

SENATE BILL REPORT

ESB 5834

As Passed Senate, February 12, 2020

Title: An act relating to providing for educational equity regardless of immigration or citizenship status.

Brief Description: Concerning the immigration status of students.

Sponsors: Senators Hunt, Wellman, Randall, Pedersen, Wilson, C., Salomon, Frockt, Hasegawa, Kuderer, Nguyen and Saldaña.

Brief History:

Committee Activity: Early Learning & K-12 Education: 1/15/20, 1/27/20 [DP, DNP].

Floor Activity:

Passed Senate: 2/12/20, 29-17.

Brief Summary of Engrossed Bill

- Requires school districts, tribal compact schools, and charter schools to provide information to parents and guardians of enrolled students regarding students' right to an education.
- Prohibits collecting students' immigration status except as required by state or federal law or as required to administer educational programs.
- Requires school employees to direct law enforcement officers to the district's superintendent if an officer requests immigration information or access to school grounds, and prohibits a superintendent from disclosing immigration information or providing school access except when the officer presents a dated, signed judicial warrant.
- Requires the Office of the Superintendent of Public Instruction and the Washington State School Directors' Association to develop materials and policies for responding to immigration requests.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: Do pass.

Signed by Senators Wellman, Chair; Wilson, C., Vice Chair; Hunt, McCoy, Mullet, Pedersen and Salomon.

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.

Minority Report: Do not pass.

Signed by Senators Hawkins, Ranking Member; Holy, Padden and Wagoner.

Staff: Benjamin Omdal (786-7442)

Background: Students' Right to Education. In *Plyler v. Doe* (1982), the United States Supreme Court found certain restrictions on providing free educational access and funding for undocumented students were unconstitutional. The court, in finding not providing free educational access to undocumented students violated the Equal Protection Clause under the fourteenth amendment, held any such state restriction must be justified by a substantial state interest. Public schools may not engage in any practices that chill the right of access to school.

State Employee Cooperation with Federal Law Enforcement. State employees cannot be compelled to participate in administering a federally enacted regulatory scheme. However, federal law bars state and local government entities and officials from prohibiting the release of an individual's citizenship or immigration status. In 2017, the Office of the Attorney General published *Guidance Concerning Immigration Enforcement*, summarizing existing law on standards for state employees. This guidance clarifies that state and local agencies may enact policies where their employees are not required to share immigration information absent a legal requirement.

Family Educational Rights and Privacy Act. This federal act protects the privacy of student education records. The law applies to all schools receiving federal funds for a United States Department of Education program. The Family Educational Rights and Privacy Act (FERPA) allows schools to disclose information from a student's education record, without consent, only to certain parties or under certain conditions. A school may disclose information in a student's record, without consent, to authorized representatives of state and local educational authorities for audit or evaluation of federal or state supported education programs.

Washington State School Directors' Association. This organization is comprised of all 1477 school board members from Washington's 295 public school districts. The Washington State School Directors' Association (WSSDA) provides materials and educational services to its members, including model policies and procedures.

Attorney General Model Policies. In 2019 the Legislature passed E2SSB 5497 which, among other things, required the Attorney General to publish model policies for limiting immigration enforcement to the fullest extent possible consistent with state law at public schools. The model policies are to be published by May 21, 2020. All public schools must either adopt necessary changes to policies consistent with the model policy or notify the Attorney General that they are not adopting the changes, state the reasons for not doing so, and provide the Attorney General with a copy of their policies. The act also specified that any implementation of such policy must be in accordance with state and federal law, or other requirements necessary to maintain funding.

Summary of Engrossed Bill: School Procedures on Student Immigration Status. School districts must provide information to parents and guardians regarding students' rights to a free

public education, regardless of immigration status or religious beliefs. Districts must provide meaningful access to this information for families with limited English proficiency.

School district officials and employees may not collect information or documents regarding the citizenship or immigration status of students or their family members, except as required by state or federal law, or as required to administer a state or federally supported educational program.

If a federal immigration officer or law enforcement officer working on behalf of a federal immigration agency requests information or access to school grounds, principals and other school administrators must direct the officer to the district's superintendent. The superintendent or a designee may only provide information or access to the officer after the officer presents a dated, signed judicial warrant. The superintendent or designee must report the request to the district board of directors in a timely manner, ensuring confidentiality and privacy.

A school district may include information from a student's education record in the student information directory only after the student's parent or guardian has provided prior written consent to include the information.

Tribal compact schools and charter schools must also follow the procedures under the act.

Washington State School Directors' Association Model Policy. WSSDA must develop and publish a model policy and procedure complying with and including actions:

- related to requests for information or access to school grounds for purposes related to immigration enforcement;
- for staff to notify the school district superintendent or designee if an individual requests or gains access to school grounds for purposes related to immigration enforcement; and
- for responding to requests for personal information about students or students' family members for purposes of immigration enforcement.

School districts must adopt and enforce policies consistent with the WSSDA model policy beginning in the 2020-21 school year.

Office of the Superintendent of Public Instruction Materials. The Office of the Superintendent of Public Instruction must develop and publish a brief presentation, guidance, or other training materials describing the requirements.

Appropriation: None.

Fiscal Note: Available (Partial).

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: There have been situations in Thurston County where individuals have been detained at court proceedings. There is a need to follow state and federal laws, but also the state should want to ensure access to school for vulnerable students. All students have access to free public education. No student should be left out of school. The entire school community deserves a safe, positive environment. The bill will educate parents about the rights afforded to students. Strong policies and procedures have limited the access of information by federal immigration authorities. There has been a chilling effect in programs from immigration enforcement as well, including immunizations, health care, Head Start, college-bound opportunities. This bill will create policy consistency statewide, and will especially help smaller school districts who might not have the staff to be able to update their policies. Not having proper policies could lead to potential legal liability.

CON: The manner in which the bill is constructed could lead to implementation issues. Law enforcement already believes there are much better places to enforce criminal immigration warrants than public schools.

Persons Testifying: PRO: Senator Sam Hunt, Prime Sponsor; Lucinda Young, Washington Education Association; Marie Sullivan, Washington State PTA; Debra Hardy, citizen; Gayle Mar-Chun, Strengthening Sanctuary Alliance; Sarah Albertson, Office of the Superintendent of Public Instruction; Matt McCauley, retired educator.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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