

SENATE BILL REPORT

4SHB 1541

As Reported by Senate Committee On:
Early Learning & K-12 Education, February 25, 2016
Ways & Means, February 29, 2016

Title: An act relating to implementing strategies to close the educational opportunity gap, based on the recommendations of the educational opportunity gap oversight and accountability committee.

Brief Description: Implementing strategies to close the educational opportunity gap, based on the recommendations of the educational opportunity gap oversight and accountability committee.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Santos, Ortiz-Self, Tharinger, Moscoso, Orwall and Gregerson).

Brief History: Passed House: 3/05/15, 53-45; 2/04/16, 50-47.

Committee Activity: Early Learning & K-12 Education: 3/16/15; 2/23/16, 2/25/16 [DPA-WM].

Ways & Means: 2/29/16, 2/29/16 [DPA, w/oRec].

Brief Summary of Bill (Recommended Amendments)

- Makes a number of changes to student discipline law, including prohibiting certain types of suspensions and expulsions, limiting the length, and requiring policies and procedures.
- Requires the development of cultural competence training for school staff and encourages the use of this training.
- Mandates that teachers assigned to the Transitional Bilingual Instructional Program have a bilingual education or English language learner endorsement.
- Directs the Office of Superintendent of Public Instruction to assist school districts in developing language proficiency instructional practices and evaluation.
- Requires phased-in collection and reporting of student data further disaggregated by sub-racial and sub-ethnic categories and creation of a task force to provide guidance.

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.

- Tasks the Department of Early Learning with creating a plan to inform certain early learning providers of the Early Achievers program.
- Establishes the Washington Integrated Student Supports Protocol to coordinate academic and non-academic supports and creates a work group to determine implementation.
- Makes changes to the Learning Assistance Program and the Center for the Improvement of Student Learning.

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 Litzow, Chair; Dammeier, Vice Chair; McAuliffe, Ranking Member; Billig, Fain, Hill, Mullet, Rivers and Rolfes.

Staff: Ailey Kato (786-7434) Alia Kennedy (786-7405)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Braun, Vice Chair; Dammeier, Vice Chair; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Billig, Conway, Darneille, Hasegawa, Nelson, O'Ban, Pedersen, Rolfes and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Padden, Parlette and Warnick.

Staff: Lorrell Noahr (786-7708)

Background: Educational Opportunity Gap Oversight and Accountability Committee (EOGOAC). In 2009 the EOGOAC was established to recommend policies and strategies to close the achievement gap. The EOGOAC is composed of six legislators, representatives of the Office of the Education Ombuds and the Office of the Superintendent of Public Instruction (OSPI), and five members representing the state ethnic commissions and federally recognized tribes.

In its 2015 report to the Legislature, the EOGOAC made the following recommendations:

- reduce the length of time students of color are excluded from school due to suspensions and expulsions and provide student support for reengagement plans;
- enhance cultural competence of current and future educators and classified staff;
- endorse all educators in ELL/Second Language acquisition;
- accountability for the Transitional Bilingual Instructional Program (TBIP) services provided to ELL students;
- analyze the opportunity gap through deeper disaggregation of student demographic data;
- invest in recruitment, hiring, and retention of educators of color;

- incorporate integrated student services and family engagement; and
- strengthen student transitions.

Student Discipline. Under current law, each school district board of directors must adopt and make available written policies regarding pupil conduct, discipline, and rights. OSPI must adopt rules providing for due process rights for pupils.

Long-term suspensions are defined as any suspension longer than ten consecutive school days, and principals must consider imposing long-term suspensions or expulsions for certain violations. Legislation enacted in 2013 prohibited indefinite suspensions or expulsions and required that suspensions or expulsions of more than 10 days be limited to no longer than one year with a petition process to exceed this limit. Districts should meet with the student and their parents or guardians to discuss a plan to reengage the student in a school program.

OSPI must collect and report data on student suspensions and expulsions disaggregated by race and other characteristics and categories. The Legislature directed OSPI to establish the Discipline Task Force in 2013 to develop standard definitions and data collection standards for disciplinary actions taken at the discretion of school districts. OSPI and the K-12 Data Governance Group revised the statewide student data system to incorporate the standards recommended by the Discipline Task Force beginning in the 2015-16 school year.

Cultural Competence. In 2009 the Legislature directed the Professional Educator Standards Board (PESB) to develop standards for cultural competency for teacher certification in collaboration with the EOGOAC. Cultural competency includes knowledge of student cultural histories and contexts; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences.

Subject to funds appropriated, OSPI must develop and make available a professional development program to support the implementation of the teacher and principal evaluation system. The criteria for evaluating teachers and principals include the acquisition and use of knowledge about students' cultural development and a commitment to closing the achievement gap.

English Language Learner (ELL) Instruction. The state allocates funding through TBIP to provide additional support for ELL students to develop English language proficiency. In the 2013-14 school year there were 110,579 ELL students identified for service statewide which is an increase of more than 32 percent since the 2005-06 school year. ELL student enrollment has increased by more than 5 percent per year in each of the past three years in more than 130 schools across the state.

ELL Accountability. OSPI has developed the Washington English Language Proficiency Assessment (WELPA) to determine student eligibility for services and assess annual growth in English language development. In 2014 the Legislature directed OSPI to convene a task force to design a performance-based assistance and accountability system for the TBIP. The task force was directed to submit a report to the Legislature by January 15, 2016.

Disaggregated Data. The K-12 Data Governance Group within OSPI oversees the development and implementation of the data system for financial, student, and educator data.

The education data center, commonly referred to as the Education Research and Data Center (ERDC), resides in the Office of Financial Management and conducts collaborative analyses of early learning, K-12, and higher education programs and education issues.

OSPI collects student data on race and ethnicity through the statewide student data system in accordance with federal guidelines. The federal guidelines for K-12 student data require reporting of a student's race as White, African American/Black, Asian, American Indian/Alaskan Native, and Native Hawaiian/Pacific Islander. The guidelines also require separate reporting of ethnicity as Hispanic or non-Hispanic. According to the EOGOAC's 2015 report, OSPI developed standards that allow one or more selections from 57 sub-racial categories and nine ethnic subcategories, but school districts are not required to report data at this level of disaggregation.

Under current law, the results of schools and districts that test fewer than ten students in a grade level must not be reported to protect the privacy of students.

Recruitment and Retention. According to data from PESB, about 5 percent of teachers leave the workforce each year. The rate of Black/African American teachers leaving the workforce has risen from 5.2 percent in 2008-09 to 10.3 percent in 2012-13. In the 2012-13 school year, over 89 percent of teachers were white while over 40 percent of students identified as Hispanic, Asian, Black/African American, Native American, Pacific Islander, or multiracial.

The Recruiting Washington Teachers program was established in 2007 to support the recruitment and preparation of diverse high school students to explore future roles as educators. The program focuses on students who are underrepresented in the teaching profession and shortage areas including bilingual education, ELL, and special education, among others.

Transitions. The Early Achievers program was created in 2007 to provide a quality rating and improvement system for the early care and education system in Washington. This program provides training, technical assistance, consultation, and coaching to licensed childcare facilities, tribal and military certified programs, and early learning programs including state and federally funded preschool programs such as the Early Childhood Education and Assistance Program (ECEAP) and Head Start. DEL administers the program.

Integrated Student Services and Family Engagement. According to the EOGOAC's 2015 report, integrated student supports is a school-based approach to promote academic success by coordinating academic and non-academic supports. These academic and non-academic resources may include tutoring and mentoring; physical and mental health care; and connecting families to parent education, family counseling, food banks, or employment assistance.

As provided in statute, the purpose of the Center for the Improvement of Student Learning (CISL) is to facilitate access to information and materials on educational improvement and research. Among other duties, CISL must serve as a clearinghouse for information regarding successful educational improvement and parental improvement programs, provide best practice research, and identify strategies for improving the success rates of ethnic and racial student groups. CISL is housed within OSPI, and its duties are subject to funds appropriated.

Learning Assistance Program. The Learning Assistance Program (LAP) provides support to eligible students who need academic support for reading, writing and math, or who need readiness skills to learn these core subjects. In 2013 the Legislature enacted several changes to LAP including, among others, a focus on reading literacy in early grades, the ability to use LAP funds to provide eligible students with supports to reduce disruptive behavior, and a requirement that districts must select student support services from menus of best practices and strategies developed by a panel of experts convened by OSPI.

Summary of Bill (Recommended Amendments): Student Discipline. The Washington State School Directors' Association (WSSDA) must create, with technical assistance and guidance from OSPI's Equity and Civil Rights Office and the Washington State Human Rights Commission, model school district discipline policies and procedures by December 1, 2016. Districts must adopt and enforce policies and procedures consistent with the model by the beginning of the 2017-18 school year. Districts must disseminate the discipline policies and procedures; use disaggregated data to monitor the impact of the policies; and periodically review and update the policies in consultation with district staff, students, families, and the community.

OSPI must develop a training program to support the implementation of discipline policies and procedures, and districts are strongly encouraged to provide training to all school and district staff.

Districts are prohibited from imposing long-term suspension or expulsion as a form of discretionary discipline. Discretionary discipline is defined as a disciplinary action taken by a school district for student behavior that violates rules of student conduct, but it does not include action taken in response to any of the following:

- possessing or carrying a firearm on school premises, transportation, or facilities;
- certain violent offenses; sex offenses; offenses related to liquor, controlled substances, and toxic inhalants; and certain crimes related to firearms, assault, kidnapping, harassment, arson, and malicious mischief;
- two or more violations within a three-year period of criminal gang intimidation or other gang activity on school ground, possessing dangerous weapons on school facilities, willfully disobeying school administrators or refusing to leave public property, or defacing or injuring school property; or
- behavior that adversely impacts the health or safety of other students or educational staff.

Nothing creates any civil liability for school districts, or creates a new cause of action or new theory of negligence against a school district board of directors, a school district, or the state.

Districts are not required to impose long-term suspension or expulsion for the offenses listed above and should first consider alternative actions, with the exception of a violation of the prohibition against possessing firearms on school premises. Possession of a telecommunication device and violation of dress and grooming codes are removed from the list of discretionary violations that may result in long-term suspension or expulsion if performed two or more times within a three-year period.

Where disciplinary action involves a suspension or expulsion for more than 10 days, the end date must not be more than the length of an academic term, rather than one calendar year, from the time of the action. "Academic term" is defined by the school board.

Districts may not suspend the provision of educational services to students as a disciplinary action. Students may be excluded from a particular classroom or instructional activity area during a period of suspension or expulsion, but districts must provide an opportunity for a student to receive educational services during that period. Where a suspended or expelled student is provided educational services in an alternative setting, the alternative setting should be comparable, equitable, and appropriate to the regular education services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

Districts must, rather than should, convene a reengagement meeting with the student and the student's parents or guardians within 20 days of the long-term suspension or expulsion. Families must have access to, provide meaningful input on, and have the opportunity to participate in a culturally sensitive and culturally responsive reengagement plan.

The ERDC must prepare a regular report on the educational and workforce outcomes of youth in the juvenile justice system using disaggregated data. The Department of Social and Health Services and the Administrative Office of the Courts are added to the list of agencies that must work with and share data with the ERDC in certain cases.

Tribal representatives are added as members of the Discipline Task Force.

Cultural Competence. Professional development created by OSPI to support the teacher and administrator evaluation system must be aligned with the standards for cultural competence developed by PESB, including:

- the foundational elements of cultural competence;
- a focus on multicultural education and principles of English language acquisition; and
- information regarding best practices to implement the tribal history and culture curriculum.

Subject to funds appropriated specifically for this purpose, OSPI, in collaboration with the EOGOAC, PESB, colleges of education, and representatives from diverse communities and community-based organizations, must develop content outline for professional development and training in cultural competence for school staff that is aligned with the standards developed by PESB. The training must contain components that are appropriate for classified staff, teachers, principals, and administrators and must be suitable for delivery by individuals from the local community or community-based organizations with appropriate expertise.

Educational service districts and school districts are encouraged to use the training and to provide opportunities for all school and district staff to gain knowledge and skills in cultural competence. Required action districts, districts with schools receiving a federal school improvement grant, and districts with priority or focus schools are strongly encouraged to provide the training. In addition WSSDA, in consultation with certain organizations, must

develop a plan for the creation and delivery of cultural competency training for school board directors and superintendents.

ELL Instruction. Beginning in the 2019-20 school year, all teachers in the TBIP must hold a bilingual education or English language learner endorsement or both.

ELL Accountability. Subject to funds appropriated specifically for this purpose, OSPI must provide districts with technical assistance and support in selecting research-based program models, instructional materials, and professional development, including research about different types of language proficiency. Obsolete language has been removed.

OSPI must identify the top 5 percent of schools with the highest percent growth in ELL enrollment over the previous two school years. The identified schools and districts are strongly encouraged to provide training and professional development in cultural competence.

Disaggregated Data. Beginning in the 2017-18 school year, districts must submit - and OSPI must collect - student data using the federal race and ethnicity guidelines, including sub-racial and sub-ethnic categories, with the following modifications:

- further disaggregation of the Black category to differentiate students of African origin and students native to the United States with African ancestors;
- further disaggregation of the Asian category by countries of origin;
- further disaggregation of the White category to include sub-ethnic categories for eastern European nationalities that have significant populations in Washington; and
- collection of the racial and ethnic combination of categories for students who report as multiracial.

The data must be collected for all newly enrolled students, including transfer students. When students enroll in a different school within the district, school districts must resurvey the newly enrolled students from whom sub-racial and sub-ethnic categories were not previously collected and may resurvey other students. The K-12 Data Governance Group must develop protocols and guidance for the data collection, and OSPI must incorporate training on best practices.

OSPI must convene a task force to review the federal race and ethnicity reporting guidelines and to develop guidance for the state. The guidance must clarify why the data is collected and how students and families can help administrators properly identify them.

By July 1, 2016, OSPI must work with the K-12 Data Governance Group, the ERDC, and the State Board of Education to adopt a rule that the only student data that should not be reported for public reporting and accountability is data where the school or district has fewer than 10 students in a grade level or student subgroup. This section expires August 1, 2017.

Recruitment and Retention. To the extent data is available, OSPI must post on the Internet the percentage of classroom teachers per school district and per school and the average length of service for those teachers disaggregated by race and ethnicity as described previously for student-level data.

Transitions. DEL must collaborate with OSPI to create a community information and involvement plan to inform home-based, tribal, and family early learning providers of the Early Achievers program.

Integrated Student Services and Family Engagement. The Washington Integrated Student Supports Protocol (Protocol) is established subject to appropriation. The Protocol must be developed by CISL within OSPI. The purposes of the Protocol include the following:

- support a school-based approach to promote student success by coordinating academic and non-academic supports to reduce barriers to academic achievement;
- fulfill a vision of public education where educators focus on education, students focus on learning, and auxiliary supports enable teaching and learning to occur unimpeded;
- encourage the creation, expansion, and quality improvement of community-based supports that can be integrated into the academic environment of schools and districts;
- increase public awareness of the evidence showing that academic outcomes are the result of both academic and non-academic factors; and
- support statewide and local organizations in their efforts to provide leadership, coordination, technical assistance, professional development, and advocacy to implement high-quality, evidence-based, student-centered, coordinated approaches throughout the state.

A framework for the Protocol is provided and includes a mandatory needs assessment for all at-risk students; integration and coordination of academic and non-academic supports; community partnerships to provide non-academic supports to students and families; and tracking of student data over time to determine student progress and evolving needs. The framework must facilitate the ability of any academic or non-academic provider to support the needs of at-risk students including, but not limited to, out-of-school providers, social workers, mental health counselors, physicians, dentists, speech therapists, and audiologists.

Subject to appropriations, OSPI must create a workgroup with specified members to determine how to best implement the framework described above throughout the state and must consult with a national nonpartisan, nonprofit research center. The workgroup must submit a report recommending policies needed to implement the framework. The workgroup must submit a preliminary report by October 2016 and a final report by October 2017.

CISL, at OSPI, must perform certain functions only to the extent funds are appropriated for the purpose.

Learning Assistance Program. LAP funds are no longer required to be consistent with provisions related to intensive reading and literacy improvement strategies for certain students. The school board, rather than OSPI, must approve district partnerships with community-based organizations or local agencies before LAP funds may be expended.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): The requirement for requirement for OSPI to develop a state menu of best practices for disruptive behaviors in the classroom is restored. Provides that school districts

are not required to impose long-term suspension or expulsion for behavior that adversely impacts the health or safety of other students or educational staff and should first consider alternative actions. Subject to appropriations clauses are added or restored to the following:

1. OSPI creation of a school district discipline training program;
2. OSPI led taskforce to review federal race and ethnicity reporting guidelines;
3. The Washington integrated student supports protocol (WISSP);
4. OSPI led workgroup for implementing the WISSP; and
5. The establishment of the Center for the Improvement of Student Learning at OSPI and the duties of the Center required.

EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (Recommended Amendments): A provision is added stating that any imposition of discretionary and nondiscretionary discipline is subject to the bar on suspending the provision of educational services. Behavior that adversely impacts the health or safety of other students or educational staff is not included within the meaning of discretionary discipline. A subsection is added stating that nothing creates any civil liability for school districts, or creates a new cause of action or new theory of negligence against a school district board of directors, a school district, or the state. Subject to appropriations clauses are added to OSPI's development of a cultural competence outline for professional development and training and technical assistance and support to school districts regarding ELL instruction. The provision allowing the Protocol and services to be supported by LAP funds is removed.

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 on Fourth Substitute Bill (Early Learning & K-12 Education): PRO: The EOGOAC has many members with different experiences in education. The members went through a rigorous process to develop these recommendations. The data continues to show that students of color are being lost in the gap, which will have economic impacts throughout the state. Students of color are being suspended and expelled at a higher rate, which leads to students dropping out of school. School districts should be looking at alternative discipline methods. This bill addresses discretionary discipline, not mandatory discipline. Schools cannot kick out students and expect them to do well in school. More training is needed for teachers to be able to support students. Cultural competence training will help teachers better reach their students and the communities they serve. This bill is one solution to the opportunity gap that is based on evidence and equity.

CON: Equity is only achieved through laws. OSPI and school administrators need to be accountable. This bill will not accomplish its goals. There needs to more accountability on the part of students and families. This bill is taking responsibility away from the home and gives it to the state and schools.

OTHER: This bill could have staffing and fiscal impacts on school districts, especially small ones. WSSDA has established a model discipline policy and procedure and is ready to review and update them. WSSDA is currently creating a cultural competence toolkit for educators. There is concern that too many programs will be funded through the LAP account. The discipline provisions in the bill are premature and could bind districts' hands in dangerous ways. The effect of new discipline rules needs to be analyzed before changes are made to discipline law. The bill would allow dangerous students to remain in the classroom. Under the bill, more students may be expelled instead of long-term suspended. There may be Title IX implications related to the discipline provisions.

Persons Testifying on Fourth Substitute Bill (Early Learning & K-12 Education): PRO: Representative Ortiz-Self; Lucinda Young, Washington Education Association; Felipe Rodriguez-Flores, Progreso: Latino Progress; Dain Yoshizumi, University of Washington Tacoma Student.

CON: Grazyna Prouty, teacher; Hyon Pak.

OTHER: Jessica Vavrus, WA State School Directors' Association; Charlie Brown, Tacoma Public Schools; Brynn Brady, Issaquah School District.

Persons Signed In To Testify But Not Testifying on Fourth Substitute Bill: No one.

Staff Summary of Public Testimony on Recommended Amendments From Early Learning & K-12 Education (Ways & Means): PRO: The EOGOAC has great recommendations for reducing student discipline for students of color. Students of color are disciplined at higher rates, which impacts learning opportunities. This bill will help students like the students in Yakima who face a graduation rate of only 57 percent in the 2012-13 school year.

CON: There is concern for merging three branches of government. OSPI is not accountable.

Persons Testifying on Recommended Amendments From Early Learning & K-12 Education (Ways & Means): PRO: Felipe Rodriguez-Flores, Progreso: Latino Progress.

CON: Grazyna Prouty, Teacher.

Persons Signed In To Testify But Not Testifying on Recommended Amendments: No one.