

107TH CONGRESS  
1ST SESSION

# S. 1357

To provide for an examination of how schools are implementing the policy guidance of the Department of Education's Office for Civil Rights relating to sexual harassment directed against gay, lesbian, bisexual, and transgender students.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. WELLSTONE (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for an examination of how schools are implementing the policy guidance of the Department of Education's Office for Civil Rights relating to sexual harassment directed against gay, lesbian, bisexual, and transgender students.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS AND PURPOSE.**

4 (a) FINDINGS.—Congress makes the following find-  
5 ings:

6 (1) Although title IX of the Education Amend-  
7 ments of 1972 (20 U.S.C. 1681 et seq.) does not

1 prohibit discrimination on the basis of sexual ori-  
2 entation, one section of the Department of Edu-  
3 cation’s Office for Civil Rights’ 1997 final policy  
4 guidance, entitled “Sexual Harassment Guidance:  
5 Harassment of Students by School Employees,  
6 Other Students, or Third Parties” published in the  
7 Federal Register on March 13, 1997, 62 Fed. Reg.  
8 12034, included a determination that “sexual har-  
9 assment directed at gay or lesbian students that is  
10 sufficiently serious to limit or deny a student’s abil-  
11 ity to participate in or benefit from the school’s pro-  
12 gram constitutes sexual harassment prohibited by  
13 title IX under the circumstances described in this  
14 guidance.”. This language was unchanged in a 2001  
15 update of the policy guidance entitled “Revised Sex-  
16 ual Harassment Guidance: Harassment of Students  
17 by School Employees, Other Students, or Third Par-  
18 ties” for which a notice of availability was published  
19 in the Federal Register on January 19, 2001, 66  
20 Fed. Reg. 5512.

21 (2) That section of the 2001 “Revised Sexual  
22 Harassment Guidance: Harassment of Students by  
23 School Employees, Other Students, or Third Par-  
24 ties” went on to state: “Though beyond the scope of  
25 this guidance, gender-based harassment, which may

1 include acts of verbal, nonverbal, or physical aggress-  
2 sion, intimidation, or hostility based on sex or sex-  
3 stereotyping, but not involving conduct of a sexual  
4 nature, is also a form of sex discrimination to which  
5 a school must respond, if it rises to the level that  
6 denies or limits a student’s ability to participate in  
7 or benefit from the educational program. . . . A school  
8 must respond to such harassment in accordance with  
9 the standards and procedures described in this guid-  
10 ance.”.

11 (3) There is evidence that brings into question  
12 the degree to which the policy guidance on sexual  
13 harassment against gay, lesbian, bisexual, and  
14 transgender students is being implemented. For ex-  
15 ample, a 7-State study by Human Rights Watch of  
16 the abuses suffered by gay, lesbian, bisexual, and  
17 transgender students at the hands of their peers,  
18 published in “Hatred in the Hallways: Violence and  
19 Discrimination Against Lesbian, Gay, Bisexual, and  
20 Transgender Students in U.S. Schools” found that  
21 such students were often the victims of abuses.

22 (4) A 2000 study by the American Association  
23 of University Women focused on implementation of  
24 title IX of the Education Amendments of 1972 more  
25 generally, and the findings of that study, published

1 in “A License for Bias: Sex Discrimination, Schools,  
2 and Title IX”, included a finding that many schools  
3 and universities have not established procedures for  
4 handling title IX-based grievances.

5 (5) The 2001 report of the Surgeon General,  
6 entitled “Surgeon General’s Call to Action to Pro-  
7 mote Sexual Health and Responsible Sexual Behav-  
8 ior” notes that “antihomosexual attitudes are associ-  
9 ated with psychological distress for homosexual per-  
10 sons and may have a negative impact on mental  
11 health, including a greater incidence of depression  
12 and suicide, lower self-acceptance and a greater like-  
13 lihood of hiding sexual orientation.”. It goes on to  
14 report: “Averaged over two dozen studies, 80 per-  
15 cent of gay men and lesbians had experienced verbal  
16 or physical harassment on the basis of their orienta-  
17 tion, 45 percent had been threatened with violence,  
18 and 17 percent had experienced a physical attack.”.

19 (b) PURPOSE.—The purpose of this Act is to provide  
20 for an examination of how secondary schools are imple-  
21 menting the policy guidance of the Department of Edu-  
22 cation’s Office for Civil Rights related to sexual harass-  
23 ment directed against gay, lesbian, bisexual, and  
24 transgender students.

1 **SEC. 2. STUDY OF HOW EDUCATIONAL INSTITUTIONS ARE**  
2 **IMPLEMENTING THE POLICY GUIDANCE RE-**  
3 **LATING TO SEXUAL HARASSMENT.**

4 (a) IN GENERAL.—The United States Commission on  
5 Civil Rights (hereafter in this Act referred to as the “Com-  
6 mission”) shall conduct a study of the 1997 final policy  
7 guidance entitled “Sexual Harassment Guidance: Harass-  
8 ment of Students by School Employees, Other Students,  
9 or Third Parties” published in the Federal Register on  
10 March 13, 1997, 62 Fed. Reg. 12034, and the application  
11 of such policy guidance.

12 (b) SCOPE.—

13 (1) NATIONWIDE.—The study shall be con-  
14 ducted nationwide.

15 (2) ELEMENTS OF STUDY.—The study shall ex-  
16 amine, at a minimum, with regard to secondary  
17 schools—

18 (A) the extent to which there exists sexual  
19 harassment against gay and lesbian students in  
20 secondary schools, using the applicable stand-  
21 ards in the policy guidance of the Office for  
22 Civil Rights described in subsection (a);

23 (B) the extent to which there exists gen-  
24 der-based harassment that negatively affects  
25 the learning environment of gay, lesbian, bisex-  
26 ual, and transgender students in secondary

1 schools, applying the definition of such gender-  
2 based harassment contained in the 2001 update  
3 of the policy guidance entitled “Revised Sexual  
4 Harassment Guidance: Harassment of Students  
5 by School Employees, Other Students, or Third  
6 Parties” for which a notice of availability was  
7 published in the Federal Register on January  
8 19, 2001, 66 Fed. Reg. 5512;

9 (C) the level of awareness by school offi-  
10 cials and students of the policy guidance de-  
11 scribed in subsection (a); and

12 (D) the level of implementation of such  
13 policy guidance.

14 (c) DEFINITION.—In this section, the term “sec-  
15 ondary school” has the meaning given the term in section  
16 14101 of the Elementary and Secondary Education Act  
17 of 1965 (20 U.S.C. 8801).

18 **SEC. 3. REPORTING OF FINDINGS.**

19 (a) IN GENERAL.—Not later than 18 months after  
20 the date of enactment of this Act, the Commission shall  
21 transmit to Congress and to the Secretary of Education—

22 (1) a report of the Commission’s findings under  
23 section 2; and

1           (2) any policy recommendations developed by  
2           the Commission based upon the study carried out  
3           under section 2.

4           (b) DISSEMINATION.—The report and recommenda-  
5           tions shall be disseminated, in a manner that is easily un-  
6           derstandable, to the public by means that include the  
7           Internet.

8           **SEC. 4. COOPERATION OF FEDERAL AGENCIES.**

9           (a) IN GENERAL.—The head of each Federal depart-  
10          ment or agency shall cooperate in all respects with the  
11          Commission with respect to the study under section 2.

12          (b) INFORMATION.—The head of each Federal de-  
13          partment or agency shall provide to the Commission, to  
14          the extent permitted by law, such data, reports, and docu-  
15          ments concerning the subject matter of such study as the  
16          Commission may request.

17          (c) DEFINITION.—In this section, the term “Federal  
18          department or agency” means any agency as defined in  
19          section 551 of title 5, United States Code.

20          **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

21          (a) IN GENERAL.—There are authorized to be appro-  
22          priated to carry out this Act, such sums as may be nec-  
23          essary for fiscal year 2002.

1           (b) AVAILABILITY.—Any amount appropriated under  
2 the authority of subsection (a) shall remain available until  
3 expended.

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