

# SENATE BILL REPORT

## SB 5605

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As of February 20, 2017

**Title:** An act relating to aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

**Brief Description:** Aligning the office of the superintendent of public instruction's background check authority with that of the department of early learning.

**Sponsors:** Senators Walsh and Billig; by request of Superintendent of Public Instruction.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 2/07/17.

**Brief Summary of Bill**

- Makes changes to background check requirements for the Office of Superintendent of Public Instruction (OSPI) and the Department of Early Learning (DEL).
- Allows school districts and other educational entities to request background checks for prospective volunteers.
- Provides OSPI authority to charge fees for background checks and establishes a criminal background check account.
- Allows OSPI to consider past involvement of child protective services or law enforcement agencies when determining whether an individual lacks good moral character or personal fitness.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Staff:** Ailey Kato (786-7434)

**Background:** OSPI Record Check Requirements. School districts, educational service districts (ESDs), the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children must request a record check through the Washington State Patrol (WSP) and the Federal Bureau of Investigation (FBI).

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*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.*

OSPI must adopt rules to implement record checks. These rules must include written procedures for reviewing record check information and limiting access to the record check database to only those individuals processing record check information.

Certificate Revocation or Suspension. A K-12 employee's certificate may be revoked or suspended for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit.

DEL Record Check Requirements. DEL may consider past involvement of child protective services or law enforcement agencies when determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services. In making this determination, these individuals must be fingerprinted and have their criminal history record checked.

**Summary of Bill:** OSPI Record Check Requirements. School districts, ESDs, the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to developmentally disabled persons must request a record check through WSP and FBI.

The requesting entity may, instead of must, provide a copy of the record report to the applicant at the applicant's request.

School districts, ESDs, the Washington State Center for Childhood Deafness and Hearing Loss, the State School for the Blind, charter schools, tribal schools, and their contractors may perform record checks for any prospective volunteer who will have regularly scheduled unsupervised access to children under 18 years of age or developmentally disabled persons under circumstances where access will or may involve the following:

- groups of five or fewer children under 12 years of age;
- groups of three or fewer children between 12 and 18 years of age; or
- developmentally disabled persons.

For the purposes of performing record checks for prospective volunteers, unsupervised means not in the presence of:

- another employee or volunteer from the same school or organization; or
- any relative or guardian of any of the children or developmentally disabled persons to which the prospective employee or volunteer has access during the course of their involvement with the school or organization.

OSPI's record check rules must include written procedures that apply to charter schools and state tribal-compact schools.

Character and Fitness. An employee's certificate may be revoked or suspended for lack of good moral character or personal fitness, rather than immorality. In determining whether an individual lacks good moral character or personal fitness, OSPI may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the

health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged may be used for such purposes. OSPI must not disclose unfounded or inconclusive allegations of child abuse or neglect.

OSPI must use fingerprint criminal history record check information solely for the purposes of determining eligibility for a certificate.

K-12 Criminal Background Check Fees. A person who must be fingerprinted and have their criminal history record checked must pay a fee to WSP and OSPI. PESB rules must specify that a criminal history record check is at the applicant's expense.

The K-12 Criminal Background Check Account is created in the custody of the State Treasurer. All record check fees collected by OSPI must be deposited in the account. Expenditures from the account may be made only for the purpose of administering OSPI record check duties. Only the Superintendent of Public Instruction or designee may authorize expenditures from the account. The account is subject to allotment procedures, but an appropriation is not required for expenditures.

Sharing Information with DEL. Individuals, who have completed a fingerprint background check as required by OSPI and have been continuously employed by the same school district or ESD, can meet DEL record check requirements by providing a true and accurate copy of their WSP and FBI background check report results to DEL. A school district or ESD may also provide an affidavit to DEL that the individual has completed a record check and has been authorized to work.

**Appropriation:** None.

**Fiscal Note:** Available. OFM requested ten-year cost projection pursuant to I-960.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill clarifies and streamlines background check requirements and helps make sure children are in safe environments. The Early Start Act requires ECEAP employees to get fingerprint checks. Many ECEAP employees work at schools and have already gotten an OSPI fingerprint check. This bill allows OSPI and DEL to work together. The bill also aligns DEL's and OSPI's background check requirements as it relates to volunteers, child protective services findings, and fees. This bill gives school districts the option to conduct fingerprint checks on volunteers, which checks criminal convictions in this state and other states. It is not clear whether the cost of these checks would go to the school or volunteer.

OTHER: Current law allows school districts and employees to negotiate who pays for the record checks. This bill says that the employee must pay for the records check, and this should still be left up to collective bargaining. There is also a question of who pays the OSPI and DEL reciprocity administrative fee. Screened out records are ones that are not investigated because the accusations lack merit. Unfounded records are determined by a

preponderance standard, which means that it is more likely than not that the accusation lacks merit. These records can be held up to 35 years and may result from false allegations. There is concern about using these records for determining whether a person has good moral character or personal fitness.

**Persons Testifying:** PRO: Senator Maureen Walsh, Prime Sponsor; Dierk Meierbachtol, Office of Superintendent of Public Instruction; Bob Butts, Office of Superintendent of Public Instruction; Catherine Slagel, Office of Superintendent of Public Instruction.

OTHER: Michael Althaus, Columbia Legal Services; Doug Nelson, PSE/SEIU 1948.

**Persons Signed In To Testify But Not Testifying:** No one.