



To: Senate Judiciary Committee  
From: Richard Donovan, Oregon School Boards Association  
Re: Senate Bill 292  
Date: March 10, 2017

Chair Prozanski and members of the Senate Judiciary Committee:

On behalf of OSBA’s membership, including 197 school districts and 17 community colleges throughout the state of Oregon, thank you for the opportunity to testify in opposition to SB 292. OSBA stands in opposition to SB 292 for several reasons:

- *SB 292 would increase costs for school districts*

Senate Bill 292 would create a new cause of action under ORS 659A. This new cause of action would cost school districts and community colleges money due to an anticipated increase in costs of insurance and liability coverage that every district must purchase. Unfortunately, the significant costs to protect school districts from the liabilities created by this new cause of action will be taken from money that would hopefully otherwise be going to the classroom.

- *Sufficient remedies exist under current state and federal law*

Under current law, a number of remedies exist for damages alleged to have occurred in the workplace. State remedies include Oregon workers’ compensation claims, including a specific provision around damages as a result of “mental stress,” and remedies for hostile, offensive or intimidating behavior experienced by an employee as a result of the employee’s membership in a protected class (e.g. race, religion, gender, sexual orientation, nationality, disability, age). Federal law provides for remedies under the Equal Employment Opportunities Commission. Additionally, there of course exists the substantial body of tort case law and rule. OSBA believes that these existing remedies provide sufficient parameters to make determinations of harm.

- *SB 292 would expand the responsibilities of investigators*

Senate Bill 292 would expand the scope of workplace-related investigations (e.g. those conducted by Bureau of Labor and Industries investigators) to include a determination of whether or not a work environment is abusive, which is directly tied in the bill to a determination of physical or psychological harm. Currently, the normal course of investigation does not include any provision this broad as it relates to mental or psychological wellbeing. Although SB 292 does require documentation of impairment by a physician or related expert, existing workers’ compensation remedies have procedures in place to address issues such as the effect of pre-existing conditions on a determination of whether a work environment caused “material impairment” to an

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employee's physical or mental health. OSBA has strong concerns around the appropriateness of increasing the scope of responsibility of investigators in this fashion.

- *The burden of proof for employers under SB 292 would be challenging for school districts and community colleges to meet*

OSBA strongly believes that the burden of proof set forth in SB 292 would be difficult, if not impossible, for school districts and community colleges to meet without devoting significant financial and personnel resources to the issue. Senate Bill 292 would put the burden on school districts and community colleges to demonstrate that they exercised reasonable care to prevent an alleged abusive work environment and took appropriate actions to remedy an alleged situation.

This is challenging because the bill does not limit the source of harm. Parents, students, and community members may engage in behavior which is perceived as hostile, intimidating, or offensive to teachers and other staff. School districts and community colleges have limited resources as it is, and diverting resources to prevent parents, students, or community members from engaging in potentially hostile, intimidating, or offensive behavior would only further detract from their ability to provide quality education.

- *SB 292 would be especially challenging for small and rural school districts*

The cause of action created by SB 292 would be especially burdensome on small and rural school districts. Small and rural schools have very limited practical abilities to shuffle staff, teachers, and other employees. This hampers their ability to correct a workplace situation which an employee might allege is hostile, intimidating, or offensive.

For instance, a district with only one 8<sup>th</sup> grade teacher who has alleged a parent of an 8<sup>th</sup> grade student has been hostile, intimidating, or offensive must figure out a way to either ensure the parent never engages in such behavior again or ensure that the teacher is not required to interact with the parent again (while still providing that parent with their statutorily-protected rights with regard to their child's education). The very broad definition of "abusive work environment" in SB 292 means that the above example could arise from something as commonplace as a parent continually questioning how a teacher grades his or her child, if this behavior was considered offensive to the teacher and caused stress. Creating a new cause of action which depends on a district's ability to prevent and remedy any potential physical or psychological harm would be one more hurdle that small and rural districts would have to traverse in order to deliver basic education services to students.