

House Bill 3077

Sponsored by Representative SALINAS, Senator GELSER; Representatives NOSSE, POWER, WILLIAMS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies processes relating to reporting, investigating and appealing findings related to sexual harassment in schools.

Takes effect July 1, 2020.

A BILL FOR AN ACT

1
2 Relating to school sexual harassment policies; amending ORS 342.704; and prescribing an effective
3 date.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 342.704, as amended by section 1, chapter 38, Oregon Laws 2018, is amended
6 to read:

7 342.704. (1) The State Board of Education shall adopt by rule minimum requirements for school
8 district policies on sexual harassment of students by staff members and other students [*including*].

9 **A school district policy must include**, but not **be** limited to, requirements that:

10 (a) All staff members and students are subject to the policies[;].

11 (b) Sexual harassment of students includes:

12 (A) A demand **or request** for sexual favors in exchange for benefits; [*and*]

13 (B) Unwelcome conduct of a sexual nature **that is physical, verbal or nonverbal and** that [*has*
14 *the purpose or effect of unreasonably interfering*] **interferes** with a student's [*educational*
15 *performance*] **educational program or activity** or that creates an intimidating, offensive or hostile
16 educational environment;

17 (C) **Assault when sexual contact occurs without a student's consent because the student**
18 **is under the influence of drugs or alcohol, is unconscious or is pressured through physical**
19 **force, coercion or explicit or implied threats; and**

20 (D) **Any retaliation by other students, staff members or third parties.**

21 (c) When a student or, if applicable, the student's parents file a complaint alleging behavior that
22 may violate the policy, the student or student's parents shall receive a written notification as de-
23 scribed in subsection (4) of this section[;].

24 (d) **When a staff member becomes aware of behavior that may violate this policy, the**
25 **staff member shall contact a school district official so that the school district official and the**
26 **staff member may coordinate efforts to take any action necessary to ensure the student is**
27 **protected and to promote a nonhostile learning environment, including:**

28 (A) **Providing resources for support measures to the student; and**

29 (B) **Taking any actions that are necessary to remove potential future impact on the**
30 **student, but that are not retaliatory against the person who may have acted in a manner**
31 **that violates the policy.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [(d)] (e) All complaints about behavior that may violate the policy shall be investigated[;].

2 [(e)] (f) The initiation of a complaint, **and the participation in an investigation**, in good faith
3 about behavior that may violate the policy may not adversely affect the educational assignments or
4 educational environment of the student who initiated the complaint[; *and*].

5 [(f)] (g) The student who initiated the complaint and, if applicable, the student's parents shall
6 be notified:

7 (A) When the investigation is **initiated and** concluded; and

8 (B) As to whether a violation of the policy was found to have occurred, to the extent allowable
9 under state and federal student confidentiality laws.

10 (2) The State Board of Education shall adopt by rule minimum requirements for school district
11 policies on sexual harassment of staff members by students and other staff members [*including*]. **A**
12 **school district policy must include**, but not **be** limited to, requirements that:

13 (a) All staff members and students are subject to the policies[;].

14 (b) Sexual harassment of staff members includes:

15 (A) A demand **or request** for sexual favors in exchange for benefits; [*and*]

16 (B) Unwelcome conduct of a sexual nature **that is physical, verbal or nonverbal and** that [*has*
17 *the purpose or effect of unreasonably interfering*] **interferes** with a staff member's ability to perform
18 the job or that creates an intimidating, offensive or hostile work environment;

19 (C) **Assault when sexual contact occurs without a staff member's consent because the**
20 **staff member is under the influence of drugs or alcohol, is unconscious or is pressured**
21 **through physical force, coercion or explicit or implied threats; and**

22 (D) **Any retaliation by other staff members, students or third parties.**

23 (c) When a staff member files a complaint alleging behavior that may violate the policy, the staff
24 member shall receive a written notification as described in subsection (4) of this section[;].

25 (d) **When another staff member becomes aware of behavior that may violate this policy,**
26 **the other staff member shall contact a school district official so that the school district of-**
27 **ficial may take any action necessary to ensure the staff member is protected and to promote**
28 **a nonhostile work environment, including:**

29 (A) **Providing resources for support measures to the staff member; and**

30 (B) **Taking any actions that are necessary to remove potential future impact on the staff**
31 **member, but that are not retaliatory against the person who may have acted in a manner**
32 **that violates the policy.**

33 [(d)] (e) All complaints about behavior that may violate the policy shall be investigated[;].

34 [(e)] (f) The initiation of a complaint, **and the participation in an investigation**, in good faith
35 about behavior that may violate the policy may not adversely affect any terms or conditions of em-
36 ployment or work environment of the staff member who initiated the complaint[; *and*].

37 [(f)] (g) The staff member who initiated the complaint shall be notified:

38 (A) When the investigation is **initiated and** concluded; and

39 (B) As to whether a violation of the policy was found to have occurred, to the extent allowable
40 under state and federal student confidentiality laws.

41 (3) The State Board of Education shall adopt by rule minimum requirements for school district
42 policies on sexual harassment of persons described in paragraph (b) of this subsection by staff
43 members and students, [*including*]. **A school district policy must include**, but not **be** limited to,
44 requirements that:

45 (a) All staff members and students are subject to the policies[;].

1 *[(b) The policies apply to persons who are on or immediately adjacent to school grounds, at any*
 2 *school-sponsored activity, on school-provided transportation or at any official school bus stop;]*

3 **(b) The policies apply to persons who:**

4 **(A) Are on or immediately adjacent to school grounds or school district property;**

5 **(B) Are at any school-sponsored activity or program; or**

6 **(C) Are off school or school district property, if a student or staff member acts toward**
 7 **the person in a manner that creates a hostile environment for the person while at school**
 8 **or a school-sponsored activity or program.**

9 (c) Sexual harassment of persons described in paragraph (b) of this subsection includes:

10 (A) A demand **or request** for sexual favors in exchange for benefits; *[and]*

11 (B) Unwelcome conduct of a sexual nature that is **physical, verbal or nonverbal and that***[:]*

12 *[(i) Has the purpose or effect of unreasonably interfering with a person's educational performance*
 13 *or a person's ability to perform the job; or]*

14 *[(ii)]* creates an intimidating, offensive or hostile *[educational or work]* environment;

15 **(C) Assault when sexual contact occurs without a person's consent because the person**
 16 **is under the influence of drugs or alcohol, is unconscious or is pressured through physical**
 17 **force, coercion or explicit or implied threats; and**

18 **(D) Any retaliation by students, staff members or third parties.**

19 (d) When a person **who may have been subjected to behavior in violation of the policy** or,
 20 if applicable, the person's parents file a complaint alleging behavior that may violate the policy, the
 21 person or person's parents shall receive a written notification as described in subsection (4) of this
 22 section*[:]*.

23 **(e) When a staff member becomes aware of behavior that may violate this policy, the**
 24 **staff member shall contact a school district official so that the school district official and the**
 25 **staff member may coordinate efforts to take any action necessary to ensure the person who**
 26 **was subjected to the behavior is protected and to promote a nonhostile environment, in-**
 27 **cluding:**

28 **(A) Providing resources for support measures to the person who was subjected to the**
 29 **behavior; and**

30 **(B) Taking any actions that are necessary to remove potential future impact on the**
 31 **person who was subjected to the behavior, but that are not retaliatory against the person**
 32 **who may have acted in a manner that violates the policy.**

33 *[(e)]* **(f)** All complaints about behavior that may violate the policy shall be investigated*[:]*.

34 *[(f)]* **(g)** The initiation of a complaint, **and the participation in an investigation**, in good faith
 35 about behavior that may violate the policy may not adversely affect any terms or conditions of em-
 36 ployment or of work or educational environment of the person who initiated the complaint*[: and]*.

37 *[(g)]* **(h)** The person who initiated the complaint and, if applicable, the person's parents shall be
 38 notified:

39 (A) When the investigation is **initiated and** concluded; and

40 (B) As to whether a violation of the policy was found to have occurred, to the extent allowable
 41 under state and federal student confidentiality laws.

42 (4)(a) The written notification required under subsections (1)(c), (2)(c) and (3)(d) of this section
 43 must set forth:

44 (A) The rights of the student, student's parents, staff member, person or person's parents who
 45 filed the complaint*[:]*.

1 (B) Information about the internal complaint processes available through the school or school
2 district that the student, student's parents, staff member, person or person's parents who filed the
3 complaint may pursue[;], **including the person designated for the school or school district for**
4 **receiving complaints.**

5 (C) Notice that civil and criminal remedies that are not provided by the school or school district
6 may be available to the student, student's parents, staff member, person or person's parents through
7 the legal system and that those remedies may be subject to statutes of limitation[;].

8 (D) Information about services available to the student or staff member through the school or
9 school district, including any counseling services, nursing services or peer advising[;].

10 (E) Information about the privacy rights of the student, staff member or person and legally re-
11 cognized exceptions to those rights for internal complaint processes and services available through
12 the school or school district[; *and*].

13 (F) Information about, and contact information for, state and community-based services and re-
14 sources that are available to persons who have experienced sexual harassment.

15 (G) **Notice that persons who report information about possible prohibited conduct and**
16 **persons who participate in an investigation under a policy adopted as provided by this section**
17 **may not be disciplined for violations of the school district's drug and alcohol policies that**
18 **occurred in connection with the reported prohibited conduct and that were discovered as a**
19 **result of a prohibited conduct report or investigation unless the person gave another person**
20 **alcohol or drugs without the person's knowledge and with the intent of causing the person**
21 **to become incapacitated and vulnerable to the prohibited conduct.**

22 (b) The written notification required by this subsection must:

23 (A) Be written in plain language that is easy to understand;

24 (B) Use print that is of a color, size and font that allow the notification to be easily read; and

25 (C) Be made available to students, students' parents, staff members and members of the public
26 **at each school office, at the school district office and** on the website of the school or school
27 district.

28 **SECTION 2. This 2019 Act takes effect on July 1, 2020.**

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