



Summary of Referendum Measure No. 90

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Referendum Measure No. 90. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Requires every public school to provide comprehensive sexual health education (CSHE) to each student by the 2022-23 school year.
- Establishes differentiated instructional requirements for students in kindergarten through grade 3 and students in grades 4 through 12, and separate requirements for frequency of instruction.
- Requires public schools to ensure that the curriculum, instruction, and materials used to provide CSHE include information about affirmative consent and bystander training.

BACKGROUND

Referendum Measure No. 90

Laws passed by the Legislature are subject to the referendum process (except for emergency legislation). The sponsor of a referendum measure must collect a sufficient number of signatures on a petition to have a law become a referendum measure. If enough signatures are collected, the Secretary of State certifies the referendum measure, and the law is placed on the ballot. The voters are asked to approve or reject the law passed by the Legislature.

Referendum Measure No. 90 was certified for the ballot on June 24, 2020. The ballot title and ballot measure summary prepared by the Attorney General, and revised by court order on April 7, 2020, are as follows:

Ballot Title

Statement of Subject: The Legislature passed Engrossed Substitute Senate Bill 5395 concerning comprehensive sexual health education.

Concise Description: This bill would require school districts to adopt or develop, consistent with state standards, comprehensive age-appropriate sexual health education, as defined, for all students, and excuse students if their parents request.

Should this bill be: Approved [] Rejected []

Ballot Measure Summary

The Legislature enacted a law requiring all school districts to provide comprehensive sexual health education, as defined, beginning in 2021-22 for grades 6-12 and in 2022-23 for grades K-5. Students must be excused from this program if parents so request. The curriculum must satisfy state standards. The content and frequency of providing comprehensive sexual health education would vary by grade level and must include affirmative consent and bystander training. K-3 instruction must be social-emotional learning.

Sexual Health Education - General Information

Public schools may provide sexual health education to their students. Public schools that choose to offer sexual health education must assure that the education is medically and scientifically accurate, age-appropriate, and appropriate for students regardless of gender, race, disability status, or sexual orientation. Sexual health education must include information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases.

Sexual health education provided to students must be consistent with the January 2005 Guidelines for Sexual Health information and Disease Prevention (Sexual Health Information Guidelines) developed by the Department of Health (DOH) and the Office of the Superintendent of Public Instruction (OSPI). A school may choose to use separate, outside speakers or prepared curriculum to teach different content areas or units within the comprehensive sexual health program if all speakers, curriculum, and materials meet statutory requirements.

Curriculum Review and Selection by Schools

The Superintendent of Public Instruction (SPI), in consultation with the DOH, is required to develop a list of sexual health education curricula that are consistent with the Sexual Health Information Guidelines. This list is intended to serve as a resource for schools, teachers, or any other organization or community group and must be updated no less frequently than annually and made available on the websites of the OSPI and the DOH.

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Public schools that offer sexual health education are encouraged to review their sexual health education curriculum and choose a curriculum from the list developed by the OSPI. The list does not represent the exclusive options, as any public school that offers sexual health education may identify, choose, or develop a curriculum provided it complies with applicable statutory requirements.

Excusing Students from Instruction and Parental Review of Curriculum

A parent or legal guardian who wishes to have his or her child excused from any planned instruction in sexual health education may do so upon filing a written request with the school district board of directors (school directors), the principal of the school the child attends, or a designee of those school officials.

A parent or legal guardian may review the sexual health education curriculum offered in their child's school by filing a written request with the school directors, the principal of the child's school, or the principal's designee.

Other Duties of Agencies Relating to Sexual Health Education

The SPI and the DOH must make the Sexual Health Information Guidelines available to school districts, teachers, and guest speakers on their websites. Within available resources, the SPI and the DOH must also make available any related information, model policies, curricula, or other resources.

The OSPI, through its Washington State School Health Profiles Survey or other existing reporting mechanism, is required to ask public schools to identify any curricula used to provide sexual health education and must report the results of these inquiries to the Legislature on a biennial basis.

Comprehensive Sexual Health Education Work Group

Legislation enacted in 2019 required the OSPI to convene a work group to complete delineated sexual health education duties. The Comprehensive Sexual Health Education Work Group (Work Group) was required to:

- review provisions related to sexual health education in the statewide Health and Physical Education Standards (Health and P.E. Learning Standards);
- review existing sexual health education curricula in use in the state for the purpose of identifying gaps or potential inconsistencies with the Health and P.E. Learning Standards;
- consider revisions to sexual health education provisions in statute; and

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- consider the merits and challenges associated with requiring all public schools to offer comprehensive sexual health education (CSHE) to students in all grades by September 1, 2022.

The OSPI issued a report for the Work Group, including findings and recommendations, in December 2019.

Social-Emotional Learning

Social-emotional learning (SEL) is the process of developing and applying the skills, attitudes, behavior, and knowledge that afford individuals the opportunity to identify and regulate emotions and behaviors, form meaningful relationships, and make responsible decisions.

Legislation enacted in 2019 required the OSPI to adopt SEL standards and benchmarks, and to revise the SEL standards and benchmarks as appropriate. The legislation also required the OSPI to align the programs it oversees with the standards for SEL and to integrate the standards where appropriate.

Protected Class Status

Antidiscrimination provisions in Washington law establish the right of individuals to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

SUMMARY

Provision of Comprehensive Sexual Health Education to All Public School Students

Every public school must provide comprehensive sexual health education (CSHE) to each student by the 2022-23 school year. The requirement to provide CSHE includes a multi-year phase-in process:

- beginning in the 2021-22 school year, CSHE must be provided to all public school students in grades 6 through 12; and
- beginning in the 2022-23 school year, CSHE must be provided to all public school students.

The CSHE must be consistent with the statewide Health and P.E. Learning Standards and the Sexual Health Information Guidelines.

The curriculum, instruction, and materials used to provide the CSHE must be medically and

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scientifically accurate, age-appropriate, and inclusive of all students, regardless of their protected class status, and must include information about abstinence and other methods of preventing unintended pregnancy and sexually transmitted diseases.

Public schools may choose a curriculum from the list developed by the OSPI or identify, choose, or develop a different curriculum if it complies with applicable requirements. If a public school chooses a curriculum that is not from the OSPI list, the public school or applicable school district, in consultation with the OSPI, must conduct a review of the curriculum using a CSHE curriculum analysis tool of the OSPI.

Definition of Comprehensive Sexual Health Education and Differentiated Instructional Requirements

"Comprehensive sexual health education" is defined as recurring instruction in human development and reproduction that is age-appropriate and inclusive of all students, regardless of their protected class status under specific laws. In addition to satisfying medical and scientific accuracy requirements, all information, instruction, and materials used in providing CSHE must use language and strategies that recognize all members of protected classes.

The definition further specifies that CSHE for students in kindergarten through grade 3 must be instruction in SEL that is consistent with the SEL standards and benchmarks adopted by the OSPI. Comprehensive sexual health education instruction for students in grades 4 through 12 must include information about:

- the physiological, psychological, and sociological developmental processes experienced by an individual;
- the development of intrapersonal and interpersonal skills to communicate, respectfully and effectively, to reduce health risks, and choose healthy behaviors and relationships;
- health care and prevention resources;
- the development of meaningful relationships and avoidance of exploitative relationships;
- understanding the influences of family, peers, community, and the media throughout life on healthy sexual relationships; and
- affirmative consent and recognizing and responding safely and effectively when violence, or a risk of violence, is or may be present with strategies that include bystander training.

Frequency of Instruction and Notification Requirements for Schools

Comprehensive sexual health education in public schools must be provided no less than:

- once to students in kindergarten through grade 3;
- once to students in grades 4 through 5;
- twice to students in grades 6 through 8; and
- twice to students in grades 9 through 12.

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At the beginning of the 2021-22 school year, each school providing CSHE must notify parents and guardians, in writing or in accordance with the methods the school finds most effective in communicating with parents, that the school will be providing CSHE during the school year. The notice 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.

Excusing Students from Instruction

Provisions governing the excusing of students from CSHE are modified to specify that a person or entity who receives a request to excuse a student from instruction must grant the request.

Duties for Phasing-In Comprehensive Sexual Health Education

Duties related to the broad phasing-in of classroom instruction for CSHE begin one year before the instructional requirement takes effect. Beginning in the 2020-21 school year, any public school that provides CSHE must ensure that the curriculum, instruction, and materials include information about affirmative consent and bystander training.

School directors for districts with one or more schools that are not providing CSHE in the 2019-20 school year, the 2020-21 school year, or both, must prepare for incorporating information about affirmative consent and bystander training into their CSHE curriculum, instruction, and materials. In meeting this requirement, the school directors must also, no later than the 2020-21 school year, consult with parents and guardians of students, local communities, and the Washington State School Directors' Association.

Implementation Duties for State Agencies

The OSPI must provide technical assistance to public schools and school districts that is consistent with the authority of schools and districts to review, select, and develop CSHE curricula. The OSPI must also provide technical assistance to public schools and school districts that choose or are required to use the CSHE curriculum analysis tool of the OSPI.

Subject to the availability of specific legislative funding, the OSPI must periodically review and revise, as necessary, training materials for classroom teachers and principals to implement CSHE requirements. The training materials may be in an electronic format, and the initial review must be completed by March 1, 2021.

When making related information, model policies, curricula, or other resources available, the SPI and the DOH must post the information on their websites and may only make the information available to the extent permitted by federal law.

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Additional Requirements for the Office of the Superintendent of Public Instruction and Public Schools

The materials that OSPI must consider when developing a list of CSHE curricula that complies with specified requirements are expanded to include an evaluation of the curricula's consistency with the Health and P.E. Learning Standards.

Data collection and reporting duties of schools and the OSPI are modified. Each public school, annually by September 1, must identify to the OSPI any curricula used to provide CSHE and describe how the provided classroom instruction aligns with the CSHE requirements. The OSPI must report the results of the school submissions to the education committees of the Legislature on a biennial basis, beginning after the 2022-23 school year.

Legislative Intent Statement

A statement of legislative intent is included specifying that nothing in the CSHE requirements expresses legislative intent to require that CSHE, or components of CSHE, be integrated into curriculum, materials, or instruction in unrelated subject matters or courses.

Effective Date: The referendum measure takes effect 30 days after the election at which it is approved.

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