

HOUSE BILL REPORT

HB 1239

As Reported by House Committee On:
Education

Title: An act relating to establishing a simple and uniform system for complaints related to, and instituting a code of educator ethics for, conduct within or involving public elementary and secondary schools.

Brief Description: Establishing a simple and uniform system for complaints related to, and instituting a code of educator ethics for, conduct within or involving public elementary and secondary schools.

Sponsors: Representatives Santos, Kloba, Morgan, Ramel and Pollet.

Brief History:

Committee Activity:

Education: 1/23/23, 2/7/23 [DPS].

Brief Summary of Substitute Bill

- Directs the design and establishment of a simple, uniform, and easily accessible state-level process for the receipt and classification of complaints involving the elementary and secondary education system.
- Requires school districts and educational service districts to make available information about the complaint process.
- Requires the Professional Educator Standards Board and the Paraeducator Board to report to the Legislature with recommendations related to a code of educator ethics.
- Changes the defense for use of force on children with respect to teachers and other school staff.

HOUSE COMMITTEE ON EDUCATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Santos, Chair; Shavers, Vice Chair; Bergquist, Callan, Ortiz-Self, Pollet, Stonier and Timmons.

Minority Report: Do not pass. Signed by 1 member: Representative Steele.

Minority Report: Without recommendation. Signed by 6 members: Representatives Rude, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Eslick, Harris, McClintock and Sandlin.

Staff: Megan Wargacki (786-7194).

Background:

Complaint Processes.

There are several complaint and investigation processes related to public school employees and students, for example: the special education community complaint process; discrimination complaint processes; the process for making complaints related to student harassment, intimidation, and bullying; and the complaint and investigation provisions related to revocation or suspension of educator certificates, such as for sexual misconduct towards a child.

Code of Professional Conduct.

The Professional Educator Standards Board (PESB) is a statutorily created 12-member board whose duties include establishment and enforcement of rules determining eligibility for the certification of teachers, administrators, and educational staff associates working in elementary and secondary schools. The PESB has established a Code of Professional Conduct to protect the health, safety, and general welfare of students, to assure the citizens that education practitioners are accountable for acts of unprofessional conduct, and to define and provide notice to certificated educators of the acts of unprofessional conduct for which they are accountable.

Use of Force on Children.

The stated policy of the state is to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. The criminal code specifies that the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child.

The criminal code also specifies that any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

The education code prohibits the use of restraint or isolation to control a student participating in school activities, except when reasonably necessary to control spontaneous

behavior that poses an imminent likelihood of serious harm. "Likelihood of serious harm" generally means there is evidence of substantial risk that the student will inflict physical harm upon self, another, or the property of others.

When a school staff member uses restraint or isolation on a student participating in school activities, among other things:

- The staff member must discontinue the restraint or isolation as soon as the likelihood of serious harm has dissipated.
- The staff member must inform the building administrator as soon as possible and submit a written report of the incident to the district administrator within two business days.
- The principal must make a reasonable effort to inform the student's parent or guardian within 24 hours of the incident and must send written notification to the parent or guardian as soon as possible, but no later than five business days, after the incident.
- The school must review the incident with the student and the parent or guardian to address the behavior that precipitated the incident and the appropriateness of the response, and review the incident with the staff member to discuss whether the proper procedures were followed and what support is needed for the staff member to help the student avoid similar situations.

Administrative rules of the Superintendent of Public Instruction prohibit school staff to use corporal punishment, including any act that willfully inflicts or willfully causes the infliction of physical pain, on a student. Corporal punishment does not include: the use of reasonable physical force to maintain order or to prevent a student from harming themselves, other students, school personnel, or property; physical discomfort caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or physical exertion shared by all students in a teacher-directed class activity.

Summary of Substitute Bill:

Uniform Complaint Process.

By July 1, 2024, the Office of the Superintendent of Public Instruction (OSPI) must establish a simple, uniform, and easily accessible process for the receipt and classification of complaints involving the elementary and secondary education system. This process is intended to apply to complaints that were not resolved by discussions between the complainant and the individual who is the subject of the complaint at the lowest level of dispute resolution. When the process is used by a complainant to submit an initial complaint, the process must redirect the complaint to the lowest appropriate level of dispute resolution.

The OSPI and the Office of the Education Ombuds (OEO) must collaborate to design the complaint process. The following entities must be consulted during research and

development: The OSPI's Equity and Civil Rights Office; the OSPI's Office of Professional Practices; the OSPI's Office of Native Education; the state Special Education Advisory Council; an association of educational service districts; a state association of parents; the Washington State School Directors' Association; a state association of superintendents; a state association of principals; state associations of public school employees; the Washington State Office of Equity; the state ethnic commissions; and the Washington State Human Rights Commission.

The process must connect to all other complaint and investigation processes related to public school employees. To facilitate resolution at the lowest level possible, the process must classify each complaint and direct each complainant to the appropriate individual or entity for resolution.

The process must include marking each complaint with a unique identifier. Data collection must be considered as an element of the complaint design process.

Complaints may be submitted by any individual who has first-hand knowledge of a violation of federal, state, or local laws, policies and procedures, or codes of conduct related to public elementary and secondary education committed by an employee or contractor, student, parent or legal guardian of a student, or member of the public. "Employee or contractor" means employees and contractors of the state education agencies, educational service districts, public schools, the Washington State School for the Blind, and the Center for Deaf and Hard of Hearing Youth.

The OEO must have access to each complaint and may contact any parties to a complaint to facilitate resolution of a complaint. The OEO must also post on its website the complaint process.

Beginning with the 2024-25 school year, school districts and educational service districts must post on their websites the complaint process and must distribute information about the complaint process in existing materials that are shared with students and their families, and with employees and contractors.

Code of Educator Conduct.

By January 31, 2024, the Professional Educator Standards Board and the Paraeducator Board (boards) must jointly report to the Legislature with any recommendations for the Legislature to take related to a code of educator ethics or any planned activities by either board related to adopting and enforcing a code of educator ethics. In this context, "educator" refers to certificated administrative staff, certificated instructional staff, and paraeducators.

Before making its recommendations, the boards must review, with interested parties, the National Association of State Directors of Teacher Education and Certification's model code of ethics for educators and issues related to the enforcement of a code of educator

ethics.

If the boards recommend legislative action, then the recommendations must advise the Legislature whether the model code of ethics for educators should be adopted or adapted, or whether a code of educator ethics unique to Washington should be developed.

Use of Force on Children.

The defense for teachers that use of force on a child is not unlawful when it is reasonable and moderate and inflicted for purposes of restraining or correcting a child is replaced with a defense that use of force on a child is not unlawful if it complies with requirements for school staff use of restraint and isolation including that the use of force be reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill, including:

1. specifying that, when the complaint process established by the Office of the Superintendent of Public Instruction (OSPI) is used by a complainant to submit an initial complaint, the process must redirect the complaint to the lowest appropriate level of dispute resolution;
2. requiring that a complainant using the process have "first-hand knowledge" of a violation, rather than "knowledge" of a violation;
3. adding that the establishment of the complaint process does not confer additional authority to the OSPI to mitigate or oversee disputes;
4. requiring that data collection be considered as an element of the complaint process design; and
5. modifying the reporting date for the Professional Educator Standards Board and the Paraeducator Board to report to the Legislature about a code of educator ethics, from November 1, 2023, to January 31, 2024.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 8, 2023.

Effective Date of Substitute 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) This legislation comes directly from the experiences of people in Washington. The use of corporal punishment in the common schools is prohibited. However, the

criminal code allows it because it was done by a teacher. Corporal punishment should be banned. In addition to protecting children in schools, this is how to help heal the harms. It will show children that the state expects them to be safe and that when there is a problem with the law, legislators will work to fix it.

Some children are traumatized by the educators in their classrooms. Some educators have been warned to not continue this behavior but continue to serve in classrooms. There is a defense for teachers who use force against children. This is unconscionable, especially when there are conflicting statutes in the education code. The bill instead permits appropriate behavior that complies with the restraint and isolation procedures.

The state has an archaic statute for educator misconduct. It was updated once about 50 years ago. Instead of taking on updating that statute this year, the bill asks the Professional Educator Standards Board (PESB) to look at adopting an educator code of ethics and to make this something that educators and the public can agree to.

Parents should know who to go to when they have concerns. This bill creates a common front door for all complaints related to the education system to come through. It does not change anything about how any of the complaints are handled. It allows complaints to be tracked and dealt with in a timely fashion in the place with the lowest resolution. While establishing a mechanism to ensure that complaints are received, there are some process and implementation questions.

(Opposed) There is already a code of professional conduct for educator practitioners that includes a process for complaints. There is no need for a separate code of ethics. This bill takes away the control of local school boards and gives more control to the state. This bill will result in more students leaving the public school system.

(Other) While creating a complaint process and code of ethics and aligning criminal and educator statutes are good, there are concerns about what the complaint process will actually do. Many parents have pulled their children out of the public schools. The bill contributes to the current climate of fear and doubt.

Research shows that this bill would be bad policy. Educators already have a code of professional conduct. This bill could force teachers to violate their consciences and violate speech codes. The actual problem is that it is difficult to remove a teacher who abuses a student.

Persons Testifying: (In support) Representative Sharon Tomiko Santos, prime sponsor; Samantha Fogg, Seattle Council Parent Teacher Student Association; and Kristin Murphy, Office of Superintendent of Public Instruction.

(Opposed) Julie Barrett, Conservative Ladies of Washington.

(Other) Liv Finne, Washington Policy Center; and Nasue Nishida, Washington Education

Association.

Persons Signed In To Testify But Not Testifying: Jana Parker, Seattle Special Education Parent Teacher Student Association; Vivian Song Maritz; Amy Moses-Lagos, Parent Teacher Association Advocate; Rachel Buck; and Laurie Layne.