

Enrolled Senate Bill 197

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CHAPTER

AN ACT

Relating to lawsuits; creating new provisions; and amending ORS 339.366, 339.368 and 342.704.

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

SECTION 1. (1) A person may bring an action for an injunction compelling a private school to comply with the provisions of any of the following laws:

- (a) ORS 339.366 and 339.368 (policies on teen dating violence and domestic violence);
- (b) ORS 339.370 to 339.400 (reporting of suspected abuse and suspected sexual conduct);
- (c) ORS 342.704 (policy on sexual harassment); and
- (d) ORS 419B.005 to 419B.050 (reports on child abuse).

(2) A court may enter an order compelling compliance and may prescribe the requirements and timelines for satisfaction of the order. When a court enters an order under this subsection, the court may award reasonable attorney fees and costs to the prevailing plaintiff.

(3) If a private school does not satisfy an order entered as provided by subsection (2) of this section, a student, or the parent or guardian of a student, may bring a civil action and recover damages for the greater of \$1,000 or the total amount for special and general damages, including damages for emotional distress. A court may award reasonable attorney fees and costs to the prevailing plaintiff in an action under this subsection.

SECTION 2. ORS 339.366 is amended to read:

339.366. (1) As used in this section:

(a) "Dating" or "dating relationship" means an ongoing social relationship of a romantic or intimate nature between two persons. "Dating" or "dating relationship" does not include a casual relationship or ordinary fraternization between two persons in a business or social context.

(b) "Domestic violence" means abuse as defined in ORS 107.705 between family and household members, as those terms are defined in ORS 107.705.

(c) "Teen dating violence" means:

(A) A pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age; or

(B) Behavior by which a person uses or threatens to use sexual violence against another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age.

(2) Each school district board **or private school** shall adopt a policy that **contains the following**:

(a) States that teen dating violence is unacceptable and is prohibited and that each student has the right to a safe learning environment[;].

(b) Incorporates age-appropriate education about teen dating violence and domestic violence into new or existing training programs for students in grades 7 through 12 and school employees as recommended by the school officials identified under paragraph (d) of this subsection[;].

(c) Establishes procedures for the manner in which employees of a school are to respond to incidents of teen dating violence that take place at the school, on school grounds, at school-sponsored activities or in vehicles used for school-provided transportation[;].

(d) Identifies by job title the school officials who are responsible for receiving reports related to teen dating violence[, *which*]. **For public schools, the school officials identified under this paragraph** shall be the same school officials identified in the policy adopted by a school district under ORS 339.356[; *and*].

(e) Notifies students and parents of the teen dating violence and domestic violence policies adopted by the board **or school**.

(3) **Except for private schools**, the policy adopted under subsection (2) of this section must be included in and consistent with the policy adopted by a school district under ORS 339.356.

SECTION 3. ORS 339.368 is amended to read:

339.368. (1) The Department of Education shall provide school districts **and, upon request, private schools** with posters containing information in both English and Spanish regarding domestic violence and at least one toll-free hotline telephone number that a student may call to obtain information and help regarding domestic violence.

(2) A private school may choose to not request posters under subsection (1) of this section. If a private school chooses to not request posters under subsection (1) of this section, the private school must create or use posters that:

(a) Are written in plain language that is easy to understand;

(b) Include at least one toll-free hotline telephone number that a student may call to obtain information and help regarding domestic violence; and

(c) Use print that is of a color, size and font that allows the poster to be easily read.

[2] (3) Each school district board **and private school** shall adopt policies that require posting of the posters in clearly visible locations on school campuses. **The policies adopted by the school district board must be** in accordance with rules adopted by the [*department*] **State Board of Education**.

[3] (4) The [*department*] **State Board of Education** shall adopt rules to implement the provisions of this section **in relation to school districts**.

SECTION 4. ORS 342.704 is amended to read:

342.704. (1) As used in this section, "district" includes a school district, an education service district and a public charter school.

(2)(a) The State Board of Education shall adopt by rule minimum requirements for district policies on:

(A) Sexual harassment of students by staff members and other students.

(B) Sexual harassment of staff members by students and other staff members.

(C) Sexual harassment of persons described in subsection (5)(b) of this section by staff members and students.

(b) A private school shall adopt policies on:

(A) Sexual harassment of students by staff members and other students.

(B) Sexual harassment of staff members by students and other staff members.

(C) Sexual harassment of persons described in subsection (5)(b) of this section by staff members and students.

(c) Rules adopted by the State Board of Education and policies adopted by private schools must comply with the requirements of this section.

(3) A *[district policy must include, but not be limited to,]* **policy on sexual harassment of students by staff members and other students must include** requirements that:

(a) All staff members and students are subject to the policies.

(b) Sexual harassment of students includes:

(A) A demand or request for sexual favors in exchange for benefits;

(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student's educational program or activity or that creates an intimidating, offensive or hostile educational environment; and

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

(c) When a student or, if applicable, the student's parents file a complaint alleging behavior that may violate the policy, the student or student's parents shall receive a written notification as described in subsection [(5)] (6) of this section.

(d) When a staff member becomes aware of behavior that may violate the policy, the staff member shall report to *[a district official]* **an official of the district or private school** so that the *[district]* official and the staff member may coordinate efforts to take any action necessary to ensure the student is protected and to promote a nonhostile learning environment, including:

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

(B) Taking any actions that are necessary to remove potential future impact on the student, but that are not retaliatory against the student or the staff member who reported to the *[district]* official **of the district or private school**.

(e) All complaints about behavior that may violate the policy shall be investigated.

(f) The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate the policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or who participated in the investigation.

(g) The person who initiated the complaint and, if applicable, the student's parents shall be notified:

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

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

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

(a) All staff members and students are subject to the policies.

(b) Sexual harassment of staff members includes:

(A) A demand or request for sexual favors in exchange for benefits;

(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a staff member's ability to perform the job or that creates an intimidating, offensive or hostile work environment; and

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

(c) When a staff member files a complaint alleging behavior that may violate the policy, the staff member shall receive a written notification as described in subsection [(5)] (6) of this section.

(d) When another staff member becomes aware of behavior that may violate the policy, the other staff member shall report to *[a district official]* **an official of the district or private school** so that the *[district]* official may take any action necessary to ensure the staff member is protected and to promote a nonhostile work environment, including:

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

(B) Taking any actions that are necessary to remove potential future impact on the staff member, but that are not retaliatory against the staff member or the other staff member who reported to the [district] official **of the district or private school**.

(e) All complaints about behavior that may violate the policy shall be investigated.

(f) The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate the policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or participated in the investigation.

(g) The person who initiated the complaint shall be notified:

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

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

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

(a) All staff members and students are subject to the policies.

(b) The policies apply to persons who:

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

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

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

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

(A) A demand or request for sexual favors in exchange for benefits;

(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that creates an intimidating, offensive or hostile environment; and

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

(d) When a person who may have been subjected to behavior in violation of the policy or, if applicable, the person's parents file a complaint alleging behavior that may violate the policy, the person or person's parents shall receive a written notification as described in subsection [(5)] **(6)** of this section.

(e) When a staff member becomes aware of behavior that may violate the policy, the staff member shall report to [a district official] **an official of the district or private school** so that the [district] official and the staff member may coordinate efforts to take any action necessary to ensure the person who was subjected to the behavior is protected and to promote a nonhostile environment, including:

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

(B) Taking any actions that are necessary to remove potential future impact on the person, but that are not retaliatory against the person or the staff member who reported to the [district] official **of the district or private school**.

(f) All complaints about behavior that may violate the policy shall be investigated.

(g) The initiation of a complaint, and the participation in an investigation, in good faith about behavior that may violate the policy may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who initiated the complaint or who participated in the investigation.

(h) The person who initiated the complaint and, if applicable, the person's parents shall be notified:

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

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

[(5)(a)] **(6)(a)** The written notification required under subsections [(2)(c), (3)(c) and (4)(d)] **(3)(c), (4)(c) and (5)(d)** of this section must set forth:

(A) The rights of the student, student's parents, staff member, person or person's parents who filed the complaint.

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

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

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

(E) Information about the privacy rights of the student, staff member or person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district.

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

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

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

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

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

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

Passed by Senate May 5, 2021

Repassed by Senate June 14, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

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Approved:

.....M.,....., 2021

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Kate Brown, Governor

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Shemia Fagan, Secretary of State