



THE SENATE
FEDERAL REPUBLIC OF NIGERIA

**SEXUAL HARASSMENT OF STUDENTS IN TERTIARY
EDUCATIONAL INSTITUTIONS (PROHIBITION) BILL, 2020**

(SB.77)

A BILL

FOR AN ACT TO MAKE COMPREHENSIVE PROVISIONS FOR THE
PROHIBITION AND PUNISHMENT OF SEXUAL HARASSMENT OF
STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS;
AND FOR RELATED MATTERS.

FIRST READING

WEDNESDAY, 9TH OCTOBER, 2019

SECOND READING

WEDNESDAY, 8TH NOVEMBER, 2019

THIRD READING AND PASSAGE

TUESDAY, 7TH JULY, 2020

SEXUAL HARASSMENT OF STUDENTS IN TERTIARY EDUCATIONAL INSTITUTIONS (PROHIBITION) BILL,
2020



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A BILL FOR AN ACT TO MAKE COMPREHENSIVE PROVISIONS FOR THE PROHIBITION AND PUNISHMENT OF SEXUAL HARASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS; AND FOR RELATED MATTERS

} Commencement.

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1. The objective of the Bill is to create equal learning opportunities for students of tertiary institutions in an atmosphere devoid of sexual harassment and to promote ethical standards of education and respect for human dignity in tertiary educational institutions by providing for:
 - (a) protection of students against sexual harassment by educators in tertiary educational institutions;
 - (b) prohibition of sexual harassment of students by educators in tertiary educational institutions; and
 - (c) Redress of complaints of sexual harassment of students by educators in tertiary educational institutions.

Objective of the Bill

2. A relationship of authority, dependency and trust shall be construed to exist between an educator and a student in an institution if:
 - (a) the educator is directly or indirectly involved in the full-time or part-time academic training, teaching, advising, supervision and education of the student; or
 - (b) the educator has direct or indirect academic or non-academic authority over the student; or
 - (c) the student depends, directly or indirectly, on the educator in any manner whatsoever.

Relationship of Authority, Dependency and Trust

3. To uphold the Objective of this Bill, an educator shall observe a fiduciary duty of care to every student by not exploiting a student or his/her relationship with a student for personal gains, sexual pleasure, or immoral satisfaction, or in any way whatsoever that violates the sacrosanctity, honour and inviolability of the fiduciary relationship of authority, dependency and trust between him/her and a student.

Fiduciary Duty of Care

4. An educator commits an offence of sexual harassment where he or she:

Offences

 - (a) violates the fiduciary duty of care in section 3 of this Bill; or
 - (b) has sexual intercourse with a student or demands for sex from a student or prospective student; or
 - (c) intimidates or creates a hostile or offensive environment for the student by soliciting for sex from the student or by making sexual advances towards a student; or
 - (d) directs or induces another person to commit any act of sexual harassment under the provisions of this Bill, or conspires with another person in the commission of sexual harassment by another person without which it would not have been committed; or
 - (e) grabs, hugs, kisses, rubs or strokes or touches or pinches the breasts or hair or lips or hips or buttocks or any other part of the body of a student; or
 - (f) displays, requests, gives or sends by hand or courier or electronic or any other means, explicit or suggestive pornographic messages, whether by text, pictures or videos or other sex related objects to a student; or
 - (g) whistles or winks at a student or screams or exclaims or jokes or makes sexually complimentary or uncomplimentary remarks about a student's physique or stalks a student.

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| 5. | For the purposes of the offences created in clause 4 of this Bill, it shall be a defence that the educator and the student are legally married. | Defence on
Grounds of
Marriage |
| 6. | It shall not be a defence to any offence created in clause 4 of this Bill that a student consented to the commission of the offence. | Students' Consent not a
Defence |
| 7. | For the purpose of proving the commission of any of the offences in Clause 4 of this Bill, it shall not be necessary for the prosecution to prove the intention of the accused person or the condition under which the act of sexual harassment was carried out. | Proof of
Commission of
Offences |
| 8. | A written Sexual Harassment Petition, complaining of the offence of sexual harassment against an educator may be filed or made by a student or by a student's representative who may be a relative, a guardian, or a lawyer of the student, or any person who has interest in the wellbeing of the student to the Nigerian Police Force, or the Attorney-General who shall take necessary measures to prosecute the educator in accordance with the provisions of this Bill. | Filing of Sexual
Harassment
Complaint |
| 9. | A copy of the written sexual harassment petition, complaining of sexual harassment in section 8 of this bill shall be delivered by the petitioner or complainant to the administrative head of the institution, Secretary of the Independent Sexual Harassment Investigative Committee and the head of Department of the alleged offender for record purposes and such actions that may be required under this Bill. | Petitioner or
Complainant to
forward Petition
to Appropriate
Authorities |
| 10. | (1) Any person who commits any of the offences specified in Section 4 (a), (b), (c), (d) and (e) of this Bill and shall, on conviction, be sentenced to imprisonment for 14 years, or to a fine of 5 Million Naira or both.

(2) Any person who commits any of the offences specified in Section 4 (f) and (g) of this Bill shall on conviction, be sentenced to 2 years imprisonment or to a fine of 1,000,000 Naira or both. | Penalty |
| 11. | Notwithstanding the provisions of Sections 4, 8, 9, 10 and 11 of this Bill or any other part thereof, the right of a student who complains or alleges sexual harassment by an educator to commence and maintain a civil action in Court for breach of fiduciary duty of care, contrary to Sections 2 and 3 of this Bill is preserved. | Civil Action for
Breach of
Fiduciary Duty |
| 12. | Nothing under this Bill shall preclude an institution from proceeding under its established policies, rules and regulations for the internal administrative discipline of its staff and students, provided that where:

(a) a student makes a Sexual Harassment Complaint against an educator, an institution's Independent Sexual Harassment Investigative Committee established under this Bill shall investigate, determine and render a final decision on the merits of the complaint in line with the provisions of this Bill. In determining a complaint of sexual harassment, the provisions of this Bill shall supersede any existing policies, rules or regulations for internal administrative discipline of its staff and students;

(b) an Independent Sexual Harassment Investigative Committee established under this Bill has concluded its Investigative proceedings and rendered a final decision, such proceedings or decision shall not operate to bar or prevent criminal prosecution or civil proceedings in a Court for acts of sexual harassment under this Bill; and

(c) internal administrative or disciplinary sanctions are imposed by a Sexual Harassment Investigative Committee against or on an educator in accordance with the provisions of this Bill before commencement of criminal proceedings, a Court, in passing sentence, shall have regard to the sanctions already imposed on the educator. | Institutional
Disciplinary
Measures |
| 13. | (1) The administrative head of an institution shall establish an Independent Sexual Harassment Prohibition Committee in consultation with the highest management body of the institution. | Independent
Sexual
Harassment |

(2) The membership of the Independent Sexual Harassment Investigative Committee shall be seven (7), staff members and representatives of the Student Union Government of the institution, including a Chairperson who shall not be less than the rank of a Senior Lecturer or a Deputy Director in the Federal Civil Service and a Secretary who shall not be less than the rank of a Lecturer or an Assistant Director in the Federal Civil Service.

(3) The membership of an Independent Sexual Harassment Investigative Committee shall at all times consist of at least two students, two non-academic staff members and two academic staff members of the institution and shall include at least three (3) females.

(4) In the constitution of an Independent Sexual Harassment Investigative Committee, an administrative head of an institution shall ensure that at least one (1) lawyer is a member of the Committee at any material time, provided that there are lawyers who are staff members of the institution and satisfy the provisions of this Bill in respect of the membership of the Committee.

(5) The administrative head of an institution who fails to comply with the provisions of subsections (1) and (2) of this Section commits an offence and shall be liable on conviction to 2 years or to pay a fine of N5,000,000, or both.

(6) The Independent Sexual Harassment Investigative Committee shall be independent and impartial in all its dealings, proceedings and affairs.

(7) The members of an Independent Sexual Harassment Investigative Committee shall be persons of high moral standing and good reputation.

(8) The Chairperson and Members of the Independent Sexual Harassment Investigative Committee shall hold office for such period, not exceeding two (2) years, from the date of their appointment as may be specified in writing by the administrative head.

(9) Where the Chairperson or any Member of the Independent Sexual Harassment Investigative Committee –

- (a) contravenes the provisions of this Bill; or
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

the Chairperson or such a Member, as the case may be, shall be removed from the Committee by an institution's administrative head with the approval of an institution's highest management body and the vacancy so created or any casual vacancy shall be filled by the administrative head in consultation with the institution's highest management body.

(10) The quorum of the Independent Sexual Harassment Prohibition Committee shall be five (5) members.

(11) Members present at the meeting of the Committee shall select an ad-hoc Chairperson and/or Secretary for the purpose of hearing the complaint brought before it if the substantive Chairperson and/or Secretary are absent.

(12) The Independent Sexual Harassment Investigative Committee shall conduct its proceedings with utmost thoroughness, fairness and in compliance with the rules of natural justice, and exercise its discretion judiciously and fairly with regards to facts, evidence and the number of

witnesses that may be allowed to testify during its proceedings.

(13) Decisions of the Independent Sexual Harassment Investigative Committee shall be by a simple majority; rendered in writing and read openly to the parties by the Chairperson of the Committee.

(14) All decisions, including the final decision, of the Independent Sexual Harassment Investigative Committee shall be signed by all members of the Committee who participated in the inquiry and sealed/stamped by the Secretary with the Committee's seal or stamp which shall be kept in the custody of the Secretary.

(15) The Secretary of the Independent Sexual Harassment Investigative Committee shall communicate the final decision of the Committee in writing and within seven (7) working days of giving the decision to all parties to a sexual harassment complaint, whether they participated in the Committee's proceedings or not.

(16) The Secretary of the Independent Sexual Harassment Investigative Committee shall issue sealed/stamped certified true copies of the Committee's decisions, including its final decisions, in respect of sexual harassment complaints to any person, including parties in any of its proceedings within seven (7) working days of giving such a decision, provided that the person shall apply for the certified true copies of the decision and pay such reasonable fees to be prescribed by the Committee's Chairperson and remitted to the institution by the Secretary.

(17) The Secretary of an Independent Sexual Harassment Investigative Committee who wilfully fails to comply with the provisions of subsections (14) or (15) of this Section of this Bill commits an offence and shall be liable on conviction to imprisonment for six (6) months or a maximum fine of N1,000,000, or both.

(18) Subject to approval by the highest management body of an institution, an administrative head shall provide such resources, funding, facilities, materials and support that are reasonably required for the Independent Sexual Harassment Investigative Committee to carry out its functions under this Bill.

(19) The Chairperson of every Independent Sexual Harassment Investigative Committee shall make and submit an annual report on sexual harassment complaints received and actions taken on them to the highest management body of the institution.

(20) Except otherwise stated in this Bill, a person who wilfully contravenes the provisions of the Bill or fails to perform an obligation under the Bill commits an offence and shall be liable on conviction to imprisonment for twelve (12) months or a maximum fine of N2,000,000, or both.

(21) A member of the Independent Sexual Harassment Investigative Committee shall not be removed from the Committee, except in accordance with the provision of sub-section (9) of this Section or by an order of Court.

(22) The Independent Sexual Harassment Investigative Committee shall not be dissolved, suspended or rendered redundant or inoperative by an administrative head or any person on any ground whatsoever, except by an order of the Court.

14. (1) Where a student complains of sexual harassment, he or she shall submit a written Sexual Harassment Complaint to the administrative head of the institution where the complaint arose and shall specify the name and department, office or home address of the educator who is alleged to have committed an offence under this Bill.

Institutional
Disciplinary
Procedure

(2) The complaint mentioned in sub-section (1) of this Section may be made by the student, personally or by the student's representative who may be the student's relative, guardian, or lawyer, or any person who has interest in the wellbeing of the student.

(3) Upon receipt of a Sexual Harassment complaint, the administrative head, shall, within fourteen (14) working days, refer or transmit the Sexual Harassment complaints to the Independent Sexual Harassment Investigative Committee for the purpose of investigation, determination and final decision.

(4) Upon receipt of a Sexual Harassment Complaint, an Independent Sexual Harassment Investigative Committee shall take immediate steps to investigate, determine and reach a final written decision on the complaint within 45 working days from the date of receipt of the complaint from the administrative head.

(5) Where the complaint of a student is proved or made out, the Independent Sexual Harassment Investigative Committee shall take the circumstances of the proven complaint into account and recommend any of the following sanctions to both the administrative head and the highest management body of the institution for implementation:

- (a) the prosecution or dismissal of the educator and reasons for the dismissal shall be stated in writing and given to all the parties; or
- (b) a reduction in the rank of the educator and reasons for the reduction shall be stated in writing and given to all the parties; or
- (c) ensure appropriate restitution for the student; or

(6) Where after the expiration of 14 days the administrative head fails or neglects to refer or transmit the sexual harassment complaints, pursuant to sub-section (3) of this section, the Independent Sexual Harassment Investigative Committee shall proceed to take action on the copy of the Sexual Harassment complaints submitted to its Secretary under section 9 of this Bill, as provided in subsections (4) and (5) of this section.

- 15. An educator or a student shall be entitled to apply to a High Court for judicial review of the final decision of the Independent Sexual Harassment Investigative Committee, if the educator or student is dissatisfied with that decision or part thereof, an application for judicial review under this section may be consolidated with any civil proceedings commenced on behalf of the affected student, pursuant to the provisions of this Bill. Judicial Review
- 16. Where before the commencement of criminal proceedings for sexual harassment under this Bill, a student or his or her representative makes a sexual harassment complaint to the administrative head of an institution against an educator, it shall be an offence, if the administrative head wilfully fails or neglects to refer the complaint to the institution's Independent Sexual Harassment Investigative Committee within Fourteen (14) working days of receiving the complaint from the student. Criminal liability of Administrative Head
- 17. An administrative head who commits the offence under Section 16 of this Bill shall, upon conviction, be liable to pay a fine of N5, 000,000.00. Penalty for Failure of Administration Head to Set up Independent Sexual Harassment Investigative Committee
- 18. Where at the completion of an investigation into a Sexual Harassment Complaint, an Independent Sexual Harassment Investigative Committee finds or determines in its final decision that the complaint is false and malicious, the Committee shall, recommend sanctions to the administrative head against the student who made the complaint, which may include suspension or expulsion of the Student. Liability for false Complaint

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| 19. | An administrative head shall implement every recommendation made by the Independent Sexual Harassment Investigative Committee within 7 working days of the Committee's final decision. | Implementation of Recommendation of Independent Sexual Harassment Investigation Committee |
| 20. | Where criminal proceedings and appeals are commenced and concluded under the provisions of this Bill and the educator is discharged and acquitted of the charge on the ground that the allegation was false, a disciplinary action may be taken against the student by the administrative head in line with the internal disciplinary procedure of the Institution, which may include but not restricted to expulsion from the institution. | Remedy on grounds of False Allegation |
| 21. | The administrative head of an institution shall ensure that a student who makes a sexual harassment complaint pursuant to this Bill is adequately protected and not subjected to any form of victimization by the educator who is complained against or any other educator or person within the institution or in another institution. | Protection of Students from Victimization |
| 22. | Any educator or person in an institution where sexual harassment is alleged or in another institution or any place whatsoever, who victimizes a student or any person in respect of a sexual harassment complaint under this Bill, shall be liable to the same criminal sanctions, disciplinary punishment or damages as the educator whom the student originally complained against. | Penalty for Victimization of Students in Respect of Complaint |
| 23. | For the purpose of commencing any civil proceedings in court for breach of fiduciary duty of care or any criminal proceedings against an educator under this Bill, the limitation period for commencing actions against a public officer stipulated in the Public Officers Protection laws or any other law limiting the time of commencement of proceedings against a public officer in force in Nigeria or any part thereof, shall not be applicable. | Public Officers Protection Laws not Applicable in the Commencement of Proceedings for Breach of Fiduciary Duty of Care |
| 24. | In this Bill – | Interpretation |

"administrative head" means a vice chancellor of a university, a rector of a Polytechnic/Monotechnic, a provost of a college of education or any officer who is the chief executive officer of any tertiary academic institution or any other person acting in that capacity.

"attorney-general" means Attorney-General of the Federation or Attorney General of a State.

"committee" means Independent Sexual Harassment Investigative Committee

"court" means a Magistrate Court, High Court of a State or of the Federal Capital Territory and the Federal High Court.

"educator" means every employee of a tertiary educational institution including academic and non-academic staff, or a faculty or non-faculty member of a tertiary educational institution including a professor, lecturer, graduate assistant, post-doctoral fellow or associate serving as a full-time or part-time instructor or a teaching fellow in similar institutional roles who teaches, educates or trains students or who provides professional educational services; or a staff or member of any tertiary educational institution who may have authority over or a mentoring relationship with any student and also includes, coaches, supervisors of student employees, advisors and directors of student organizations, students' residential fellows, and persons who advise, mentor, or evaluate students or any person who oversees any aspect of any student's academic work.

"fiduciary duty" means an inviolable duty of care founded on honourable human behaviour, obligation of good faith, honesty, and respect for human dignity and rights owed to a student by an educator on the basis of a unique relationship of authority, dependency and trust by which an

educator exercises direct supervisory responsibilities or superiority over a student.

“institution” means any public or private tertiary or post-secondary educational institution in Nigeria and this includes any university, polytechnic, monotechnic, or college of education.

“relationship of authority, dependency and trust” means a relationship between an educator and a student where the educator exercises or is reasonably expected to exercise direct or indirect supervisory responsibilities over the student; a relationship that forbids all forms of sexual coercion or sexual consensus, including amorous relationships that jeopardizes or likely to jeopardize the integrity of the educational process or impairs the learning environment through conflict of interest.

“Sexual harassment” includes:

(a) any unwelcome sexual attention from an educator who knows or ought reasonably to know that such attention is unwelcome to the student;

(b) any unwelcome implicit or explicit behaviour, suggestions, messages or remarks of a sexual nature that have effect of offending, intimidating or humiliating the student or a related person in circumstances which a reasonable person having regard to all the circumstances would have anticipated that the student or such related person would be offended, intimidated or humiliated;

(c) any implied or expressed promise of reward by an educator to a student or related person for complying with a sexually oriented request or demand;

(d) any implied or expressed threat of reprisal or actual reprisal from an educator to a student or related person for refusal to comply with a sexually oriented request or demand;

(e) a single incident of sexual harassment defined in paragraphs (a) to (d) above, constitutes harassment.

“sexual intercourse” means penetration of a sexual nature of the vagina or anus or mouth of the student by the penis or mouth or finger of the educator or any instrument or toy by the educator and for this purpose, a male student can be sexually harassed by a female or male educator;

“student” refers to all persons enrolled in any or all educational and training programmes of a tertiary educational institution or post-secondary institution, and this includes persons seeking admission to study in any tertiary educational institution or post-secondary institution;

“Supervision” means course teaching, training, examining, grading, advising, counselling, and includes any other form of guidance of a student on any academic or non-academic matter.

25. This Bill may be cited as the Sexual Harassment of Students in Tertiary Educational Institutions (Prohibition) Bill, 2020. Citation

EXPLANATORY MEMORANDUM

This Bill seeks to make comprehensive provisions for the Prohibition of Sexual Harassment of Students by Educators in Tertiary Institutions to ensure ethical standards in the educational sector and for Related Matters.

THIS BILL WAS PASSED BY THE SENATE ON TUESDAY, 7TH JULY, 2020


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President,
Senate of the Federal Republic of Nigeria


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Clerk,
Senate of the Federal Republic of Nigeria

