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

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

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

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

A school district policy must include, but not be limited to, requirements that:
(a) All staff members and students are subject to the policies; [and]
(b) Sexual harassment of students includes:
(A) A demand or request for sexual favors in exchange for benefits; [and]
(B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that [has the purpose or effect of unreasonably interfering] interferes with a student’s [educational performance] educational program or activity or that creates an intimidating, offensive or hostile educational environment;
(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; and
(D) Any retaliation by other students, staff members or third parties.
(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 (4) of this section[.];
(d) When a staff member becomes aware of behavior that may violate this policy, the staff member shall contact a school district official so that the school 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 person who may have acted in a manner 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.

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

[(e)] (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 educational environment of the student who initiated the complaint.

[(f)] (g) The student 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.

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

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

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

(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; and

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

(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 (4) of this section.

(d) When another staff member becomes aware of behavior that may violate this policy, the other staff member shall contact a school district official so that the school 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 person who may have acted in a manner that violates the policy.

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

[(e)] (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 any terms or conditions of employment or work environment of the staff member who initiated the complaint.

[(f)] (g) The staff member 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.

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

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

(C) Are off school or school 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 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; [and]

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

[i] Has the purpose or effect of unreasonably interfering with a person’s educational performance

or a person’s ability to perform the job; or]

[iii] creates an intimidating, offensive or hostile educational or work environment;

(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; and

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

(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 (4) of this

section[.]

(e) When a staff member becomes aware of behavior that may violate this policy, the

staff member shall contact a school district official so that the school 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, in-

cluding:

(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 who was subjected to the behavior, but that are not retaliatory against the person

who may have acted in a manner that violates the policy.

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

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 any terms or conditions of em-

ployment or of work or educational environment of the person who initiated the complaint[ and].

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.

The written notification required under subsections (1)(c), (2)(c) and (3)(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 school
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 school district for
receiving complaints.

(C) Notice that civil and criminal remedies that are not provided by the school or school 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
school 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 re-
cognized exceptions to those rights for internal complaint processes and services available through
the school or school district[; and]

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

(G) Notice that persons who report information about possible prohibited conduct and
persons who participate in an investigation under a policy adopted as provided by this section
may not be disciplined for violations of the school 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 person 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 school district office and on the website of the school or school
district.

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