

SENATE BILL REPORT

E2SHB 3026

As of February 18, 2010

Title: An act relating to school districts' compliance with state and federal civil rights laws.

Brief Description: Regarding school district compliance with state and federal civil rights laws.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Santos, Quall, Chase, Upthegrove, Kenney, Hunt, Nelson, Liias, McCoy, Hudgins, Simpson and Darneille).

Brief History: Passed House: 2/13/10, 59-35.

Committee Activity: Early Learning & K-12 Education: 2/18/10.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Staff: Juliana Roe (786-7438)

Background: The 2008 Legislature commissioned five studies, by way of 2SHB 2722 (2008), and four provisos in the 2008 supplemental operating budget that analyzed the differences in academic achievement and educational outcomes among various subgroups of students. These differences are referred to as the achievement gap. In 2009 the Legislature created the Achievement Gap Oversight and Accountability Committee (Committee), by way of 2SSB 5973, to synthesize findings and recommendations from the 2008 studies into an implementation plan, and recommend policies and strategies in specified areas to the Office of Superintendent of Public Instruction (OSPI), Professional Educator Standards Board (PESB), and the State Board of Education to close the achievement gap. The Committee has since provided the Legislature with a list of recommendations on how to close the achievement gap, including the recommendations that OSPI be given legal authority to take affirmative steps to ensure that school districts comply with state and federal civil rights laws; and that the chapter on sexual equality, RCW 28A.640, be updated to include other federal and state protected classes.

Discrimination on the basis of sex is prohibited in Washington public schools. Aggrieved persons can file a complaint with the district superintendent, who must respond in writing within 30 days, setting forth whether the district denies the allegations or acknowledges the validity of the allegations and provides the nature of the corrective actions deemed necessary. An aggrieved person can appeal the superintendent's decision to the school board. The school board must schedule a hearing for the appeal and render a written decision. An

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aggrieved person can appeal the school board's decision to OSPI. OSPI can enforce and obtain compliance by appropriate order which may include the termination of all or part of moneys to the offending district, termination of specified programs, institution of corrective action, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved.

Under RCW 49.60, the Washington Law Against Discrimination created the Human Rights Commission (HRC) with powers to eliminate and prevent discrimination. Any person claiming to be aggrieved by an alleged unfair practice may file a complaint with the HRC. The HRC may then investigate complaints and issue written findings of fact as well as findings as to whether there exists reasonable cause to believe that an unfair practice has been, or is being, committed. Upon a finding of reasonable cause, the HRC staff must endeavor to eliminate the unfair practice by conference, conciliation, and persuasion. If an agreement is reached, the HRC issues an order setting forth the terms of the agreement. If no agreement is reached, the HRC requests the appointment of an administrative law judge (ALJ) to hear the complaint. An ALJ may award damages, require that wrongful conduct cease and desist, and order affirmative action so as to effectuate the purposes of the chapter. There is a right of judicial review from the ALJ's order.

Alternatively, a complainant may file a civil suit against the alleged wrongdoer. Relief may be in the form of an injunction against further violations, the recovery of actual damages, and reasonable attorneys' fees.

Summary of Bill: Discrimination is prohibited in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

OSPI must develop rules and guidelines to eliminate discrimination. OSPI must monitor local school districts' compliance, and must establish a compliance timetable, rules, and guidelines for enforcement. OSPI has the authority to enforce and obtain compliance with the provisions of this chapter and other state and federal laws prohibiting discrimination by appropriate order. The order may include termination of all or part of federal financial assistance or state apportionment or categorical moneys to the offending school district, termination of specified programs, institution of corrective action, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved.

OSPI will post on its website monthly, and issue a statewide press release, reports of any violations subject to the order or other punitive or corrective actions. OSPI will also post the nature and extent of educational disparities evident in student outcome data reported by each school district.

Aggrieved persons have a right of action in superior court for civil damages.

The act is null and void if it is not funded in the omnibus appropriations budget.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: There is a null and void clause if it is not funded in the omnibus appropriations act.

Staff Summary of Public Testimony: PRO: The Achievement Gap Accountability and Oversight Committee (Committee) discovered during a presentation to the Committee that OSPI does not have authority to enforce compliance with discrimination other than sex discrimination. An entire statute is devoted to sex equality, but no other civil rights. This bill parallels existing law and establishes a new section on discrimination. The bill does not create any new protected classes as these are all already protected. OSPI already must monitor and enforce complaints in order for Washington to receive federal funds. OSPI signs a document to this effect. Therefore, OSPI is effectively already enforcing civil rights laws. Students learn self confidence from how they are being perceived and how they are being treated. If protected groups are left out, we are telling them that they are second class citizens.

This fiscal note is astonishing. If OSPI is already monitoring and enforcing compliance with sex equality, then it should not cost more to add other protected classes to those within OSPI's enforcement powers. The fiscal note shows a subjective estimation. If there is no discrimination in schools, then there is no liability and no need for such a large fiscal note.

The problem with current laws is that federal laws do not provide incentives for compliance and cases take many years to resolve. Schools may be in compliance in many ways, but often do not comply with civil rights laws and these problems are swept under the rug.

This bill takes a logical step; it brings all civil rights to the same level of enforcement and compliance. There is no doubt that this type of law is needed. Racial disparity is a continuing problem in schools. This bill fills an important gap in enforcement of civil rights. It gives parents an option other than litigation and gives OSPI enforcement power.

Many students are discriminated against by students and teachers alike in public schools. Further, there is poor communication between staff and students and their families. There is also a lack of policy and procedure to be followed in civil rights cases.

There is a shared goal of ensuring that discrimination is eliminated in schools. OSPI has increased staffing of the Office of Equity and Civil Rights. We believe we can achieve compliance with school districts through persuasion and assistance. This legislation affirms the process that OSPI currently pursues and utilizes. However, the fiscal note is large. This bill explicitly grants new legal authority to OSPI and there is anticipation that aggrieved persons will sue the state or districts. The reality is that there are large legal costs associated with this bill.

CON: This bill has a problem with duplication of services and avenues for access of litigation. We have a problem trying to determine why there is a provision regarding websites and the nexus between the achievement gap and discrimination. Where is this nexus?

In order to make something like this happen we need resources. If you want to provide children with the best possible resources, you have to appropriately fund this bill to provide for the possible litigation to follow. You should look at other avenues of approaching this issue. OSPI should not be in a police role, but rather a supportive role. There should be a nonpunitive approach to the situation. You should look at SB 6800 for a better approach.

Persons Testifying: PRO: Representative Santos, prime sponsor; Drew Vernon, Peggy Johnson, Susannah Lowe, Adam Caldwell, Susan Fish, citizens; Robert Harkins, OSPI; Lynne Tucker, NW Exceptional Children; Shankar Narayan, ACLU; Jennifer Allen, Planned Parenthood and Safe Schools.

CON: Randy Hathaway, Washington School Personnel Association; Barbara Mertens, WSSDA.