

Senate Bill 244

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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**.

Allows district to respond to allegations of sexual harassment only under federal law if district determines that behavior alleged in report or complaint of sexual harassment is subject to investigation requirements under federal law.

Clarifies procedural requirements related to reports or complaints of behavior that may constitute sexual harassment.

A BILL FOR AN ACT

1
2 Relating to district policies on sexual harassment; creating new provisions; and amending ORS
3 342.704.

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

5 **SECTION 1.** ORS 342.704 is amended to read:

6 342.704. (1) As used in this section[.]:

7 (a) "District" includes a school district, an education service district and a public charter
8 school.

9 (b) "Nonschool person" means a person who is:

10 (A) Located on or immediately adjacent to school grounds or district property;

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

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

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

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

19 [(b) Sexual harassment of students includes:]

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

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

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

27 [(c) When a student or, if applicable, the student's parents file a complaint alleging behavior that
28 may violate the policy, the student or student's parents shall receive a written notification as described

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 *in subsection (5) of this section.]*

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

6 *[(A) Providing resources for support measures to the student; and]*

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

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

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

14 *[(g) The person who initiated the complaint and, if applicable, the student's parents shall be noti-*
15 *fied:]*

16 *[(A) When the investigation is initiated and concluded; and]*

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

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

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

23 *[(b) Sexual harassment of staff members includes:]*

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

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

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

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

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

36 *[(A) Providing resources for support measures to the staff member; and]*

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

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

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

45 *[(g) The person who initiated the complaint shall be notified:]*

- 1 [(A) When the investigation is initiated and concluded; and]
- 2 [(B) As to whether a violation of the policy was found to have occurred, to the extent allowable
- 3 under state and federal student confidentiality laws.]
- 4 [(4) The State Board of Education shall adopt by rule minimum requirements for district policies
- 5 on sexual harassment of persons described in paragraph (b) of this subsection by staff members and
- 6 students. A district policy must include, but not be limited to, requirements that:]
- 7 [(a) All staff members and students are subject to the policies.]
- 8 [(b) The policies apply to persons who:]
- 9 [(A) Are on or immediately adjacent to school grounds or district property;]
- 10 [(B) Are at any school-sponsored or district-sponsored activity or program; or]
- 11 [(C) Are off school or district property, if a student or staff member acts toward the person in a
- 12 manner that creates a hostile environment for the person while at school or a school-sponsored or
- 13 district-sponsored activity or program.]
- 14 [(c) Sexual harassment of persons described in paragraph (b) of this subsection includes:]
- 15 [(A) A demand or request for sexual favors in exchange for benefits;]
- 16 [(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that creates
- 17 an intimidating, offensive or hostile environment; and]
- 18 [(C) Assault when sexual contact occurs without a person's consent because the person is under the
- 19 influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit
- 20 or implied threats.]
- 21 [(d) When a person who may have been subjected to behavior in violation of the policy or, if ap-
- 22 plicable, the person's parents file a complaint alleging behavior that may violate the policy, the person
- 23 or person's parents shall receive a written notification as described in subsection (5) of this section.]
- 24 [(e) When a staff member becomes aware of behavior that may violate the policy, the staff member
- 25 shall report to a district official so that the district official and the staff member may coordinate efforts
- 26 to take any action necessary to ensure the person who was subjected to the behavior is protected and
- 27 to promote a nonhostile environment, including:]
- 28 [(A) Providing resources for support measures to the person who was subjected to the behavior;
- 29 and]
- 30 [(B) Taking any actions that are necessary to remove potential future impact on the person, but that
- 31 are not retaliatory against the person or the staff member who reported to the district official.]
- 32 [(f) All complaints about behavior that may violate the policy shall be investigated.]
- 33 [(g) The initiation of a complaint, and the participation in an investigation, in good faith about
- 34 behavior that may violate the policy may not adversely affect the educational assignments or any terms
- 35 or conditions of employment or of work or educational environment of the person who initiated the
- 36 complaint or who participated in the investigation.]
- 37 [(h) The person who initiated the complaint and, if applicable, the person's parents shall be noti-
- 38 fied:]
- 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 **(2) The State Board of Education shall adopt by rule minimum requirements for district**
- 43 **policies on sexual harassment. A policy must address sexual harassment by a student or a**
- 44 **staff member of:**
- 45 **(a) A student;**

- 1 **(b) A staff member; or**
- 2 **(c) A nonschool person.**
- 3 **(3) In accordance with rules adopted by the State Board of Education, a district shall**
- 4 **adopt and implement a policy on sexual harassment. A district policy must include, but not**
- 5 **be limited to, requirements that:**
- 6 **(a) All students and staff members are subject to the policy.**
- 7 **(b) Sexual harassment includes any of the following:**
- 8 **(A) A demand or request for sexual favors in exchange for benefits.**
- 9 **(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that:**
- 10 **(i) Interferes with a student’s educational program or activity or interferes with a staff**
- 11 **member’s ability to perform a job; or**
- 12 **(ii) Creates an intimidating, offensive or hostile environment.**
- 13 **(C) Assault that occurs when sexual contact is made without the consent of the person**
- 14 **who was assaulted because the person who was assaulted was under the influence of drugs**
- 15 **or alcohol, was unconscious or was pressured through physical force, coercion or explicit or**
- 16 **implied threats.**
- 17 **(c) The district designate a district official to receive any complaints or reports alleging**
- 18 **behavior that may constitute sexual harassment under a policy adopted under this section.**
- 19 **(d) Allegations of behavior that may constitute sexual harassment:**
- 20 **(A) May be made as a complaint by the person subjected to the behavior or, if applicable,**
- 21 **by the person’s parents.**
- 22 **(B) Must be reported by a staff member to the district official designated under para-**
- 23 **graph (c) of this subsection when the staff member:**
- 24 **(i) Becomes aware of the behavior; or**
- 25 **(ii) Receives a complaint described in subparagraph (A) of this paragraph.**
- 26 **(e) When the district official receives a complaint or report under paragraph (d) of this**
- 27 **subsection, the district official shall determine if the behavior alleged in the report or com-**
- 28 **plaint is subject to investigation requirements under federal laws related to discrimination**
- 29 **based on sex in an education program or activity. If the behavior is subject to investigation**
- 30 **requirements under federal law, the district shall proceed with those requirements and is**
- 31 **not required to follow any additional requirements prescribed by this section.**
- 32 **(f) After making a determination under paragraph (d) of this subsection, the district**
- 33 **shall:**
- 34 **(A) Provide the written notification described in subsection (4) of this section to the**
- 35 **person who made a complaint under paragraph (d)(A) of this subsection.**
- 36 **(B) Take any action necessary to ensure that the person who was subjected to the be-**
- 37 **havior is protected and that is necessary to promote a nonhostile environment, including:**
- 38 **(i) Providing resources for support measures to the person who was subjected to the**
- 39 **behavior; and**
- 40 **(ii) Taking any actions that are necessary to remove potential future impact on the per-**
- 41 **son who was subjected to the behavior, but that are not retaliatory against the person who**
- 42 **was subjected to the behavior or the staff member who made the report to the district offi-**
- 43 **cial.**
- 44 **(g) All reports about behavior that may constitute sexual harassment shall be investi-**
- 45 **gated.**

1 **(h) The initiation of a complaint or report, and the participation in an investigation, in**
 2 **good faith about behavior that may constitute sexual harassment may not adversely affect**
 3 **the educational assignments or any terms or conditions of employment or of work or edu-**
 4 **catinal environment of the person who made the complaint, initiated the report or partic-**
 5 **ipated in the investigation.**

6 **(i) The person who made the complaint and, if applicable, the person’s parents shall be**
 7 **notified:**

8 **(A) When an investigation is initiated and concluded; and**

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

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

13 **(A)** The rights of the [*student, student’s parents, staff member, person or person’s parents*] **person**
 14 who filed the complaint.

15 **(B)** Information about the internal complaint processes available through the school or district
 16 that the [*student, student’s parents, staff member, person or person’s parents*] **person** who filed the
 17 complaint may pursue, including **identification and contact information of** the person designated
 18 for the school or district for receiving complaints.

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

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

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

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

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

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

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

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

40 **(C)** Be made available to students, students’ parents, **nonschool persons, nonschool persons’**
 41 **parents**, staff members and members of the public at each school office, at the district office and
 42 on the website of the school or district.

43 **SECTION 2. The amendments to ORS 342.704 by section 1 of this 2021 Act apply to re-**
 44 **ports or complaints about behavior that may constitute sexual harassment that are received**
 45 **by a district on or after the effective date of this 2021 Act.**

