



# Title IX Refresher 2022

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**August 30, 2022**

Kate Hildebrandt, she/her

Civil Rights and Title IX Specialist, Oregon Department of Education

[katherine.hildebrandt@ode.oregon.gov](mailto:katherine.hildebrandt@ode.oregon.gov)

**This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.**

**ODE is available to support with individual technical assistance following this training.**

# About Us

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- The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;
- Together, we serve over 560,907\* K-12 students and support 75,807\* school employees, including teachers, administrators and classified staff;
- We believe every student should have access to a high-quality, well-rounded learning experience; and
- We work to ensure every student in Oregon graduates with a plan for their future.

\*Data from October 2021

# Who We Serve

**560,907 Students**

More than 200 languages spoken

**75,807 Educators**  
Staff of Color

- 11.4% of Teachers
- 12.3% of Administrators
- 16.4% of Counselors
- 21.1% of Educational Assistants

**197 Districts**

1,257 Schools

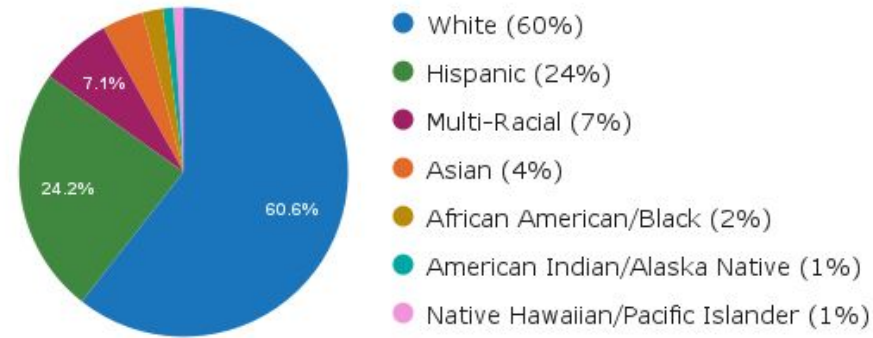
133 Charter Schools

19 Education Service Districts

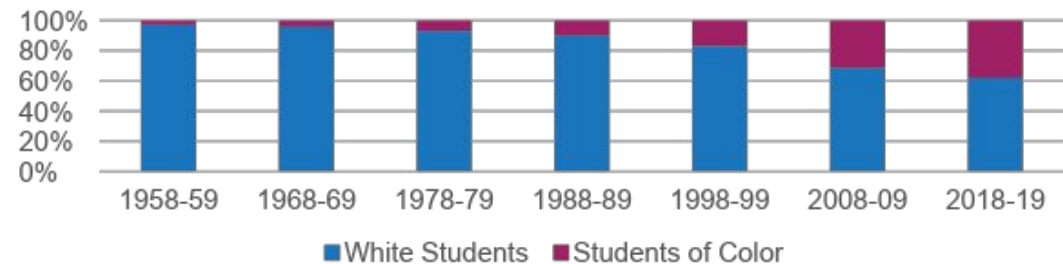
Oregon Department of Education, 2020-21 School Year

## Student Diversity

- Economically Disadvantaged: 53%
- Ever English Learners: 18%
- Homeless: 3%
- Lesbian/Gay /Bisexual: 12.6%
- Mobile Students: 11%
- Students with Disabilities: 15%



## Rapidly Diversifying Population



# Agenda

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- ★ Review: The Fundamentals of Title IX
- ★ Single-Sex Programs
- ★ Sexual Harassment Refresher
- ★ Sexual Orientation & Gender Identity Discrimination
- ★ 2022 Title IX NPRM

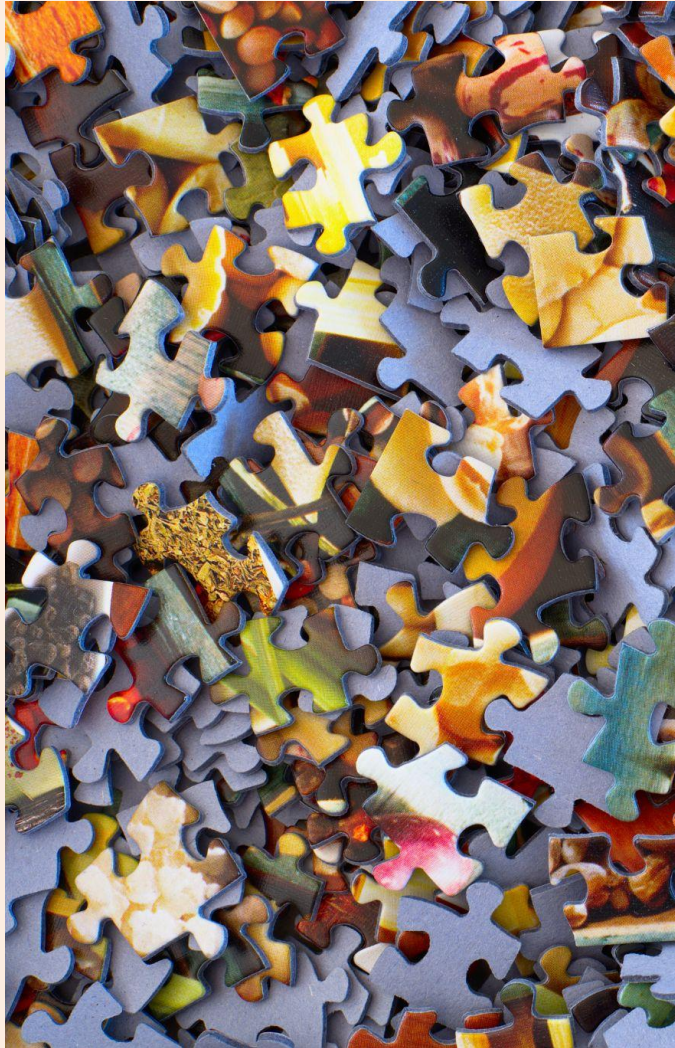
# Who's in the room?

What is your role at your school?

How much knowledge/experience do you have with Title IX?

## **Chat Waterfall:**

When you were a K12 student, what was your favorite thing about school?



# The Fundamentals of Title IX

# Title IX

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*“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.”*



# Key Areas of Title IX Compliance for K-12 Schools

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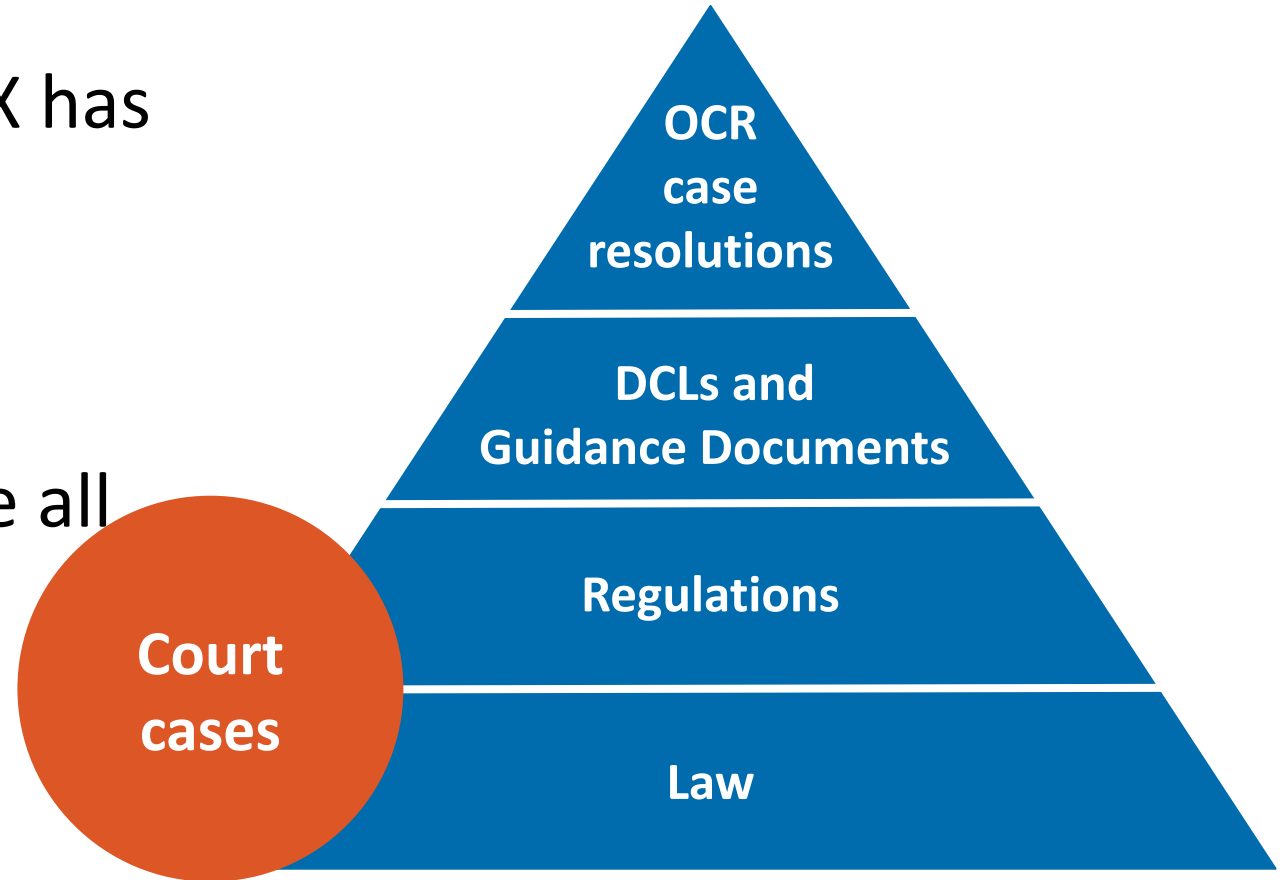
- Title IX Coordinator(s)
- Your policies and procedures
  - Discrimination
  - Employment
  - Complaint processes
- Website
  - Nondiscrimination notice
  - Title IX contacts
- Recordkeeping
- Athletic equity
  - Policies
  - Funding
- Sexual harassment
  - Policies, procedures, and processes
  - Personnel
- Staff training
  - Reporting requirements

# Title IX is an evolving and living law!

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Over the past 50 years, Title IX has evolved and expanded.

The Office of Civil Rights, Congress, and the Courts have all impacted how Title IX is implemented and enforced through:



# What does the Title IX Coordinator do?

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- Ensure the district/school is fully complying with Federal Title IX law, regulations, and guidance
  - Keep track of new law, regulations, and guidance, and update as needed
- Coordinate responses to reports of sex discrimination, including:
  - student and employee reports
  - sexual harassment
  - athletic equity complaints
  - single-sex education
- Keep track of records and data related to Title IX compliance
- Coordinate with other roles/departments
- Monitor overlapping requirements between Title IX and other Federal/state laws

# Notification

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## Who is notified?

- applicants for admission and employment
- students
- parents or legal guardians of elementary and secondary school students
- employees
- unions or professional organizations holding collective bargaining or professional agreements with the recipient

## What information must be shared?

- Title IX Coordinator's name/title, email address, physical address, phone number
- That the district/school does not discriminate
- That discrimination can be reported **verbally** (including in-person or over the phone) or by **writing** (including email, mail, or otherwise)
- About the school's grievance procedures

34 CRF Part 106.8

Title IX Notice of Nondiscrimination:

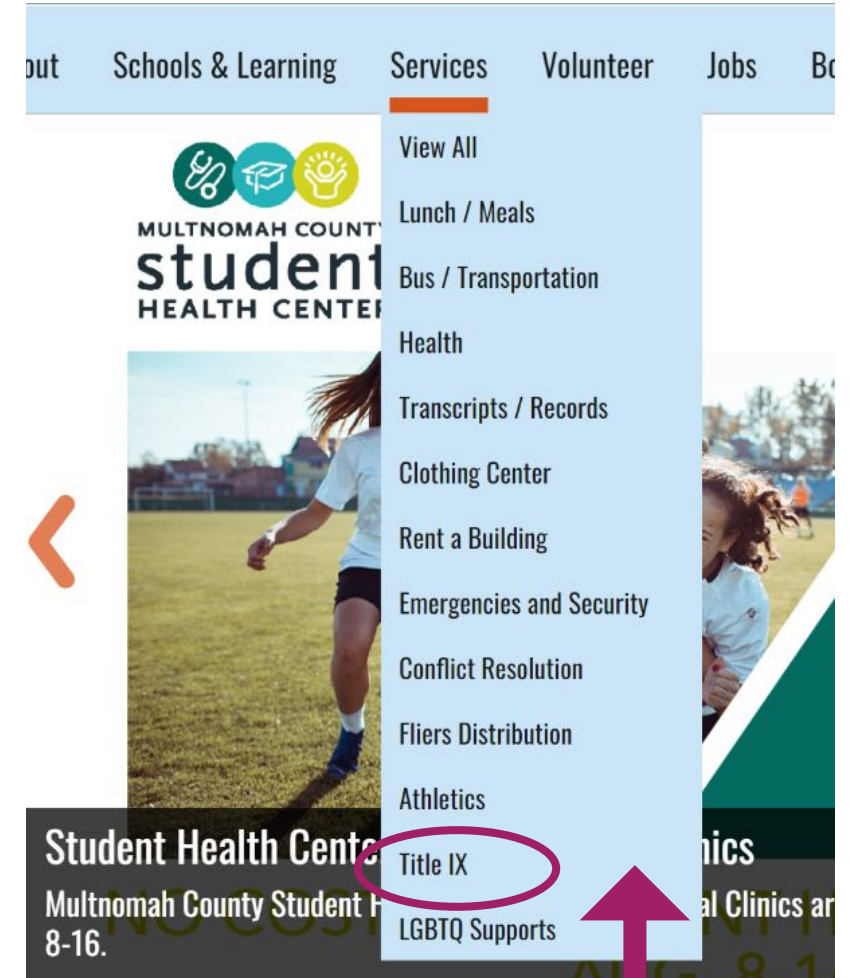
The Siuslaw School District does not discriminate on the basis of race, color, sex, marital status, religion, national origin, age, sexual orientation, or disability in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. For inquiries regarding the non-discrimination policies:

Lisa Utz  
Special Programs Director,  
Siuslaw School District 97J  
541-997-5456

[lutz@siuslaw.k12.or.us](mailto:lutz@siuslaw.k12.or.us)

[Siuslaw Title IX page](#)

[Click here for further information on notice of non-discrimination](#)



website footer appears on the bottom of each page

easily accessible in dropdown menu

A website search for “Title IX” yields accessible information as the top results



**Search**

title+ix ✕ 🔍

42 results

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[Student TITLE IX Resource Flyer 2021.pdf](#)  
<https://4.files.edl.io/7e33/10/29/21/193238-0a3a632b-544f-491d-8169-8c415bed9507.pdf>  
Title IX Coordinator: David Marshall titleix@brookings.k12.or.us www.brookings.k12.or.us/ apps/pages...What is Title IX?...Title IX is a federal civil rights law passed as part of the Education Amendments of 1972...Title IX states that: “No person in the United States shall, on the basis of sex, be excluded from...Who do I contact with a Title IX/Sexual Harassment complaint?”

[File A Complaint - Parent and Student Resources - Brookings-Harbor School District](#)  
[https://www.brookings.k12.or.us/apps/pages/index.jsp?uREC\\_ID=1399057&type=d&pREC\\_ID=1577692](https://www.brookings.k12.or.us/apps/pages/index.jsp?uREC_ID=1399057&type=d&pREC_ID=1577692)  
Title IX Complaints The Brookings-Harbor School District 17C is committed to establishing and maintaining...Title IX is a federal law that was passed in 1972 to ensure that male and female students and employees...The regulations implementing Title IX, published in 1975, prohibit discrimination, exclusion, denial...Title IX states: “No person in the United States shall, on the basis of sex, be excluded from...IX Coordinator: Title IX Coordinator Email(titleix@brookings.k12.or.us) Title IX Resource

# Athletics: Three Analytical Standards

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1. Schools must offer male and female students equal athletic opportunities and effectively accommodate students' athletic interests and abilities.



The “three-part test”

2. Schools must allocate athletic financial assistance equitably.

3. Schools must provide male and female athletes with equal benefits and opportunities.



The “laundry list”

# Athletics: The Three-Part Test

Part 1: Athletic participation opportunities for males and females are substantially proportionate to their respective enrollments;

**OR**

Part 2: The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex;

**OR**

Part 3: The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.







## Athletics: The “Laundry List”

- Equipment and supplies
- Facilities
- Assignment and compensation of coaches
- Support services
- Medical and training facilities
- Scheduling of games and practices
- Travel and Per Diem
- Housing and dining
- Publicity
- Opportunity to receive academic tutoring
- Recruitment

# Athletics: Booster Clubs and Donors

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All athletic funding, equipment, travel, etc. counts towards your Title IX equity, *even if it comes from booster clubs or donors.*

- Some sports will be more popular than others with the community; this creates an unfair advantage for certain teams, even if the “opportunity” to fundraise is provided equally.
- School admin and athletic staff must understand the implications of accepting donations and support, especially if it is targeted and specific

Helpful Resource: [OSAA and ODE webinar series on booster clubs](#)

# Pregnant and Parenting Students

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- Schools cannot exclude pregnant or parents students from activities on the basis on their pregnancy/parenting status
- May only require medical permission if medical permission is required for all physical/emotional conditions
- Students are entitled to leave, either:
  - In alignment with the districts policies relating to temporary disabilities, or
  - In alignment with the recommendation of the student's physician



Oregon Department of Education

# Single-Sex Programs

# Title IX and Single-Sex Programs

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Any program that receives federal dollars must comply with Title IX (prohibit sex discrimination) throughout their **ENTIRE** educational program.

Separating students by sex is only allowable under Title IX under specific circumstances:

- Exception [defined in regulations](#) (i.e., human sexuality, contact sports)
- Specific criteria:
  - meets a specific “important objective” of the school,
  - enrollment is voluntary, AND
  - the school provides a “substantially equal” program for excluded students

# Is this allowable by Title IX?

A group of high school girls approach their PE teacher and ask if the school can add a women's weightlifting course next semester. They complain that the current weightlifting class period is dominated by football players, and that the girls in the class don't get enough help from the teacher because he designs the class for the football team.

★ **Is this allowable by Title IX? Why or why not?**

★ **How should the school district respond for both compliance AND best practice?**

# External Partners: “Significant Assistance”

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External organizations partnering with the school to offer programs may still be a part of the school’s education program (and may be subject to Title IX).

Schools generally cannot provide **significant assistance** to external organizations that exclude students based on sex (i.e., single-sex programs).

Significant assistance takes into account:

- financial support,
- provision of tangible resources (e.g., staff, equipment, and facilities),
- intangible benefits (e.g., recognition and approval),
- whether the school district provides similar privileges and resources to other organizations,
- whether the relationship is occasional and temporary or permanent and long-term

# External Partners: VYSOs

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Schools may partner with [Voluntary Youth Service Organizations](#) and may offer them significant assistance.

*“...**tax-exempt organizations**, the membership of which has **traditionally been limited to persons of one sex** and principally to **persons of less than nineteen years of age**. A voluntary youth service organization also must **facilitate public service opportunities** for its members.”*

In order for an external organization to offer a single-sex program as part of the school's education program:

- They must be a Voluntary Youth Service Organization (VYSO)
- The school must offer a substantially equal program to excluded students



# Example: VYSOs and Significant Assistance

“Empower Girls CBO” is a community-based organization that offers co-curricular programs in schools. The mission of Empower Girls is “to provide educational and empowerment opportunities for girls and their families to make them leaders in their community.”

A district wants to use federal grant funding they received to fund the Empower Girls’ programs in their middle schools.

- ★ **Is this program allowable under Title IX?**
- ★ **What would the district need to do to be in compliance?**

**What messages do our students receive when we advertise programs along the gender binary?**

**What about trans, nonbinary, intersex, and other gender expansive students?**

Students in Oregon may assert nonbinary gender identities, and Oregon allows [three gender fields](#) (M, F, and X) for students; a school that has a “boys” and a “girls” version of a class/activity is not serving all students.

Sometimes a “sex-based participation concern” is actually a problem of discrimination or bias, and could be resolved through an alternative solution.

# Gender-Inclusive Practices: Sex Ed

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- Human sexuality education is an allowable carveout area under Title IX.
- Be mindful of trans, gender expansive, and intersex students in your schools. Separating students by gender puts these students in uncomfortable and sometimes unsafe situations.
- Carefully weigh the needs of your community in your decisions.

If you are allowing gender-separate groups:

- Ensure that all groups receive the same information, including information about all bodies and all genders
- Remember that Title IX's carveout does not cover all comprehensive sex education required by Oregon law; only specific human sexuality lessons are covered.

# Program Areas to Look Out For

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- ★ Community Partnership
  - Recipients of federal funding cannot work with organizations that engage in sex discrimination
- ★ Federal grants and programs
- ★ CTE programs
  - CTE courses may NEVER be offered on a single-sex basis
- ★ STEM education
- ★ Summer programs
- ★ Co-curricular activities - clubs, field trips



# Sexual Harassment Refresher

# Title IX Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

-34 CFR Part 106.30

# Jurisdictional Requirements

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- The conduct must occur within the educational programs or activities offered by the school/district.
  - On school grounds
  - Off school grounds, including: field trips, athletic games, transportation, school fundraising events, etc.
- The conduct must occur within the United States.

# Schools are required to designate, at minimum:

Title IX Coordinator

Investigator

Decision-Maker

Appeals Decision-Maker

The Title IX Coordinator may also serve as the Investigator.

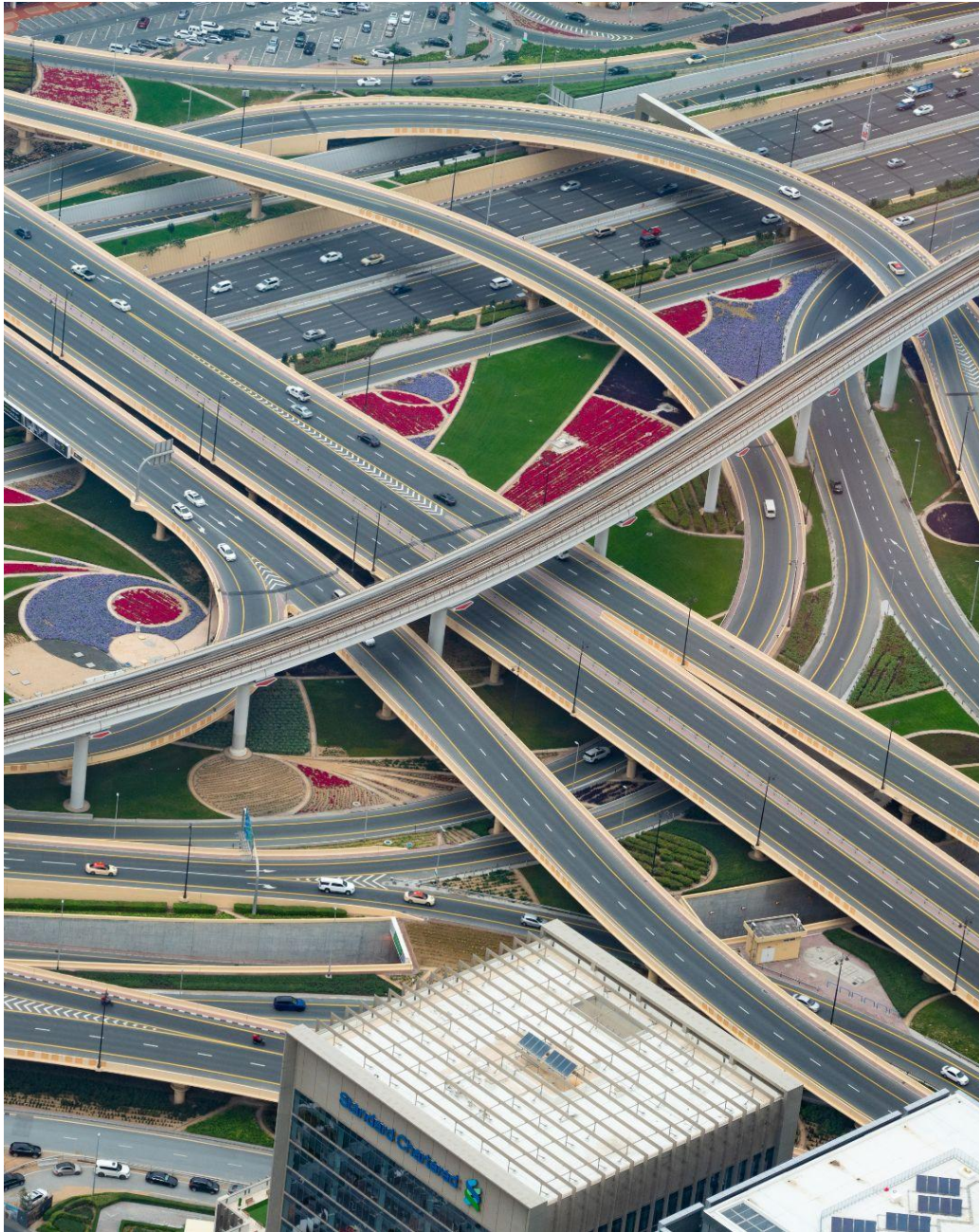
In each case the Investigator, Decision-Maker, and Appeals Decision-Maker must be different people.

The Decision-Maker and Appeals Decision-Maker CANNOT be the Title IX Coordinator.



# Training Requirements

	Title IX Coordinator	Investigator	Decision-Maker	Appeals Decision-Maker	Informal Process Facilitator
Definition of sexual harassment	X	X	X	X	X
Scope of “educational program or activity”	X	X	X	X	X
How to conduct the applicable portions of the grievance process	X	X	X	X	X
Avoiding prejudgment of facts, conflicts of interest, and bias	X	X	X	X	X
How to create a fair investigative report		X			
Any technology used at hearings			X	X	
Issues of relevance for questions and evidence			X	X	



1

Actual Notice and Supportive Measures

2

Formal Complaint

3

Investigation

4

Decision-Making

5

Appeals

6

Sanctions and Remedies

7

Wrap-up and Compliance

# 1

## Actual Notice and Supportive Measures

Whenever any school employee has knowledge of possible sexual harassment, the school is “on notice” and must respond:

- outreach to complainant
- provision of **supportive measures**, which are “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.”
- can engage in emergency removal

Overlap your Oregon-specific processes:

- mandatory reporting
- Oregon sexual harassment law “notification of rights and options”
- bullying and harassment parental notification

## 2 Formal Complaint

Once a formal complaint has been filed, the Title IX grievance process begins.

- Schools must issue a **Notice of Allegations**
- Participants now have the option to opt into an informal process
- Schools may put employees on administrative leave

## 3 Investigation

Investigating the allegations of sexual harassment under Title IX involves:

- Interviewing parties
- Gathering and reviewing evidence
- Writing and Issuing the **Investigation Report**

## 4 Decision-Making

The decision-maker(s) take the evidence from the investigation and:

- Conduct the “modified cross-examination” process
- Independently review the investigation report and evidence
- Determine responsibility and sanctions
- Write and issuing the **Determination of Responsibility**

## 5 Appeals

Appeals must be allowed on procedural irregularity, newly discovered/available evidence, or allegations of bias/conflict of interest.

If an appeal is submitted, the appeals decision-maker(s) will independently review the investigation, determination, and any newly submitted statement and evidence and write the **Appeal Determination.**

## 6 Sanctions and Remedies

Once the results of the grievance process are finalized, the school must implement sanctions and remedies.

- **Sanctions** are disciplinary or other measures imposed on on a respondent found responsible.
- **Remedies** are measures designed to restore educational access for the complainant and remedy any harm caused.

## 7 Wrap-Up and Compliance

The final steps of the process ensure the everything is finalized and the school has met the standards of compliance, including:

- Ensuring confidentiality
- Recordkeeping
- Debriefing and review

# FAQs: Dismissals

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## **MUST** dismiss under Title IX if:

- the conduct in the formal complaint does not constitute sexual harassment
- the conduct did not happen in the educational program or activity of the school
- the conduct did not happen in the United States

## **MAY** dismiss under Title IX if:

- complainant asks to withdraw the complaint
- the respondent is no longer enrolled or employed by the recipient
- “specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

# FAQs: Timeline Requirements

Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.

-34 CFR 106.45(b)(1)(v)

## 3 required time frames:

- When providing notice to the applicable party or witness, must allow **sufficient time** to prepare for the interview.
- When sending evidence and to parties and advisors, must allow **10 days** to review and submit written response.
- When submitting the final investigation report to parties, must allow at least **10 days** to respond before determination of responsibility issued.



# FAQs: Overlap with Law Enforcement

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...the final regulations only permit 'temporary' delays or 'limited' extensions of time frames even for good cause such as concurrent law enforcement activity, this provision does not result in protracted or open-ended investigations in situations where law enforcement's evidence collection (e.g., processing rape kits) occurs over a time period that extends more than briefly beyond the recipient's designated time frames.

-p 30269, Federal Register, Vol. 85, No. 97

# FAQs: “Modified Cross Examination”

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Parties may submit written questions that are asked of the other party or witnesses. The written answers are submitted to that party, with limited follow up.

- Can be conducted during the 10-day review time

Exclude questions that:

- Are not related to the allegations
- Seek privileged information
- Are related to the complainant’s sexual predisposition or unrelated sexual behavior, unless it goes to prove consent or to “prove that someone other than the respondent committed the behavior”

34 CFR § 106.45(b)(6)

# Exclude or allow?

Xavier has been accused of sexually assaulting Elliot on an overnight trip for an athletic away game. Xavier submits the following questions:

- Do you remember that three weeks before the trip, didn't you tell me you were gay and would be willing to hook up with anyone on the team?
- When we hooked up the night before the tournament, didn't you tell me you would bring a condom on the trip and leave it on the bathroom counter if you felt like hooking up?
- Didn't you tell your counselor that you were excited we had hooked up on the trip?

# SAVE THE DATE!

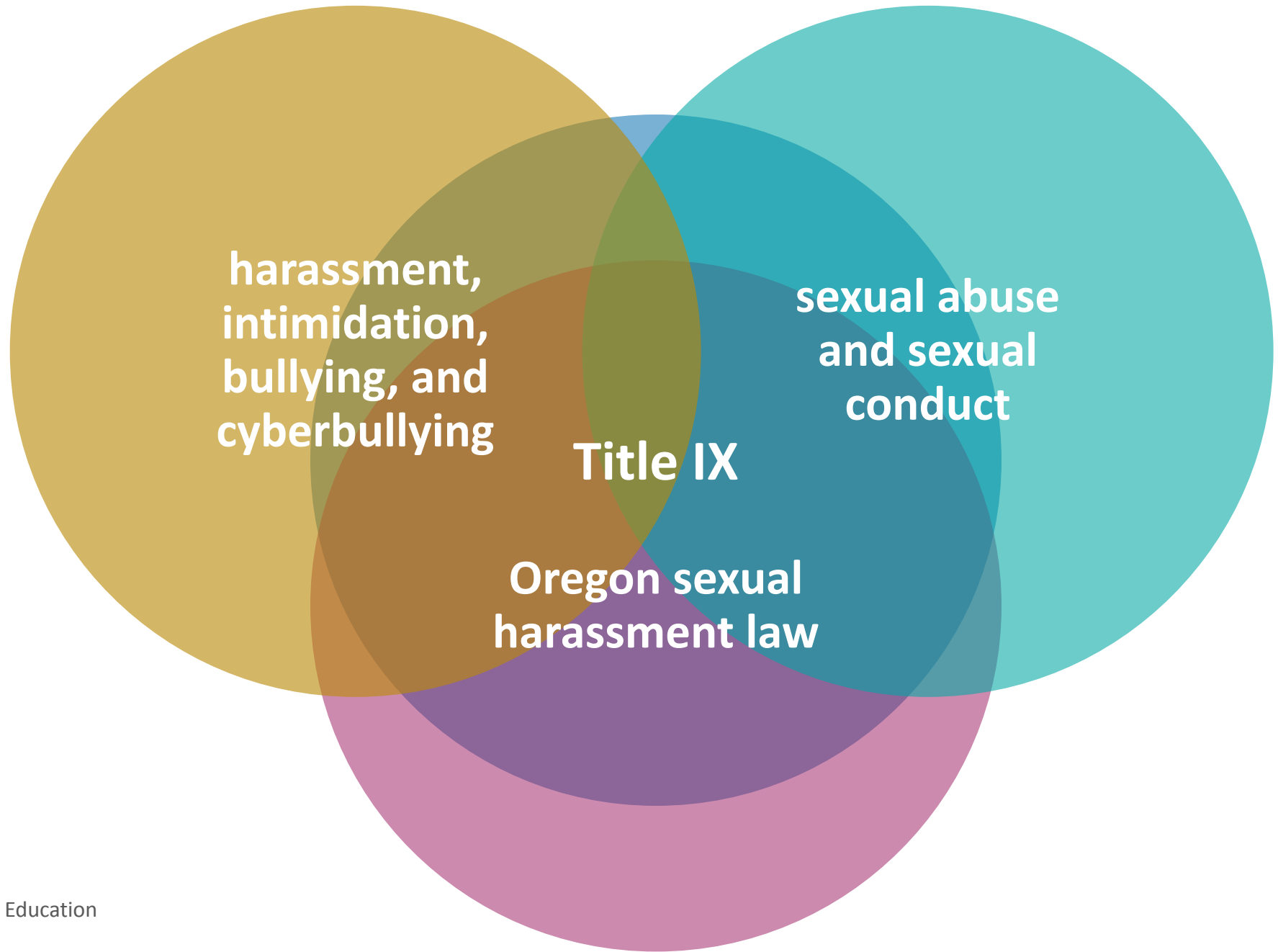
## **Title IX Sexual Harassment Case Study Workshop**

Tuesday, November 1, 10:30 am-noon

OR

Thursday, November 3, 1-2:30 pm

**Registration opens in September**



# Title IX Sexual Harassment

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

# Oregon Sexual Harassment Law

- (i) A demand or a request for sexual favors in exchange for benefits.
- (ii) Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - (I) Interferes with a student's educational activity or program;
  - (II) Interferes with a school or district staff member's ability to perform their job; or
  - (III) Creates an intimidating, offensive, or hostile environment.
- (iii) Assault, when sexual contact occurs without a person's consent because the person is:
  - (I) Under the influence of drugs or alcohol;
  - (II) Unconscious; or
  - (III) Pressured through physical force, coercion or explicit or implied threats.

# Oregon Sexual Harassment Law

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Oregon law (ORS 342.700-708 and OAR 581-021-0038) requires schools to adopt policies that prohibit sexual harassment for students, employees, and third parties.

These policies must include:

- specific definitions of sexual harassment
- a requirement for employees to report sexual harassment
- the supportive measures are available to reporting parties
- that all reports will be investigated
- that reporting and responding parties will be notified when an investigation begins and its outcome
- that all reporting parties receive written notice of their rights and options under the policy

# Sexual Conduct

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“Sexual conduct” means verbal or physical conduct or verbal, written or electronic communications by a **school employee, a contractor, an agent or a volunteer** that involve a student and that are:

- (A) Sexual advances or requests for sexual favors directed toward the student; or
- (B) Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student’s educational performance, or of creating an intimidating or hostile educational environment.

ORS 339.370



# Sexual Conduct and Sexual Abuse



Oregon Department of Education

- Sexual abuse and sexual conduct must be reported to law enforcement, DHS, TSPC, and/or ODE (depending on conduct and licensure status).
- If the reported behavior is sexual conduct or abuse AND Title IX sexual harassment, the processes must be overlaid.

Reporting to law enforcement, DHS, ODE, and/or TSPC does NOT absolve the school of their Title IX responsibilities.

# Harassment, Intimidation, and Bullying

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“Cyberbullying” means the use of any electronic communication device to harass, intimidate, or bully

“Harassment, intimidation, or bullying” means any act that:

- Substantially interferes with a student’s educational benefits, opportunities, or performance;
- Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop;
- Has the effect of:
  - Physically harming a student or damaging a student’s property
  - Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property; or
  - Creating a hostile environment, including interfering with the psychological well-being of a student; and
- May be based on, but not limited to, the protected class status of a person

ORS 339.351

# HB 2631: Parental Notification



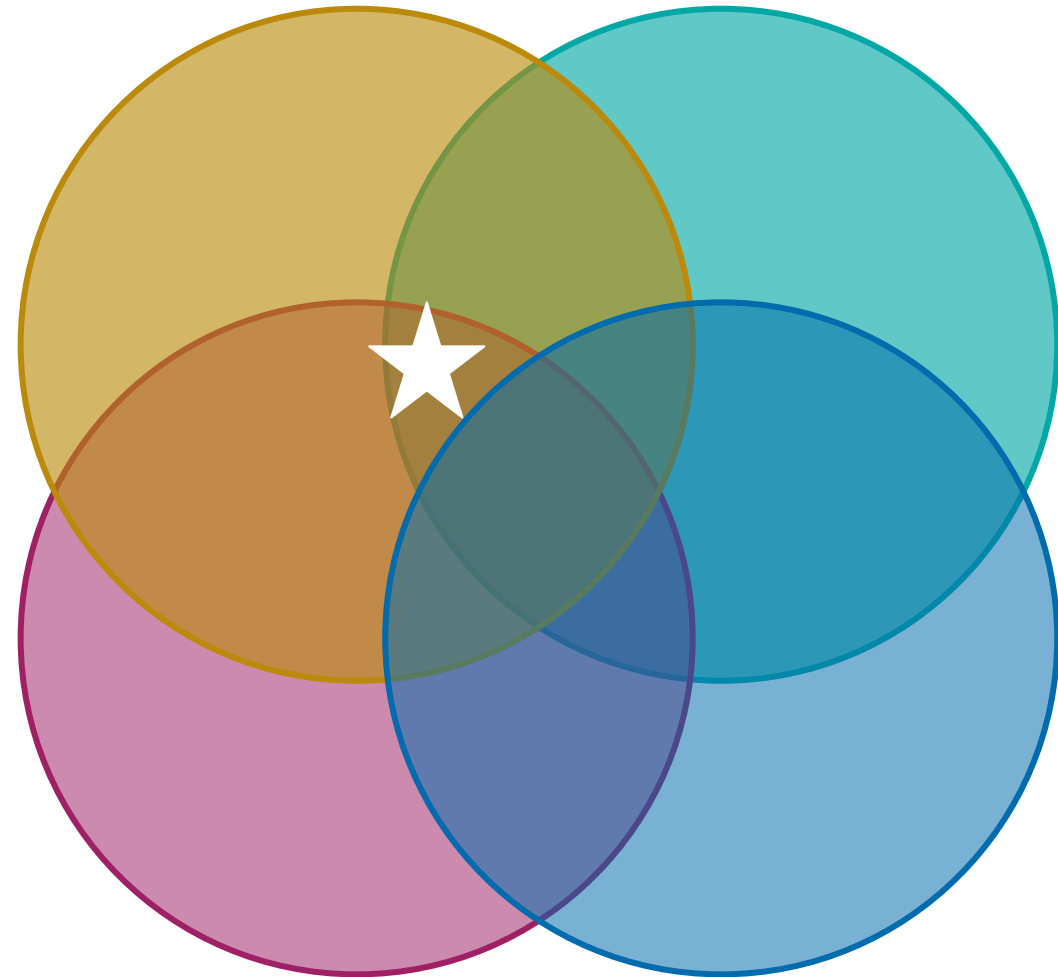
- Requires parent/guardian notification if a student experiences or commits bullying, cyberbullying, harassment, or intimidation, with an opt-out option.
- Notification must occur:
  - Promptly for physical acts, or
  - Within a reasonable time period
- Prior to notification, the school must inform the student that they are notifying the parent/guardian.

# Which policies apply?

A school employee is accused of having sex with a 17-year-old high school senior while they are attending a church retreat together.

**Sexual  
Conduct**

**Sexual  
Abuse**



**Oregon  
Sexual  
Harassment**

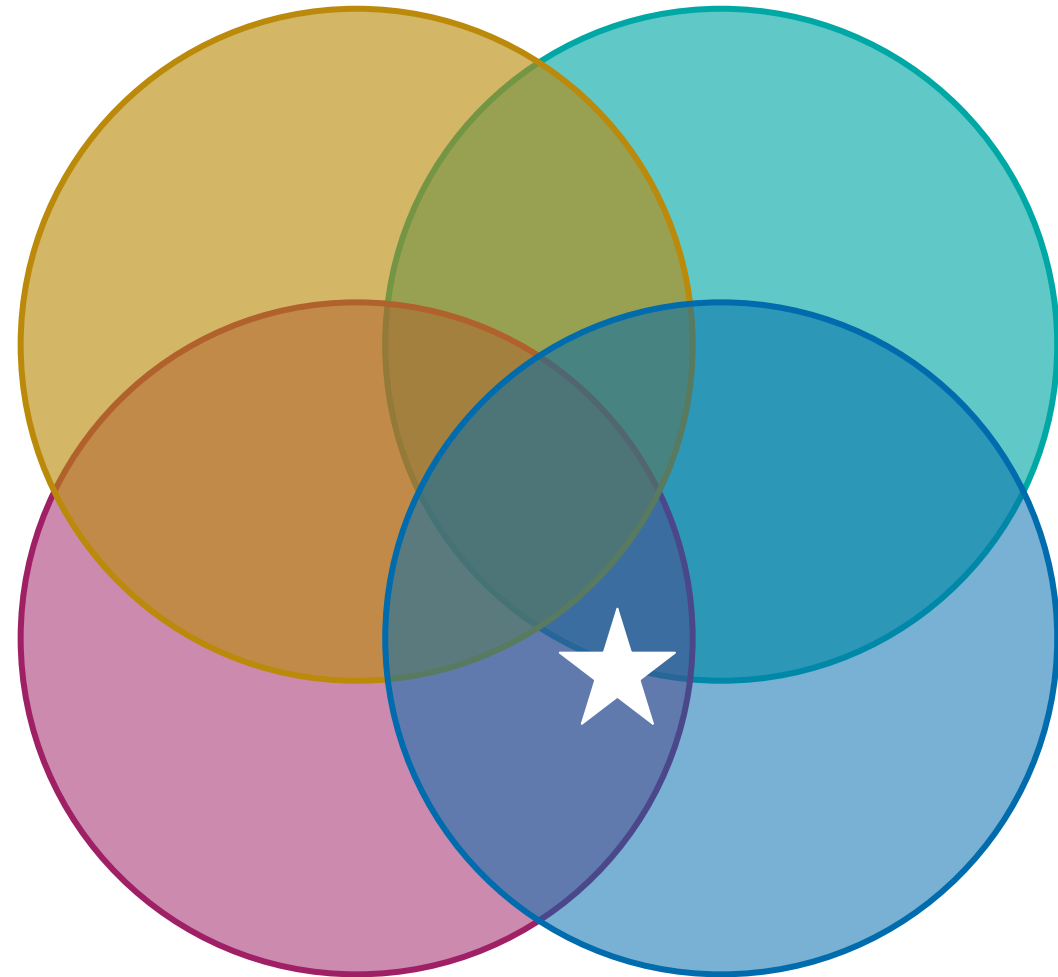
**Title IX**

# Which policies apply?

Student A is accused of grabbing Student B's breasts while riding the bus home from school.

**Sexual  
Conduct**

**Sexual  
Abuse**



**Oregon  
Sexual  
Harassment**

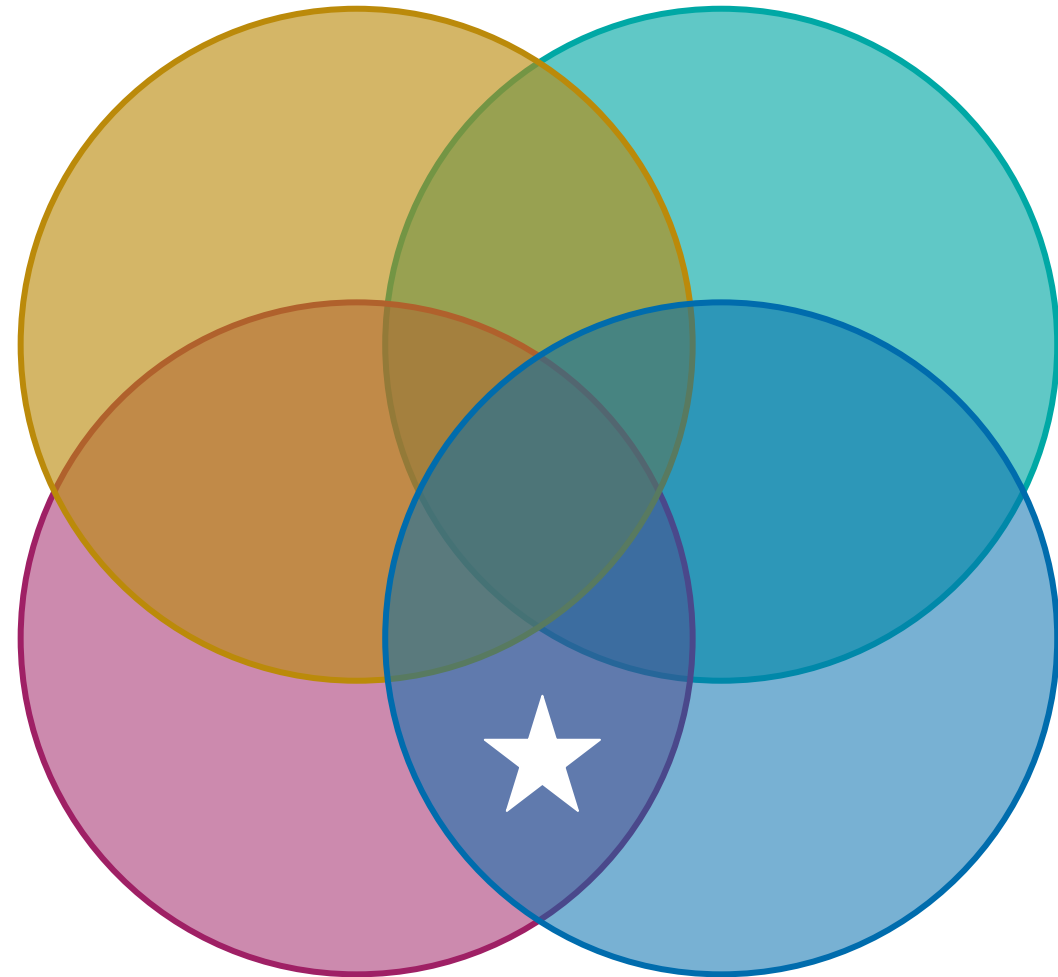
**Title IX**

# Which policies apply?

For the past week, several students have been taking pictures of Student A while he walks down the hallway and posting them online with comments about his butt and physique. Student A has been late to class several times because he tries to avoid these students in the hallways between classes.

**Sexual  
Conduct**

**Sexual  
Abuse**



**Oregon  
Sexual  
Harassment**

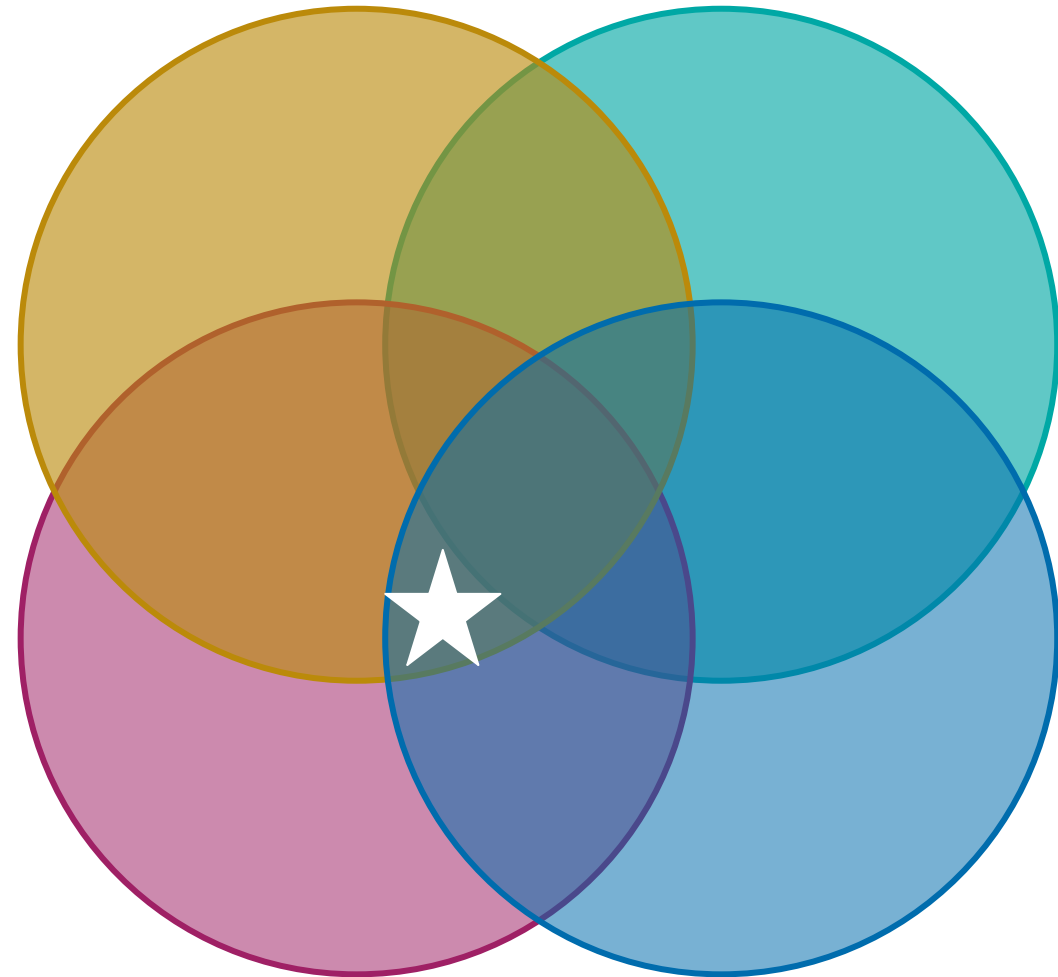
**Title IX**

# Definitional Overlap

A coach suggests that Student A might be able to get off athletic probation if they volunteer after school to model for photographs of new swim uniforms.

**Sexual  
Conduct**

**Sexual  
Abuse**



**Oregon  
Sexual  
Harassment**

**Title IX**



Oregon Department of Education

# Sexual Orientation & Gender Identity Discrimination



# Title IX

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“Consistent with the Supreme Court’s ruling and analysis in *Bostock*, the Department interprets Title IX’s prohibition on discrimination “on the basis of sex” to encompass discrimination on the basis of sexual orientation and gender identity.”

-OCR Notice of Interpretation, June 16, 2021

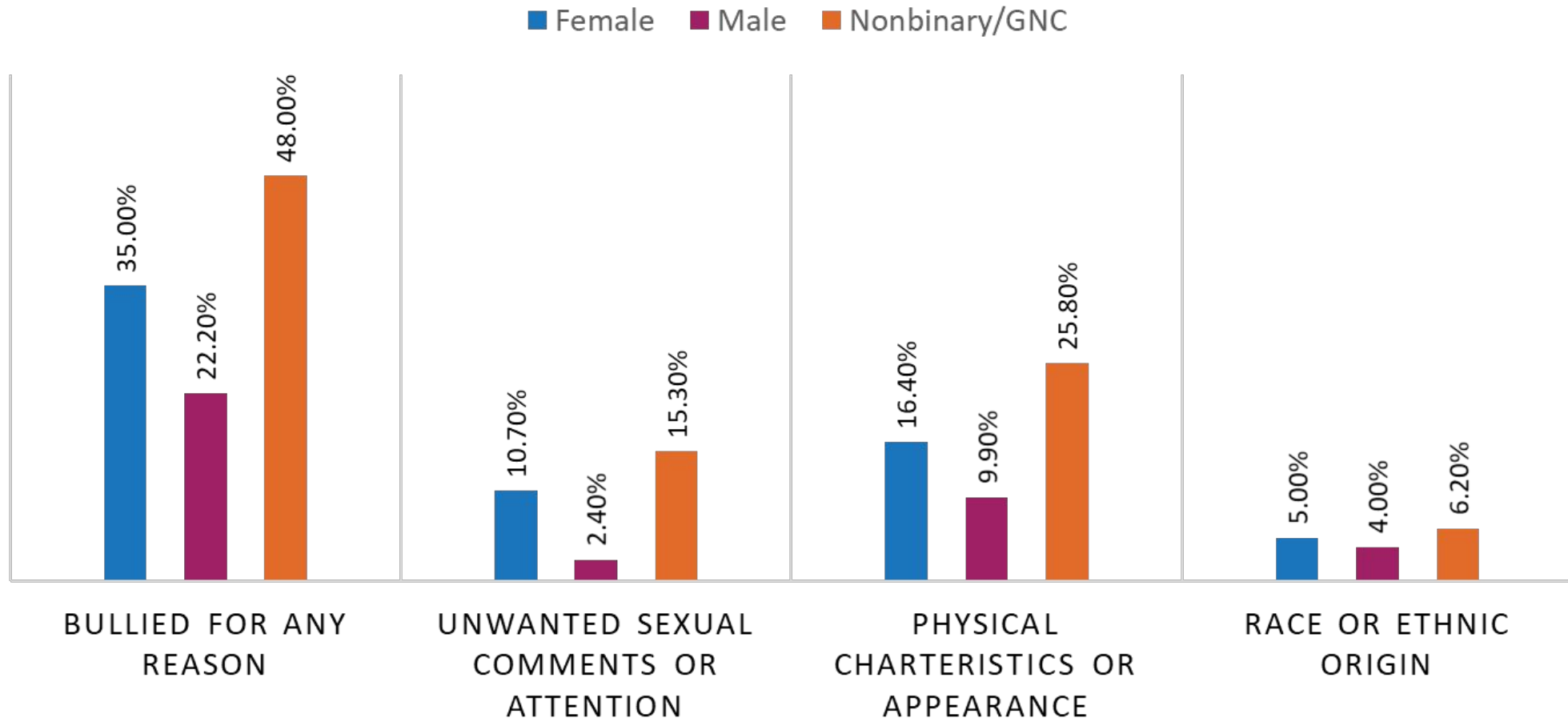
# Oregon Law

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Oregon law has prohibited discrimination based on sexual orientation and gender identity in education since 2007.

- OAR 581-021-0045 prohibits protected class discrimination in schools and defines sexual orientation and gender identity.
- Every Student Belongs (OAR 581-022-2312) requires schools to develop a policy for bias incidents, including those based on sexual orientation and gender identity.
- Schools must prohibit and address bullying, intimidation, harassment, and cyber-bullying (ORS 339.356), including protected-class incidents.

# IN THE PAST 30 DAYS, HAVE YOU BEEN BULLIED AT SCHOOL?



Oregon Healthy Teens Survey, 2019; 8<sup>th</sup> grade data, bullying

<https://www.oregon.gov/oha/PH/BIRTHDEATHCERTIFICATES/SURVEYS/OREGONHEALTHYTEENS/Documents/2019/Gender/8th/Bully8.pdf>

**59.1%** of LBGTQ+ students felt unsafe at school because of their sexual orientation; **42.5%** felt unsafe because of their gender expression.

**32.7%** of LBGTQ+ students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable; **8.6%** missed four or more days in the past month.



# 2016 Guidance on Supporting Transgender Students

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- Terminology
- Student Identity
- Free and Appropriate Public Education
- Names and Pronouns
- School Documents and Records
- Name Change Options + Process
- Transcripts and Diplomas
- Student Health Records
- Instruction + Comprehensive Sexuality Education
- Gender-Based Activities, Rules, Policies
- Restroom and Locker Usage
- Sports
- Student Safety

# FAQs: Student Identity, Names, and Pronouns

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**“The person best situated to determine a student’s gender identity is the individual student.”**

When a student or the student’s parent or guardian notifies the school that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student’s gender identity.

There is no medical diagnosis or treatment requirement. Requiring students to produce such identification documents can be considered a violation of Oregon law if it limits or denies a student access to an educational program or activity.

# FAQs: Restrooms, Locker Rooms, and Showers

- Students should be allowed to use the restrooms, locker rooms, and showers that align with their gender identity
- Schools may offer a single-stall restroom or alternative accommodations, but may not require the student to use them.



See also: [\*Parents for Privacy v. Barr, Ninth Circuit Court dismissal\*](#)

# FAQs: Athletics

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“...once a transgender student has notified the student's school of their gender identity, the student shall be consistently treated as that gender for purposes of eligibility for athletics and activities...”

See also: OSAA's [Gender Identity Participation Policy](#)





# What would you do?

Ash, a nonbinary ninth grade student, originally joined the boys soccer team, but approaches the coach three weeks into the season and says they're quitting the team. When the coach asks why, Ash won't really give a reason. The coach approaches you as Title IX Coordinator because the coach believes that some of the other boys might be bullying Ash, but he doesn't have proof of it.

Some parents have complained to you about the LGBTQ+ student club at the middle school. They say that the topics discussed by this club are inappropriate for middle-school-aged students, and ask the school to require parental permission forms for students who attend this club.

# GSAs

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- Schools must allow GSAs (or similar clubs) to form by the same rules for any other club.
- Schools cannot create separate rules.

## LGBTQ+ students with GSAs in their schools...

- Felt less unsafe
- Missed less school
- Experienced less bullying and violence based on gender expression
- Perceived that staff were more supportive of LGBTQ+ student rights



Oregon Department of Education

# 2022 Title IX NPRM

# Timeline

- Spring 2021 - President Biden announces intent to replace [current Title IX regulations](#)
- July 12, 2022 - [Draft regulations officially published on Federal Register](#)
- September 12, 2022 - Comments due to OCR on draft regulations
- 2023?? - Final regulations published and implemented

# What is Sex Discrimination?

## Current Regulations and Guidance

Prohibits discrimination based on marital or parental status, pregnancy, or related conditions.

34 CFR § [106.40](#)

[Notice of Interpretation](#) (June 2021) states that “sex discrimination” includes sexual orientation and gender identity discrimination.

## Proposed Regulations

Includes all sex discrimination, including discrimination based on ***sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.***

Proposed 34 CFR § 106.10

# Sex Discrimination: Harassment

## Current Regulations and Guidance

**SEXUAL HARASSMENT** is “conduct on the basis of sex that satisfies one or more of the following:”

- (1) quid pro quo harassment
- (2) “Unwelcome conduct determined by a reasonable person to be ***so severe, pervasive, and objectively offensive that it effectively denies a person equal access*** to the recipient's education program or activity;” or
- (3) Sexual assault, domestic violence, dating violence, or stalking.

§ 106.30

## Proposed Regulations

**SEX-BASED HARASSMENT** includes

- (1) Quid pro quo harassment.
- (2) “***Hostile environment harassment.*** Unwelcome sex-based conduct that is ***sufficiently severe or pervasive***, that, based on the totality of the circumstances and evaluated subjectively and objectively, ***denies or limits*** a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment).”

Proposed § 106.2

# Sex Discrimination: Hostile Environment

## Proposed Regulations

“Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (i) “The degree to which the conduct affected the complainant’s ability to access the recipient’s education program or activity;
- (ii) “The type, frequency, and duration of the conduct;
- (iii) “The parties’ ages, roles within the recipient’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
- (iv) “The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and
- (v) “Other sex-based harassment in the recipient’s education program or activity.”

Proposed § 106.2

# Pregnancy Discrimination

## Current Regulations and Guidance

Prohibits discrimination against students, employees, and applicants based on pregnancy, childbirth, termination of pregnancy, and recovery.

§ 106.21(c)

## Proposed Regulations

Discrimination prohibited against pregnancy and related conditions:

- (1) “Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) “Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) “Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions.”

Proposed § 106.2 and 106.10



# Sexual Orientation and Gender Identity Discrimination

## Current Regulations and Guidance

[Notice of Interpretation](#) (June 2021) states that “sex discrimination” includes ***sexual orientation and gender identity*** discrimination.

## Proposed Regulations

Discrimination means that recipient must not subject a person to more than “de minimis” harm, and “***[a]dopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.***”

Proposed § 106.31(a)(2)

# Title IX Coordinator Role

## Current Regulations and Guidance

“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the ‘Title IX Coordinator.’”

§ 106.8(a)

## Proposed Regulations

- (1) Must designate a Title IX Coordinator
- (2) “Delegation to designees. ***As appropriate, the recipient may assign one or more designees to carry out some of the recipient’s responsibilities*** for compliance with this part, but one Title IX Coordinator must retain ultimate oversight over those responsibilities.”

Proposed § 106.8(a)

“Monitoring. A recipient must:

- (1) ***Require its Title IX Coordinator to monitor the recipient’s education program or activity for barriers*** to reporting information about conduct that may constitute sex discrimination under Title IX; and
- (2) ***Take steps reasonably calculated to address such barriers.***”

Proposed § 106.44(b)

# Employee Reporting Requirements

## Current Regulations and Guidance

Any employee of an elementary or secondary school who has “actual knowledge” sexual harassment triggers a school’s response requirements.

§ 106.30

## Proposed Regulations

All employees at elementary and secondary schools who are not confidential must notify the Title IX Coordinator if they become aware of possible sex discrimination

Proposed § 106.44(c)

***“...when any employee is informed of a student’s pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee promptly informs that person of how the person may notify the Title IX Coordinator of the student’s pregnancy or related conditions for assistance and provides contact information for the Title IX Coordinator, unless the employee reasonably believes the Title IX Coordinator has already been notified.”***

Proposed § 106.40(b)(2)

# Confidential Employees

## Current Regulations and Guidance

N/A

## Proposed Regulations

Confidential employees are:

- anyone who has confidentiality/privilege under Federal or State law
- ***“an employee of a recipient whom the recipient has designated as a confidential resource*** for the purpose of providing services to persons in connection with sex discrimination”

Proposed § 106.2

Schools must notify all participants of any employee’s confidential status. Confidential employees, if discussing sexual harassment with a student, must

- explain their confidential status,
- provide contact info for the Title IX Coordinator, and
- explain how to report sex discrimination.

Proposed § 106.44(d)

# Employee Training

## Current Regulations and Guidance

### ***SPECIFIC TO SEXUAL HARASSMENT:***

Title IX Coordinators, investigators, and decision-makers must receive training on:

- definition of sexual harassment
- the scope of the recipient's educational program or activity
- how to conduct the grievance process (including role-specific training)
- avoiding bias, conflicts of interest, and prejudgment of facts

§ 106.8(d)

## Proposed Regulations

**All employees must receive training on:**

- Sex discrimination is prohibited
- Scope of conduct that constitutes sex discrimination
- Applicable notification requirements (sex discrimination and pregnancy)

**Investigators, decision-makers,** and others who implement grievance processes or have the authority to institute/modify supportive measures must receive additional specific training on their roles.

**Informal resolution facilitators** must be trained on the school's process and how to serve impartially without bias.

**Title IX Coordinators and deputies** in addition to all requirements under 1-3, also need training on their specific responsibilities.

Proposed § 106.8(d)

# General Response to Sex Discrimination

## Current Regulations and Guidance

Must follow a grievance procedures in response to any complaint of sex discrimination (§ 106.8)

### **FOR SEXUAL HARASSMENT ONLY:**

Requires a response to actual knowledge of sexual harassment in a manner that is **not deliberately indifferent** ([106.44\(a\)](#))

Specifically schools must:

- Contact the complainant
- Describe to the complainant how to file a formal complaint
- Describe the availability of supportive measures
- Possibly take other steps that would be required to not be deliberately indifferent to sexual harassment

§ 106.44

## Proposed Regulations

A recipient must take “***prompt and effective action to end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects.***”

Proposed § 106.44(a)

Title IX Coordinator must:

- Notify complainant of grievance procedures
- Offer and coordinate supportive measures
- If a complaint is filed or grievance process initiated, initiate the grievance process and notify all involved parties
- “***Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur in the recipient’s education program or activity, in addition to providing remedies to an individual complainant***”

Proposed § 106.44(f)

# General Response to Student Pregnancy

## Current Regulations and Guidance

- Must allow students to take a leave of absence.
- May not require a physical exam to participate in any school activities, unless it is required of all students.
- May offer an alternative schooling program, but it must be voluntary

§ [106.40](#)

## Proposed Regulations

Recipient is required to:

- ***Provide reasonable accommodations to the education program/activity***
- May offer voluntary enrollment in an alternative education program, but it must be comparable
- Allow a voluntary leave of absence; “Upon the student’s return to the recipient’s education program or activity, ***the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.***”
- ***“Ensure the availability of a lactation space, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.”***

Proposed § 106.40(b)(3)

# Supportive Measures

## Current Regulations and Guidance

***“...services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.”***

§ 106.30(a)

## Proposed Regulations

Keeps similar definition, but adds:  
***“including temporary measures that burden a respondent*** imposed for non-punitive and non-disciplinary reasons and that are designed to protect the safety of the complainant or the recipient's educational environment, or deter the respondent from engaging in sex-based harassment”

Proposed § 106.2

- Supportive measures that burden the respondent may only be issued during the pendency of grievance procedures
- Must provide a person affected by a supported measure to a decision to provide one with an opportunity to appeal
- If the student has a disability, the Title IX Coordinator must consult with the IEP or 504 team regarding supportive measures

Proposed § 106.44(g)



# Grievance Procedures, selected changes

## Current Regulations and Guidance

No specific grievance requirements for general sex discrimination.

### **FOR SEXUAL HARASSMENT:**

- Must involve **3 separate individuals**: investigator, different decision-maker, different available appeal decider
- Required to give **four written notices**:
  - Notice of Allegations, Investigation Report, Determination of Responsibility, Appeal Determination (if an appeal is filed)
- Includes a written question-and-answer requirements (**modified cross-examination**)
- **Must allow a one-level appeal**
- **Two required 10-day time windows**: to review evidence, and to review investigative report before a decision is made

§ 106.45

## Proposed Regulations

- **Allows single-investigator model** (same person to investigate and make issue a determination)
- Must provide notices, **but may provide them orally**:
  - Notice of allegations
  - A description provided to the parties by the recipient of the relevant and not otherwise impermissible evidence, as well as a reasonable opportunity to respond
  - Determination of responsibility
- **Must use preponderance of the evidence** standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings, including other discrimination complaints, in which case that standard may be used in determining whether sex discrimination occurred.
- **May offer an appeal, but not required**
- **Reasonably prompt timeframes, but not prescribed**

Proposed § 106.45

# Retaliation

## Current Regulations and Guidance

***“No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.”***

- Exercise of first amendment rights does not constitute retaliation
- ***It is not retaliatory to discipline an individual for making a bad-faith false statement during the Title IX grievance process***

§ 106.71

## Proposed Regulations

A recipient would be prohibited from taking action against a student or employee under its code of conduct for the purpose of intimidating, threatening, coercing, or discriminating against someone because they provided information or made a complaint regarding sex discrimination.

Proposed § 106.71(a)

***Defines retaliation to include peer retaliation.***

Proposed § 106.2

A recipient ***must initiate its grievance procedures upon receiving a complaint alleging retaliation.***

Proposed § 106.71

# Students with Disabilities

## Current Regulations and Guidance

Recipients are also required to comply with IDEA and Section 504.

The only time students with disabilities are explicitly mentioned in current Title IX regulations is:

- Emergency removal may not conflict with any rights under IDEA or Section 504

§ 106.44(c)

## Proposed Regulations

If any party involved in a complaint of sex discrimination has a 504 or IEP, the Title IX Coordinator is **required to consult with the student's IEP and/or 504 team** during the implementation of any grievance process.

Proposed § 106.8(e)

In providing supportive measures, if the student has a disability, the Title IX Coordinator ***must consult with the IEP or 504 team regarding supportive measures.***

Proposed § 106.44(g)

# Athletics

## Current Regulations and Guidance

Allows schools to operate separate male and female athletic teams, provided they are operated in a way that provides equal opportunities and benefits to students.

§ [106.41](#)

## Proposed Regulations

Department intends to engage in a separate rulemaking process.



Oregon Department of Education

# Resources

# Office of Civil Rights (OCR) Resources

[Title IX Regulations \(34 CFR Part 106\)](#)

[Policy Guidance Portal](#)

- Search for “Title IX” to find guidance documents

[OCR Blog](#)

[Department of Education Youtube Page](#)

[LGBTQI+ Student Resources Page](#)

[OCR Hotline and Contact Information](#)

# ODE and Oregon Resources

[ODE Civil Rights Page](#)

[ODE Title IX Coordinators Resource Page](#)

- Webinars and recordings will be added here when available

[OSAA Title IX Page](#)

# Who Can I Call?

[OCR Seattle Office](#) - 206-607-1600

[ODE Civil Rights Support](#) - 503-551-5713

You should always contact legal counsel for legal advice, such as your district legal counsel or organizations you belong to (OSBA, ATIXA, etc).





# CONTACT US

Kate Hildebrandt

Civil Rights and Title IX Specialist

Oregon Department of Education

[katherine.hildebrandt@ode.oregon.gov](mailto:katherine.hildebrandt@ode.oregon.gov)

503-551-5713