

DRAFT

SUMMARY

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

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

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

SECTION 1. ORS 342.704 is amended to read:

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

(a) “District” includes a school district, an education service district and a public charter school.

(b) “Nonschool person” means a person who is:

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

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

(C) Located 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 the person is at school or at a school-sponsored or district-sponsored activity or program.

[(2) *The State Board of Education shall adopt by rule minimum require-*

ments for district policies on sexual harassment of students by staff members and other students. A district policy must include, but not be limited to, 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) 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 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.]

[(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

1 *of work or educational environment of the person who initiated the complaint*
2 *or who participated in the investigation.]*

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

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

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

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

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

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

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

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

18 *[(C) Assault when sexual contact occurs without a staff member's consent*
19 *because the staff member is under the influence of drugs or alcohol, is uncon-*
20 *scious or is pressured through physical force, coercion or explicit or implied*
21 *threats.]*

22 *[(c) When a staff member files a complaint alleging behavior that may vio-*
23 *late the policy, the staff member shall receive a written notification as de-*
24 *scribed in subsection (5) of this section.]*

25 *[(d) When another staff member becomes aware of behavior that may violate*
26 *the policy, the other staff member shall report to a district official so that the*
27 *district official may take any action necessary to ensure the staff member is*
28 *protected and to promote 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*
31 *on the staff member, but that are not retaliatory against the staff member or*

1 *the other staff member who reported to the district official.]*

2 *[(e) All complaints about behavior that may violate the policy shall be in-*
3 *vestigated.]*

4 *[(f) The initiation of a complaint, and the participation in an investigation,*
5 *in good faith about behavior that may violate the policy may not adversely af-*
6 *fect the educational assignments or any terms or conditions of employment or*
7 *of work or educational environment of the person who initiated the complaint*
8 *or participated in the investigation.]*

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

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

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

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

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

18 *[(b) The policies apply to persons who:]*

19 *[(A) Are on or immediately adjacent to school grounds or district*
20 *property;]*

21 *[(B) Are at any school-sponsored or district-sponsored activity or program;*
22 *or]*

23 *[(C) Are off school or district property, if a student or staff member acts*
24 *toward the person in a manner that creates a hostile environment for the per-*
25 *son while at school or a school-sponsored or district-sponsored activity or pro-*
26 *gram.]*

27 *[(c) Sexual harassment of persons described in paragraph (b) of this sub-*
28 *section includes:]*

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

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

1 and]

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

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

9 [(e) When a staff member becomes aware of behavior that may violate the
10 policy, the staff member shall report to a district official so that the district
11 official and the staff member may coordinate efforts to take any action neces-
12 sary to ensure the person who was subjected to the behavior is protected and
13 to promote a nonhostile environment, including:]

14 [(A) Providing resources for support measures to the person who was sub-
15 jected to the behavior; and]

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

19 [(f) All complaints about behavior that may violate the policy shall be in-
20 vestigated.]

21 [(g) The initiation of a complaint, and the participation in an investigation,
22 in good faith about behavior that may violate the policy may not adversely af-
23 fect the educational assignments or any terms or conditions of employment or
24 of work or educational environment of the person who initiated the complaint
25 or who participated in the investigation.]

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

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

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

31 **(2) The State Board of Education shall adopt by rule minimum re-**

1 **quirements for district policies on sexual harassment. A policy must**
2 **address sexual harassment by a student or a staff member of:**

- 3 **(a) A student;**
- 4 **(b) A staff member; or**
- 5 **(c) A nonschool person.**

6 **(3) In accordance with rules adopted by the State Board of Educa-**
7 **tion, a district shall adopt and implement a policy on sexual**
8 **harassment. A district policy must include, but not be limited to, re-**
9 **quirements that:**

10 **(a) All students and staff members are subject to the policy.**

11 **(b) Sexual harassment includes any of the following:**

12 **(A) A demand or request for sexual favors in exchange for benefits.**

13 **(B) Unwelcome conduct of a sexual nature that is physical, verbal**
14 **or nonverbal and that:**

15 **(i) Interferes with a student's educational program or activity or**
16 **interferes with a staff member's ability to perform a job; or**

17 **(ii) Creates an intimidating, offensive or hostile environment.**

18 **(C) Assault that occurs when sexual contact is made without the**
19 **consent of the person who was assaulted because the person who was**
20 **assaulted was under the influence of drugs or alcohol, was uncon-**
21 **scious or was pressured through physical force, coercion or explicit**
22 **or implied threats.**

23 **(c) The district designate a district official to receive any com-**
24 **plaints or reports alleging behavior that may constitute sexual**
25 **harassment under a policy adopted under this section.**

26 **(d) Allegations of behavior that may constitute sexual harassment:**

27 **(A) May be made as a complaint by the person subjected to the**
28 **behavior or, if applicable, by the person's parents.**

29 **(B) Must be reported by a staff member to the district official des-**
30 **ignated under paragraph (c) of this subsection when the staff member:**

31 **(i) Becomes aware of the behavior; or**

1 (ii) Receives a complaint described in subparagraph (A) of this
2 paragraph.

3 (e) When the district official receives a complaint or report under
4 paragraph (d) of this subsection, the district official shall determine
5 if the behavior alleged in the report or complaint is subject to inves-
6 tigation requirements under federal laws related to discrimination
7 based on sex in an education program or activity. If the behavior is
8 subject to investigation requirements under federal law, the district
9 shall proceed with those requirements and is not required to follow
10 any additional requirements prescribed by this section.

11 (f) After making a determination under paragraph (d) of this sub-
12 section, the district shall:

13 (A) Provide the written notification described in subsection (4) of
14 this section to the person who made a complaint under paragraph
15 (d)(A) of this subsection.

16 (B) Take any action necessary to ensure that the person who was
17 subjected to the behavior is protected and that is necessary to promote
18 a nonhostile environment, including:

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

21 (ii) Taking any actions that are necessary to remove potential fu-
22 ture impact on the person who was subjected to the behavior, but that
23 are not retaliatory against the person who was subjected to the be-
24 havior or the staff member who made the report to the district official.

25 (g) All reports about behavior that may constitute sexual
26 harassment shall be investigated.

27 (h) The initiation of a complaint or report, and the participation in
28 an investigation, in good faith about behavior that may constitute
29 sexual harassment may not adversely affect the educational assign-
30 ments or any terms or conditions of employment or of work or edu-
31 cational environment of the person who made the complaint, initiated

1 **the report or participated in the investigation.**

2 (i) **The person who made the complaint and, if applicable, the**
3 **person's parents shall be notified:**

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

5 (B) **As to whether a violation of the policy was found to have oc-**
6 **curred, to the extent allowable under state and federal student**
7 **confidentiality laws.**

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

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

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

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

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

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

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

31 (G) Notice that students who report information about possible prohibited

1 conduct and students who participate in an investigation under a policy
2 adopted as provided by this section may not be disciplined for violations of
3 the district's drug and alcohol policies that occurred in connection with the
4 reported prohibited conduct and that were discovered as a result of a pro-
5 hibited conduct report or investigation unless the student gave another per-
6 son alcohol or drugs without the person's knowledge and with the intent of
7 causing the person to become incapacitated and vulnerable to the prohibited
8 conduct.

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

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

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

13 (C) Be made available to students, students' parents, **nonschool persons,**
14 **nonschool persons' parents,** staff members and members of the public at
15 each school office, at the district office and on the website of the school or
16 district.

17 **SECTION 2. The amendments to ORS 342.704 by section 1 of this**
18 **2021 Act apply to reports or complaints about behavior that may con-**
19 **stitute sexual harassment that are received by a district on or after**
20 **the effective date of this 2021 Act.**