

Senate Committee on Education
Testimony on H. 461
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Chair Campion and Members of the Committee:

I write to encourage you to adopt changes to Title 16 that eliminate the “severe or pervasive” definition of harassment which must be investigated and addressed by schools. I concur with the testimony offered by Jessica Barquist of the Vermont Network. I write to share the experiences of two children with disabilities served by the Disability Law Project that highlight the severity of harassment that is allowed to occur under the existing standard. These stories were also shared during the last legislative session.

- (1) Persephone is a now eight year old biracial girl with several disabilities including Tourette’s syndrome, ADHD, OCD, and anxiety. After being home schooled during COVID, she returned to school in August of 2021. On her first day of school, her classmates began to target her. Two male peers teased her about her tics. Another boy in her class instructed his “girlfriend” and her friends not to be friends with her. She was physically pushed, and one boy threatened to hit her. While she was made to apologize for her reaction to these students, they were not made to apologize to her. Just a few days later, these same students began verbally harassing her because her hair is different and she is different. When she escalated in response to this harassing treatment, she was restrained, and yelled at by staff.

The school **did not** initiate investigation into this harassing behavior against a biracial female child with a disability until her mother demanded one after the second incident. In response to this demand, the mother was told that her daughter would be found to have retaliated if an investigation was opened. The student felt so unsafe she could not attend school in her community any longer.

- (2) Julie [pseudonym at the request of the student] came to the Disability Law Project at the end of her freshman year of high school, but her story begins long before that. Julie was identified as a student with a disability at the age of 4, and had an IEP, or Individualized Education Plan. Unfortunately, the reality was that her disability wasn’t truly understood for many years. She had challenges with processing information, but she, like many girls, had learned a skill called “masking” so that it was not evident when she was confused or didn’t understand what was going on around her socially, or in terms of the very words being thrown in her direction. Because of this processing difference, the harassment she experienced had a severe impact on her. By eighth grade, she was in a state of terror every time she came into the building, for an entire school year. This was because she was the target of many students, and there were many others who

followed along because they, too, were afraid of the ringleader. Every day, she lived with the threat that something physical would happen to her, that the main harasser would beat her up, and other kids would get involved. What did this treatment look like?

She was followed. She was threatened. She was physically assaulted. She was repeatedly verbally harassed, called “skank” and “whore” by other kids.

This was not perceived to be **substantially** undermining her access to education because she kept coming to school, because she masked her fear (she would smile and laugh in reaction to harassment), she had no “externalizing behaviors.” She was perceived by school staff in participating in her own harassment, when in fact, because of her disability, she did not understand what was happening, or how to cope.

Throughout that school year, over and over, her mother reported this harassment, but it was not addressed. Phone calls went unanswered. Emails were ignored. Finally an incident took place where Julie responded not with a smile and a laugh, and the parent of the other student demanded an investigation and one was opened immediately. An independent investigator came in, and finally students were interviewed, and, as that year came to an end, Julie’s school situation did not change. Her mother was simply reassured that things would be better and different when she went to high school. Within two weeks of starting high school, in front of all her peers, one of those students from middle school came up to her, and poured chocolate milk all over her head. In an instant, Julie knew that, just like in middle school, she could not be safe there.

She did not return to school. For the rest of her freshman year, she had access to tutoring, and a family-arranged flexible pathway, but no assurance she would receive credit for that work. No plan was made for her safe return to school during her entire 9th grade year. And, Julie lived so close to the school that she could see it if she walked out her front door, so she could no longer take walks in her neighborhood because the building itself was a trigger. It took months to negotiate to send her to another public school for a fresh start and opportunity to feel safe.

Julie asked me to share her own words about what happened to her as well:

Over the years in this school district, there have been more students [than] I could ever imagine feeling the same exact way that I have, not just emotionally, but physically and mentally! From being harassed, bullied, and beat up, all these incidents have put me through so much agony and in very difficult situations to the point even coping with it was so hard to find. I was so drained having to watch my back everywhere I went on a daily basis. Hiding in the bathroom, eating lunch by myself, fake being sick just so I didn’t have to go to school. Always wondering who I was going to run into, or get a message from next. Every

single day [questioning] myself- what did I do to deserve any of this and why this is happening?

Julie's mom also shares this:

I also feel it is important not only the students but family members were out to inflict harm on [Julie].

The trauma that it put on our whole family I don't feel will ever be understood, but can be expressed.

Thank you so much for giving this opportunity and giving [Julie] story a voice to be heard and help others in the future.

In Julie's new school environment, away from the relentlessness of her prior targeting, she thrived. She graduated early! But it remains a point of pain and hardship for Mom and daughter that pleas to address these harassing behaviors went unanswered for most of an entire school year.

These are, unfortunately, not atypical experiences of Disability Law Project clients. In both cases, these clients were targeted for harassment based on their multiple identities, and, their schools were not concerned about liability for allowing this treatment to continue because the current harassment standard is so high. The DLP has also had clients drop out because harassing behavior – by peers and by staff – went unaddressed.

The loss to our state when a high school student drops out is significant morally, and financially. The loss of a student's faith in our education system to protect them from harassing behavior, is an unacceptable outcome when the reasons to not change the system are merely the protection of administrative time or potential legal liability of our schools and their insurance carrier.

The changes proposed here are long overdue, because no level of discrimination should be acceptable in any place of public accommodation, including in our schools.

Severe or Pervasive: As you have heard from other witnesses, this standard is court-created interpretation of how bad harassment needs to be in the employment context, and has been imported to other settings, including schools. It is not the result of carefully considered legislative decision-makers.

Substantially Undermine Standard: Removing the word "substantially" in 16 V.S.A. for the term "substantially undermined" is needed to ensure consistency between Title 16 and Title 9, *both of which apply to our schools*. I have seen too many students leave school because they are harassed and the harassment is not actually addressed. Currently, our schools are not doing investigations where there is *no question* that access to education has been impacted – or even

100% stymied. Dropping the word “substantially” still requires a finding of *some* undermining of access to school resources or education.

I recognize that there are concerns about unintended consequences of changing this standard. These can be appropriately addressed through:

- Requiring state-provided or state-approved training and resources for all staff or administrators designated to investigate bullying and harassment,
- Improved data collection, and reporting systems at the school, supervisory union, and state level,
- Ongoing technical assistance and coaching to address unintended disproportionate impact on historically marginalized students, and
- Differentiated response that focuses on education, use of restorative practices, positive behavioral interventions and supports (PBIS), and safety planning, rather than discipline to stop harassment and remediate the harm

Thank you for your consideration.