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**SUBSTITUTE SENATE BILL 5237**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Early Learning & K-12 Education (originally sponsored by Senators C. Wilson, Wellman, and Hunt)

AN ACT Relating to establishing complaint procedures to address noncompliance with certain state education laws; amending RCW 28A.343.360; adding new sections to chapter 28A.300 RCW; adding a new section to chapter 28A.410 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature acknowledges and supports the importance of local control for school district governance. Local school boards and superintendents are in the best position to effectively and quickly respond to the needs of their communities. However, local control is not absolute and must also be balanced against the need to ensure all students have access to a healthy, safe learning environment that celebrates and protects their diversity and civil rights. There are certain areas of state law which are critically important to ensuring every student has equal access to this type of supportive and responsive learning environment.

(2) The legislature is aware that some school districts are intentionally not complying with certain requirements in state law and that this noncompliance is negatively impacting students. School board members and superintendents are uniquely responsible for ensuring that their school district is in compliance with those state laws and members of the school district should have a mechanism to hold those individuals accountable if state laws are not followed.

(3) The legislature therefore intends to establish complaint procedures for parents and community members to address noncompliance with certain state laws that are necessary for protecting the health, safety, and civil rights of students in order to ensure every student has access to a positive learning environment.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.300 RCW to read as follows:

The definitions in this section apply throughout sections 3 through 6 of this act unless the context clearly requires otherwise.

(1) "Broad complaint" means a complaint that impacts an entire student body, an entire school, or an entire school district.

(2) "Limited complaint" means a complaint that impacts one or more individual students.

(3) "Negligent" means the failure to exercise ordinary care by a local superintendent, a local school district board of directors, or a member of a board of directors and they knew or reasonably should have known that the failure to exercise ordinary care would result in noncompliance with state law as defined in this section.

(4) "Noncompliance with state law" means action or inaction by a local superintendent, a local school district board of directors, or a member of a board of directors that results in noncompliance with state laws concerning:

(a) Civil rights including discrimination as described in RCW 28A.640.010 and 28A.642.010 and "sexual harassment" as defined in RCW 28A.640.020;

(b) "Harassment, intimidation, and bullying" as defined in RCW 28A.600.477;

(c) Curriculum requirements as described in RCW 28A.150.230, 28A.300.475, and 28A.320.170, and the policies and procedures related to the selection or deletion of instructional materials as described in RCW 28A.320.230;

(d) The use of restraint or isolation on a student as described in RCW 28A.600.485; or

(e) Student discipline as described in chapter 28A.600 RCW.

(5) "Willful" means nonaccidental action or inaction by a local superintendent, a local school district board of directors, or a member of a board of directors that they knew or reasonably should have known would result in noncompliance with state law as defined in this section.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction must establish procedures to investigate and address two types of complaints alleging noncompliance with state law:

(a) Limited complaints; and

(b) Broad complaints.

(2) The purpose of the complaint procedures is to secure equitable resolutions to complaints relating to alleged noncompliance with the state laws listed in section 2(4) of this act.

(3)(a) Anyone residing within the boundaries of the school district or who has a student enrolled in the school district may file a limited or broad complaint with the office of the superintendent of public instruction alleging noncompliance with a state law listed in section 2(4) of this act.

(b) Limited and broad complaints may be filed against a local superintendent, a local school district board of directors, or a member of a board of directors.

(c) Before a person may file a complaint with the office of the superintendent of public instruction, the person must exhaust existing complaint procedures if procedures exist including procedures established under state law including but not limited to RCW 28A.320.124, 28A.320.230, 28A.410.090, 28A.600.477, 28A.640.020, and 28A.642.030, and local policy and procedure.

(4)(a) The office of the superintendent of public instruction must adopt rules regarding the complaint procedures, timelines, compliance action plans, and consequences established under this section and sections 4 and 5 of this act.

(b) The office of the superintendent of public instruction must consult with the state board of education to build a connection between the rules adopted under this subsection and the state board of education's rules on basic education compliance established under RCW 28A.150.220 for complaints regarding noncompliance with curriculum requirements as described in section 2(4)(c) of this act.

(c) The office of the superintendent of public instruction may adopt rules to allow for an expedited process when the complaint relates to an immediate health or safety concern.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.300 RCW to read as follows:

(1) Upon receipt of a complaint filed under section 3 of this act, the office of the superintendent of public instruction must conduct a prompt and thorough investigation into the allegations in the complaint.

(2)(a) If the office of the superintendent of public instruction finds noncompliance with state law, the local district superintendent and local school district board of directors must adopt and submit a compliance action plan to the office of the superintendent of public instruction. Unless otherwise required by subsection (4) of this section, the plan must be submitted under a timeline as required by the office of the superintendent of public instruction.

(b) A compliance action plan must be developed in collaboration with the office of the superintendent of public instruction, administrators, teachers, and other staff, parents, unions representing any employees within the school district, students, impacted communities, and other representatives of the local community.

(c) The office of the superintendent of public instruction must provide a school district with assistance in developing its plan and must develop and publish guidelines for the development of compliance action plans as needed.

(d) Before adopting and submitting a compliance action plan to the office of the superintendent of public instruction, the local school board must conduct a public hearing to allow for public comment on the proposed compliance action plan. For complaints in which individual students may be identified, the public hearing and materials prepared for such hearing must adhere to nondisclosure of personally identifiable information consistent with state and federal student privacy laws.

(3) A compliance action plan must include the following:

(a) A description of the changes in the school district's or school's existing policies, structures, agreements, processes, and practices needed to come into compliance with state law; and

(b) The timeline for coming into compliance with state law.

(4) Compliance action plans must be developed in accordance with chapters 41.56 and 41.59 RCW where applicable.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.300 RCW to read as follows:

(1) If the office of the superintendent of public instruction investigates a complaint under this act and finds willful noncompliance with state law, the school district must conduct at least two public hearings in addition to the public hearing under section 4(2)(d) of this act:

(a) One public hearing must take public comment on the willful noncompliance with state law and the actions the public thinks are needed to come into compliance;

(b) One public hearing must present the progress on the compliance action plan after it has been submitted to the office of the superintendent of public instruction and take public comment on this progress; and

(c) Additional public hearings with public comment must be conducted every six months until the office of the superintendent of public instruction finds that the school district has come into compliance with state law.

(2) For complaints in which individual students may be identified, the public hearings and materials prepared for such hearings must adhere to nondisclosure of personally identifiable information consistent with state and federal student privacy laws.

(3) If the office of the superintendent of public instruction finds willful noncompliance with state law, the office of the superintendent of public instruction may impose any of the following consequences:

(a) Require the school district to adopt or readopt policies and procedures to come into compliance with state law;

(b) Find that a superintendent committed an act of unprofessional conduct under section 6 of this act and may be held accountable for such conduct under rules established under section 6 of this act; and

(c) Withhold up to 20 percent of state funds for the basic education allocation and redirect these funds to support the compliance action plan required in section 4 of this act until the office of the superintendent of public instruction finds that the school district has come into compliance with state law. Written notice of the intent to withhold and redirect state funds, with reasons stated for this action, must be made to the school district by the office of the superintendent of public instruction before any portion of the state allocation is withheld and redirected.

(4) A member of a board of directors may be subject to recall and discharge for willful or negligent noncompliance with state law under RCW 29A.56.110.

(5) Sections 3 and 4 of this act and this section do not change any existing authority the office of the superintendent of public instruction has to enforce compliance with state law including health and safety requirements.

(6) The complainant or school district may file a notice of appeal with the office of the superintendent of public instruction within 30 days of the final decision. An administrative law judge of the office of administrative hearings will hear and determine the appeal. Appeal proceedings must be conducted pursuant to chapter 34.05 RCW. An appeal of the administrative law judge's determination or order shall be to the superior court. The superior court's decision is subject only to discretionary review under the rules of appellate procedure.

NEW SECTION. **Sec.**  A new section is added to chapter 28A.410 RCW to read as follows:

The professional educator standards board must adopt rules that makes a superintendent's willful noncompliance with state law an act of unprofessional conduct and provides that a superintendent, whether certificated or not, may be held accountable for such conduct under rules established under this section. It is a defense if the superintendent can show that they were actively attempting to bring the school district into compliance with state law.

**Sec.**  RCW 28A.343.360 and 1990 c 33 s 314 are each amended to read as follows:

Every person elected or appointed to the office of school director, before entering upon the discharge of the duties thereof, shall take an oath or affirmation to support the Constitution of the United States and the state of Washington and the laws of the state of Washington and to faithfully discharge the duties of the office according to the best of his or her ability. In case any official has a written appointment or commission, the official's oath or affirmation shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officials are hereby authorized to administer all oaths or affirmations pertaining to their respective offices without charge or fee. All oaths of office, when properly made, shall be filed with the county auditor. Every person elected to the office of school director shall begin his or her term of office at the first official meeting of the board of directors following certification of the election results.

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