

Email Sent to Oregon Leaders

Related to Oregon's Bullying Prevention Statute

Subject: Addressing Bullying and Harassment to make sure all Oregon students are safe and welcome

Date: Fri, 30 Nov 2018 10:23:00 -0800

From: Nancy Willard <nwillard@embracecivility.org>

To: jcss.exhibits@oregonlegislature.gov, lisa.gezelter@oregonlegislature.gov, Sen.ArnieRoblan@oregonlegislature.gov, rep.barbarasmithwarner@oregonlegislature.gov, GILL Colt - CEEdO <colt.gill@state.or.us>, Craig Hawkins <craig@cosa.k12.or.us>, jgreen@osba.org, mpaulson@osba.org, lindsey.d.capps@oregon.gov, superintendent@wesd.org, URBINA Carmen - ODE <carmen.urbina@state.or.us>

This will be long. My apologies. This email addresses the concerns of bullying and harassment. And sets forth recommendations on how Oregon could move forward with a revision of ORS 339.351, et. seq. to achieve better results.

Oregon is very fortunate to have the bipartisan, bicameral leadership of the Joint Interim Committee on Student Success, as well as Governor Brown recently enunciated plans for long overdue increased funding of our school. I was quite impressed watching the last meeting of the committee and I am in agreement with all of the recommendations of the Joint Committee, except for the direction related to bullying.

For the record, I live in Eugene. I am an internationally recognized authority in bullying prevention. I wrote the first book ever published on cyberbullying (2007). <https://www.researchpress.com/books/495/cyberbullying-and-cyberthreats>. I am author of two new books. Engage Students to Embrace Civility <https://www.amazon.com/Engage-Students-Embrace-Civility-Willard/dp/0972423621/> and Be Positively Powerful: An Empowerment Plan for Teens Who Are Bullied or Harassed. <https://www.amazon.com/Be-Positively-Powerful-Empowerment-Harassed/dp/0972423613/>

I am currently working on an additional document, which is a guide for parents and their advocates on how to more effectively document and file a complaint against a school, with appeal to the state department of education, when bullying or harassment situations are not being effectively addressed by the school -- which is most often the case. More has to be done to support students and I intend to engage in this work. I have worked as a special education teacher of students with emotional challenges and am a former attorney. I have worked as a trial consultant for attorneys suing school districts, although not in this state. I was an expert advisor to Colt Gill's Advisory Committee.

Briefly, what schools are doing to address bullying is flat not working. This is national and in Oregon. While most educators think they are doing a fine job addressing bullying, most students think schools are not doing enough. Further, the vast majority of students do not report when

they are being bullied, even if this is serious or persistent, because they do not think the school will make things better or that things will get worse. Decades of research show that "rule enforcement" punitive approaches are totally ineffective in changing behavior. While there is not data specifically on this, but I would lay odds that most of the students who are causing room clears by triggering are being persistently bullied and excluded. Being bullied is experiencing a form of trauma and students who experience trauma are more likely to trigger. Students who are bullied, do not feel safe at school, and have gotten into fights are more likely to bring weapons to school.

The lack of effectiveness is not because educators do not care. This is because what they have been told about bullying behavior is inaccurate and what they have been told to do will never be effective.

There has been no decline on the national YRBS question on bullying since 2009, when the CDC first started asking the question. Oregon's OHT and SWS bullying questions present a challenge. Neither ask about bullying based on disabilities -- students who are very frequently harassed. OHT's question keeps changing. SWS's question is over broad.

Better insight into the concern comes from a survey conducted by the Eugene 4J school district. 4J has conducted its own survey since 2009. 4J's data on OHT and SWS is comparable to other districts, so 4J can be considered a representative sample.

On the 2018 survey, close to 9% of 4J's secondary students reported being bullied or harassed once a week or more. Two-thirds of these students said they would not tell a school staff member to get help. (Clearly, most are not telling.) 15% of students reported they had seen students with disabilities harassed once a week or more, 12% saw LGBTQ students harassed once a week or more, 9% based on race, 7% based on religion. There has been no decline in this rate since 2009. The district is not doing anything different in response to these findings. In fact, based on information provided to me, it appears that the only attention the secondary school leadership has paid to bullying so far this school year was a session on how to avoid liability.

I have attached the first 2 chapters of my book, Engage Students to Embrace Civility. These chapters outline the evidence that what schools are doing is not working, the harms, and the whys. The remainder of the book outlines positive, research-based strategies for improvement. These strategies include engaging students as leaders in this effort and responding more effectively to both the more minor incidents, as well as those that are more serious or persistent. This also includes addressing the even more challenging situations of students with disabilities who are engaging in or being bullied.

The Joint Committee's apparent current approval of the thoughts of the Oregon School Safety Task Force on bullying present a significant concern. This is the statement from their document: <https://www.wesd.org/cms/lib/OR01915639/Centricity/Domain/83/OTSS%20Proposal%20on%20School%20Safety%20May%20-%202018.pdf>

Research shows that adults can stop bullying behavior by responding quickly and consistently to bullying (Stop Bullying.gov, 2018). The Task Force will collaborate with Oregon Department of Education to ensure school staff are trained on how to identify bullying, enforce school rules and

policies, as well as incorporate trauma informed practices in classrooms (Oregon Safe Schools & Communities Coalition, 2017).

The first statement is inaccurate -- however, the inaccuracy is the source, not the task force. Six recent meta analyses of bullying prevention approaches have documented limited to no positive effect, with zero effectiveness at the secondary level. The vast majority of students do not report. Schools that function in an authoritarian manner -- enforce rules -- have higher levels of bullying.

While it is exceptionally important to implement trauma informed practices throughout our schools, most bullying is not grounded in trauma. The students most involved in bullying in schools are socially skilled, compliant students who are being hurtful to their peers to establish dominance. This is dominance, privilege behavior. Not risk behavior. Risk prevention approaches will not change this behavior. A different approach is needed.

The chapters in my book go into extensive detail on why focusing on identifying bullying and enforcing rules meets Einstein's definition of insanity. This is what schools have been doing over and over and not achieving any different or better results. This is why the guidance from the Oregon School Safety Task Force is ill-founded.

A huge part of the problem is the current Oregon bullying statute. This statute could be amended to lay the groundwork for the potential for significant improvement. This is the reason for my email.

Do not think that emulating statutes from other states that are more strict will be effective. The New York Dignity Act has been touted as one of this nation's most comprehensive bullying prevention statute. This was enacted in 2011. In 2011, on the NY YRBS, 18% of students reported being bullied. In 2017, this had increased to 21%. However, with the insanely stupid provision that requires schools to make annual public reports of bullying incidents, in one recent year, 71% of NYC schools reported zero bullying incidents.

Going through the provisions of ORS 339.351, et. seq.:

339.351

Cyberbullying. The courts have been consistently clear that schools have the authority to respond to off-campus harmful speech that has caused a substantial disruption of students in school or significant interference with any individual student. The ORS provisions have caused confusion on this in Oregon schools. (2)(b) is what needs to be amended to include off-campus hurtful situations that are, or reasonably could, cause a significant interference with a student at school (2)(a).

Harassment, intimidation, or bullying. The use of these terms and provision (3) is confusing because of issues of what constitutes discriminatory harassment. If a student who is within Oregon's protected classes is being seriously or persistently treated badly and this is interfering with the student's learning or participation, this constitutes discriminatory harassment. Should this also be considered harassment under the bullying statute? What are the differences? Also of

concern is that the classes listed in (3) go beyond Oregon's civil rights protected classes. Basically, the language is a mess and needs to be improved.

Harassment, intimidation, or bullying. Let's look at some of the other language: means any act. (note, singular) that involves (A) physical harm. (B) threat. (C) creates hostile environment (not defined) interfering with psychological well-being (totally unclear). The term "hostile environment" in civil rights laws is a situation where serious, persistent, or pervasive hurtful acts have created a situation that is interfering with ...

To the best of my ability to figure out what is going on in the thinking of principal's thinking, what this statute is addressing -- solely -- is whether the principal will discipline the accused student (at a time, when principals are supposed to reduce suspensions). So principals are only taking action in the more serious situations -- the one serious act situations.

What is being missed are the persistent and pervasive, once a week or more, situations that have created toxic stress -- a form of trauma-- that is causing serious harm to Oregon students, including lifelong emotional and physical challenges, school failure, school avoidance and drop-outs, suicide, and school violence. The reason the principals are not responding to these kinds of situations appears to be (2)(b)9c). It is ESSENTIAL to reword this so it includes both serious incidents and those situations that are persistent or pervasive.

339.351 Findings. Nothing wrong with the findings, except that given that bullying is still a major concern -- note since 2001 -- the commendation is not credible.

339.356 Policy. Absolutely need to have a policy.

(a)(b)(c) Creates confusion between this and requirements that schools avoid discriminatory harassment, as addressed before.

(d) Should add off-campus speech or actions that cause significant interference of a student at school.

(e) Students should be fully engaged in the enunciation of shared values -- shifting from adult directives. See 339.359(2), below.

(f) Reporting provisions are fine. They just are not working.

(g) Should be strengthened. The investigation should be prompt, thorough, and unbiased (civil rights language) and should address the motivations of those being hurtful, the challenges of any involved students, involvement of supporters, and any aspects of the school environment that may be contributing to the situation, including any relevant actions of school staff in their treatment of any of the involved students or their response when witnessing a hurtful incident (my language, but I strongly recommend this, because this is the only way that an effective plan for intervention can be created.)

(h) Complaint/appeal. This provision appears out of line sequentially. However, the greater concern is that if a situation does involve discriminatory harassment, it is possible to complain or

appeal to ODE. However, if students and parents think the only way to proceed in these situations is the bullying policy, then they will not recognize they have this right. Further, there is zero reason to allow students who are experiencing discriminatory harassment appeal a decision of the district or complain to ODE, when students who are being treated just as badly can only appeal up to the superintendent level. This is plain not fair. There should be an appeal to ODE for the school's failure to effectively respond to any serious or persistent/pervasive hurtful situation that is interfering with the ability of any student to learn -- regardless of whether that students is within a protected class or not.

(i) Intervention. Most principals appear to think that this provision focuses solely on whether the accused student will be punished. The OSBA policy on this complaint JFCF-AR contains this language: "The district official(s) conducting the investigation shall notify the complainant and parents as appropriate, [in writing,] when the investigation is concluded and a decision regarding disciplinary action, as warranted, is determined."

This makes it clear that OSBA has interpreted this statute to mean that if a student reports a concern or files a complaint, the sole issue to be addressed is whether a disciplinary consequence against the accused is warranted. **This is a HUGE part of the problem.** Reflect on 4J's data.

It is in this provision that I strongly recommend adding language from federal civil rights regulations. This includes, that if a hostile environment is found to exist, the school will engage in actions reasonably calculated to stop the harassment, prevent retaliation, remedy the harm, and correct the hostile environment. I would add, monitor to ensure effectiveness. Here is a Dear Colleague Letter that outlines more significantly what should happen. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

(j) Consequences. I would modify this language to reference a restorative intervention that requires acts taken to remedy the harm both to the student treated badly and to the school community. This, by the way, is the research-based approach that does have the potential to change behavior. Also any actions necessary to address any challenges of this student.

(k)(l)(m)(n) No concerns.

339.359

(2) Absolutely should be changed. Schools should be required to create a task force that specifically includes students and parents which would develop a plan of action to promote positive school climate, kindness, and inclusion to ensure all students feel safe and welcome. In the creation of this plan of action, the school will either survey or hold focus groups with students and parents to identify current concerns. The plan will be made public to the school community for review and comment, with revision based on such input.

I hope this is helpful. I am quite willing to respond to questions. I would welcome the opportunity to work on an improvement to Oregon's statute to help to make Oregon schools truly a place where all students feel safe and welcome.

Blessings, Nancy