

HOUSE BILL REPORT

SSB 5766

As Reported by House Committee On: Education

Title: An act relating to preventing harassment, intimidation, bullying, and discrimination in public schools.

Brief Description: Preventing harassment, intimidation, bullying, and discrimination in public schools.

Sponsors: Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Liias, Pedersen, Billig, Fain, Hunt, Keiser, Kuderer and Saldaña).

Brief History:

Committee Activity:

Education: 2/8/18, 2/22/18 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- Requires agency development of a model transgender student policy and procedure, and school district adoption of a policy and procedure that incorporates the model.
- Requires school districts to designate an administrator as the primary contact for the transgender student policy and procedure, and specifies the duties of the primary contact.
- Requires agency development of a training program to support the implementation of district policies and procedures prohibiting discrimination and harassment, intimidation, and bullying (HIB), and requires school district provision of this training to all employees annually.
- Makes changes to requirements related to model and school district HIB policies and procedures, including policy and procedure content, primary contact duties, notice requirements, and related educational materials.
- Directs that the questions in the Healthy Youth Survey be aligned with the model transgender student policy and procedure.

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.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 10 members: Representatives Santos, Chair; Dolan, Vice Chair; Stonier, Vice Chair; Bergquist, Kilduff, Lovick, Ortiz-Self, Senn, Slatter and Valdez.

Minority Report: Do not pass. Signed by 8 members: Representatives Harris, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Caldier, Hargrove, Johnson, McCaslin, Steele and Stokesbary.

Staff: Megan Wargacki (786-7194).

Background:

Prohibited Discrimination in Public Schools.

Discrimination 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 is prohibited. The rules of the Superintendent of Public Instruction (Superintendent) require school districts to provide training to administrators and classroom personnel regarding their responsibilities to raise awareness of and eliminate bias based on these protected classes and characteristics.

The Superintendent's rules require districts to designate one employee to be responsible for monitoring and coordinating compliance with prohibitions against discrimination in public schools. This employee is responsible for ensuring that all discrimination complaints communicated to the district are promptly investigated and resolved.

According to rules and guidelines developed by the Superintendent, harassment may be discrimination when it is based on a student's protected class or characteristic. The guidelines state that a school district is responsible for addressing discriminatory harassment about which it knows or reasonably should have known, including promptly investigating and, if appropriate, taking effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent harassment from recurring.

Harassment, Intimidation, and Bullying.

Model HIB Policy and Procedure. In 2010 the Superintendent was directed to update its model harassment, intimidation, and bullying (HIB) prevention policy and procedure, in consultation with representatives of parents, school personnel, the Office of the Education Ombuds (OEO), the Washington State School Directors' Association (WSSDA), and other interested parties. The Superintendent publishes this model HIB prevention policy and procedure, along with training and instructional materials on the components that must be included in any school district policy and procedure on its website.

District HIB Policy and Procedure. School districts must have HIB prevention policies and procedures that, at a minimum, incorporate the Superintendent's model HIB policy and procedure. Districts were encouraged to adopt or amend their HIB policy and procedure through a process that included parents or guardians, school employees, volunteers, students,

administrators, and community representatives. It is recommended that district HIB policies emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy prohibiting HIB.

Districts must share the HIB policy with parents or guardians, students, volunteers, and school employees in accordance with the Superintendent's rules on this topic.

District Primary HIB Policy Contact. Each school district must designate one person to: serve as the primary contact on the HIB policy and procedure between the district, the OEO, and the Office of the Superintendent of Public Instruction (OSPI); receive copies of all formal and informal complaints; and implement the HIB policy and procedure.

Posting of District HIB Materials. Each district was required to provide the Superintendent with a brief summary of the district's policies, procedures, programs, partnerships, vendors, instructional and training materials, and a link to the district's website, by August 15, 2011 for posting on the OSPI website. Each primary contact must verify the posted information and links and notify the Superintendent of any updates or changes, on an annual basis.

Model and District Cyberbullying Policy and Procedure. In 2007 the WSSDA, with the assistance of the OSPI, was directed to convene an advisory committee to develop a model policy prohibiting acts of HIB that are conducted via electronic means by a student while on school grounds and during the school day (cyberbullying). The policy must include a requirement that materials meant to educate parents and students about the seriousness of cyberbullying be disseminated to parents or made available on a school district's website. The WSSDA and the advisory committee were required to develop sample educational materials, including information on responsible and safe Internet use as well as what options are available if a student is being bullied via electronic means, such as reporting threats to local police and when to involve school officials, the Internet service provider, or phone service provider. The WSSDA was required to post the model policy and sample materials on its website.

School districts must have a policy that prohibits cyberbullying.

Healthy Youth Survey.

The Healthy Youth Survey is a collaboration between the OSPI, the Department of Health, the Department of Social and Health Services, and the Liquor and Cannabis Board. The survey includes questions about safety and violence; physical activity and diet; alcohol, tobacco, and other drug use; and related risk and protective factors. This information can be used to identify trends in the patterns of youth behavior over time.

Definitions.

"Electronic" means any communication where there is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means.

"Gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-

image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

"Harassment, intimidation and bullying" means any intentional electronic, written, verbal, or physical act, including but not limited to one shown to be motivated by any characteristic listed in the malicious harassment statute of the criminal code, or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act:

- physically harms a student or damages the student's property; or
- has the effect of substantially interfering with a student's education; or
- is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- has the effect of substantially disrupting the orderly operation of the school.

This does not require the affected student to actually possess a characteristic that is a basis for the HIB.

"Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity.

Summary of Amended Bill:

Definitions.

The definition of HIB is revised to reference characteristics listed in the school code's statute prohibiting discrimination, rather than the criminal code's malicious harassment statute, resulting in the addition of honorably discharged veteran or military status and use of a trained dog guide or service animal by a person with a disability to the list of protected characteristics.

"Transgender" refers to a person whose gender expression or identity differs from what is typically associated with the sex they were assigned at birth.

Harassment, Intimidation, and Bullying.

Model HIB Policy and Procedure. By July 1, 2018, and by July 1 every three years thereafter, the WSSDA must collaborate with the OSPI to develop or update a model HIB policy and procedure that, at a minimum, prohibits cyberbullying; and require that materials meant to educate students and students' families about the seriousness of HIB, including cyberbullying, be disseminated to students' families or maintained on the school district's website. The procedure may emphasize positive character traits and values, such as the civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy and procedure.

The WSSDA must consult with specified stakeholders on the content of the model policy and procedure. The OSPI and the WSSDA must maintain the model policy and procedure on the agency's website at no cost to districts.

District HIB Policy and Procedure. By September 1, 2018, each school district must adopt a policy and procedure that prohibits the HIB of any student and that, at a minimum,

incorporates the WSSDA model policy and procedure. Each district must update the policy and procedure at least every three years, and within a reasonable time following any substantive changes to the model policy and procedure. Districts continue to be encouraged to adopt and update the HIB policy and procedure through a process that includes specified stakeholders.

Rather than requiring the district primary HIB contact to verify district anti-HIB materials posted on the OSPI website annually, districts must submit district anti-HIB materials to the OSPI as required.

District Primary HIB Policy Contact. The primary HIB contact for each district must be an administrator. In addition to other duties required by law and the school district, the primary contact must communicate with district employees responsible for monitoring compliance with the prohibition against discrimination in public schools and the transgender student policy and procedure.

Beginning July 1, 2019, districts must collect data on HIB complaints and actions taken to resolve these complaints and record this information in the statewide student data system. The information must be made available to the public, but may not include students' personally identifiable information.

HIB Educational Materials. By July 1, 2018, and by July 1 every three years thereafter, the OSPI must collaborate with the WSSDA to develop or update sample materials to educate students and students' families about the seriousness of HIB, including cyberbullying. In addition to previously required content, the educational materials must include information on responsible and safe digital technology and media use, rather than responsible and safe Internet use.

The OSPI must consult with specified stakeholders on the content of the materials. The materials must be maintained on the OSPI and WSSDA websites at no cost to school districts.

Transgender Students.

Model Transgender Student Policy and Procedure. By July 1, 2018, and by July 1 every three years thereafter, the WSSDA must collaborate with the OSPI to develop or update a model transgender student policy and procedure that, at a minimum, incorporates the OSPI rules and guidelines developed to: eliminate discrimination in Washington public schools on the basis of gender identity and expression; address the unique challenges and needs faced by transgender students in public schools; and describes the application of the model anti-HIB policy to transgender students.

The WSSDA must consult with specified stakeholders content of the model policy and procedure. The OSPI and the WSSDA must maintain the model policy and procedure on the agency's website at no cost to districts.

District Transgender Student Policy and Procedure. By September 1, 2018, each district must adopt a transgender student policy and procedure that, at a minimum, incorporates the WSSDA model policy and procedure. Each district must update the policy and procedure at

least every three years, and within a reasonable time following any substantive changes to the model policy and procedures. Districts are encouraged to adopt and update the transgender student policy and procedure through a process that includes specified stakeholders. Districts must share the transgender student policy and procedure with students, students' families, volunteers, and school district employees in accordance with rules adopted by the Superintendent.

As required by the Superintendent, districts must provide to the OSPI district materials related to transgender students, for example the district's policy and procedure, primary contact information, programs, partnerships, vendors, educational materials, training materials, and website links.

District Primary Transgender Student Policy Contacts. Each school district must designate one administrator as the primary contact regarding the transgender student policy and procedure. In addition to other duties required by law and the school district, the primary contact must: ensure the implementation of the policy and procedure; receive copies of formal and informal complaints of violation of the transgender student policy or procedure; communicate with school district employees responsible for monitoring district compliance with the prohibition against discrimination in public schools and the anti-HIB policies and procedures; and serve as the primary contact on the policy and procedure between the district, the OEO, and the OSPI.

Training Program.

By September 1, 2018, the OSPI must maintain a training program to support the implementation of district policies and procedures prohibiting discrimination and HIB on the agency's website at no cost to school districts. The training program must incorporate or adopt existing training or curricula related to discrimination and HIB of students. The training program must, at a minimum:

- be based on the model policies and procedures described above;
- cover the rules and guidelines developed by the Superintendent to eliminate discrimination in public schools;
- describe the role of the primary contacts for monitoring district compliance with the prohibition against discrimination in public schools, anti-HIB policies and procedures, and transgender student policies and procedures;
- review example scenarios as appropriate; and
- include best practices for building and strengthening a safe, welcoming, open, respectful, and positive school environment and culture; addressing the root causes of discrimination and HIB in schools; and requiring prompt reporting and resolution of HIB events and discriminatory actions.

The training program must be developed, and updated every three years, in collaboration with specified stakeholders. School districts must provide the training program to all school district employees annually. The training program may be combined with other employee trainings.

Healthy Youth Survey.

The OSPI, in collaboration with other agencies as appropriate, must review and align the questions in the Healthy Youth Survey with the model transgender student policy and procedure each time that these questions are reviewed by the agencies.

Amended Bill Compared to Substitute Bill:

The amendment makes the following substantive changes:

- revises provisions related to requiring HIB policies and procedures by amending the definition of HIB, combining district policy and procedure requirements related to HIB and cyberbullying, requiring the WSSDA to develop this policy and procedure, and adding the new HIB provisions to the Students Chapter of the School Code;
- revises provisions related to requiring transgender student policies and procedures by defining the term transgender; and adding to the content requirements;
- makes changes to both the HIB and transgender student policy and procedure provisions by requiring the primary contacts to be administrators and adding communication duties; requiring district collection of data on HIB complaints and complaint resolutions; giving the OSPI, rather than the WSSDA, the duty to develop educational materials; specifying that the model policies and procedures and educational materials must be maintained on agency websites at no cost to districts; requiring updating of the district and model policies and procedures at least every three years; expanding the required primary contacts training program to all district employees annually; and specifying that the training program be updated every three years; and
- requires the Healthy Youth Survey to be aligned to the model transgender student policy and procedure each time it is reviewed by state agencies, not just the next time.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 22, 2018.

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

Staff Summary of Public Testimony:

(In support) Discrimination and discriminatory harassment against transgender and gender nonconforming students is prohibited in public schools. This bill would reinforce those legal protections by improving the collaboration of state and local officials responsible for implementing anti-HIB and antidiscrimination policies in schools. The bill will help create clarity, uniformity, and transparency across districts regarding who is responsible for implementing laws and policies preventing discrimination against transgender and gender nonconforming students. It will also ensure that the right personnel receive the right training.

Any law that increases respect for transgender peoples should be supported. Transgender youth are at significantly increased risk of HIB. As a result, they are at increased risk of self-

injurious behavior, depression, and post-traumatic stress disorder. Some transgender students are choosing death over life. Students sometimes mock and harass transgender students for using certain bathrooms or wearing certain clothing. Youth advocates are working to update district transgender student policies. The policy does not stop bad behavior; rather it is a tool that supports the protection of transgender students.

Generic antibullying policies are not enough protection for transgender students. School anti-HIB policies are more effective when the policies explicitly prohibit behaviors that target sexual orientation and transgender students. Transgender students report feeling safer when those prohibitions are laid out in policy statements. Student beliefs about what is or is not HIB, and their beliefs about the persuasiveness of school anti-HIB policies are determinants of whether HIB and other discrimination persist. Students often engage in harmful behaviors without the intention of causing harm. School-wide interventions that highlight the consequences of HIB, are explicit, and that engage the entire school, parents, and students on a regular, ongoing basis tend to be most effective.

Sending a child to school is an act of trust; parents lose control of what happens to their child when the child steps onto a bus or school grounds. When a district has a transgender student policy, it lets parents of transgender students know that the administration supports their children and how to advocate for their children. Having a transgender student policy helps students to not be bystanders and raises awareness of HIB and discrimination. When there is a transgender student policy attached to the anti-HIB policy, it educates the key figures in children's lives.

The model HIB policy does not address discriminatory harassment, which is harassment based up on a protected class, such as race, sex, or gender identity. Policies that address discriminatory harassment generally fall under the category of civil rights policies. At the OSPI, the School Safety Center helped develop the model HIB policy and works with districts to provide technical assistance to prevent HIB of students. The OSPI's Equity and Civil Rights Office works with districts to help prevent discriminatory harassment complaints. At the school district level, different personnel often handle HIB and discriminatory harassment. This bill will help link these issues by requiring that the HIB primary contact be trained on the transgender student policy.

This policy will support and provide infrastructure to districts and school personnel to support every student. Districts are required to adopt a HIB policy and a nondiscrimination policy. The WSSDA has a model transgender student policy that is not required, but is covered under the umbrella of the two required policies. The nondiscrimination policy aligns with state and federal laws. Some districts would like to focus on implementing the required policies. Some districts would prefer that the transgender student policy be encouraged, rather than required.

(Opposed) None.

Persons Testifying: Lucy Homans, Washington State Psychology Association; Lisa Keating, My Purple Umbrella; Dierk Meierbachtol, Office of the Superintendent of Public Instruction; Corina Pfeil, Bellevue PFLAG; and Jessica Vavrus, Washington State School Directors' Association.

Persons Signed In To Testify But Not Testifying: None.