

# SENATE BILL REPORT

## SB 5237

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As of January 16, 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.

**Brief Summary of 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.
- Specifies that violation of a school district director's oath of office includes willful or negligent noncompliance with these state laws and may be the basis for a recall of the elected official.

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

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

**Background:** Existing Complaint Procedures. Current state law includes certain complaint

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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.*

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.

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:** 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:

- individual complaints, which impacts an individual student and involves an issue that has not been resolved by existing complaint procedures; and
- broad complaints, which impacts an entire student body or group of students.

The purpose of the complaint procedures is to secure equitable resolutions to justifiable 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 may file a complaint with OSPI against a local superintendent, school board, or school board member. Before a person may file an individual complaint, the person must exhaust existing complaint 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.

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.

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

OSPI Rules. OSPI must adopt rules regarding the complaint procedures, timelines, compliance action plans, and consequences. 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 and Recall. 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.

The definition for violation of the oath of office, as it applies to the recall of an elected official, is amended to include a school director's willful or negligent noncompliance with state law.

"Willful" means nonaccidental action or inaction by a local superintendent, school board, or school board member that they knew or reasonably should have known would result in noncompliance with state law. "Negligent" means the failure to exercise ordinary care, and

they knew or reasonably should have known that failure to exercise ordinary care would result in noncompliance with state law.

**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:** 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.