

House Bill 2280

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Education)

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 requirements of consent for purposes of school district sexual harassment policies.
Declares emergency, effective July 1, 2023.

A BILL FOR AN ACT

1
2 Relating to school sexual harassment policies; creating new provisions; amending ORS 342.704; and
3 declaring an emergency.

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) "**Without consent**" means an act performed:

10 (A) **Without the knowing, voluntary and clear agreement by all parties to participate in**
11 **the specific act; or**

12 (B) **When a person who is a party to the act is:**

13 (i) **Incapacitated by drugs or alcohol;**

14 (ii) **Unconscious; or**

15 (iii) **Pressured through physical force, coercion or explicit or implied threats to partic-**
16 **ipate in the act.**

17 (2)(a) The State Board of Education shall adopt by rule minimum requirements for district poli-
18 cies on:

19 (A) Sexual harassment of students by staff members and other students.

20 (B) Sexual harassment of staff members by students and other staff members.

21 (C) Sexual harassment of persons described in subsection (5)(b) of this section by staff members
22 and students.

23 (b) A private school shall adopt policies on:

24 (A) Sexual harassment of students by staff members and other students.

25 (B) Sexual harassment of staff members by students and other staff members.

26 (C) Sexual harassment of persons described in subsection (5)(b) of this section by staff members
27 and students.

28 (c) Rules adopted by the State Board of Education and policies adopted by private schools must
29 comply with the requirements of this section.

30 (3) A policy on sexual harassment of students by staff members and other students must include
31 requirements that:

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 (a) All staff members and students are subject to the policies.
- 2 (b) Sexual harassment of students includes:
- 3 (A) A demand or request for sexual favors in exchange for benefits;
- 4 (B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that inter-
- 5 feres with a student's educational program or activity or that creates an intimidating, offensive or
- 6 hostile educational environment; and
- 7 (C) Assault when sexual contact occurs *[without a student's consent because the student is under*
- 8 *the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or*
- 9 *explicit or implied threats]* **without consent.**
- 10 (c) When a student or, if applicable, the student's parents file a complaint alleging behavior that
- 11 may violate the policy, the student or student's parents shall receive a written notification as de-
- 12 scribed in subsection (6) of this section.
- 13 (d) When a staff member becomes aware of behavior that may violate the policy, the staff
- 14 member shall report to an official of the district or private school so that the official and the staff
- 15 member may coordinate efforts to take any action necessary to ensure the student is protected and
- 16 to promote a nonhostile learning environment, including:
- 17 (A) Providing resources for support measures to the student; and
- 18 (B) Taking any actions that are necessary to remove potential future impact on the student, but
- 19 that are not retaliatory against the student or the staff member who reported to the official of the
- 20 district or private school.
- 21 (e) All complaints about behavior that may violate the policy shall be investigated.
- 22 (f) The initiation of a complaint, and the participation in an investigation, in good faith about
- 23 behavior that may violate the policy may not adversely affect the educational assignments or any
- 24 terms or conditions of employment or of work or educational environment of the person who initi-
- 25 ated the complaint or who participated in the investigation.
- 26 (g) The person who initiated the complaint and, if applicable, the student's parents shall be no-
- 27 tified:
- 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 the extent allowable
- 30 under state and federal student confidentiality laws.
- 31 (4) A policy on sexual harassment of staff members by students and other staff members must
- 32 include requirements that:
- 33 (a) All staff members and students are subject to the policies.
- 34 (b) Sexual harassment of staff members includes:
- 35 (A) A demand or request for sexual favors in exchange for benefits;
- 36 (B) Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that inter-
- 37 feres with a staff member's ability to perform the job or that creates an intimidating, offensive or
- 38 hostile work environment; and
- 39 (C) Assault when sexual contact occurs *[without a staff member's consent because the staff mem-*
- 40 *ber is under the influence of drugs or alcohol, is unconscious or is pressured through physical force,*
- 41 *coercion or explicit or implied threats]* **without consent.**
- 42 (c) When a staff member files a complaint alleging behavior that may violate the policy, the staff
- 43 member shall receive a written notification as described in subsection (6) of this section.
- 44 (d) When another staff member becomes aware of behavior that may violate the policy, the other
- 45 staff member shall report to an official of the district or private school so that the official may take

1 any action necessary to ensure the staff member is protected and to promote a nonhostile work
 2 environment, including:

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

4 (B) Taking any actions that are necessary to remove potential future impact on the staff mem-
 5 ber, but that are not retaliatory against the staff member or the other staff member who reported
 6 to the official of the district or private school.

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

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

12 (g) The person who initiated the complaint shall be notified:

13 (A) When the investigation is initiated and concluded; and

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

16 (5) A policy on sexual harassment of persons described in paragraph (b) of this subsection by
 17 staff members and students must include requirements that:

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

19 (b) The policies apply to persons who:

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

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

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

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

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

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

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

32 (d) When a person who may have been subjected to behavior in violation of the policy or, if
 33 applicable, the person's parents file a complaint alleging behavior that may violate the policy, the
 34 person or person's parents shall receive a written notification as described in subsection (6) of this
 35 section.

36 (e) When a staff member becomes aware of behavior that may violate the policy, the staff
 37 member shall report to an official of the district or private school so that the official and the staff
 38 member may coordinate efforts to take any action necessary to ensure the person who was subjected
 39 to the behavior is protected and to promote a nonhostile environment, including:

40 (A) Providing resources for support measures to the person who was subjected to the behavior;
 41 and

42 (B) Taking any actions that are necessary to remove potential future impact on the person, but
 43 that are not retaliatory against the person or the staff member who reported to the official of the
 44 district or private school.

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

1 (g) The initiation of a complaint, and the participation in an investigation, in good faith about
2 behavior that may violate the policy may not adversely affect the educational assignments or any
3 terms or conditions of employment or of work or educational environment of the person who initi-
4 ated the complaint or who participated in the investigation.

5 (h) The person who initiated the complaint and, if applicable, the person's parents shall be no-
6 tified:

7 (A) When the investigation is initiated and concluded; and

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

10 (6)(a) The written notification required under subsections (3)(c), (4)(c) and (5)(d) of this section
11 must set forth:

12 (A) The rights of the student, student's parents, staff member, person or person's parents who
13 filed the complaint.

14 (B) Information about the internal complaint processes available through the school or district
15 that the student, student's parents, staff member, person or person's parents who filed the complaint
16 may pursue, including the person designated for the school or district for receiving complaints.

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

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

22 (E) Information about the privacy rights of the student, staff member or person and legally re-
23 cognized exceptions to those rights for internal complaint processes and services available through
24 the school or district.

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

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

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

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

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

37 (C) Be made available to students, students' parents, staff members and members of the public
38 at each school office, at the district office and on the website of the school or district.

39 **SECTION 2. The amendments to ORS 342.704 by section 1 of this 2023 Act apply to acts**
40 **occurring on or after the effective date of this 2023 Act.**

41 **SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
43 **July 1, 2023.**