

A BILL

FOR

AN ACT TO MAKE PROVISION FOR THE PROHIBITION OF SEXUAL HARASSMENT OF STUDENTS BY EDUCATORS IN TERTIARY EDUCATIONAL INSTITUTIONS, AND FOR MATTERS CONNECTED THEREWITH, 2016

Sponsored by Senator Ovie A. Omo-Agege

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[] Commencement

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

- 1 1. This Act may be cited as the Sexual Harassment in Tertiary Citation
- 2 Educational Institutions Prohibition Bill, 2016.

Definition of
Terms

- 1 **2. In this Act, unless the context indicates otherwise:**
- 2 **"administrative head" means the vice chancellor of a university, rector of a**
- 3 **Polytechnic/Monotechnic or a provost of a college of education or any officer**
- 4 **who is the chief executive officer of any tertiary academic institution or an any**
- 5 **person acting in that capacity;**
- 6 **"Attorney-general" means Attorney-General of the Federation or Attorney-**
- 7 **General of a State;**
- 8 **"court" means a High Court of a State or of the Federal Capital Territory and the**
- 9 **Federal High Court;**
- 10 **"educator" means a faculty or non-faculty member of a tertiary educational**
- 11 **institution including a professor, lecturer, graduate assistant, post-doctoral**
- 12 **fellow or associate serving as a full-time or part-time instructor or a teaching**
- 13 **fellow in similar institutional roles who teaches, educates or trains students or**
- 14 **who provides professional educational services; or a staff or member of any**
- 15 **tertiary educational institution who may have authority over or a mentoring**
- 16 **relationship with any student and also includes, coaches, supervisors of student**
- 17 **employees, advisors and directors of student organizations, students'**
- 18 **residential fellows, and persons who advise, mentor, or evaluate students or**
- 19 **any person who oversees any aspect of any student's academic work;**
- 20 **"institution" means any public or private tertiary or post-secondary educational**
- 21 **institution in Nigeria and this includes any university, polytechnic,**
- 22 **monotechnic, or college of education;**
- 23 **"relationship of authority, dependency and trust" means a relationship between**
- 24 **an educator and a student where the educator exercises or is reasonably**
- 25 **expected to exercise direct or indirect supervisory responsibilities over the**
- 26 **student; a relationship that forbids all forms of sexual coercion or sexual**
- 27 **consensus, including amorous relationships that jeopardizes or likely to**
- 28 **jeopardize the integrity of the educational process or impairs the learning**
- 29 **environment through conflict of interest;**
- 30 **"Sexual harassment" includes:**

1 (a) Sexual intercourse between an educator and a student where the
2 student is below the age of 18 years or is an imbecile or of generally low
3 mental capacity or physically challenged;

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

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

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

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

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

22 "student" refers to any person enrolled in any educational or training
23 programs of a tertiary educational institution or post-secondary institution,
24 and this includes persons seeking admission to study in any tertiary
25 educational institution or post-secondary institution;

26 "supervision" means course teaching, training, examining, grading,
27 advising, counseling, and includes any other form of guidance of a student
28 on any academic or non-academic matter.

29 3. A relationship of authority, dependency and trust shall be
30 construed to exist between an educator and a student in an institution if:

Relationship of
Trust

1 (1) the educator is directly or indirectly involved in the full-time or
2 part-time academic training, teaching, advising, supervising and education of
3 the student;

4 (2) the educator has direct or indirect academic or non-academic
5 authority over the student; or

6 (3) the student depends, directly or indirectly, on the educator in any
7 manner whatsoever.

Offences

8 **4.** An educator shall be guilty of committing an offence of sexual
9 harassment against a student if he/she:

10 (1) has sexual intercourse with a student or demands for sex from a
11 student or a prospective student as a condition to study in an institution; or

12 (2) has sexual intercourse with a student or demands for sex from a
13 student or a prospective student as a condition to the giving of a passing grade
14 or the granting of honours and scholarships, or the payment of stipend,
15 allowance or other benefits, privileges or considerations;

16 (3) solicits sex from or makes sexual advances towards a student
17 when the sexual solicitation or sexual advances result in an intimidating,
18 hostile or offensive environment for the student;

19 (4) directs or induces another person to commit any act of sexual
20 harassment under this Act, or cooperates in the commission of sexual
21 harassment by another person without which it would not have been
22 committed;

23 (5) grabs, hugs, rubs or strokes or touches or pinches the breasts or
24 hair or lips or hips or buttocks or any other sensual part of the body of a student;

25 (6) displays, gives or sends by hand or courier or electronic or any
26 other means naked or sexually explicit pictures or videos or sex related objects
27 to a student; or

28 (7) whistles or winks at a student or screams or exclaims or jokes or
29 makes sexually complimentary or uncomplimentary remarks about a student's
30 physique.

1 **5.** For the purposes of the offences created in Section 4 of this Act,
2 it shall be a defence that the educator and the student are legally married.

3 **6.** It shall not be a defence to any offence created in Section 4 of
4 this Act that a student consented to the offence.

5 **7.** A complaint for the offence of sexual harassment may be made
6 by a student or by any other person to the Nigerian Police or to the Attorney-
7 General who shall take necessary measures to commence criminal
8 proceedings against the educator. Commencement
of Criminal
Proceedings

9 **8.** Any person who commits any of the acts specified in Section 4 Penalty
10 of this Act is guilty of an offence and shall, on conviction, be sentenced to
11 imprisonment of up to 5 years but not less than 2 years and there shall be no
12 option of a fine.

13 **9.** Notwithstanding the provisions of Sections 4, 7 and 8 of this Civil action for
breach of
Fiduciary Duty
14 Act or any other part of this Act, the right of a student who alleges sexual
15 harassment by an educator to commence and maintain a civil action in Court
16 for breach of fiduciary duty contrary to Section 3 of this Act is preserved.

17 **10.** The standard of proof in any proceedings for breach of
18 fiduciary duty under Section 3 of this Act shall be the same standard
19 applicable in all civil proceedings.

20 **11.** Nothing shall preclude an institution from proceeding under Institutional
Disciplinary
Measures
21 the institution's established Rules and Regulations for the internal
22 administrative discipline of staff in related circumstances, provided that:

23 **(a)** Where criminal proceedings under this Act have been
24 commenced and pending in a Court in respect of a complaint of sexual
25 harassment, no disciplinary body in an institution shall have the power to
26 commence or to continue disciplinary proceedings in respect of acts to
27 which this Act relates;

28 **(b)** Where internal disciplinary proceedings have been concluded
29 and appropriate sanctions imposed, such administrative or disciplinary
30 sanctions shall not be a bar to prosecution in a court under this Act for acts of

Institutional
Disciplinary
Procedure

1 sexual harassment;

2 (c) Where internal administrative or disciplinary sanctions have been
3 imposed before commencement of criminal proceedings, a court, in passing
4 sentence, shall have regard to the sanctions already imposed on the educator.

5 **12.-(1)** Where a student complains of sexual harassment, he or she
6 shall submit a written Sexual Harassment Complaint to the administrative head
7 of the institution where the complaint arose and shall specify the name and
8 address of the educator who is alleged to have committed sexual harassment as
9 defined under Section 4 of this Act.

10 (2) The complaint mentioned in sub-section (1) of this section of this
11 Act may be made by the student in person or by the student's relative, guardian,
12 or lawyer, or any person who has sufficient interest in the wellbeing of the
13 student.

14 (3) Upon receipt of a Sexual Harassment complaint by the
15 administrative head, he shall, within seven (7) working days, constitute a panel
16 to be known and called Sexual Harassment Prohibition Committee to
17 determine sexual harassment complaints under the provisions of this Act.

18 (4) Where the complaint is against an academic staff, the Sexual
19 Harassment Prohibition Committee shall be headed by a non-academic staff
20 who shall not be less than the rank of an Assistant Director or its equivalent
21 with membership which shall include a representative of the student body and a
22 representative of the academic staff of the institution.

23 (5) Where the complaint is against a non-academic staff, the Sexual
24 Harassment Prohibition Committee shall be headed by an academic staff who
25 shall not be less than the rank of a Senior Lecturer or its equivalent with
26 membership which shall include a representative of the student body and a
27 representative of the administrative or non-academic staff of the institution.

28 (6) The membership of the Sexual Harassment Prohibition
29 Committee shall be five (5) persons, including a Chairman who shall direct the
30 Committee's proceedings.

1 (7) Any 3 (three) members of the Sexual Harassment Prohibition
2 Committee, including the Chairman, shall form a quorum.

3 (8) A Sexual Harassment Prohibition Committee shall conduct its
4 proceedings with utmost fairness to the parties and compliance with the
5 rules of natural justice.

6 (9) A Sexual Harassment Prohibition Committee shall judiciously
7 and fairly exercise its discretion with regards to the number of witnesses that
8 may be allowed to testify during its proceedings.

9 (10) The decision of the Sexual Harassment Prohibition
10 Committee which shall be in writing shall be by a simple majority.

11 (11) Where the complaint of a student is made out, the Sexual
12 Harassment Prohibition Committee may recommend to the administrative
13 head the dismissal of the educator or any other appropriate sanction such as
14 reduction in rank of the educator concerned.

15 (12) Where it is shown at the conclusion of the Sexual Harassment
16 Prohibition Committee's proceedings that the complaint was false or was
17 made with malice, the committee may recommend to the administrative
18 head appropriate sanction against the student which may include dismissal
19 of the student from the institution or other appropriate sanction which may
20 include suspension for up to one year.

21 (13) A Sexual Harassment Prohibition Committee shall deliver its
22 decision in writing within thirty (30) days from the date of its inauguration
23 by the administrative head.

24 **13.** An educator or a student shall be entitled to apply to a High Judicial Review
25 Court for judicial review of the decision of a Sexual Harassment Prohibition
26 Committee if the educator or student is dissatisfied with that decision or part
27 thereof.

28 **14.** Where before the commencement of criminal proceeding Criminal
29 under this Act for sexual harassment, a student has made a formal complaint Liability of
30 in writing to the administrative head of the institution complaining of sexual Administrative
Head

1 harassment against an educator, it shall be an offence for the administrative
2 head to fail or neglect to set up a Sexual Harassment Prohibition Committee to
3 look into the complaint within seven (7) working days of receipt of the
4 complaint.

5 **15.** An administrative head who is guilty under Section 13 of this Act
6 shall, upon conviction, be sentenced to not less than two (2) years
7 imprisonment or a fine of not less than N2,000,000.00) or both.

Liability for false
Complaint

8 **16.** Where a complaint has been made to an administrative head and a
9 Sexual Harassment Prohibition Committee has been set up, if after completion
10 of its proceedings, the Committee determined that the complaint is false, the
11 Committee may, recommend sanctions to the administrative head against the
12 student, including dismissal of the student from the institution.

13 **17.** An administrative head shall implement the recommendations of
14 a Sexual Harassment Prohibition Committee if, after seven (7) working days of
15 the decision or recommendations of a Sexual Harassment Prohibition
16 Committee, an educator or student did not bring an action in Court for a judicial
17 review of the recommendations.

18 **18.** Where criminal proceedings are commenced and concluded
19 under Section 7 of this Act and the educator is discharged and acquitted of the
20 charge on the ground not only that the prosecution failed to prove its case but
21 that the allegation was false, the Attorney-General may recommend to the
22 administrative head sanctions to be meted out to the student, including
23 dismissal from the institution.

Protection of
Students from
Victimization

24 **19.** The administrative head of an institution shall ensure that a
student who makes a sexual harassment complaint pursuant to this Act is
adequately protected and not subjected to any form of victimization by the
educator who is complained against or any other educator within the institution
or in another institution during the pendency of any civil, criminal or internal
institutional disciplinary proceedings initiated under this Act.

20. An educator in the institution in question or in another institution

1 who victimizes a student in respect of any complaint under this Act shall be
2 liable to the same criminal sanctions, disciplinary punishment or damages as
 the educator whom the student originally complained against.

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for the Prohibition of Sexual Harassment of Students by Educators in Tertiary Educational Institutions, and for related matters.