

HB 1356.Mandatatory Administrative Reports for Sex

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Position: UNF

BILL: House Bill 1356
TITLE: Public Schools - Reporting of Sexual Misconduct, Stalking, and Harassment (Report Act of 2022)
POSITION: OPPOSE
DATE: March 10, 2022
COMMITTEE: Ways and Means
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The Maryland Association of Boards of Education (MABE) opposes House Bill 1356 due to the prescriptive administrative procedures and reporting requirements each school would be required to make to their board of education regarding instances of sexual misconduct, harassment, or stalking. MABE certainly appreciates the seriousness of the behaviors identified in the bill. However, MABE does not believe that this bill would meaningfully improve the responsiveness of school systems to complaints and would create an inordinate increase in workload for school administrators to gather and report on sensitive and legally complex matters.

Federal law, under Title IX (20 U.S.C. § 1681) prohibits sex discrimination by educational institutions in the operation of their programs and services. Title IX states that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” This law is credited, most particularly, with increasing opportunities for women in athletic programs at public schools and post-secondary institutions. However, Title IX’s prohibition against sex discrimination also includes prohibiting sexual harassment.

In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), the U.S. Supreme Court found that a school’s deliberate indifference to a teacher’s sexual harassment of a student violated Title IX. Similarly, a school’s deliberate indifference to sexual harassment of a student by another student, if sufficiently severe, can constitute discrimination on the basis of sex in violation of Title IX. Title IX’s sexual harassment prohibition also places an obligation on schools to respond to harassment against students based on sexual orientation. Guidance from the U.S. Department of Education’s Office for Civil Rights states that “sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX.”

MABE strongly believes that safety in public schools is the joint responsibility of local boards of education, school administrators and staff, students, parents and guardians, law enforcement, the courts, and other public safety agencies, human services agencies, and the community in general. Safety, as it relates to House Bill 1356, includes the protection from and immediate responses to instances of sexual misconduct, harassment, and stalking. However, MABE opposes this bill because it would require the filing of an administrative incident report, and reporting of data on a statewide basis, for all instances involving staff, students, parents, and any other persons who may be engaged in these behaviors on school premises.

Regarding employee sexual harassment, Title VII of the Civil Rights Act of 1964 prohibits sexual harassment in the workplace as a form of gender discrimination. Hostile environment harassment is very broad and includes any unwelcome act or gesture of a sexual nature including, but not limited to, staring, stalking, telling dirty jokes, sending pornographic e-mails, and repeatedly asking a person out for a date despite being told “no”.

Hostile environment harassment may be between co-workers of like or different status as well as harassment by vendors, parents of students, and students themselves. Quid pro quo harassment implies an offer of an exchange of “services” for “benefits” and is typically between a supervisory employee and a subordinate employee.

Under Title VII, school systems are also required to protect employees against harassment by non-employees. For example, a school system would be required to take prompt and effective remedial action to prevent a parent or a vendor from engaging in pervasive sexual harassment of a teacher or other employee. Accordingly, school systems must take certain steps in an effort to help prevent sexual harassment in the work place and to respond to it if it occurs. Federal case law has outlined employer practices of taking prompt, effective remedial action when it becomes aware of such harassment.

- Each school system should have a clear, well-written policy prohibiting harassment and explaining how and to whom a report of harassment should be made.
- Each school system should conduct mandatory in-service training for all staff and volunteers to make sure that all employees and volunteers understand the harassment policy and further understand that they are encouraged to report allegations of harassment. Taking attendance at the in-service presentations is important.
- Each school system should conduct prompt, thorough investigations of all allegations of harassment in as confidential a manner as possible.
- Each school system should take prompt, effective, remedial action in every case. The range of remedial action will be dependent upon the outcome of the investigation, the seriousness of the allegations, and whether there were repeat occurrences.

Again, MABE believes that these federal laws and standards and the practices adopted by school systems already address the core concerns raised by House Bill 1356, and reiterates the concern that any overlapping reporting requirements could have unintended consequences concerning the administration and any litigation arising from the behaviors of sexual misconduct, harassment, or stalking.

For the reasons outlined above, MABE requests an unfavorable report on House Bill 1356.