

B-Engrossed
House Bill 3077

Ordered by the Senate May 28
Including House Amendments dated April 17 and Senate Amendments
dated May 28

Sponsored by Representative SALINAS, Senator GELSER; Representatives FAHEY, KENY-GUYER, NOBLE,
NOSSE, POWER, SOLLMAN, WILLIAMS, WILLIAMSON, Senators MANNING JR, WAGNER

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.

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) **As used in this section, "district" includes a school district, an education**
8 **service district and a public charter school.**

9 [(1)] (2) The State Board of Education shall adopt by rule minimum requirements for [school]
10 district policies on sexual harassment of students by staff members and other students [including].

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

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

13 (b) Sexual harassment of students includes:

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

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

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

22 (c) When a student or, if applicable, the student's parents file a complaint alleging behavior that
23 may violate the policy, the student or student's parents shall receive a written notification as de-
24 scribed in subsection [(4)] (5) of this section[;].

25 (d) **When a staff member becomes aware of behavior that may violate the policy, the staff**
26 **member shall report to a district official so that the district official and the staff member**

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 **may coordinate efforts to take any action necessary to ensure the student is protected and**
2 **to promote a nonhostile learning environment, including:**

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

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

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

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

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

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

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

17 [(2)] **(3)** The State Board of Education shall adopt by rule minimum requirements for [school]
18 district policies on sexual harassment of staff members by students and other staff members [*in-*
19 *cluding*]. **A district policy must include**, but not **be** limited to, requirements that:

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

21 (b) Sexual harassment of staff members includes:

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

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

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

29 (c) When a staff member files a complaint alleging behavior that may violate the policy, the staff
30 member shall receive a written notification as described in subsection [(4)] (5) of this section[;].

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

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

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

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

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

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

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

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

3 [(3)] (4) The State Board of Education shall adopt by rule minimum requirements for [school]
4 district policies on sexual harassment of persons described in paragraph (b) of this subsection by
5 staff members and students[, *including*]. **A district policy must include**, but not **be** limited to, re-
6 quirements that:

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

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

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

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

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

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

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

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

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

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

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

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

25 (d) When a person **who may have been subjected to behavior in violation of the policy** or,
26 if applicable, the person's parents file a complaint alleging behavior that may violate the policy, the
27 person or person's parents shall receive a written notification as described in subsection [(4)] (5)
28 of this section[;].

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

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

35 **(B) Taking any actions that are necessary to remove potential future impact on the**
36 **person, but that are not retaliatory against the person or the staff member who reported to**
37 **the district official.**

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

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

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

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

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

3 [(4)(a)] **(5)(a)** The written notification required under subsections [(1)(c), (2)(c) and (3)(d)] **(2)(c),**
4 **(3)(c) and (4)(d)** of this section must set forth:

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

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

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

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

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

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

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

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

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

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

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

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

34