

To: House Education Committee  
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Re: HB 2697 -- Hate and bias incidents.  
Date: February 26, 2021

I have worked in the field of bullying prevention for well over a decade. This necessarily includes a focus on acts of discriminatory harassment. Having paid attention to the data, my own experiences, and the reported experiences of colleagues in other states, the efforts of schools in this area have been ineffective. Look at the data on the Oregon Healthy Teen survey and the Student Wellness Survey for the last decade.

I am thoroughly supportive of the goals and objectives of HB 2697. However, based on my extensive work in this area, I will tell you that the language in this bill raises a huge red flag — and it is my fear that this new language will render achieving the intent of enacting this legislation highly questionable. I am sorry that I failed to raise attention to this concern to the state board before it enacted a similar regulation.

Here is the quandary you are creating for principals: If someone reports an incident where a student treats a protected class student badly, how should that incident be handled? Is this to be handled as a report of bullying? Or handled in accord with civil rights laws? Or handled under this new bias incident statute?

Based on my extensive work in this area, I am of the strong opinion that the reason that what principals are doing is not working effectively to address hurtful acts is that principals are following the bullying statute and do not understand what they are supposed to do under civil rights laws in these situations. One reason for this is that none of the basic administrative licensure programs even teach principals about civil rights laws and how to respond to discriminatory harassment concerns. I did investigate this.

I could conduct an hour long workshop on this. I will attempt to be brief.

Oregon's bullying statute, ORS 339.351 and 339.356, focuses the attention of principals on the potential of a violation of the district's disciplinary code and the determination of whether to impose a disciplinary consequence on the student. Thus, the focus of the principal is on whether the reported acts of the student were sufficiently disruptive that this student should receive a disciplinary consequence.

Many situations of bullying, harassment, and bias incidents do not reach this level — they are more often a persistent pattern of hurtful acts. Further, principals are under strong pressure to reduce imposing disciplinary consequences. As a result, often when a student reports an incident, nothing happens — except for retaliation.

Often, these days, principals will attempt to use a restorative practices approach instead of a disciplinary consequence. Unfortunately, the manner in which this is most often implemented results in a forced, fake apology and a forced acceptance of this apology — followed by retaliation, which is not reported because the first request for help just made things worse.

The regulations under the federal civil rights laws call for a far better response. The focus is not on whether a student violated a policy. The focus is on whether a protected class student is experiencing a hostile environment — defined as experiencing severe, persistent, or pervasive hurtful conduct that has resulted in an interference with this student's right to receive an education and participate in school activities.

If a hostile environment is suspected, the school is required to conduct a prompt and unbiased investigation. If a hostile environment has been found to exist, the school is required to take prompt and effective steps to stop the hurtful conduct (which requires more than a disciplinary consequence), remedy the harm to the targeted student (academic and emotional), and correct the hostile environment. Many of the steps recommended to correct a hostile environment are similar to the provisions of HB 2697.

Attached is an article I have written that I am intending to get to a law review. Attached also is a document I wrote for parents of kids with disabilities who were being harassed and the school's response is not working. This explains the

challenges that Oregon's bullying statute is presenting and sets forth a path to follow to help their child. Bullying Resolution Support is a service I was starting to offer — in February 2019.

I have created the attached chart that outlines the really challenging position you are going to put principals in with HB 2697. While your intentions are exemplary, the language in this bill, when combined with the current challenges between the bullying statute and the civil rights regulations requirements, will simply create a morass.

I do have a recommended path for you to follow that I believe will meet the objectives you are trying to accomplish.

I think that what you are trying to do under HB 2697 is to address the more widespread incidents — such as racist graffiti or a major racist incident at a game. Look at the examples that were provided to you by Jessica Ventura. Essentially, what it appears HB 2697 is striving to accomplish is a process to correct the hostile environment within a school that is supporting such more widespread activity.

You can better address the probable massive confusion the current language will cause by amending the definition of "bias incident" to reflect that this means only the kinds of incidents that are widespread/highly visible. And that incidents that are more individual in nature will be handled under the bullying statute or civil rights laws. In some situations, both actions would take place — because if individual students are experiencing these kinds of widespread bias incidents, the attention must be on correcting the hostile environment.

However, I have also been recommending amendments to HB 2631. What I am essentially recommending is incorporating the beneficial requirements of civil rights regulations into Oregon's bullying statute — and applying them to all students. Why should poor white students or obese students not have the same level of responsiveness to their being treated badly?

I have attached the testimony I provided on this bill. Briefly, this is the language I have suggested adding to the bullying statute.

Throughout ORS 339.351 and 339.356 amend the statute to read "any act **or acts**." (This will make it clear to principals that they are required to respond to all situation where a significant act or a series of acts are resulting in the effects outlined in ORS 339.351(2)(c).)

(g) A procedure that is uniform throughout the school district for prompt investigation of a report of an act **or acts** of harassment, intimidation or bullying or an act of cyberbullying, **including an investigation of any aspects of the school environment that may be supporting such act or acts**. A procedure established under this paragraph shall identify by job title the school officials responsible for investigating such a report. (This will ensure that the investigation is not just of the hurtful situation, but goes to the school factors that may be supporting the harm.)

Then, add these new sections within this series of provisions:

(\* A statement of how the school will correct aspects of the school environment that have been identified as supporting such act or acts. *(This will focus attention of the correction of the harmful factors that may be supporting the situation — similar to what also is required under HB 2697.)*

(\* A statement of how the school will remedy the academic or psychological harm to the student who has experienced such act or acts of harassment, intimidation or bullying or an act of cyberbullying. *(This will support a more effective resolution.)*

(\* Following all confirmed reports of an act or acts of harassment, intimidation or bullying or an act of cyberbullying and intervention, the school will conduct a follow-up investigation of both the persons who experienced and committed an act or acts of harassment, intimidation or bullying or an act of cyberbullying to ensure that the situation has been effectively resolved. *(This will better ensure that the actions of the school in addressing the concerns have achieved a positive result.)*

If we want to get Oregon on a path of making sure that widespread bias/hate incidents are effectively handled by addressing the environment AND the more specific bullying/harassment incidents with specific targets who have experienced a harmful impact are handled effectively this is my recommended path to accomplish this.