course or online school program. However, a district may refuse an application to transfer if the nonresident student has repeatedly failed to comply with requirements for participating in online school programs, such as maintaining minimum weekly contact time.

OSPI is authorized to develop online course approval criteria allowing providers which are candidates for accreditation to apply to provide programs in Washington. OSPI's Office of Online Learning is directed to develop a standard form to be used by all school districts for releasing a student to a nonresident school district for the purposes of enrolling in an online course or online school program.

Online school programs may request a waiver from OSPI to administer one or more sections of the statewide assessment for grades 3-8 on alternate days, as long as the administration is within the OSPI-designated testing period. OSPI may deny a waiver if the proposal does not maintain adequate test security or would reduce the reliability of the assessment results by providing an inequitable advantage for some students.

Funding. Funding is determined by the statewide Basic Education Allocation (BEA) rate for grades 9-12, allocated on a student full-time equivalent (FTE) basis. An emergency clause sets the effective date on the funding section to September 1, 2013.

Office of Financial Management (OFM) Study. The act directs the OFM to conduct a study, in consultation with OSPI, representatives from school districts that operate each type of course, the WSIPP, individuals with expertise in outcome-based public school funding models, a Washington State nonprofit organization with expertise in alternative learning education, and the Legislative Evaluation and Accountability Program committee. The purpose of the study is to create a proposal for efficiently and sustainably funding such courses, as well as to recommend performance targets, data needed to establish a baseline for measuring progress toward targets, and other accountability improvements. OFM must report findings to the Quality Education Council by November 1, 2013. The Quality Education Council will review the findings and make recommendations to the education and fiscal committees of the Legislature by December 15, 2013.

Appropriation: None.

Fiscal Note: Available.

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: Early-grade literacy instruction is a priority. Reading is essential as a primary reform because how you approach reading has a large

influence on the impact of the money spent in education. We are in support of the entire bill. We would suggest focusing on ensuring that every child can recognize and manipulate sounds and follow up with phonological screening twice per year. The problem is not that the children are poor; it is the quality of the instruction. We have supported the elements of this legislation when they were in separate bills and many have been improved from the earlier version. We have concerns about Section 501 and addressing compensation in this bill because it is complex and needs much more attention. All these programs would be more successful with full funding of basic education.

CON: We do not disagree with the parts of the bill that address early reading, LAP, teacher mentoring, or limiting suspensions and expulsions. Focused programs help. But it is late in the session and, if new programs are added without being fully funded in the budget, school districts have to make trade-off decisions about what they'll stop doing. We specifically oppose Section 501 which erodes local control and affects all K-12 employees. We strongly support professional development but it needs to be appropriate to the employees' jobs and should not come at the expense of pay. There are many legitimate reasons to raise pay to accomplish particular local objectives. Full-day kindergarten would accomplish the same early learning objectives. The school districts do not need the Legislature to tell them what to do; they need the resources to do it. Districts know how to limit suspensions by using Alternative Learning Experience programs but they need you to fully fund them.

OTHER: We support the discipline provisions of the bill because they represent a common-sense, low-cost approach for addressing the problems associated with exclusionary policies. Current school discipline practices are a contributing factor to ongoing juvenile justice system involvement. The ability to stay in school and on the path to graduation is essential to change the trajectory of these young people's lives and will result in long-term cost savings. One concern relates to allowing districts to appeal to their own superintendents for exemptions from the limits. We believe that role belongs with the Superintendent of Public Instruction to maintain statewide consistency, to ensure the educational opportunity gap is not inadvertently exacerbated, and to have transparency around the criteria for approval of an exemption. We are concerned about a phrase in to the section that delineates the types of suspension and expulsion data to be collected, "...Any other categories added at a future date by the data governance group." We believe this provides a non-legislative group with too much open-ended authority. We support the additional professional development but would like to see it extended to principals as well. It will be difficult for schools to use LAP funds for principal and superintendent internships and would like those funded separately. The Washington State School Directors' Association (WSSDA) asks that you include us as the lead provider of the school directors' training. It is very helpful to have included the colleges for teacher education in the early reading provisions; putting the beginning teacher mentoring program in statute, and applying limits to school suspensions and expulsions. The bill contains improvements to language compared to earlier versions. The 10-day limit on emergency expulsions continues to be a concern as school districts need funding and time to conduct violence risk assessments to ensure the student body is safe before returning expelled students to school. LAP funds are used across the grades and should not be limited to early-grade reading.

Persons Testifying: PRO: Ramona Hattendorf, Washington State PTA; Frank Ordway, League of Education Voters.

CON: Lucinda Young, Washington Education Association; Marcia Fromhold, OSPI.

OTHER: Jeannie Nist, TeamChild; Jerry Bender, Association of Washington School Principals; Jonelle Adams, Washington State School Directors' Association; Bob Cooper, Washington Association of Colleges for Teacher Education; Charlie Brown, Tacoma School District.

House Amendment(s): Part I. Adds the Washington State Institute for Public Policy to the panel of experts to develop a menu of best practices for reading instruction.

Part II. Allows up to 5 percent of LAP funds to be used to support development of partnerships with community-based organizations, ESDs, and other local agencies to deliver academic and nonacademic supports to participating students to enhance their readiness to learn. Beginning in 2016-17, allows districts to enter cooperative agreements for administrative or operational costs to provide services in accordance with the state menus of best practices for LAP. Requires the OSPI to approve any organization or entity before funds are expended.

Part III. Permits schools to implement a student suspension or expulsion from school for more than one calendar year by petitioning the school district superintendent based on policies adopted by the OSPI, rather than adopted by the district board of directors. Requires the OSPI, rather than school districts, to adopt rules outlining the limited circumstances to exceed the one-year limitation. Requires annual reports of the number of petitions filed and granted.

Part V. Removes provisions related to professional development, including professional development for school directors and superintendents to be provided by WSSDA; the requirement that any adjustments to locally provided compensation must be in the form of professional development; and an analysis by OSPI and reporting by school districts on the uses of locally bargained compensation for professional development.