

# HOUSE BILL REPORT

## E4SHB 1239

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### As Amended by the Senate

**Title:** An act relating to establishing a simple and uniform system for complaints related to, and instituting a code of educator ethics for, conduct within or involving public elementary and secondary schools.

**Brief Description:** Establishing a simple and uniform system for complaints related to, and instituting a code of educator ethics for, conduct within or involving public elementary and secondary schools.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Santos, Kloba, Morgan, Ramel and Pollet).

### Brief History:

#### Committee Activity:

Education: 1/23/23, 2/7/23 [DPS], 1/22/24, 1/30/24 [DP3S];

Appropriations: 2/20/23, 2/23/23 [DP2S(w/o sub ED)], 2/3/24, 2/5/24 [DP4S(w/o sub ED)].

#### Floor Activity:

Passed House: 2/12/24, 92-5.

Senate Amended.

Passed Senate: 2/29/24, 49-0.

### Brief Summary of Engrossed Fourth Substitute Bill

- Directs the creation of a simple and uniform access point for the receipt of complaints involving the elementary and secondary education system.
- Requires public schools and educational service districts to post a link to the complaint access point on their websites.
- Requires the Professional Educator Standards Board and the Paraeducator Board to report to the Legislature on a code of educator ethics.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- Changes the defense for use of force on children with respect to teachers and other school staff.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The third substitute bill be substituted therefor and the third substitute bill do pass. Signed by 13 members: Representatives Santos, Chair; Shavers, Vice Chair; McEntire, Assistant Ranking Minority Member; Bergquist, Couture, Eslick, Harris, McClintock, Nance, Ortiz-Self, Pollet, Stonier and Timmons.

**Minority Report:** Do not pass. Signed by 1 member: Representative Steele.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Rude, Ranking Minority Member.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The fourth substitute bill be substituted therefor and the fourth substitute bill do pass and do not pass the substitute bill by Committee on Education. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Ryu, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

**Minority Report:** Without recommendation. Signed by 5 members: Representatives Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Rude and Sandlin.

**Staff:** Jordan Clarke (786-7123).

### **Background:**

#### Office of the Education Ombuds.

In 2006 the Office of the Education Ombuds (OEO) was created within the Office of the Governor to provide information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system and to advocate on behalf of students.

The OEO has the power and duty to, among other things: (1) facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and

secondary education system; and (2) refer complainants and others to appropriate resources, agencies, or departments. All matters are treated as confidential by the OEO, except as necessary to perform the duties of the office.

#### Code of Professional Conduct.

The Professional Educator Standards Board (PESB) is a statutorily created 12-member board whose duties include establishment and enforcement of rules determining eligibility for the certification of teachers, administrators, and educational staff associates working in elementary and secondary schools. The PESB has established a Code of Professional Conduct to protect the health, safety, and general welfare of students, to assure the citizens that education practitioners are accountable for acts of unprofessional conduct, and to define and provide notice to certificated educators of the acts of unprofessional conduct for which they are accountable.

#### Use of Force on Children.

The stated policy of the state is to protect children from assault and abuse and to encourage parents, teachers, and their authorized agents to use methods of correction and restraint of children that are not dangerous to the children. The criminal code specifies that the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a parent, teacher, or guardian for purposes of restraining or correcting the child.

The criminal code also specifies that any use of force on a child by any other person is unlawful unless it is reasonable and moderate and is authorized in advance by the child's parent or guardian for purposes of restraining or correcting the child.

Administrative rules of the state Superintendent of Public Instruction prohibit school staff from using corporal punishment, including any act that willfully inflicts or willfully causes the infliction of physical pain, on a student.

The education code prohibits school staff from using restraint or isolation to control a student participating in school activities, except when reasonably necessary to control spontaneous behavior of the student that poses an imminent likelihood of serious harm. "Likelihood of serious harm" generally means there is evidence of substantial risk that the student will inflict physical harm upon themselves, another, or the property of others.

When school staff use restraint or isolation on a student, the staff must complete follow-up activities, such as incident notifications and reports.

#### **Summary of Engrossed Fourth Substitute Bill:**

##### Uniform Complaint Process.

By July 1, 2025, the Office of the Education Ombuds (OEO) must create a simple and uniform access point for the receipt of complaints involving the elementary and secondary education system. The purpose of the access point is to provide a single point of entry for

complaints to be reported and then referred to the most appropriate individual or entity for dispute resolution at the lowest level of intercession.

Complaints may be submitted by any individual who has firsthand knowledge of a violation of federal, state, or local laws, policies and procedures, or of improper or illegal actions related to elementary and secondary education and performed by an employee or contractor, student, parent or legal guardian, or member of the public. "Employee or contractor" means employees and contractors of the state education agencies, educational service districts, public schools, the State School for the Blind, and the Center for Deaf and Hard of Hearing Youth.

The OEO must delineate a complaint resolution and referral process for reports received through the access point. The process must:

1. require that the OEO assign a unique identifier to a complaint upon receipt before referring the complaint to the appropriate individual or entity for dispute resolution at the lowest level of intercession;
2. link to all existing relevant complaint and investigative processes; and
3. discourage frivolous complaints and complaints made in bad faith.

The OEO, in collaboration with the Office of the Superintendent of Public Instruction, must develop protocols for the receipt, resolution, and referral of complaints and must design a communications plan to inform individuals who report complaints through the access point about the steps in the complaint resolution and referral process, including when to expect a response from the individual or entity charged with resolving the complaint.

The Office of the Superintendent of Public Instruction, school districts, public schools, and educational service districts must post on their websites a prominent link to the complaint resolution and referral access point maintained by the OEO.

#### Code of Educator Conduct.

By September 1, 2025, the Professional Educator Standards Board and the Paraeducator Board (boards) must jointly report to the Legislature on a code of educator ethics. In this context, "educator" refers to certificated administrative staff, certificated instructional staff, and paraeducators.

The boards must engage with stakeholders across the professional educator spectrum and review the National Association of State Directors of Teacher Education and Certification's model code of ethics for educators.

The report must advise the legislature on the following topics:

1. how a code of educator ethics will support the development of an effective and comprehensive professional educator workforce;
2. whether a model code of educator ethics will be adopted or adapted for Washington, or whether a code of educator ethics unique to Washington will be developed; and

3. any challenges that are anticipated with state adoption of a code of educator ethics.

The report must also include a summary of the required activities, any planned activities by either board related to adopting a code of educator ethics, and any recommendations for legislative action, if necessary, related to state adoption of a code of ethics.

Use of Force on Children.

The defense for teachers that use of force on a child is not unlawful when it is reasonable and moderate and inflicted for purposes of restraining or correcting a child is removed.

The defense to use of force on a child by any person other than the parents and their authorized agents is expanded, such that use of force on a child is not unlawful if it actually or substantially complies with limitations on the use of student isolation and restraint, including that it is used only when a student's behavior poses an imminent likelihood of serious harm.

**EFFECT OF SENATE AMENDMENT(S):**

As compared to the engrossed fourth substitute House bill, the Senate amendment clarifies that the defense to use of force on a child available when a person actually or substantially complies with limitations on the use of student isolation and restraint applies in an educational setting and involves an educator.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Education):**

(In support) Parents do not expect their children to be bullied or abused when they go to school. While most children are not abused by school staff, it makes parents feel helpless and lost to send their children into unknown daily harm. The best way to achieve learning is to meet students where they are at.

It should not be legal for kids to be harmed at the hands of a teacher. Some teachers engage in harmful behavior with students, including pulling ears, twisting wrists, digging fingernails into necks, slamming heads into desks, and slapping. Teachers have been practicing these methods of student discipline for decades. While this contact may be in violation of school policy, the criminal code allows this type of treatment of students. Adults who use these practices should not be allowed to continue working with students. There should be an easily accessible and uniform reporting system to help parents to keep

their children safe by tracking the bad behavior of teachers.

This bill seeks to create a uniform portal for people to file complaints then be referred to the appropriate place for dispute resolution. This bill seeks to remove the criminal defense of an educator for use of force on a student. The practice of isolation and restraint is the subject of another bill and this bill adds a cross reference to those limitations in the defense.

This bill is not trying to rewrite the disciplinary laws that govern the actions of educators or to change the processes for investigating or adjudicating disciplinary actions. The code of educator ethics is not about the actual behavior of educators, rather it is intended to be an aspirational expectation for educators and the education system. This code is currently missing from the system.

(Opposed) The state has a code of educator conduct; a code of ethics may or may not conflict with that. There is concern about who will write the code of ethics. There are some things happening in schools that maybe unethical, for example students with another gender identity must be allowed to use the restroom and locker rooms of their choice. People with either gender identity may play any sport. There is lowered attendance and injuries for females.

(Other) The current complaint processes should be strengthened rather than duplicated or confused.

The code of educator ethics has been looked into by the Professional Educator Standards Board and the Paraeducator Board. There can be a conflating with the code of ethics and the code of conduct. The code of ethics should be aspirational set of values, while the code of conduct prohibits specific actions and behaviors. The language about enforcement of the code of ethics needs to be clarified. There are questions about how a code of ethics would support the education system.

### **Staff Summary of Public Testimony (Appropriations):**

(In support) Parents have observed teacher-student interactions and the consequences of negative contact from kindergarten through graduation. For example, when a kindergarten student develops suicidal ideations and the need for mental health services, when an elementary teacher's aggressive behavior increased disability adverse impacts for a student who is now placed at a nonpublic agency school paid for by state safety net funding, or when a high school junior who felt hated by teachers had an autistic shutdown and was moved to a nonpublic agency school paid for by state safety net funding. This bill is an investment in our children's futures by working to fix a broken system and to improve state fiscal responsibility. It also provides parents with needed information to make choices to keep children safe. Keeping children safe is the morally right thing to do and is fiscally responsible, since children who are kept safe require fewer services.

Some children in the state have had abusive teachers who have harmed children for decades without consequences, even if the school and the district know about the abuse. The criminal code allows for these harmful actions by teachers, and this bill changes that. The bill also creates a uniform system for complaints, when many parents have had no recourse in the past with systems in place that protected abusive teachers. This bill creates a pathway for parents to submit complaints through the Office of the Education Ombuds (OEO), and would build on the OEO's existing system which currently handles more than 1,000 complaints per year. Using the existing system is an effective and efficient use of funds to keep Washington students safer.

(Opposed) None.

**Persons Testifying (Education):** (In support) Representative Sharon Tomiko Santos, prime sponsor; Julianna Hillard, Seattle Council Parent Teacher Student Association; Laura Marie Rivera; Sebrena Burr; and Marianne Bryan.

(Opposed) Gabriel Jacobs.

(Other) Jenny Plaja, Office of the Superintendent of Public Instruction; and Nasue Nishida, Washington Education Association.

**Persons Testifying (Appropriations):** Marianne Bryan; and Julianna Hillard, Seattle Council Parent Teacher Student Association.

**Persons Signed In To Testify But Not Testifying (Education):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.