

# SENATE BILL REPORT

## SB 5237

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As Reported by Senate Committee On:  
Early Learning & K-12 Education, January 26, 2023

**Title:** An act relating to establishing complaint procedures to address noncompliance with certain state education laws.

**Brief Description:** Establishing complaint procedures to address noncompliance with certain state education laws.

**Sponsors:** Senators Wilson, C., Wellman and Hunt.

**Brief History:**

**Committee Activity:** Early Learning & K-12 Education: 1/16/23, 1/26/23 [DPS-WM, DNP].

### Brief Summary of First Substitute Bill

- Directs the Office of the Superintendent of Public Instruction (OSPI) to establish procedures to investigate and address complaints alleging noncompliance with state laws concerning civil rights; harassment, intimidation, and bullying; certain curriculum requirements; the use of restraint or isolation on a student; and student discipline.
- Requires school districts to submit compliance action plans if OSPI finds noncompliance with any of these state laws and allows OSPI to impose certain consequences.
- Amends the oath that elected or appointed school directors take to include that they must support Washington laws.

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### SENATE COMMITTEE ON EARLY LEARNING & K-12 EDUCATION

**Majority Report:** That Substitute Senate Bill No. 5237 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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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.*

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

**Minority Report:** Do not pass.

Signed by Senators Hawkins, Ranking Member; Dozier and McCune.

**Staff:** Ailey Kato (786-7434)

**Background:** Existing Complaint Procedures. Current state law includes certain complaint procedures regarding issues related to:

- school safety and security staff;
- instructional materials used by school districts;
- physical abuse or sexual misconduct by a certificated employee;
- harassment, intimidation, or bullying; and
- discrimination.

Other state and federal agencies also address discrimination complaints. Local school district policies and procedures may also include complaint procedures concerning staff or programs.

Basic Education Compliance. The State Board of Education (SBE) must adopt rules to implement and ensure compliance with basic education requirements and related supplemental program approval requirements as SBE may establish.

School Board Member's Oath of Office and Recall. Every school director must take an oath or affirmation to support the federal and state constitutions and faithfully discharge the duties of the office according to the best of their ability.

A voter may demand the recall of an elected public official by preparing a written charge that the official has committed an act of malfeasance, an act of malfeasance while in office, violated the oath of the office, or has been guilty of any two or more acts specified in the Constitution as grounds for a recall.

**Summary of Bill (First Substitute):** Complaint Procedures. The Office of the Superintendent of Public Instruction (OSPI) must establish procedures to investigate two types of complaints alleging noncompliance with state law:

- limited complaints—which impacts one or more individual students; and
- broad complaints—which impacts an entire student body, an entire school, or an entire school district.

The purpose of the complaint procedures is to secure equitable resolutions to complaints related to alleged noncompliance with state laws concerning:

- civil rights including discrimination and sexual harassment;
- harassment, intimidation, and bullying;

- curriculum requirements, including comprehensive sexual health education and tribal history, and the policies and procedures related to the selection or deletion of instructional materials;
- the use of restraint or isolation on a student; or
- student discipline.

Anyone residing within the boundaries of the school district or who has a student enrolled in the school district may file a complaint with OSPI against a local superintendent, school board, or school board member. Before a person may file a complaint, the person must exhaust existing complaint procedures if procedures exist including procedures established under state law and local policy and procedure.

Upon receipt of the complaint, OSPI must conduct a prompt and thorough investigation into the allegations in the complaint.

Compliance Action Plans. If OSPI finds noncompliance with state law, the local superintendent and school board must adopt and submit a compliance action plan to OSPI.

The plan must include:

- a description of the changes in existing policies, structures, agreements, processes, and practices needed to come into compliance with state law; and
- the timeline for coming into compliance.

Compliance action plans must be developed in collaboration with OSPI, school staff, parents, unions, students, impacted communities, and other representatives of the local community. Before adopting and submitting a plan, the local school board must conduct a public hearing to allow public comment. OSPI must provide assistance and publish guidelines as needed, and plans must be developed in accordance with state collective bargaining laws.

For complaints in which individual students may be identified, the public hearing and materials prepared for such hearing must adhere to nondisclosure of personally identifiable information consistent with state and federal student privacy laws.

Consequences for Willful Noncompliance with State Law. If OSPI finds willful noncompliance with state law, the school district must conduct at least two additional public hearings, and OSPI may impose any of the following consequences:

- require the school district to adopt or readopt policies and procedures to come into compliance;
- find that a superintendent committed any act of unprofessional conduct and may be held accountable under rules adopted by the Professional Educator Standards Board; and
- withhold up to 20 percent of state funds for the basic education allocation, with prior written notice, and redirect those funds to support the compliance action plan.

A member of a board of directors may be subject to recall and discharge for willful or negligent noncompliance with state law.

These complaint procedures do not change any existing authority OSPI has to enforce compliance with state law including health and safety requirements.

Appeals. The complainant or school district may file a notice of appeal with OSPI within 30 days of the final decision. An administrative law judge of the Office of Administrative Hearings will hear and determine the appeal. An appeal of the administrative law judge's determination or order shall be to the superior court. The superior court's decision is subject only to discretionary review under the rules of appellate procedure.

OSPI Rules. OSPI must adopt rules regarding the complaint procedures, timelines, compliance action plans, and consequences. OSPI must consult with SBE to build a connection between the rules adopted and SBE rules on basic education compliance for complaints regarding noncompliance with curriculum requirements. OSPI may adopt rules to allow for an expedited process when the complaint relates to an immediate health or safety concern.

School Board Member's Oath of Office. In addition to supporting the federal and state constitutions, the school board member's oath or affirmation must include that they support the laws of the state of Washington.

#### **EFFECT OF CHANGES MADE BY EARLY LEARNING & K-12 EDUCATION COMMITTEE (First Substitute):**

- Adds to the definition of a “broad complaint” to include a complaint that impacts an entire school or an entire school district.
- Changes the term “individual complaint” to “limited complaint.”
- Requires a person to exhaust existing complaint procedures if procedures exist before filing any complaint.
- Removes the word “justifiable” to describe the complaints.
- Specifies that anyone residing within the boundaries of the school district or who has a student enrolled in the school district may file a complaint.
- Directs OSPI to consult with the SBE to build a connection between the rules adopted and SBE’s rules on basic education compliance for complaints regarding noncompliance with curriculum requirements.
- Explains that for complaints in which individual students may be identified, the public hearing and materials prepared for such hearing must adhere to nondisclosure of personally identifiable information consistent with state and federal student privacy laws.
- Removes the section of the bill that amended the basis for a recall and specifies that a member of a board of directors may be subject to recall and discharge for willful or negligent noncompliance with state law.

- Adds an appeals process following a final OSPI decision and specifies that an administrative law judge of the Office of Administrative Hearings will hear and determine the appeal and an appeal of that decision shall be to the superior court.

**Appropriation:** None.

**Fiscal Note:** Requested on January 10, 2023.

**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: Families and children have shared stories that school districts are intentionally not complying with state law, which is problematic and negatively impacts students. All children need access to responsive, safe, and healthy learning environments. Local school boards are in the best position to quickly respond to student needs, but local control is not absolute, especially if their actions are harming students. This bill gives power to families and protects students. Some superintendents are not certificated, so it may be difficult for the Professional Educator Standards Board to develop consequences. OSPI may have a conflict of interest when administering the complaint procedure because the complaints could reveal systemic failures. This bill is not about denying rights to school boards and superintendents; it is about protecting and helping students, especially students who are transgender. Schools need to be held accountable.

CON: This bill would punish school districts and superintendents for not implementing certain things that parents have made clear that they do not want. One size does not fit all, and local school districts should be aligned with local values. Local control is absolute. This bill codifies government overreach into school districts and renders school districts impotent. The bill changes the office of elected school board members by changing the oath to say that they must support state laws. Local school boards are the closest to the governed and represent the consent of the governed. They act as a check and a balance. The laws that are the focus of this bill are cherry-picked. There is no evidence that school districts are not implementing state law.

OTHER: All officials must follow all state laws all of the time. At the same, the needs of the separately elected officials must be balanced, and they shouldn't be pre-judged as a class. OSPI has the authority to adopt rules about the process, and it's not clear what that process will be. Complaints should be filed with school districts first. Superintendents have to wear many hats and address many issues. Sometimes things slip through the cracks and that could be perceived as willful noncompliance, but they are not acting willfully. The required public hearings and the withholding of state funds are an overreach, and redirecting funds could negatively impact students.

**Persons Testifying:** PRO: Senator Claire Wilson, Prime Sponsor; Julie Salvi, Washington Education Association; Jillian Baer; Jake Vela, League of Education Voters; Kristin Murphy, Office of Superintendent of Public Instruction (OSPI); Zackary Turner, PESB.

CON: Julie Barrett, Conservative Ladies of Washington; Laurie Layne; Andy Cilley, Parent; Jeannie Magdua, Conservative Ladies of Washington; Val Mullen; Aaron Lang; Rachel Buck.

OTHER: Eric Sobotta, Reardan-Edwall School District; Mike Hoover, Washington State School Directors' Association; Liv Finne, Washington Policy Center; Jim Kowalkowski, Rural Education Center.

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