
Education Committee

ESB 5834

Brief Description: Concerning the immigration status of students.

Sponsors: Senators Hunt, Wellman, Randall, Pedersen, Wilson, C., Salomon, Frockt, Hasegawa, Kuderer, Nguyen and Saldaña.

Brief Summary of Engrossed Bill

- Requires that school districts, charter public schools, and state-tribal education compact schools, among other things: provide information to the parents and guardians of enrolled students regarding students' rights to a free public education, regardless of immigration status or religious beliefs; not collect information or documents regarding the citizenship or immigration status of students or their family members, except as otherwise required; and only provide information or access to an immigration officer after the officer presents a dated, signed judicial warrant.
- Directs the Office of the Superintendent of Public Instruction to develop training materials on the requirements described above.
- Directs the Washington State School Directors' Association (WSSDA) to develop a model policy and procedure that complies with the requirements described above.
- Directs school districts, charter public schools, and state-tribal education compact schools to adopt and enforce policies and procedures consistent with the WSSDA model policy, beginning in the 2020-21 school year, and to inform employees of the requirements described above.
- Provides that school districts, charter public schools, and state-tribal education compact schools may include information from students' education records in the student information directory only after the students' parents have provided prior written consent.

Hearing Date: 2/25/20

Staff: Megan Wargacki (786-7194).

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.

Background:

Student's Right to a Public Education. Noncitizens, like citizens are afforded certain rights by the Washington and United States (U.S.) Constitutions. Article IX, Section 1 of the Washington Constitution declares that it is the paramount duty of the state to make ample provision for the education of all the state's children. In addition, the U.S. Supreme Court held that it is a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution to deny enrollment in public schools to children who were not "legally admitted" into the country.

Collecting and Disclosing Student Information. *Collecting Generally.* Public schools are not generally required by federal law to collect information about student or parent immigration status. Yet, public schools are permitted to collect information that relates to participation in programs or activities that may be associated with an individual's immigration status, for example information related to participation in an English learner program.

Disclosing Generally. The federal Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. The law applies to schools funded by a U.S. Department of Education program. In general, schools must have written permission from the parent or eligible student (age 18 and older, or attending post-secondary school) in order to release any information from a student's education record. Although there is no exception specifically for federal immigration agencies, FERPA allows schools to disclose student education records, without consent, to comply with a judicial order or lawfully issued subpoena.

In addition, schools may disclose, without consent, "directory" information such as a student's name, contact information, date and place of birth, honors and awards, and dates of attendance. However, each year, schools must tell parents and eligible students what information is subject to release as directory information and provide them with a reasonable opportunity to opt-out of having their directory information disclosed.

School Resource Officer Restrictions. Legislation adopted in 2019 (i.e., Engrossed Second Substitute Senate Bill 5497, enacted as Chapter 440, Laws of 2019 (E2SSB 5497)) specified that school resource officers, acting in their official capacity, may neither: (1) inquire into or collect information about an individual's immigration or citizenship status, or place of birth; nor (2) provide information to federal immigration authorities for the purposes of civil immigration enforcement, except as required by law.

Immigration Enforcement. *Guidance.* In 2017, the Washington Attorney General issued Guidance Concerning Immigration Enforcement to provide general information about limitations on federal immigration enforcement power and the authority of local government agencies, including school districts, related to immigration. With respect to public elementary and secondary schools, the guidance recommends, among other things, developing policies that restrict immigrant officers access to non-public portions of campus without a signed judicial warrant and that require consultation with a school administrator or school attorney anytime immigration officers seek access to campus.

Model Policy. The Attorney General was directed by E2SSB 5497 to consult with appropriate stakeholders to develop and publish model policies for limiting immigration enforcement to the

fullest extent possible consistent with federal and state law at public schools and other specified locations. The model policy must be published by May 21, 2020.

Public schools must adopt necessary changes to their policies consistent with the model policy or notify the Attorney General that the school is not adopting the changes, state the reasons why, and provide a copy of the current policies. Implementation of policies for limiting immigration enforcement must comply state and federal law and must meet requirements necessary to maintain funding.

Summary of Bill:

Student's Right to a Public Education. School districts must provide information to the parents and guardians of enrolled students regarding students' rights to a free public education, regardless of immigration status or religious beliefs. School districts must provide meaningful access to this information for families with limited English proficiency.

Collecting Student Information. School district officials and employees may not collect information or documents regarding the citizenship or immigration status of students or their family members, except as required by state or federal law or as required to administer a state or federally supported educational program.

Immigration Enforcement. When a federal immigration officer or law enforcement officer working on behalf of a federal immigration agency requests information or access to school grounds, school administrators must direct the officer to the school district superintendent, or the superintendent's designee. The superintendent, or the superintendent's designee, may only provide information or access to the officer after the officer presents a dated, signed judicial warrant. Following the officer's request for information or access, the superintendent, or the superintendent's designee, must report the request for information or access to the school board of directors in a timely manner and in a manner that ensures the confidentiality and privacy of any potentially identifying information.

Policies and Procedures. The Washington State School Directors' Association (WSSDA) must develop a model policy and procedure related to immigrant students that address the requirements described above and include procedures:

- related to requests for information or access to school grounds for purposes related to immigration enforcement;
- for staff to notify the school district superintendent, or the superintendent's designee, if an individual requests, or gains, access to school grounds for purposes related to immigration enforcement; and
- for responding to requests for personal information about students or students' family members for purposes of immigration enforcement.

School districts must adopt and enforce policies and procedures consistent with the WSSDA model policy, beginning in the 2020-21 school year.

Training Materials. The Office of the Superintendent of Public Instruction (OSPI) must develop a brief presentation, guidance, or other training materials describing the requirements listed

above, and must publish the materials on its website. School districts must use the OSPI training materials to inform employees of the requirements listed above.

Disclosing Student Information. School districts may include information from a student's education record in the student information directory only after the parent or guardian of the enrolled student has provided prior written consent to include the information.

Charter Schools and Tribal Compact Schools. Charter public schools and state-tribal education compact schools must meet all school district requirements described above.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.