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

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 requirements 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 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 noti-
fied:]

[(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 district policies
on sexual harassment of staff members by students and other staff members. A district policy must in-
clude, 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;]

[(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) 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 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.]

[(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:]

[2]
[(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) The State Board of Education shall adopt by rule minimum requirements for district policies  
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, 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 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 ap-  
plicable, 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) 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 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.]  

[(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 noti-  
fied:]  

[(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 district  
policies on sexual harassment. A policy must address sexual harassment by a student or a  
staff member of:  

(a) A student;
(b) A staff member; or
(c) A nonschool person.

(3) In accordance with rules adopted by the State Board of Education, a district shall adopt and implement a policy on sexual harassment. A district policy must include, but not be limited to, requirements that:

(a) All students and staff members are subject to the policy.
(b) Sexual harassment includes any of the following:
   (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:
      (i) Interferes with a student’s educational program or activity or interferes with a staff member’s ability to perform a job; or
      (ii) Creates an intimidating, offensive or hostile environment.
   (C) Assault that occurs when sexual contact is made without the consent of the person who was assaulted because the person who was assaulted was under the influence of drugs or alcohol, was unconscious or was pressured through physical force, coercion or explicit or implied threats.
(c) The district designate a district official to receive any complaints or reports alleging behavior that may constitute sexual harassment under a policy adopted under this section.
(d) Allegations of behavior that may constitute sexual harassment:
   (A) May be made as a complaint by the person subjected to the behavior or, if applicable, by the person’s parents.
   (B) Must be reported by a staff member to the district official designated under paragraph (c) of this subsection when the staff member:
      (i) Becomes aware of the behavior; or
      (ii) Receives a complaint described in subparagraph (A) of this paragraph.
(e) When the district official receives a complaint or report under paragraph (d) of this subsection, the district official shall determine if the behavior alleged in the report or complaint is subject to investigation requirements under federal laws related to discrimination based on sex in an education program or activity. If the behavior is subject to investigation requirements under federal law, the district shall proceed with those requirements and is not required to follow any additional requirements prescribed by this section.
(f) After making a determination under paragraph (d) of this subsection, the district shall:
   (A) Provide the written notification described in subsection (4) of this section to the person who made a complaint under paragraph (d)(A) of this subsection.
   (B) Take any action necessary to ensure that the person who was subjected to the behavior is protected and that is necessary to promote a nonhostile environment, including:
      (i) Providing resources for support measures to the person who was subjected to the behavior; and
      (ii) 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 was subjected to the behavior or the staff member who made the report to the district official.
(g) All reports about behavior that may constitute sexual harassment shall be investigated.
(h) The initiation of a complaint or report, and the participation in an investigation, in good faith about behavior that may constitute sexual harassment may not adversely affect the educational assignments or any terms or conditions of employment or of work or educational environment of the person who made the complaint, initiated the report or participated in the investigation.

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

(A) When an 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)] (4)(a) The written notification required under [subsections (2)(c), (3)(c) and (4)(d)] subsection (3)(f) of this section must set forth:

(A) The rights of the [student, student’s parents, staff member, person or person’s parents] person 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] person who filed the complaint may pursue, including identification and contact information of 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, nonschool person or nonschool 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 nonschool 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, nonschool persons, nonschool persons’ 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.

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