

# HOUSE BILL REPORT

## SSB 5689

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### As Passed House - Amended:

April 9, 2019

**Title:** An act relating to preventing harassment, intimidation, bullying, and discrimination in public schools.

**Brief Description:** Concerning harassment, intimidation, bullying, and discrimination in public schools.

**Sponsors:** Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Lias, Saldaña, Pedersen, Wellman, Wilson, C., Randall, Hunt, McCoy, Salomon, Darneille, Hasegawa, Keiser, Kuderer and Nguyen).

### Brief History:

#### Committee Activity:

Education: 3/14/19, 4/1/19 [DPA].

#### Floor Activity:

Passed House - Amended: 4/9/19, 60-36.

### Brief Summary of Substitute Bill (As Amended by House)

- Requires school districts to: adopt or amend policies and procedures relating to transgender students that, at a minimum, incorporate all the elements of the model transgender student policy and procedure; and to designate a primary contact for the policies and procedures.
- Directs the Office of the Superintendent of Public Instruction (OSPI) to develop, and educational service districts to offer, mandatory training for school district primary contacts for the policies and procedures relating to transgender students and the policy and procedure prohibiting harassment, intimidation, and bullying.
- Requires the OSPI to develop online training material available to all school staff based on the model transgender student policy.
- Provides that a teacher's evaluation may not be negatively impacted if a teacher chooses to use curriculum or materials that address sexual orientation including gender expression or identity if the materials are age appropriate and connected to the content area.

*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.*

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Santos, Chair; Dolan, Vice Chair; Paul, Vice Chair; Steele, Ranking Minority Member; Bergquist, Callan, Harris, Kilduff, Ortiz-Self, Rude, Stonier, Thai and Valdez.

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

**Staff:** Megan Wargacki (786-7194).

### **Background:**

Prohibited Discrimination in Public Schools. Discrimination in Washington public schools on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sex, 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 is prohibited.

The rules of the Office of the Superintendent of Public Instruction (OSPI) require school districts to provide training to administrators and classroom personnel regarding their responsibilities to raise awareness of and eliminate bias based on these protected classes and characteristics. The OSPI's rules require school districts to designate one employee to be responsible for monitoring and coordinating compliance with prohibitions against discrimination in public schools. This employee is responsible for ensuring that all discrimination complaints communicated to the district are promptly investigated and resolved.

According to rules and guidelines developed by the OSPI, harassment may be discrimination when it is based on a student's protected class or characteristic, such as gender expression or identity. The guidelines state that a school district is responsible for addressing discriminatory harassment about which it knows or reasonably should have known, including promptly investigating and, if appropriate, taking effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent harassment from recurring.

Harassment, Intimidation, and Bullying. "Harassment, intimidation and bullying" ("HIB") is defined as any intentional electronic, written, verbal, or physical act, including one shown to be motivated by any characteristic listed in the malicious harassment statute of the criminal code, or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act: (a) physically harms a student or damages the student's property; (b) has the effect of substantially interfering with a student's education; (c) is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or (d) has the effect of substantially disrupting the orderly operation of the school. The affected student is not required to actually possess a characteristic that is a basis for the HIB.

*Model HIB Prevention Policy and Procedure.* In 2010 the OSPI was directed to update its model HIB prevention policy and procedure, in consultation with representatives of parents,

school personnel, the Office of the Education Ombuds (OEO), the Washington State School Directors' Association (WSSDA), and other interested parties. The OSPI publishes on its website this model policy and procedure, along with training and instructional materials on the components that must be included in any school district policy and procedure.

*School District HIB Prevention Policy and Procedure.* School districts must have HIB prevention policies and procedures that, at a minimum, incorporate the OSPI's model HIB prevention policy and procedure. Districts were encouraged to adopt or amend their policy and procedure through a process that included parents or guardians, school employees, volunteers, students, administrators, and community representatives. It is recommended that school district policies emphasize positive character traits and values, including the importance of civil and respectful speech and conduct, and the responsibility of students to comply with the district's policy. School districts must share their policy with parents or guardians, students, volunteers, and school employees in accordance with the OSPI's rules on this topic.

*Primary Contact.* Each school district must designate one person to: serve as the primary contact on the HIB prevention policy and procedure between the district, the OEO, and the OSPI; receive copies of all formal and informal complaints; and implement the policy and procedure.

*Posting of District HIB Prevention Materials.* Each school district was required to provide the OSPI with a brief summary of the school district's policies, procedures, programs, partnerships, vendors, instructional and training materials, and a link to the school district's website, by August 15, 2011 for posting on the OSPI website. Each primary contact must verify the posted information and links and notify the OSPI of any updates or changes, on an annual basis.

*Model and School District Cyberbullying Policy and Procedure.* In 2007 the WSSDA, with the assistance of the OSPI, was directed to convene an advisory committee to develop a model policy prohibiting acts of HIB that are conducted via electronic means by a student while on school grounds and during the school day (cyberbullying). "Electronic" is defined as any communication where there is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. The WSSDA was required to post the model policy and sample educational materials on its website. School districts must have a policy that prohibits cyberbullying.

Healthy Youth Survey. The Healthy Youth Survey is a collaboration between the OSPI, the Department of Health, the Health Care Authority, and the Liquor and Cannabis Board. This survey about the health of adolescents in Washington is conducted every other year. The survey includes questions about safety and violence; physical activity and diet; alcohol, tobacco, and other drug use; and related risk and protective factors. Students in schools that choose to participate in the survey may opt out of completing the entire survey or may choose not to answer survey questions.

Teacher Evaluations. Most teachers are evaluated using a four-level rating evaluation system with eight specified minimum criteria. Except in certain cases, every four years the evaluation must be comprehensive and use all eight criteria. In the intervening years,

evaluations are focused, zeroing in on a specific evaluation criterion for professional development.

### **Summary of Amended Bill:**

Transgender Student Policy and Procedure. *School District Policy and Procedure.* By January 31, 2020, school districts must adopt or amend if necessary policies and procedures that, at a minimum, incorporate all the elements of the model transgender student policy and procedure described below. School districts must share the policies and procedures relating to transgender students with parents or guardians, students, volunteers, and school employees in accordance with rules adopted by the Office of the Superintendent of Public Instruction (OSPI). School districts must provide the policies and procedures relating to transgender students to the OSPI, as required.

*Model Policy and Procedure.* By September 1, 2019, and periodically thereafter, the Washington State School Directors' Association (WSSDA) must collaborate with the OSPI to develop and update a model transgender student policy and procedure. The elements of the model policy and procedure must, at a minimum: incorporate the OSPI's rules and guidelines to eliminate discrimination on the basis of gender identity and expression; address the unique challenges and needs faced by transgender students in public schools; and describe the application of the model policy and procedure prohibiting harassment, intimidation, and bullying (HIB) to transgender students. The OSPI and the WSSDA must maintain the model policy and procedure on each agency's website at no cost to school districts.

*Primary Contact.* Each school district must designate one person to serve as the primary contact regarding the policies and procedures relating to transgender students. In addition to other duties required by law and the school district, the primary contact must: ensure the implementation of the policies and procedures relating to transgender students; receive copies of all formal and informal complaints relating to transgender students; communicate with the school district employees responsible for monitoring school district compliance with prohibitions against discrimination in public schools and the policy and procedure prohibiting HIB; and serve as the primary contact between the school district, the Office of the Education Ombuds, and the OSPI on policies and procedures relating to transgender students. The primary contact may also serve as the primary contact regarding the policy and procedure prohibiting HIB.

Training. *Primary Contact Training.* By December 31, 2020, the OSPI must develop a statewide training class for primary contacts regarding the policy prohibiting HIB. The training class must be offered on an annual basis by educational service districts in collaboration with the OSPI. The training class must be based on the model policy prohibiting HIB and include materials related to hazing and the model transgender student policy and procedure. Primary contacts must attend at least one training class, once this training is available.

*Training for School Staff.* By December 31, 2020, the OSPI must develop online training material available to all school staff based on the model transgender student policy and procedure and the OSPI's rules and guidance on prohibiting discrimination in public schools. The online training material must describe the role of school district primary contacts for

monitoring school district compliance with: prohibitions on discrimination in public schools; requirements related to the policies and procedures prohibiting HIB, and requirements related to policies and procedures relating to transgender students. The online training material must include best practices for policy and procedure implementation and cultural change that are guided by school district experiences. The OSPI must annually notify school districts of the availability of the online training material.

Harassment, Intimidation, and Bullying Policy and Procedure. The following modifications are made to provisions related to the policy and procedure prohibiting HIB: the provisions are moved from the Superintendent of Public Instruction chapter to the student chapter of the school code; the definition of HIB is modified to refer to characteristics in the statutes related to anti-discrimination and sexual equality in the school code, rather than the malicious harassment statute of the criminal code; the term "anti-HIB policy and procedure" is changed to "policy and procedure prohibiting HIB"; and changes are made to mirror the requirements related to policies and procedures relating to transgender students.

Healthy Youth Survey Alignment. The OSPI, in collaboration with the Health Care Authority, the Department of Health, and the Liquor and Cannabis Board must review and align the Healthy Youth Survey with the model transgender student policy and procedure.

Impact on Teacher Evaluation. A teacher's evaluation may not be negatively impacted if a teacher chooses to use curriculum or instructional materials that address subject matter related to sexual orientation including gender expression or identity so long as the subject matter is age-appropriate and connected to the teacher's content area.

**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) National studies show that 82 percent of transgender youth report feeling unsafe at school. Almost half of transgender youth report being physically abused while in public schools, 67 percent report being bullied online, and 64 percent report having property stolen or destroyed. The experiences of transgender youth are very different than the experiences of many others in public schools. When a school district and the school community construct policies to protect the most vulnerable students in the community, they create safe schools for every single student in our public schools. This bill does not ask for special protections or unique protections, rather it seeks to ensure through a policy framework that the most vulnerable students are safe in public schools, so that they can focus on their education.

Children who are transgender and gender nonconforming are protected from discrimination under current state law. The Office of the Superintendent of Public Instruction (OSPI) has guidelines that include comprehensive requirements for what school districts must do to protect transgender students from discrimination and ensure a safe learning environment.

The model policy from the Washington State School Directors' Association (WSSDA) is online and includes the guidance from the OSPI. The OSPI receives many questions, and requests for training, from school districts on these requirements. If school districts adopt a policy and have a point of contact who is trained on the requirements, then they would be better informed and have the tools they need to protect their students from discrimination.

This bill will save lives. There are transgender children in every school in Washington. Transgender students are called hurtful names and assaulted. Classmates often participate in exclusion and transphobia. Students typically refuse to use transgender student pronouns and names, which creates a barrier to education. School is often a place of misery for transgender students and not a place where all students receive equal education. Transgender students often feel unsafe and targeted because of who they are. When families are not supportive of their trans and non-binary children, school can be the only safe place. Transgender students are warriors and they are paving a path. They are asking for some education and support as they try to reach their educational goals.

The Centers for Disease Control and Prevention issued a report last month indicating that of high school students in the United States 1.9 percent are transgender and 1.6 percent are questioning their gender. There is a high rate of anxiety and depression within the transgender community. Last year, a survey of 120,000 adolescents in the United States found that 51 percent of transgender male students, 42 percent of non-binary students, and 29 percent of transgender female students had attempted suicide within the previous year. The suicide rates for these groups are highly related to the experience of being harassed in school. The rates are even higher when the transgender student is harassed by staff.

Students and school staff need to be taught about harassment and told what categories of students are protected. Professionals should be trained to provide best practices on providing what each child needs. Most adults were not taught how to minimize bullying of gender diverse students. Many of the adults in the schools are afraid to address harassment, intimidation, and bullying (HIB) related to gender identity. This is partly because the general understanding of trans people is mired in shocking media portrayals, assumptions of mental illness, sexual deviancy, and so on. Gender diversity training is in demand on both sides of the mountains. Teachers often wonder what transgender students need and how can they can address the concerns that come with this topic. What is common to all training participants is a level of apprehension and hesitancy. Concerns about safety and privacy are voiced regularly by teachers and parents. When teachers learn about the biology of gender differences, their understanding shifts from those of past betrayals to one that recognizes the need for acceptance. When able to air concerns and not have them dismissed and be provided tools for addressing any problem, real or imagined, teachers' confidence goes up. They better understand that they already have the tools they need. When adults have the opportunity to learn and understand that all perspectives can be honored, the way forward is understood to be a shared pathway. This bill will be a great tool for teachers, principals, and school counselors who are trying to be allies to help make schools safe for each student.

This bill ensures that efforts will be made by school communities to eliminate discrimination of all types, especially based on gender identity and expression, while continuing to address the needs of every student. When schools have a policy in place to address HIB it makes a difference in the experience of transgender and nonbinary students at school. When schools

do not have, or refuse to have, policies to address HIB, the HIB continues unabated. As people work together to provide school environments in which all students can learn, where they are safe not just physically but also emotionally and socially, it is important that all school district policies remain updated to reflect the needs of all students. This legislation will ensure that WSSDA updates its model policies, so that school boards can then examine and adopt those that fit their district. This bill will make sure that the OSPI maintains an updated website and will cause every school district to have a single point of contact for any type of HIB and that school districts will share those policies with their employees, students' parents, and the broader communities.

The economic impacts of discrimination ripple down across a person's lifetime and even through generations. The economic cost of stigma and discrimination towards the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community in Arizona, which has a similar population to Washington, is estimated at between \$78 and \$105 million annually. When students are prevented from receiving a quality education due to HIB, they are less likely to graduate and less likely to have successful careers. Trans people are more than twice as likely as the general population to have a graduate or professional degree. At the same time, nearly one-third of trans people live in poverty, which is more than twice the rate for the general population.

Fighting anti-transgender bathroom bills and initiatives takes a toll on peoples health. It is disruptive to transgender people not knowing whether crucial rights and protections will be removed for no factual reason.

(Opposed) Bullying is wrong in any form and should be addressed with equality. Respect and love comes from learning by example. Students should be taught values and understanding. It is important to raise real men and women that can stand for the truth and for each other. The media and adults bash each other, bash the authority that takes care of the country, and call the President names. Teaching respect to children is the only way to protect them from bullying. Parents must talk with their children, teach them to stand for the truth, and not be hurtful to others because bullies are probably struggling and need help.

There is a concern that female children will not be able to protect themselves, but will be required to go to the same shower room as a student who calls himself female but by nature is a male. It should be considered harassment if a female student feels unsafe next to a male in a women's bathroom. There is a concern that female students will get in trouble for protecting themselves because it is considered harassment or discrimination, rather than freedom of belief. Some girls do not feel safe with boys in their bathroom. Boys are usually stronger than girls and some might take advantage to harass or assault girls.

The bill favors the gender of the few against the freedom of the majority. Special protection does not need to be provided for certain kinds of kids more than other kids. All students will not be protected by giving special treatment to some kids. Children need to find out who they are for themselves. Children should not be swayed to be one thing or another by a teacher's bias or opinion.

There are no committees or primary contacts for racial or religious bullying. No group should get tax-funded privileges over another group. Parents pay taxes so should get to

decide what their children in public schools are taught. This bill is a clever way to further infiltrate the minds of children with a social political agenda that promotes the idea that people can decide that they are a different gender, race, age, or anything else that is different from reality.

This bill is an insult to parents who oppose the LGBTQ lifestyle. This is an issue of morality and not discrimination. If this were a question of discrimination, then children who identify as Christian would not have to listen to teachers speak about evolution or be embarrassed by teachers or fellow students who look down on them for their beliefs. If this were about discrimination, there would be rights for Hispanic, Russian, Ukrainian who are bullied and told to go back to their countries. Christian children are told to keep their faith at home. If a group is large and complains together, that does not mean that individual HIB cases that are not in a group are less important. Parents of these children cannot wait for the school to provide all Christian counseling and protection.

This bill would begin to educate children as early as kindergarten about those who identify as LGBTQ and will present their choice as acceptable. This is not okay because it is a moral issue, and contradictory to what is taught in many homes and churches. Some families will remove their children from the public school system if this bill is passed.

Safety for all students is important. By elevating LGBTQ individuals, the state is discriminating against others. Current HIB laws are not protecting minorities, so something more should be done, but something that is inclusive of all minorities. Some students who are Russian are told to go back to where they came from.

Some people are trying to take away freedom of religion. This legislation is against some religious beliefs. The code of the Bible does not allow bullying.

**Persons Testifying:** (In support) Senator Liias, prime sponsor; Jill Davidson, Washington State Association of School Psychologists; Aidan Key, Gender Diversity; Taylor Briggs, Greater Seattle Business Association-Scholarship Fund; Matthew Landers, Greater Seattle Business Association; Sarah Albertson, Office of the Superintendent of Public Instruction; Lisa Keating, Washington State PTA; Stella Keating; Lucinda Young, Washington Education Association; and Carey Morris, Equal Rights Washington.

(Opposed) Julia Mikhaylenko; Tatyana Lukyanchenko; Inna Kulik; Tim Yelchaninov; Nicole Opryatova; and Dmitriy Sidlovskiy.

**Persons Signed In To Testify But Not Testifying:** Lana Andriyenko; Chris Plante, Family Policy Institute of Washington; Liliya Andriyenko; Oksana Opryatova; Dawn Land; Olga Fisenko, International Academy; Vladimir Bogdanov; Lynn Meagher; Beth Daranciang; Pavel Fisenko; Ann Streit; and Mariya Gusenkova.