

# SENATE BILL REPORT

## SB 5037

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As of January 18, 2021

**Title:** An act relating to establishing transparent school opening metrics tied to COVID-19 prevalence.

**Brief Description:** Establishing transparent school opening metrics tied to COVID-19 prevalence.

**Sponsors:** Senators Braun, Mullet, Brown, Dozier, Holy, King, Schoesler, Wagoner and Wilson, L..

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/18/21.

**Brief Summary of Bill**

- Directs school districts and charter schools to use certain metrics during COVID-19 to determine the education modality for the schools in each county.
- Requires in-person learning in certain circumstances.
- Requires the Secretary of Health, State Board of Health, and local health officers to act in accordance with the education modality requirements.
- Prohibits emergency orders by the Governor from superseding, waiving, or suspending statutory and regulatory obligations concerning education modalities.

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

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

**Background:** Metrics. On December 16, 2020, Governor Proclamation 20-09.3

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recommended the use of new Department of Health (DOH) guidance with recommendations for modes of learning based on county-level COVID-19 health metric trends. The DOH guidance provides the following categories and recommendations:

*High COVID-19 Activity:*

- greater than 350 cases per 100,000 over 14 days and test positivity greater than 10 percent; and
- recommends phasing in-person learning for Pre-K through grade 5 starting with the earlier grades and those with the highest need from any grade.

*Moderate COVID-19 Activity:*

- 50-350 cases per 100,000 over 14 days and test positivity between 5-10 percent;
- recommends phasing in-person learning starting with any elementary student not already in-person and middle school students; and
- recommends adding high school after middle school and when rates drop below 200 cases per 100,000 over 14 days.

*Low COVID-19 Activity:*

- less than 50 cases per 100,000 over 14 days and test positivity less than 5 percent; and
- recommends the provision of in-person learning for all students prioritizing full-time in-person learning for elementary students.

Outbreaks. DOH rule requires schools to notify the local health department of cases and outbreaks that may be associated with the school. When there is an outbreak of a contagious disease, the local health officer must take all appropriate actions deemed to be necessary to control or eliminate the spread of the disease within their jurisdiction including:

- closing part or all of the affected school or schools;
- closing other schools;
- canceling activities or functions at schools; and
- excluding from schools any students, staff, and volunteers who are infectious or exposed and susceptible to the disease.

Authority. Under state law, a variety of statutes exist relating to the authority of the Governor and other agencies to make and enforce policies in an emergency or similar situation.

*Governor.* After proclaiming a state of emergency, the Governor may issue an order prohibiting activities that the Governor reasonably believes should be prohibited to help preserve and maintain life, health, property, or the public peace. The Governor may also waive or suspend certain types of statutory and regulatory obligations and limitations with extension by the Legislature.

*Health Agencies.* Local health officers, acting under the direction of the local board of

health or administrative officer, must control and prevent the spread of any dangerous, contagious, or infectious disease that may occur within the jurisdiction. The State Board of Health has the authority to adopt rules for the prevention and control of infectious and noninfectious diseases. The Secretary of DOH has the authority to act in the event that local health officers fail or are unable to do so, or when in an emergency the safety of the public health demands it, or by agreement with the local health office or local board of health.

*School Districts.* School districts have authority to close a school for, among other reasons, an unforeseen natural event, such as an epidemic, that has the direct or indirect effect of rendering one or more district facilities unsafe, unhealthy, inaccessible, or inoperable.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** Metrics. When the governor proclaims a state of emergency in response to COVID-19, school districts must use certain metrics to determine the education modality for the schools by county. Education modality means the type of setting to deliver education services.

School districts that meet any of the following standards must offer in-person learning:

- school districts in counties below a 5 percent positivity standard must offer in-person learning to grades K-12;
- school districts in counties with a COVID-19 case rate below 200 cases per 100,000 over 14 days must offer in-person learning to grades K-12; or
- school districts in counties with a COVID-19 case rate below 350 cases per 100,000 over 14 days must offer in-person learning to grades K-8.

School districts that are above the standards may choose the education modality for their students.

Positivity standard means the percent of individuals testing positive for COVID-19 as reported by DOH or local health departments. It must be calculated by comparing the number of individuals testing positive over the past week to the total number of tests during the week.

If a school district is located in more than one county, a school district must determine the average positivity standard and average number of cases per 100,000 of all the counties in which it is located to determine the education modality.

School districts can meet the in-person learning requirement if school districts offer hybrid or rotating schedules with in-person and distance learning. School districts that offer in-person learning must also offer full-time distance learning as an option.

Outbreaks. If there is an outbreak of COVID-19 at a particular school, a school district and

local health officer must take all appropriate actions deemed necessary to control or eliminate the spread of COVID-19 within the affected school including:

- closing part or all of the affected school;
- canceling activities or functions at the affected school; and
- excluding from the affected school any students, staff, and volunteers who are infectious, or exposed and susceptible to the disease.

Outbreak means the school meets the following criteria:

- two or more cases of laboratory positive COVID-19 among students or staff;
- the cases have symptom onsets within a 14-day period of each other;
- plausible epidemiological-linkage in the school; and
- no other known epidemiological-linkage outside of the school.

Charter Schools. All of the requirements on school districts also apply to charter schools.

Authority. The Governor may not issue orders that supersede, waive, or suspend statutory and regulatory obligations or limitations concerning education modalities during COVID-19. The Secretary of Health, State Board of Health, and local health officers must act in accordance with the requirements regarding education modalities during COVID-19.

This act expires upon the termination of the state of emergency pertaining to COVID-19.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony On Proposed Substitute:** PRO: Many Washington students are falling behind because the majority are still only in remote learning. Remote learning does not work for some students especially for students with special needs and students from low-income families. COVID-19 has amplified existing inequities in the system. The sooner students can go back to school safely the better. School districts are fighting civil wars with their union, parents, and teachers. It is ripping apart communities and distracting from the education of children who are suffering and falling behind. This bill will level the playing field and provides a standard of when in-person learning must be offered. If proper precautions are taken, the health risks of in-person learning is the same as hybrid or remote learning. Not being in school causes social and emotional harm to students, and students are in crisis. Students' social and emotional health are being sacrificed in the name of public health. There are a number of students who have died by suicide or contemplating suicide. Teachers are mandated reporters, and it is critical students in families experiencing domestic violence are seen. For some students, school is the safest

place. Remote learning is difficult for working parents struggling to meet the demands of remote learning and work. Some schools in this state and around the country and world are back to in-person learning and are having great success. Schools are using prevention methods and contact tracing within schools, so any cases can be isolated and addressed. It is safe to bring students back because there have been no deaths for children under 19, studies show transmission does not increase when schools provide in-person learning, and teachers can be kept safe. Vaccinations should be prioritized for teachers and school staff. The state can be a partner with school districts and provide financial resources to get students back into schools.

CON: The virus is ever-changing, and it is difficult to put specific metrics in law. School boards need to remain flexible, so they can meet the needs of their communities. Many schools do not have the space to follow the safety requirements for distancing and cohorts. They have old HVAC systems and do not have the necessary equipment required for safety. School districts are facing issues with adequate staffing due to quarantining and illnesses, and lack of substitute teachers. This bill forces schools to reopen when they met certain metrics, and there is no flexibility.

OTHER: Students' academic and social and emotional health are best supported when there is in-person learning. The goal is to get students back to in-person learning as quickly and safely as possible. School districts need clear information for their own decision-making. However, putting metrics into statute may impede the ability to respond in a timely fashion and is limiting. It is challenging to base these decisions on a single metric. Test positivity is helpful but is mainly a measure of testing capacity and should not be the sole metric. The metrics in the bill make current scientific sense but requiring in-person learning based on these metrics, and do not take into account the different circumstances in each district. The bill should require that safety measures are in place before in-person learning begins.

**Persons Testifying:** PRO: Senator John Braun, Prime Sponsor; Nate Perea, Issaquah School District, Manager of Parent Alliance For Kids; Jennifer Spall, Washington Alliance 4 Kids; Liv Finne, Washington Policy Center; Katharina McPherran, Washington Alliance 4 Kids; Lisa Grant, Centralia School District; Kay Nelson, Hamlin Robinson School; Frank Corbin; Alexandra Olins; Ted Robbins; Jane Broom, Microsoft Corporation; Eric Shipley, Overlake Medical Center; Kelly Stone, Issaquah School District - Parent Alliance for Students.

CON: Lucinda Young, Washington Education Association; Edward Lin.

OTHER: Maddy Thompson, Governor's Office; Lacy Fehrenbach, Washington Department of Health; Nasue Nishida, Office of Superintendent of Public Instruction; Angela Dickson, Infection Prevention & Antimicrobial Consultants, LLC; Dan Steele, Washington Association of School Admin.

**Persons Signed In To Testify But Not Testifying:** PRO: Kimberly Brockenbrough, School is Essential and Washington Alliance 4 Kids; Katelyn Shriber, Washington Alliance

4 Kids; Cathryn Hawken, Washington Alliance for Kids; Marina Subbaiah, Washington Alliance 4 Kids; Whitney Gardner, Washington Alliance 4 Kids; Sarah Overbay.