

SENATE BILL REPORT

ESSB 5395

As Amended by House, March 4, 2020

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: Early Learning & K-12 Education: 2/13/19, 2/20/19 [DPS-WM, DNP].

Floor Activity:

Passed Senate: 2/27/19, 28-21; 1/22/20, 28-21.

Passed House: 3/04/20, 56-40.

Brief Summary of Engrossed First Substitute Bill

- Requires every public school to provide comprehensive sexual health education that meets certain requirements.
- Directs public schools to use review tools when choosing sexual health education curricula that is not on a list developed by the Office of the Superintendent of Public Instruction.
- Requires school districts to annually report the curricula used to provide comprehensive sexual health education.

SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

Majority Report: That Substitute Senate Bill No. 5395 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wellman, Chair; Wilson, C., Vice Chair; Hunt, McCoy, Mullet, Pedersen and Salomon.

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.

Minority Report: Do not pass.

Signed by Senators Hawkins, Ranking Member; Holy, Padden and Wagoner.

Staff: Ailey Kato (786-7434)

Background: Sexual Health Education. Current law requires every public school choosing to offer sexual health education to assure the education is:

- medically and scientifically accurate;
- age-appropriate;
- appropriate for students regardless of gender, race, disability status, or sexual orientation; and
- includes information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases.

2005 Guidelines for Sexual Health Information and Disease Prevention. Sexual health education must be consistent with the 2005 guidelines developed by the Department of Health (DOH) and the Office of the Superintendent of Public Instruction (OSPI).

Health and Physical Education K-12 Learning Standards. In 2016, OSPI adopted revised health and physical education learning standards. The eight learning standards are the required elements of instruction and are worded broadly to allow for local decision-making.

Choosing Sexual Health Education Curricula. OSPI, in consultation with DOH, must develop a list of sexual health education curricula consistent with the 2005 guidelines. This list must serve as a resource, be updated at least annually, and be available online.

Public schools offering sexual health education are encouraged to review their curricula and choose a curriculum from the list. Any public school offering sexual health education may identify, choose, or develop any other curriculum, if the curriculum chosen or developed complies with other requirements.

Excusal from and Review of Sexual Health Education. Parents or legal guardians may excuse their children from any planned sexual health education instruction by filing a written request with the school district board of directors, school principal, or designees. In addition, parents or legal guardians may review the sexual health education curriculum offered in their child's school by filing a written request.

Summary of Engrossed First Substitute Bill: Comprehensive Sexual Health Education. By September 1, 2021, every public school must provide comprehensive sexual health education as an integral part of the curriculum that is evidence-informed, inclusive for all students regardless of their protected class status, skills-based, and meets other requirements including:

- encourages healthy relationships based on mutual respect and affection and are free from violence, coercion, and intimidation;
- teaches how to identify and respond to attitudes and behaviors contributing to sexual violence;
- emphasizes the importance of affirmative consent, meaning conscious and voluntary agreement to engage in sexual activity, as a requirement before sexual activity; and

- is consistent with the health and physical education learning standards, which must be available on OSPI's website.

Comprehensive sexual health education must be phased in beginning with students in grades six through twelve by September 1, 2020, and then for students in grades kindergarten through five by September 1, 2021.

Evidence-informed means a program informed by scientific research and effective practice and replicates evidence-based programs or substantially incorporates elements of effective programs. All references to sexual health education are changed to comprehensive sexual health education.

Choosing Sexual Health Education Curricula. The list of sexual health education curricula must also be consistent with the health and physical education learning standards. OSPI must update the list at least biannually instead of annually.

By September 1, 2019, OSPI must develop comprehensive sexual health education instructional materials review tools and make them available online. Public schools must use the review tools when choosing curricula other than those from the list developed by OSPI.

Report. OSPI must require public school districts to annually report curricula used to provide comprehensive sexual health education. OSPI must report the results to the education committees of the Legislature by November 1, 2021, and biennially thereafter.

Excusal from Sexual Health Education. School districts must grant a parent's or legal guardian's written request to have their child excused from instruction in comprehensive sexual health education.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Many students have been sexually assaulted or coerced into sexual activity, which is linked to suicide. This is a public health crisis. Young people will pursue sexual experiences regardless of what anyone tells them. In order for young people to make good choices, they need help understanding the ramifications of their choices. Comprehensive sexual health education provides this information. It is essential to students' health, relationships, and meeting their life goals. This type of education is not just about sex, and it does not teach students how to have sex. It can reduce unintended pregnancy and STDs, teach students about affirmative consent, and can help students avoid abusive relationships. Students in all school districts deserve to have information and learn and practice the skills they need to protect their health. This education must be provided without shame and judgment and must be inclusive of all identities.

Students should be able to see themselves in the curriculum. A little more than half of school districts are already providing this type of education. Small groups of people who oppose this type of education may prevent a school board from adopting it even though the majority of people want it. Parents can still opt their children out of this type of education. This bill aligns with one of the recommendations of the Governor's Interagency Council on Health Disparities.

CON: The decision to offer this type of education should lie with school boards and ultimately parents. This bill mandates values and may lead to a number of students leaving public schools. Comprehensive sexual health education can include graphic material and can teach students how to have sex. The curriculum can contain transgender promotion and confusion for young children. Parents should educate their children on these types of topics at home. The number of pregnancies and abortions are down, so the status quo is working.

OTHER: These issues are necessary, complicated, and controversial. Local communities are going to need a strong support system to implement this requirement. This requirement should be phased-in. Additional resources and professional development are needed to adopt and implement this requirement.

Persons Testifying: PRO: Senator Claire Wilson, Prime Sponsor; Tamaso Johnson, Washington State Coalition Against Domestic Violence; CoCo Chang, Olympia YMCA; Amy Miller, Washington Education Association; Aren Wright, Student, Olympia High School; Sara Kukkonen, Planned Parenthood of the Great Northwest and the Hawaiian Islands; Xochitl Maykovitch, citizen; Fajer Saeed, Legal Voice; Maggie Davis-Bower, Teen Council; Teagan Hudson, Teen Council; Ariel Finrock, CTE Teacher, Elma School District; Melanie Smith, Committee for Children; Heather Maisen, King County Public Health Seattle and King County; Steven Hobaica, Washington State University; Nicole Mortenson, Planned Parenthood of the Great Northwest and the Hawaiian Islands; Timothy McLeod, Planned Parenthood of the Great Northwest and the Hawaiian Islands; Chris Reykdal, Office of Superintendent of Public Instruction; Lacy Fehrenbach, State Department of Health; Henry Pollet, Associated Students of Western Washington University; Charles Adkins, Director of Legislative Affairs, Geoduck Student Union; Christy Hoff, Governor's Interagency Council on Health Disparities.

CON: Vicki Kraft, Representative; Olga Fisenko, citizen; Beth Daranciang, citizen; Alexander Padillas, citizen; Garrett Sandberg, citizen; Sharon Hanek, citizen; Kenny Smith, citizen.

OTHER: Wendy Nakatsukasa-Ono, President and CEO, Cardea Services; Jessica Vavrus, Washington State School Directors' Association.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S): Comprehensive Sexual Health Education Requirement and Notification.

- Requires every public school to provide comprehensive sexual health education (CSHE) to each student by the 2022-23 school year instead of by September 1, 2021.

- Makes corresponding changes to the two-year phase-in of the requirement for students in grades 6-12 in the 2021-22 school year and all students in the 2022-23 school year.
- Specifies that CSHE must be provided no less than: (1) once to students in grades K-3; (2) once to students in grades 4-5; (3) twice to students in grades 6-8; and (4) twice to students in grades 9-12.
- Defines public schools by referencing a definition that includes common schools, charter schools, and other specified schools.
- Requires each school providing CSHE to notify parents and guardians at the beginning of the 2021-22 school year that the school will be providing CSHE during the school year.
- Specifies that the notification 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.

Affirmative Consent and Bystander Training.

- Requires any public school that provides CSHE to ensure that it includes information about affirmative consent and bystander training by the beginning of the 2020-21 school year.
- Requires school districts that are not currently providing CSHE to prepare to incorporate information about affirmative consent and bystander training and consult with parents and guardians, local communities, and the Washington State School Directors' Association.

Comprehensive Sexual Health Education Definition.

- Defines CSHE as recurring instruction in human development and reproduction that is age-appropriate and inclusive of all students regardless of protected class status.
- Specifies that for students in grades K-3 instruction must be in social-emotional learning consistent with OSPI standards and benchmarks.
- Specifies that for students in grades 4-12 instruction must include information about certain topics including (1) physiological, psychological, and sociological developmental processes; (2) development of intrapersonal and interpersonal skills to communicate, reduce health risks, and choose healthy behaviors and relationships; (3) health care and prevention resources; (4) development of meaningful relationships and avoidance of exploitative relationships; (5) understanding certain influences on healthy sexual relationships; and (6) affirmative consent and responding safely and effectively to violence.
- Removes the requirement that CSHE be skill-based and evidence-informed.
- Declares that nothing in the CSHE requirements expresses legislative intent to require CSHE be integrated into curriculum, materials, or instruction in unrelated subject matters or courses.

Comprehensive Sexual Health Education Curricula.

- Directs OSPI to at least annually, instead of biannually, update a list of CSHE curricula that meet certain requirements.
- Modifies provisions requiring public schools to choose curriculum from the OSPI list or use a review tool, including (1) encourages public schools to choose a curriculum from the OSPI list; (2) allows public schools to identify, choose, or develop any other curriculum if it complies with requirements; and (3) requires public schools or districts, in consultation with OSPI, to conduct a review of the selected or developed curriculum to ensure compliance with the requirements using an OSPI analysis tool.

- Directs OSPI to provide technical assistance to schools and districts that is consistent with the curricula review, selection, and development.
- Requires public schools to describe in annual reports how the provided classroom instruction aligns with requirements.

Comprehensive Sexual Health Education Resources and Training Materials.

- Requires website posting of resources by OSPI and DOH to comply with applicable federal law.
- Directs OSPI, subject to appropriations, to periodically review and revise, as necessary, training materials, which may be in an electronic format, for classroom teachers and principals to implement these requirements.
- Specifies that the initial review must be completed by March 1, 2021.