



To: House Committee on Judiciary Subcommittee on Civil Law  
From: Richard Donovan, Legislative Services Specialist  
Re: House Bill 2937  
Date: February 12, 2021

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Chair Power, Vice Chair Wallan, and members of the committee:

On behalf of OSBA membership, including 197 school districts and 19 Education Service Districts, thank you for the opportunity to testify to register concerns with House Bill 2937.

HB 2937 would create new causes of action for students who have been the victim of harassment, discrimination, or intimidation, based upon the student's immutable characteristics, including race, religion, gender identity, sexual orientation, disability, and others. This type of conduct is indefensible. It harms student learning and well-being and has no place in schools or school events.

However, this kind of conduct is already prohibited. Causes of action exist. There are at least three different relevant laws that prohibit this conduct, including:

- [ORS 339.351 to 339.364](#): Harassment, intimidation and bullying, wherein bad conduct based on "race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability" is expressly prohibited.
- [ORS 326.051](#) Board functions; rules, wherein school boards must adopt rules "that provide that no public elementary or secondary school shall discriminate in determining participation in interscholastic activities."
- [OAR 581-022-2312](#), "All Students Belong," a brand new temporary rule that the State Board of Education has posted for permanent adoption on February 18, three days after this hearing. That rule explicitly references existing legislative policy decisions, saying that "The Oregon Legislature has determined that a person may not be subjected to discrimination" while in school or interscholastic activities.

All of these laws seek to protect students from the discriminatory conduct that HB 2937 contemplates. When this conduct occurs, school districts are named in legal complaints alleging negligence, failure to adhere to required policy, and many other existing causes of action. This is a policy concern for school districts:

is it necessary to make this conduct “more” illegal, or illegal again? Does that help victims of these terrible actions?

A second, related concern is practical: these overlapping laws lead to confusion in the complaint process at the school district level. Bad conduct that constitutes harassment is often also bullying, discrimination. It is also sometimes: cyberbullying (prohibited generally in various parts of ORS 329, specifically under 339.356); gender-based discrimination (ORS 329 again); and, depending on the specific conduct, might also be illegal gender-based discrimination under federal Title IX laws and rules.

All of these laws seek to do the right thing. They variously seek to prevent bad conduct or make victims of bad conduct whole. However, the end result is a series of required processes for investigation, response, and remedy, all of which have just enough similarities and differences as to be challenging. It is sometimes unclear to victims which claim they should actually pursue. It is sometimes unclear to school district staff which claim is appropriate given certain conduct that has occurred. And this confusion can have real, negative impacts for victims.

One final policy concern: it is important to recognize that HB 2937 would make school districts responsible for discriminatory conduct that a student “experienced” due to the conduct of another person. It is unclear that school districts will ever, practically, be able to stop all students from experiencing instances of biased conduct. The conduct HB 2937 considers is, again, terrible. It is harmful to students and student learning. However, school districts regularly have to deal with student-to-student conduct that is harmful, biased, and designed to bully or intimidate. School districts, like the Legislature, already decry this conduct. But should they be legally responsible for damages resulting from it?

Finally, please believe these concerns are not especially motivated by school district costs. School districts already experience costs for this conduct. The concerns are motivated by consideration of what districts are responsible for, of what can and cannot happen, in response to terrible conduct.

Thank you for your time and attention.