

HOUSE BILL REPORT

ESSB 5395

As Reported by House Committee On: Education

Title: An act relating to requiring comprehensive sexual health education that is consistent with the Washington state health and physical education K-12 learning standards and that requires affirmative consent curriculum.

Brief Description: Concerning comprehensive sexual health education.

Sponsors: Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Wilson, C., Randall, Keiser, Saldaña, Takko, Mullet, Wellman, Das, Nguyen, Billig, Pedersen, Rolfes, Darneille, Dhingra, Hasegawa, Hunt and Kuderer; by request of Superintendent of Public Instruction).

Brief History:

Committee Activity:

Education: 3/12/19, 2/20/20, 2/27/20 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Requires every public school to provide comprehensive sexual health education (CSHE) to each student by the 2022-23 school year.
- Defines "comprehensive sexual health education" and establishes differentiated instructional requirements for students in kindergarten through grade 3, and students in grades 4 through 12.
- Establishes requirements for frequency of instruction through four different grade-level groupings.
- Establishes new reporting duties for public schools and the Office of the Superintendent of Public Instruction (OSPI).
- Establishes new technical support duties for the OSPI.
- Requires public schools to ensure that the CSHE curriculum, instruction, and materials include information about affirmative consent and bystander training.

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.

HOUSE COMMITTEE ON EDUCATION

Majority Report: Do pass as amended. Signed by 9 members: Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Bergquist, Callan, Ortiz-Self, Stonier, Thai and Valdez.

Minority Report: Do not pass. Signed by 6 members: Representatives Steele, Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Caldier, Corry and Rude.

Minority Report: Without recommendation. Signed by 2 members: Representatives Harris and Ybarra.

Staff: Ethan Moreno (786-7386).

Background:

Health and Physical Education Standards.

In 2016 the Office of the Superintendent of Public Instruction (OSPI) adopted new Health and Physical Education Standards (Health and P.E. Learning Standards) for kindergarten through grade 12. The Health and P.E. Learning Standards are part of the broader state learning standards that the OSPI adopts for all public school students. The Health and P.E. Learning Standards took effect in the 2017-18 school year.

School districts do not ratify or formally adopt the state learning standards, and with certain exceptions, curriculum choices are locally determined. Districts, however, are obligated by law to teach three health-related courses: human immunodeficiency virus (HIV) prevention; cardiopulmonary resuscitation instruction; and the use of external defibrillators.

Sexual Health Education—General Information.

Public schools may provide sexual health education to their students, but are not required to do so. Public schools that offer sexual health education must assure that the education is medically and scientifically accurate, age-appropriate, and appropriate for students regardless of gender, race, disability status, or sexual orientation. Sexual health education must include information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases.

Sexual health education provided to students must be consistent with the January 2005 guidelines for sexual health information and disease prevention (Sexual Health Information Guidelines) developed by the Department of Health (DOH) and the OSPI. A school may choose to use separate, outside speakers or prepared curriculum to teach different content areas or units within the comprehensive sexual health program if all speakers, curriculum, and materials meet specified statutory requirements.

Curriculum Review and Selection by Schools.

The Superintendent of Public Instruction (SPI), in consultation with the DOH, is required to develop a list of sexual health education curricula that are consistent with the Sexual Health Information Guidelines. This list is intended to serve as a resource for schools, teachers, or

any other organization or community group, and must be updated no less frequently than annually and made available on the websites of the OSPI and the DOH.

Public schools that offer sexual health education are encouraged to review their sexual health curricula and choose a curriculum from the list developed by the OSPI. The list does not represent the exclusive options, however, as any public school that offers sexual health education may identify, choose, or develop any other curriculum, provided the curriculum chosen or developed complies with applicable statutory requirements.

Provisions for Excusing Students from Instruction and Parental Review.

Any parent or legal guardian who wishes to have his or her child excused from any planned instruction in sexual health education may do so upon filing a written request with the school district board of directors, the principal of the school the child attends, or a designee of those school officials. Additionally, any parent or legal guardian may review the sexual health education curriculum offered in their child's school by filing a written request with the school district board of directors, the principal of the child's school, or the principal's designee.

Other Duties of Agencies Relating to Sexual Health Education.

The SPI and the DOH are required to make the Sexual Health Information Guidelines available to school districts, teachers, and guest speakers on their websites. Within available resources, the SPI and the DOH must make any related information, model policies, curricula, or other resources available as well.

Regarding reporting requirements, the OSPI, through its Washington State School Health Profiles Survey or other existing reporting mechanism, is required to ask public schools to identify any curricula used to provide sexual health education and to report the results of these inquiries to the Legislature on a biennial basis.

Comprehensive Sexual Health Education Work Group.

Legislation adopted in 2019 directed the OSPI to convene a work group to:

- review provisions related to sexual health education in the Health and P.E. Learning Standards;
- review existing sexual health education curricula in use in the state for the purpose of identifying gaps or potential inconsistencies with the Health and P.E. Learning Standards;
- consider revisions to sexual health education provisions in statute; and
- consider the merits and challenges associated with requiring all public schools to offer comprehensive sexual health education (CSHE) to students in all grades by September 1, 2022.

The OSPI issued a report for the CSHE Work Group, including findings and recommendations, in December 2019.

Social-Emotional Learning.

Social-emotional learning (SEL) is the process of developing and applying the skills, attitudes, behavior, and knowledge that afford individuals the opportunity to identify and regulate emotions and behaviors, form meaningful relationships, and make responsible decisions.

Legislation adopted in 2019 directed the OSPI to adopt SEL standards and benchmarks, and revise the SEL standards and benchmarks as appropriate. The 2019 legislation also directed the OSPI to align the programs it oversees with the standards for SEL and integrate the standards where appropriate.

Protected Class Status.

Antidiscrimination provisions in Washington law establish the right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or 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.

Summary of Amended Bill:

Provision of Comprehensive Sexual Health Education to All Students.

Every public school must provide CSHE to each student by the 2022-23 school year. The requirement to provide CSHE includes a multi-year phase-in process:

- beginning in the 2021-22 school year, CSHE must be provided to all public school students in grades 6 through 12; and
- beginning in the 2022-23 school year, CSHE must be provided to all public school students.

The provided CSHE is specifically required to be consistent with the Health and P.E. Learning Standards and the January 2005 Sexual Health Information Guidelines developed by the DOH and the OSPI.

Public schools retain the authority to choose a curriculum from the list developed by the OSPI or to identify, choose, or develop a different curriculum if it complies with applicable requirements. If a public school chooses a curriculum that is not from the OSPI list, the public school or applicable school district, in consultation with the OSPI, must conduct a review of the curriculum using a CSHE curriculum analysis tool of the OSPI.

Definition of Comprehensive Sexual Health Education and Differentiated Instructional Requirements.

"Comprehensive sexual health education" is defined as recurring instruction in human development and reproduction that is age-appropriate and inclusive of all students, regardless of their protected class status under specific laws. All information, instruction, and materials used in providing CSHE must be medically and scientifically accurate, and must use language and strategies that recognize all members of protected classes.

The definition specifies that CSHE for students in kindergarten through grade 3 must be instruction in SEL that is consistent with the SEL standards and benchmarks adopted by the OSPI. The definition also specifies that CSHE instruction for students in grades 4 through 12 must include information about:

- the physiological, psychological, and sociological developmental processes experienced by an individual;
- the development of intrapersonal and interpersonal skills to communicate, respectfully and effectively, to reduce health risks, and choose healthy behaviors and relationships;
- health care and prevention resources;
- the development of meaningful relationships and avoidance of exploitative relationships;
- understanding the influences of family, peers, community, and the media throughout life on healthy sexual relationships; and
- affirmative consent and recognizing and responding safely and effectively when violence, or a risk of violence, is or may be present with strategies that include bystander training.

Frequency of Instruction, Content Compliance, and Notification Requirements for Schools.

The provision of CSHE in public schools must be provided no less than:

- once to students in kindergarten through grade 3;
- once to students in grades 4 through 5;
- twice to students in grades 6 through 8; and
- twice to students in grades 9 through 12.

The curriculum, instruction, and materials used to provide the CSHE must be medically and scientifically accurate, age-appropriate, and inclusive of all students, regardless of their protected class status, and must include information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases.

At the beginning of the 2021-22 school year, each school providing CSHE must notify parents and guardians, in writing or in accordance with the methods the school finds most effective in communicating with parents, that the school will be providing CSHE during the school year. The notice must include, or provide a means for electronic access to, all course materials, by grade, that will be used at the school during the instruction.

Duties Related to the Phasing-In of Comprehensive Sexual Health Education.

Duties related to the broad phasing-in of classroom instruction for CSHE begin one year before the instructional requirement takes effect. Beginning in the 2020-21 school year, any public school that provides CSHE must ensure that the curriculum, instruction, and materials include information about affirmative consent, a defined term, and bystander training.

School district boards of directors for districts with one or more schools that are not providing CSHE in the 2019-20 school year, the 2020-21 school year, or both, must prepare for incorporating information about affirmative consent and bystander training into their CSHE curriculum, instruction, and materials. In meeting this requirement, the school district boards of directors must also, no later than the 2020-21 school year, consult with parents and guardians of students, local communities, and the Washington State School Directors' Association.

New and Modified Implementation Duties for the Office of the Superintendent of Public Instruction.

The OSPI is directed to provide technical assistance to public schools and school districts that is consistent with the authority of schools and districts to review, select, and develop CSHE curricula. Additionally, the OSPI must provide technical assistance to public schools and districts that are required to use the CSHE curriculum analysis tool of the OSPI.

Subject to the availability of specific legislative funding, the OSPI is directed to periodically review and revise, as necessary, training materials for classroom teachers and principals to implement CSHE requirements. The training materials may be in an electronic format, and the initial review must be completed by March 1, 2021.

Additionally, existing provisions directing the SPI and the DOH to make any related information, model policies, curricula, or other resources available are modified to specify that the information, policies, curricula and other resources must be, to the extent permitted by applicable federal law, posted on the websites of the OSPI and the DOH.

Provisions for Excusing Students from Sexual Health Education and Parental Review.
Provisions governing parental review of the CSHE curriculum and the excusing of students from the CSHE are generally unchanged, except that the person or entity to whom a request to excuse a student from instruction is directed is expressly required to grant the request.

List of Curricula Reviewed for Consistency with Requirements by the Office of the Superintendent of Public Instruction.

The materials that OSPI must consider when developing a list of CSHE curricula that complies with specified requirements is expanded to include an evaluation of the curricula's consistency with the Health and P.E. Learning Standards.

Modifications to Reporting Duties of Schools and the Office of the Superintendent of Public Instruction.

Data collection and reporting duties of schools and the OSPI are modified. Each public school, annually by September 1, must identify to the OSPI any curricula used by the school to provide CSHE. The materials provided by schools must also describe how the provided classroom instruction aligns with the CSHE requirements. The OSPI must report the results of the submissions to the education committees of the Legislature on a biennial basis, beginning after the 2022-23 school year.

Legislative Intent Statement.

A statement of legislative intent is included specifying that nothing in the CSHE requirements expresses legislative intent to require that CSHE, or components of CSHE, be integrated into curriculum, materials, or instruction in unrelated subject matters or courses.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill makes the following changes to the engrossed substitute bill:

1. requires every public school to provide CSHE to each student by the 2022-23 school year, instead of requiring every public school to provide CSHE by September 1, 2021, and makes corresponding changes to the two-year phase-in process, with CSHE provided to students in grades 6 through 12 in the 2021-22 school year and to all students in the 2022-23 school year;

2. defines "comprehensive sexual health education" and establishes differentiated instructional requirements for students in kindergarten through grade 3 and students in grades 4 through 12;
3. specifies, in the definition of CSHE, that CSHE instruction for students in kindergarten through grade 3 must be instruction in SEL that is consistent with the SEL standards and benchmarks adopted by the OSPI;
4. requires schools that provide CSHE to, at the beginning of the 2021-22 school year, notify parents or guardians, in writing or in accordance with the methods the school finds most effective in communicating with parents, that the school will be providing the instruction during the school year, and specifies that the notice must include, or provide a means for electronic access to, all course materials, by grade, that will be used at the school during the instruction;
5. establishes specific CSHE content requirements for students in grades 4 through 12;
6. establishes frequency of instruction requirements in four grade-level groupings;
7. removes provisions requiring the provided CSHE to include skills-based instruction that: encourages healthy relationships based on mutual respect and affection; teaches how to identify and respond to attitudes and behaviors that contribute to sexual violence; and emphasizes the importance of affirmative consent, a defined term;
8. removes provisions requiring the CSHE curriculum to be evidence-informed, a defined term;
9. modifies technical support and curriculum selection provisions for schools by requiring the OSPI to provide technical assistance to schools and school districts that is consistent with: the authority of schools and districts to review, select, and develop CSHE curricula; and, if applicable, the requirement to use a CSHE curriculum analysis tool;
10. modifies provisions requiring public schools to use curriculum review tools developed by the OSPI when choosing CSHE curricula that is not from the list developed by the OSPI, by requiring the schools or applicable districts to use a CSHE curriculum analysis tool, and by obligating schools or districts to consult with the OSPI to ensure compliance with applicable requirements;
11. directs the OSPI, subject to funding provisions, to periodically review and revise, as necessary, training materials for classroom teachers and principals to implement the CSHE requirements, and to complete the initial review by March 1, 2021;
12. modifies reporting duties of schools and the OSPI with respect to CSHE curriculum and provided instruction, including by requiring public schools to annually identify to the OSPI the CSHE curriculum they are using and how classroom instruction applies with statutory requirements for CSHE instruction, and requiring the OSPI to provide related reports to the Legislature biannually, beginning after the 2022-23 school year;
13. specifies that nothing in the CSHE requirements expresses legislative intent to require that CSHE, or components of CSHE, be integrated into curriculum, materials, or instruction in unrelated subject matters or courses;
14. conditions website postings by the OSPI and the DOH related to CSHE materials upon compliance with applicable federal law; and
15. defines "public schools" by referencing an existing definition that includes common schools, charter schools, and other specified schools.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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 bill is about safety. Many public school students are bullied because of their sexual orientation. Every curriculum required by the bill is age-appropriate: in earlier grades, kids will be taught about things such as 'safe touch,' while in later grades, students will be taught how to make good and healthy choices, and to employ affirmative consent. This bill is also about health, and kids must be taught how to avoid the unintended consequences of behavior.

The bill requires all schools to teach learning standards, regardless of their location. The CSHE should be taught to all students, and parents, not districts, should have the opportunity to opt-out of the instruction. Evidence indicates that CSHE instruction will delay the onset of sexual activity.

Sexual health education has been taught in classrooms for decades. This instruction currently includes information about HIV prevention and other subjects. The OSPI does not create curriculum. Schools may choose curriculum from the OSPI list or may choose their own. School districts must consult with parents when they adopt curriculum, and parents may review it. This bill has stronger opt-out provisions for parents than current law.

Consent, specific instruction in sexually transmitted infections, and other issues were not taught under previous requirements. The bill provides important instruction that can help prevent sexual abuse, a form of abuse that is prevalent. It is impossible to shield children forever, but if they are taught good information, they will make good choices.

Instruction in CSHE reduces unwanted pregnancies. The curriculum required by the bill will help make students safer.

Sexual assault on college campuses is rampant and getting worse. Instruction in consent can help and protect future college students.

Knowledge is power, and giving kids knowledge will empower them. Consent should be an important part of every curriculum, and if students hear about it from multiple sources, consent will be normalized.

This bill will significantly improve the lives of lesbian, gay, straight, transgender, and queer (LGBTQ) youth. No student should feel shameful or guilty about questioning their own identity. If the information provided in CSHE is not taught, students will turn to the Internet as a source for information.

The sexual health education of the past did not include discussions about LGBTQ persons and affirmative consent. Students can avoid trauma if they are given the tools to do so and to make empowered and healthy decisions.

Sexual health education in public schools is incomplete and unhelpful. Avoiding the topic of sexual abuse will not protect children.

It is important to teach curricula that emphasizes affirmative consent and healthy relationships. Dating violence is prevalent and students are not being given information, including through role-playing, that will help prevent violence.

Students should have access to sexual health information, facilitated in a safe environment.

Passing the bill will protect children and create deep, positive impacts. It will help others to safely discover their identity. The inclusivity of the bill will help children.

Inclusive sexual health education greatly benefits students. The FLASH curriculum and other sexual health education is effective and age-appropriate. If you do not teach kids about sex, they will not have instruction in safe sex.

Laws already require that students learn healthy behavior, and sexual health should be part of that. Instruction in consent is very important. People have the right to accurate and inclusive information.

A United States Centers for Disease Control (CDC) report indicates that sexual abuse is a public health crisis. The CDC also recognized strategies for responding to this abuse. Children need to be taught about safe and unsafe touches. Most abuse happens with known adults. Social-emotional learning and child sexual abuse prevention is not the same curriculum. Lawmakers, in considering the content of the bill, could borrow appropriate provisions from the directives of the OSPI directives relating to Erin's Law.

Erin's Law was adopted in 2018. The CSHE is connected to that legislation. Disabled individuals are much more likely to be sexually abused, and adults must be willing to protect students from abuse and to appropriately train adults and other students.

(Opposed) Before receiving CSHE instruction, a student's fellow classmates were innocent. Afterwards, they directed inappropriate comments at other students. Normalizing sex through the curriculum will degrade people.

This bill is an overreach in determining sexual health instruction. None of the proposed curriculum is appropriate for young children. This bill lacks transparency and does not include the amendment requiring that schools notify parents about the teaching of CSHE.

This bill makes a major change to existing law, and a sea change in cultural analysis. A risk analysis should be performed on the bill. A sign of grooming is sexualized behavior. Citizens do not want their education system to groom young people for sexual abuse. Public safety experts should review the curriculum.

The sexualization of children is already occurring. A basic curriculum, instead of the CSHE curriculum, will be better for students. This bill will demand too much from teachers and it infringes on the space of parents. The current law should be retained.

This bill takes away parents' rights. Students do not understand the curricula, and teachers and principals are unaware of this legislation. Parents will not be informed of the instruction and the opt-out provisions will be difficult to exercise. The Legislature should not be promoting lower birth rates as the best option. People should know body parts and safe-touch practices. This bill will help to make discussions about pleasure appropriateness at all levels, and determinations of age-appropriate vary by community.

Exposing children to sexual instruction will not be helpful.

A Spokane area school district tried to implement the FLASH curriculum, but when parents learned of this and read the curriculum, they found it to be awful and horrific. Different curricula are not actually different if they all must contain the same information, including negotiating sexual encounters.

Only a parent knows what to teach their children and when to teach it. This bill is a huge infringement of parental rights. The bill does not require schools to notify parents, and parents will not know about the instruction. The curricula are not age appropriate and discuss sexual pleasure—this is inappropriate.

School board members must advocate for the best for students, but the divisive approach of this bill will affect communities and have financial impacts. The curriculum elements are lacking and this will affect teaching schedules by requiring additional content.

Giving kids knowledge does protect them, but the materials in the curriculum will promote grooming and other negative impacts by exposing students to excess content at an early age. The long-term impacts of inappropriate content will be harmful.

There is a positive correlation between sexual restraint and the success of societies.

Sexually inappropriate behavior is more common than ever, and this bill will make matters worse. Social media is a negative impact. Doing the right thing at the wrong time is doing the wrong thing. This bill is the wrong thing.

This bill is not the right answer for our kids. Parents and schools should maintain the freedom that they currently have. Parents are not opposed to sexual health education, but are opposed to pleasure-based instruction. This bill asks too much of teachers—this is not what they signed up for. Teachers will not implement this bill. Opting out is not really an option, as kids will discuss the materials at recess, and in other settings. This bill will belittle a sacred thing.

The basic sexual health education is awkward enough. The curriculum will cause trauma and create confusion with children who are enduring sexual abuse.

(Other) A health impact review was performed on the underlying bill. Research indicates that CSHE has a greater impact on positive health outcomes than abstinence-only and risk avoidance instruction.

Thoughtful, open public conversations must occur before adoption of the curriculum can occur—especially with this subject. Professional development will be critical to the success of the bill, and the bill will have financial impacts to schools and districts.

The funds for implementing this bill could be used for counselors. Young children do not need to be exposed to the instruction.

Persons Testifying: (In support) Senator Wilson, prime sponsor; Melissa Boswell, Edmonds School District; Dave Mastin and Laurie Dils, Office of the Superintendent of Public Instruction; Sasha Connor; Samantha Cruz Mendoza, Associated Students of Washington State University; Marley Banker; Mal Haynes; Gwyn Gaubatz; Gabbi Nazari; Sara Cooley; Yokiko Hayashi-Saguil; Caroline Schmale; Susan Sellers, SHAPE Washington and Washington Education Association; Sara Sheriff; Aren Wright, Olympia High School; Melanie Smith, Committee for Children; and Jennifer Cole.

(Opposed) Clara Blakeslee; Lorraine Jenne, Wahluke School Board; Larry Batterton, We Believe We Vote; Barbara Frye; Pauline Johnson; Nadya Bolokhovskiy; Anniece Barker; Lora Brady; Lois Rhoads, Tonasket School District; Zandra Zupan; Diane Powell; Dennis Costin; Danell Naef; Emily Frey, Eatonville School District; and Elaina Gonzales-Blanton.

(Other) Cait Lang-Perez, State Board of Health; Lexy Miller, Eatonville School District; and Ronda Litzenberger, Eatonville School Board.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.