Title IX Sexual Harassment: Deep Dive

2026-2027

Oregon Department of Education
Civil Rights Unit
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NOT LEGAL ADVICE

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.

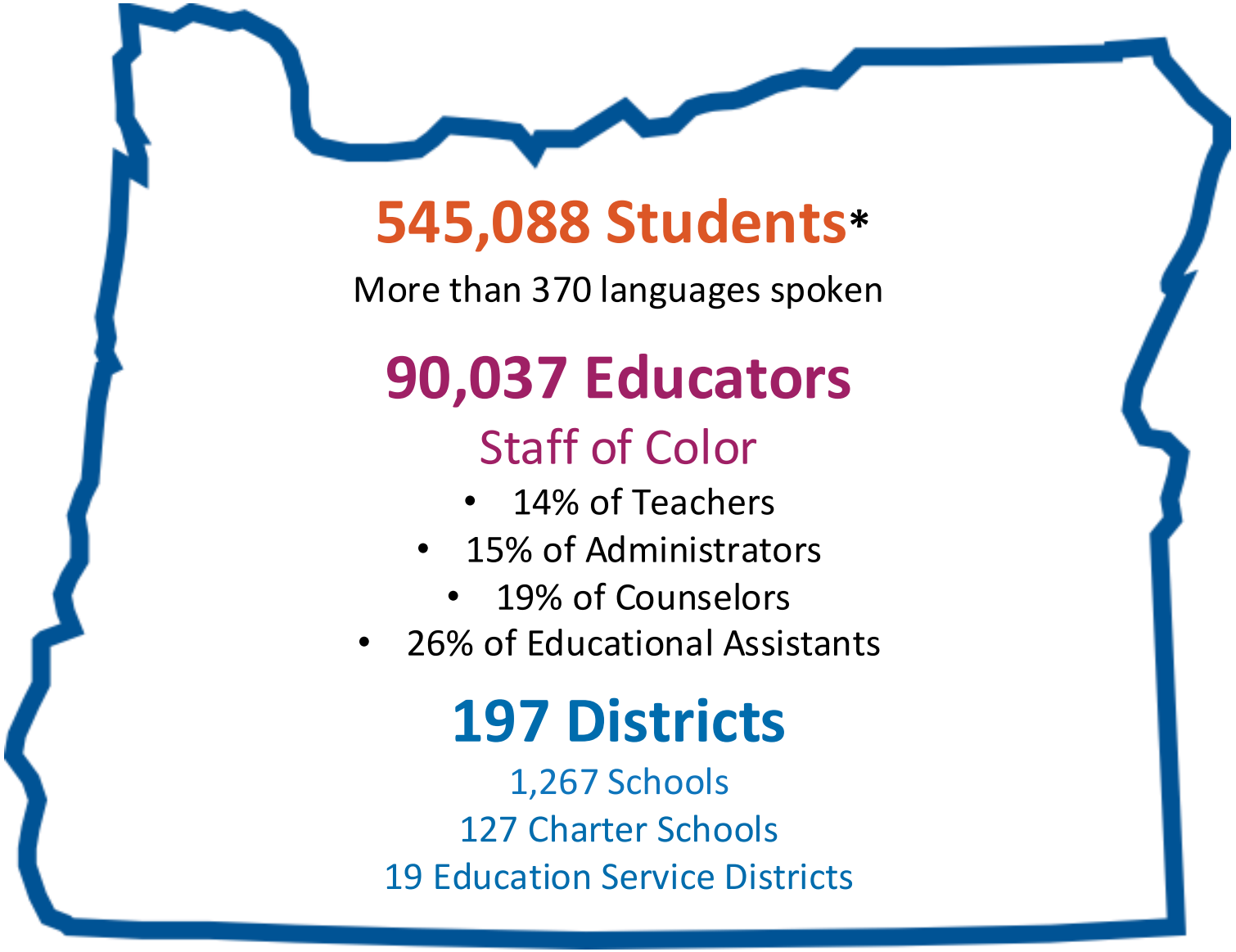
This training is being provided on October 29, 2026. Subsequent changes to law and policy may impact the accuracy of information in this slide deck.

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

Who We Serve

"My vision is to make sure every child in Oregon is successful and has a safe place to receive a high-quality public education. I've seen firsthand how a positive student-teacher relationship can set a child on a successful path for the rest of their life. When we collaborate and build partnerships with students, educators and families we can advance equity and lead all students toward success."

- Dr. Charlene Williams



545,088 Students*

More than 370 languages spoken

90,037 Educators

Staff of Color

- 14% of Teachers
- 15% of Administrators
- 19% of Counselors
- 26% of Educational Assistants

197 Districts

1,267 Schools

127 Charter Schools

19 Education Service Districts

*Numbers represent 2024-25

Session Agenda & Materials

- **Title IX: Background and Foundations**
- **Sexual Harassment: Definitions and Dynamics**
- **Title IX Sexual Harassment Process Overview**
- **Intersecting Oregon Laws**
- **Conflict of Interest & Bias in Investigations**

This session is intended to partially fulfill 34 CFR 106.45(b)(1)(iii) of the 2020 Title IX regulations, specifically requiring "…that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias."

Norms and Expectations

Participants

Ask relevant questions as they arise

Remain engaged: complete polls, participate in breakout discussions

Be open to learning

Understand the limited scope and time for this training

Break as needed

Presenters

Start and end on time

Answer questions as they arise

Keep to the content at a peppy-pace

Provide a copy of the slides and additional resources - Google Folder

Provide proof of attendance

Schedule technical assistance for individualized questions

Content Note:

This training discusses protected class discrimination. Explicit and discriminatory language is occasionally used. All examples are solely for educational purposes and are designed to contain elements of situations you may respond to in your school/district.

Terms & Acronyms



OCR – U.S. Department of Education Office for Civil Rights

CRC – Civil Rights Coordinator

ORS – Oregon Revised Statutes

OAR – Oregon Administrative Rule

NIBRS – National Incident-Based Reporting System

OAG – Office of the Attorney General

Title IX:
Background and Foundations

Title IX: Sex Discrimination

1972 civil rights law that prohibits sex discrimination in federally funded education programs.

"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."

Sex Discrimination

34 CFR 106.31(b) Specific prohibitions. Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.



Athletics

Schools have to provide equal opportunities for boys and girls teams, as well as equal benefits (facilities, equipment, travel, etc.)



Sexual Harassment

Sexual harassment that meets a specific definition must be addressed through a specific process under Title IX.



Pregnant/Parenting Students

Access to all programs, supportive modifications, leave, and more.



Single-Sex (or Sex-Segregated) Programs and Activities

Single-sex programs, or separate programs by sex/gender, are only allowed in specific, limited circumstances.

District Obligations Under Title IX

- Designate a Title IX Coordinator 34 CFR 106.8(a)
- Provide a notice of nondiscrimination 34 CFR 106.8(b)
- Adopt a policy prohibiting discrimination and adopt procedures for receiving reports and resolving complaints of sex discrimination 34 CFR 106.8(c)
- Ensure athletic programs offer equal and equitable opportunities and benefits to boys and girls athletic programs, 34 CFR 106.41
- Provide access and modifications for pregnant and parenting students 34 CFR 106.40
- Ensure compliance with Title IX regulations for any single-sex or sex-segregated programs and activities; 34 CFR 106.34
- Respond to all notice of sexual harassment and follow required procedures to investigate sexual harassment 34 CFR 106.8, 34 CFR 106.44, 34 CFR 106.45
- Train designated staff on their roles in responding to sexual harassment 34 CFR 106.45(b)(1)(iii)
  - Keep records of sex discrimination notice, complaints, and training 34 CFR 106.45(b)(10)

The Title IX Coordinator



photo from Christina; unsplash.com

Designation of coordinator. 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."

34 CFR § 106.8(a)

In practice:

- Delegating responsibilities
- Deputy Coordinators

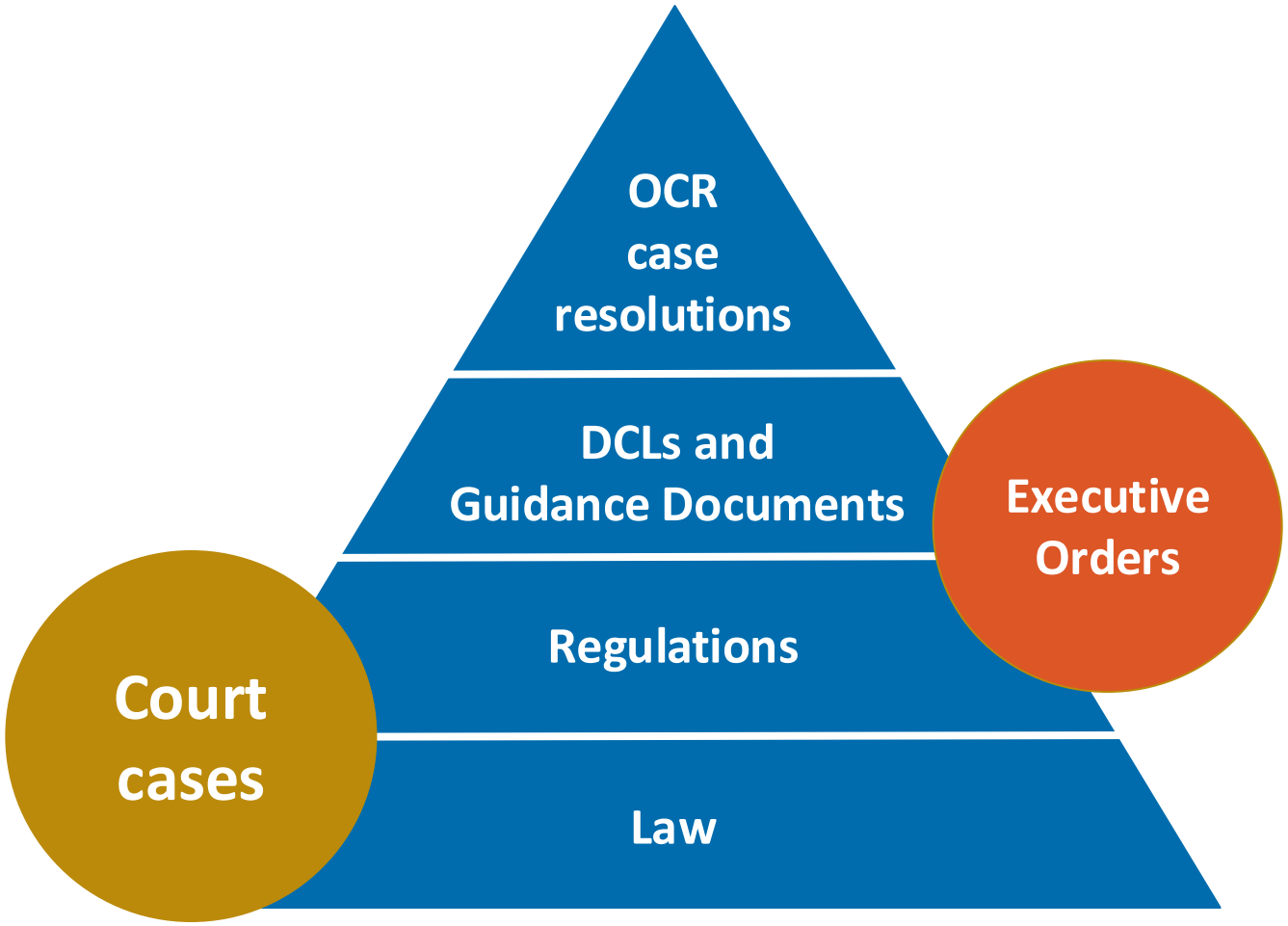
Role of the Title IX Coordinator

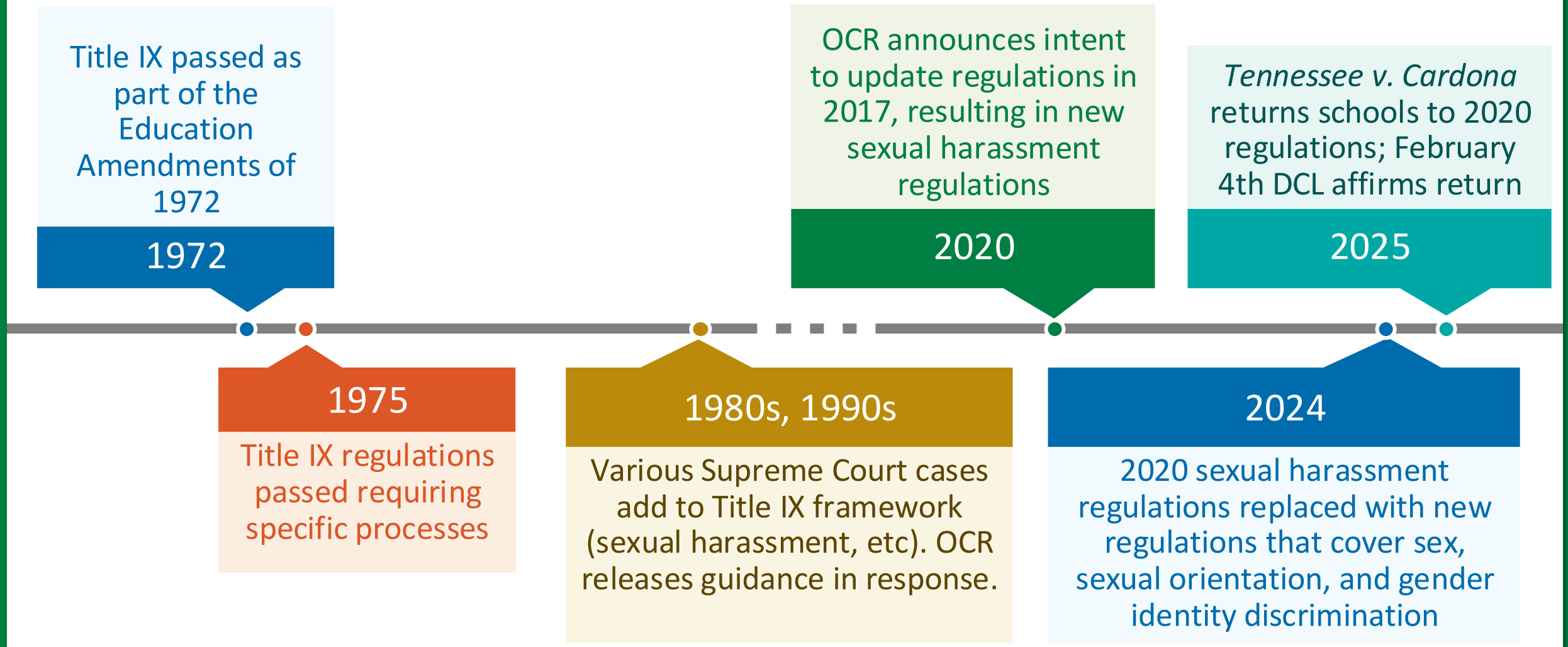
- Ensure the district/school is fully complying with Federal Title IX law, regulations, and guidance
  - Keep track of new law, regulations, and guidance, and update as needed
- Coordinate responses to reports of sex discrimination, including:
  - student and employee reports
  - sexual harassment
  - 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

Title IX: The Living Law

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

The Office for Civil Rights, Congress, and the Courts have all impacted how Title IX is interpreted and enforced. To understand what to do at our schools/districts, we look to:




Title IX passed as part of the Education Amendments of 1972
1972
1975
Title IX regulations passed requiring specific processes
1980s, 1990s
Various Supreme Court cases add to Title IX framework (sexual harassment, etc). OCR releases guidance in response.
OCR announces intent to update regulations in 2017, resulting in new sexual harassment regulations
2020
2024
2020 sexual harassment regulations replaced with new regulations that cover sex, sexual orientation, and gender identity discrimination
Tennessee v. Cardona returns schools to 2020 regulations; February 4th DCL affirms return
2025

The 2020 Regulations: Personnel Requirements

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.

Personnel Training Requirements

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	

Training Paths (with ODE)

Investigators

Sexual Harassment: Deep Dive

(3 hours)

+

Sexual Harassment: Investigations

(1.5 hours)

Decision-Makers and Appeals Decision-Makers

Sexual Harassment: Deep Dive

(3 hours)

+

Sexual Harassment: Decision-Making and Appeals

(1.5 hours)

Sexual Harassment: Definitions and Dynamics

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(a)

Jurisdictional Requirements

Schools must respond to sexual harassment that occurs within an "education program or activity" of the school:

For the purposes of this section, §§ 106.30, and 106.45, "education program or activity" includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs…

34 CFR 106.44(a)

If it did not occur within the education programs or activities of the school, it must be dismissed (under Title IX):

If the conduct alleged… did not occur in the recipient's education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX…

34 CFR 106.45(b)(3)(i)

Prong 1: "quid pro quo"

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

34 CFR 106.30



photo from Alyssa de Leva; unsplash.com

- Committed by employees only; can be experienced by students or employees
- May be overt (direct) or covert (implied)
- Linked to some aid, benefit, or service (part of the educational programs or activities

Prong 2: "unwelcome conduct"

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

34 CFR 106.30



photo from Jesus Rodriguez; unsplash.com

Must meet ***all*** to qualify:

- Sex-based
- Unwelcome
- Severe
- Pervasive
- Objectively Offensive
- Denies Equal Access

Prong 2: Unwelcome conduct

Subjective:

1. **Unwelcome** - evidence the behavior was not consensual

Objective Reasonable Person:

2. **Sex-based** - related to the person's sex (including things like pregnancy, sex-stereotypes, etc.)
3. **Severe** - how harmful or egregious
4. **Pervasive** - how often or how widespread (more than one instance)
5. **Objectively Offensive** - reasonable person in the complainant's shoes would find it offensive (taking into account individual factors)
6. **Denies Equal Access** - access is different (unequal) to a person who has not experienced harassment; does not require complete exclusion

Source: Preamble to the 2020 Regulations, p. 30148-30171

Does this meet prong 2?



photo from Yn Yn; unsplash.com

Sam, a sixth-grade student, confided in a few of her classmates that she has secretly started dating another girl in their school who is a year older. The classmates promised not to tell anyone, but by lunch the next day rumors about Sam have spread around the school. When Sam gets on the bus at the end of the day and goes to sit in her usual seat, she finds a printed picture of herself photoshopped into a picture of several naked women, with a homophobic slur and “Sam’s paradise” written across the top. Several students start taunting her by singing “Sam likes vagina” on the way home. Sam’s friend checks on her via text, mentioning that she’s heard the rumors and that everyone is talking about Sam. Sam fakes being sick and refuses to go to school the next day.

Prong 3: VAWA and Clery offenses



photo from Courtney Coles; unsplash.com

"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 106.30

- Definitions come from the Jeanne Clery Campus Safety Act (Clery, 1990), a higher education law related to crime reporting and violence prevention, and the Violence Against Women Act (VAWA) Amendments to Clery (2014), broadly relating to gender-based violence services and funding.

Prong 3: Domestic Violence

"[I]ncludes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction."

-34 U.S.C. 12291(a)(12)

Prong 3: Dating Violence

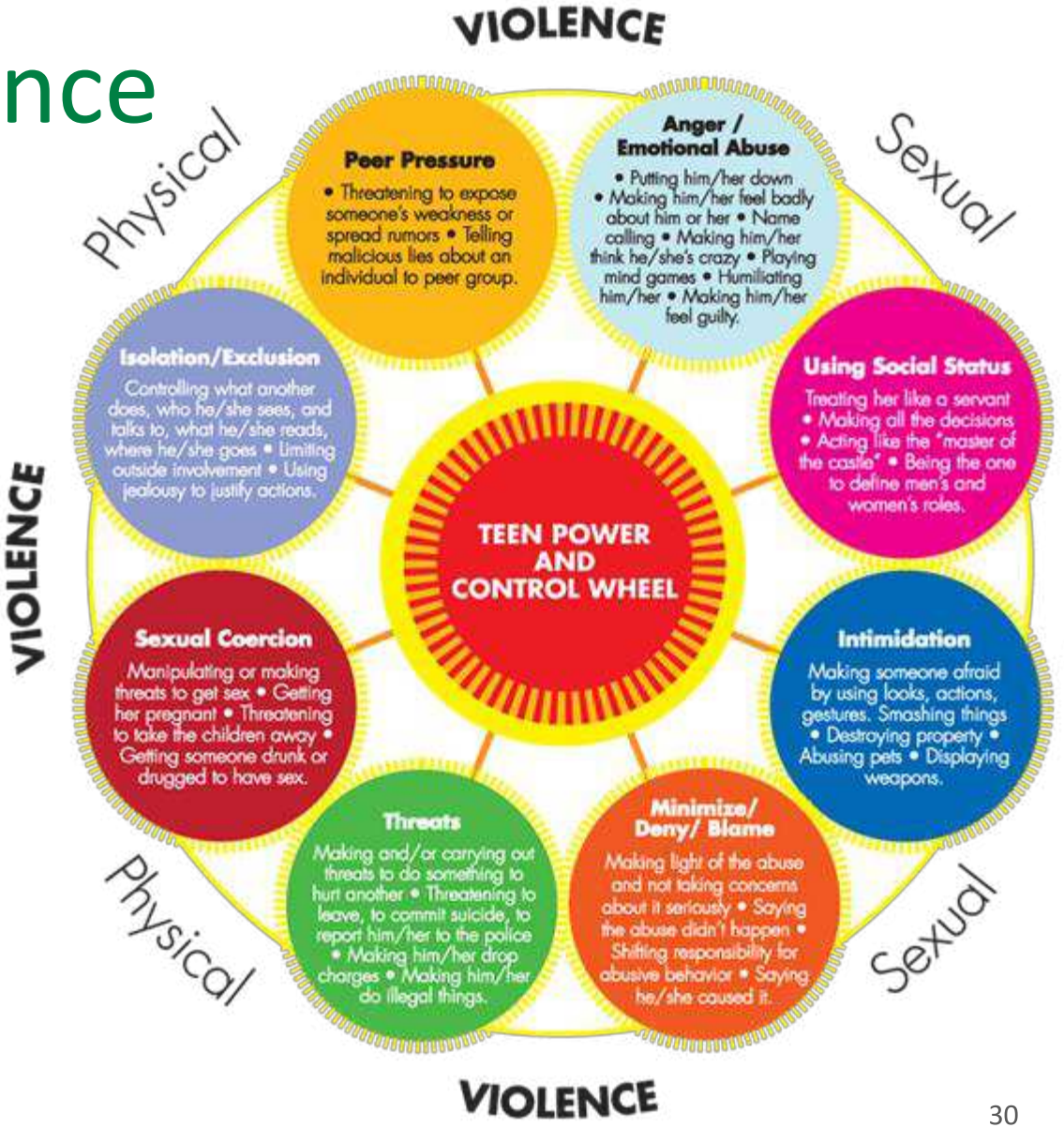
"The term ''dating violence'' means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship."

-34 U.S.C. 12291(a)(11)

Dating + Domestic Violence

- Under Oregon law, dating and domestic violence include physical violence, sexual violence, threats of violence, stalking, and emotional abuse.
- Other tactics to control or abuse a partner include isolation and exclusion, intimidation, blaming, and abuse of social status.

Power and Control Wheel Example
National Domestic Violence Hotline



Prong 3: Stalking

"[E]ngaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress."

-34 U.S.C. 12291(a)(36)

Examples of stalking behaviors could include:

- Following someone or waiting for them outside their classroom, at their car, etc.
- Unwanted electronic and written communication
- Tracking someone through social media, spyware/malware, airtags, etc.
- Spreading malicious rumors
- Unwanted gifts
- Faking an identity or relationship to get information out of others about the target
- Threatening the person, their pets, or loved ones
- Property damage
- Escalating attempts over time

Prong 3: Sexual Assault

Sexual assault includes any offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting (UCR) system of the Federal Bureau of Investigation (FBI). This includes:

- Rape (including sodomy and sexual assault with an object)
- Criminal Sexual Contact
- Incest
- Statutory Rape

We'll look at these definitions using the NIBRS (National Incident-Based Reporting System) classifications over the next several slides.

2025 NIBRS User Manual

Prong 3: Sexual Assault (Rape)

Rape: (without the consent of the victim...) Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

-2025 NIBRS Definition

Prong 3: Sexual Assault (Criminal Sexual Contact)

Criminal Sexual Contact: The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

-2025 NIBRS Definition

Prong 3: Sexual Assault (cont.)

Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

-2025 NIBRS Definition

Consent

- Title IX does not require schools to adopt a particular definition of consent
- Oregon's sexual harassment policy requirement for K-12 schools (ORS 342.704/OAR 581-012-0038) has a definition of consent required by that policy. Schools may voluntarily adopt this definition for use in Title IX

"Without consent" means an act performed:

(A) Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or

(B) When a person who is a party to the act is:

(i) Incapacitated by drugs or alcohol;

(ii) Unconscious; or

(iii) Pressured through physical force, coercion or explicit or implied threats to participate in the act.

Age of Consent in Oregon

The age at which a person can consent to sexual activity in Oregon is 18 (ORS 163.315).

It is also a defense against criminal charges if lack of consent is due ONLY to age, and the age difference is less than 3 years (ORS 163.345).

The Oregon Attorney General has stated that minor-minor sexual activity does not need to be reported as abuse if it is otherwise consensual falls within this age-gap clause (letter, Sept 11, 2018).

OAG Opinion OP8294

Is there consent?

Decide if there is consent in alignment with Oregon's laws. Why or why not?

Emma, a 4th-grade student, wants to join a group of classmates playing a recess game they call "Capture." The students made up a rule that if you get caught, the catcher gets to kiss you on the cheek. This gets a reaction from the students ranging from laughing, to "EEEW," to nervous gasps.

Later in the game, Leo catches Emma. Emma holds her hands up and backs away. Leo's friends start chanting, "Follow the rules! Follow the rules!" Leo grabs Emma's shoulders so she can't step back and kisses her on the cheek. Emma explicitly tells the group, "I don't want anyone to kiss me! You just have to tag me." Emma pushes him away, gets upset, and walks over to the recess monitor.

When the teacher asks Leo about the incident, Leo defends himself by saying, "She agreed to play the game with us, so she consented to the rules. It's not my fault!" The next day, Emma's parents ask for her to be transferred to another class. They say Leo's kiss was sexual assault.

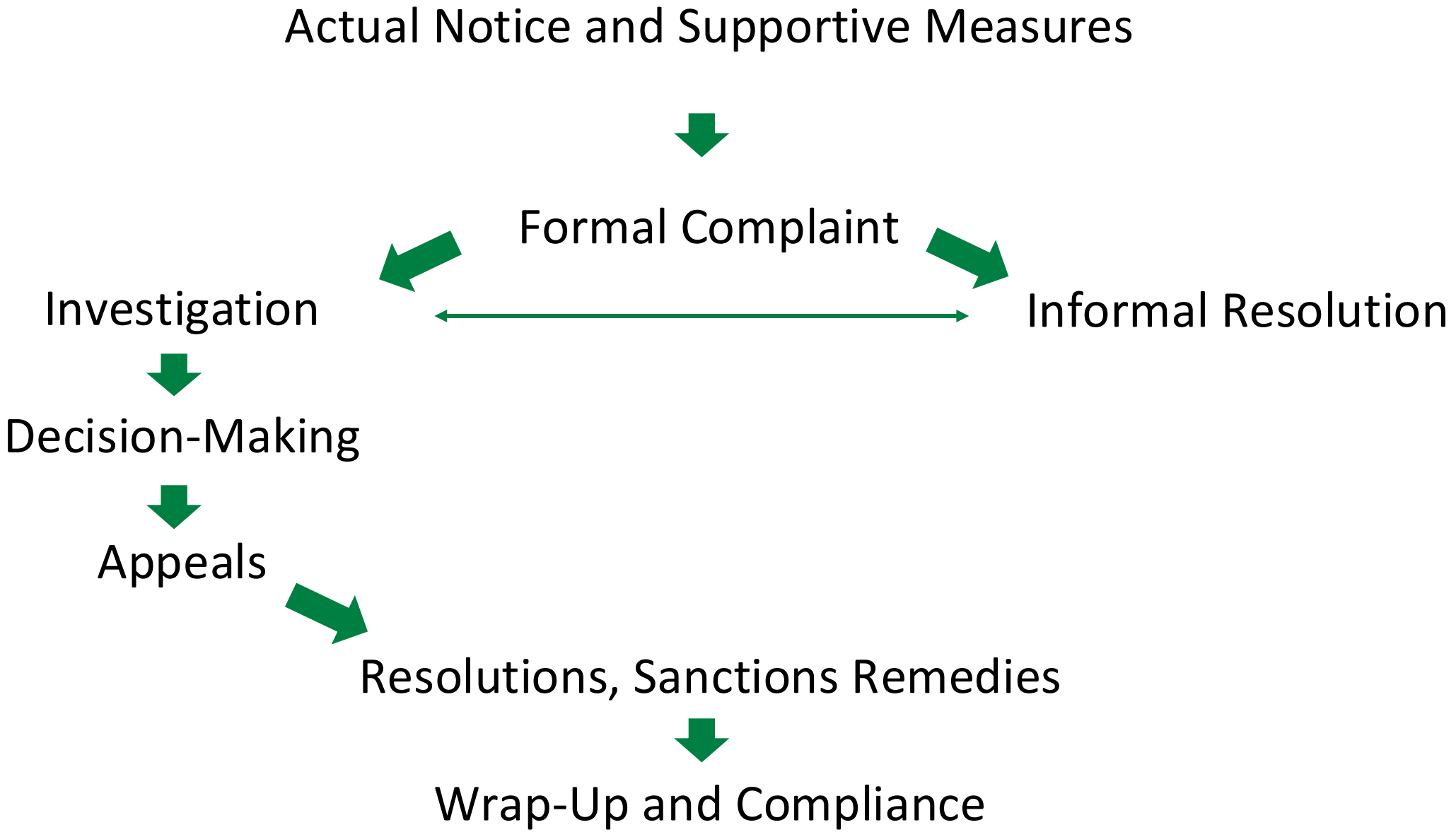
Is there consent? Decide if there is consent in alignment with Oregon's laws. Why or why not?

Assessing Consent

Consider the following questions when assessing for consent:

- What was said? What tone was used?
- What was implied? How was the interaction perceived?
- What body language was used?
- Where was the interaction?
- What environmental factors impacted the parties' agency in the moment?
- What capacity and knowledge did parties have during the interaction?
- What previous relationship dynamics exist between the parties – established methods of communication or consent, previous threats/harassment, etc.?
- What power dynamics exist in the situation?

Title IX Sexual Harassment Process Overview


Actual Notice and Supportive Measures
Formal Complaint
Investigation
Informal Resolution
Decision-Making
Appeals
Resolutions, Sanctions Remedies
Wrap-Up and Compliance

Actual Notice and Supportive Measures

Formal Complaint

Informal Resolution

Investigation

Decision-Making

Appeal

Resolutions, Sanctions, and Remedies

Wrap-up and Compliance

Step 1: Actual Notice and Supportive Measures

Who is Involved?

- All employees (could receive notice)
- Title IX Coordinator
- Complainant(s) (and family)

Required Response to Notice:

- Contact complainant to offer options
- Explain how to file a formal complaint
- Offer supportive measures

Additional Options as Needed/Required:

- Identify overlapping Oregon policies
- External reporting (child abuse, sexual conduct)
- Emergency removal of respondent

Actual Notice and Supportive Measures:
When is a school "on notice?"

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not **deliberately indifferent**.

34 CFR 106.44(a)

Actual knowledge to a K-12 school includes notice of *possible* sexual harassment to ***any*** school or district employee. Notice could include:

- A student report to a teacher
- An instructional assistant witnessing an interaction between two students
- A student conveying rumors of a sexual assault to a school counselor
- A parent filing a public complaint

Actual Notice and Supportive Measures: Required Response

Schools must respond in a manner that is not "**deliberately indifferent**," which includes:

- Contacting the complainant
- Offering supportive measures
- Describing the process for filing a formal complaint
- Potentially other steps, if required by the specific circumstances of the report

34 CFR § 106.44(a)

Actual Notice and Supportive Measures:
Supportive Measures

Supportive measures means 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.

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.

34 CFR § 106.30(a)

Examples of Supportive Measures

- academic support: deadline extensions, re-doing assignments or exams, etc.
- changes in class schedules
- changes in classroom seating, supervision, etc.
- increased hallway supervision
- escort between classes or to/from bus or parking
- different parking location
- no-contact orders (mutual or directional)
- counseling
- designated support contact
- check-in meetings, designated safe space, or designated “out of class” time
- leaves of absence
- policy flexibility (transfer policy, absence policy, athletic policy, etc.)

Actual Notice and Supportive Measures: Emergency Removal (Student)

Nothing in this part precludes a recipient from removing a respondent from the recipient's education program or activity on an emergency basis, **provided that**

- the recipient undertakes an **individualized safety and risk analysis**,
- determines that an **immediate threat to the physical health or safety** of any student or other individual arising from the allegations of sexual harassment **justifies removal**, and
- provides the respondent with **notice and an opportunity to challenge** the decision immediately following the removal.

This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

34 CFR 106.44(c)

Actual Notice and Supportive Measures: Administrative Leave (Staff)

Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

34 CFR 106.44(d)

Actual Notice and Supportive Measures

|

Formal Complaint

|

Informal Resolution

|

Investigation

|

Decision-Making

|

Appeal

|

Resolutions, Sanctions, and Remedies

|

Wrap-up and Compliance

Step 2: Formal Complaint

Who is Involved?

- Title IX Coordinator
- Complainant(s), Respondent(s), and Advisors (and families)

Upon Receiving a Formal Complaint

- Informal resolution processes may be utilized
- Emergency leave (students) and administrative leave (staff) continue to be option

Required Documents

- Must issue a written "Notice of Allegations"

Formal Complaint: What is a formal complaint?

Formal complaint means a document ***filed by a complainant*** or ***signed by the Title IX Coordinator*** alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, ***a complainant must be participating in or attempting to participate in the education program or activity*** of the recipient with which the formal complaint is filed... As used in this paragraph, the phrase "document filed by a complainant" means a ***document or electronic submission*** (such as by electronic mail or through an online portal provided for this purpose by the recipient) that ***contains the complainant's physical or digital signature***, or otherwise indicates that the complainant is the person filing the formal complaint.

34 CFR 106.30

Formal Complaint: Notice v. Complaint

Notice

- Can be provided by anyone
- Obligates the school to contact the complainant, provide information about how to file a formal complaint, and offer supportive measures
- Must be documented as a record

Complaint

- Must be submitted by the complainant, their parent/guardian (if a minor), or the TIX Coordinator
- Obligates the school to initiate grievance procedures and investigate
- Must be documented as a record

Formal Complaint: Education Program or Activity

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient.

> …For the purposes of this section, §§ 106.30, and 106.45, "education program or activity" includes locations, events, or circumstances over which the **recipient exercised substantial control** over both the **respondent and the context** in which the sexual harassment occurs…
>
> 34 CFR 106.44(a)

- This includes at school, after-school clubs and programs, school athletic events (at and away from school), on school buses and at school bus stops, etc.

Formal Complaint: Complaint Dismissal

MUST dismiss:

- Conduct as alleged does not meet the definition of sexual harassment
- Conduct did not occur within the education programs or activities or the schools
- Did not occur in the United States

A dismissal under this part does not preclude response under another part of recipient's policies/procedures

MAY dismiss if at any during the investigation or decision-making:

- Complainant notifies TIX Coordinator in writing they would like withdraw the formal complaint or individual allegations
- Respondent is no longer enrolled or employed by recipient
- Specific circumstances prevent the recipient from gathering enough information to reach a determination

Formal Complaint: Complaint Dismissal, cont.

Upon a dismissal required or permitted pursuant to paragraph (b)(3)(i) or (b)(3)(ii) of this section, the recipient must promptly send **written notice of the dismissal and reason(s)** therefor simultaneously to the parties.

34 CFR 106.45(b)(3)(iii)

- Both parties must be offered an opportunity to appeal a dismissal of a formal complaint or of any of the allegations in the complaint *(see **Step 5: Appeals** for more information on appeal procedural requirements).*

Formal Complaint: Notice of Allegations

Written notice to the parties must include:

- Notice that the recipient's grievance process complies with the 2020 Title IX regulations
- Information about any informal resolution processes available
- The allegations, including sufficient details known such as the identities of the parties involved, the alleged conduct, and the date and location of the incident(s)
- A statement that the respondent is presumed not responsible and that a determination will be made at the conclusion of the grievance process
- That parties may have an advisor of their choice who may be, but is not required to be, an attorney
- That parties may inspect and review evidence
- Any provisions within the recipient's code of conduct that prohibit knowingly making false statements or submitting false information

If additional allegations are known or additional parties are identified, an amended written notice must be provided.

34 CFR 106.45(b)(2)(i)(B)

Formal Complaint: Notice of Allegations, cont.

Oregon law has two provisions that schools may wish to include in their notices:

- ORS 339.356(2)(L) - **Bullying/Harassment** requires "A statement of the ***consequences and appropriate remedial action for a person found to have falsely accused another*** of having committed an act of harassment, intimidation or bullying or an act of cyberbullying as a means of reprisal or retaliation, as a means of harassment, intimidation or bullying or as a means of cyberbullying."
- OAR 581-021-0038(5)(h) - **Oregon Sexual Harassment** requires that **"**…students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation ***may not be disciplined for violations of the district's drug and alcohol policies*** that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person's knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct."

Knowledge Check:

Notice and Formal Complaint

Group Discussion:

Mr. Lopez witnesses two students, George and Nick, arguing in the school parking lot. George accuses Nick of cheating on him; he pushes Nick down to the ground and yells that he never wants to see him again. Mr. Lopez intervenes to stop any further conduct; he takes George to the office, where Assistant Principal Snyder asks George what happened. George says that Nick, his boyfriend, was caught talking to another boy on a dating app; George confronted Nick and "accidentally" pushed him. Assistant Principal Snyder says she knows this isn't the first time George has been stopped for putting his hands on Nick; as this is the third report, she's going to have to suspend him for 3 days.

- **Is this incident a Title IX concern?**
- **Is George's suspension compliant with Title IX?**
- **Nick's parents call the school the next day and express concern with George returning to school; they want the school to do something more permanent to keep Nick safe. What is the school required to do now?**

Actual Notice and Supportive Measures

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Resolutions, Sanctions, and Remedies

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Wrap-up and Compliance

Step 3 *(option 1)*: Informal Resolution

Who is Involved?

- Title IX Coordinator
- Informal Resolution Facilitator
- Complainant(s) and Respondent(s) (and families)

What does the Informal Resolution Process look like?

- Schools may, but are not required to, offer an informal resolution
- Many options; processes may look different at each school

Required Documents

- Written document describing informal resolution rights and options

Informal Resolution: Requirements

Informal resolutions may be offered in Title IX sexual harassment cases ***once a formal complaint is filed.***

- Informal resolutions must be fully optional; they cannot be a condition of enrollment or employment, and cannot be required in any way.
- Informal resolutions are not allowed in cases where an employee is accused of sexually harassing a student.
- You have the discretion to determine if offering an informal resolution option is appropriate within each specific case or circumstance.

34 CFR 106.45(b)(9)

Informal Resolution: Requirements, cont.

…at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient…

34 CFR 106.45(b)(9)

- Must provide written notice disclosing information about the informal resolution process.
- Must obtain voluntary, written consent from all parties to participate in the informal resolution process.

Informal Resolution: Written Notice

Written notice regarding an informal resolution must include:

- The allegations
- The specific requirements of the school's informal resolution process
- Any circumstances under which parties would be precluded from resuming a formal complaint process about the same allegations
  - These circumstances must provide for that "at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process"
- Any consequences that could result from participation in the informal process, including records that would be maintained or potentially disclosed

34 CFR 106.45(b)(9)(i)

Informal Resolution: What could it look like?

Informal resolutions can look a variety of ways. You could offer one or more of these options in your school community:

- Agreed-upon immediate remedies
- Mediation or facilitation processes to negotiate a mutually agreeable resolution
- Restorative processes
- Many other options!

Informal resolutions may result in supportive measures, remedies, or even disciplinary actions.

Informal Resolution: Restorative Practices

Many schools have started to implement some level of restorative practices to address student behavior:

> "Restorative practices build community and promote healthy relationships among educators and students in order to teach the social-emotional and conflict-resolution skills necessary to reduce conflict… Using approaches such as dialogues, peace circles, conferencing, and peer-led mediation, restorative practices get to the root cause of student behavior, which often relates to adult behavior."

Restorative practices may or may not be appropriate for addressing sexual harassment:

- Are restorative practices being implemented appropriately, effectively, and consistently?
- Do staff and facilitators have the specific training needed to address the specific discrimination in a restorative manner?
- Are the methods of the restorative process appropriate for the specific circumstance of the harassment?

School-Wide Restorative Practices: Step by Step

Actual Notice and Supportive Measures

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Wrap-up and Compliance

Step 3 *(option 2)*: Investigation

Who is Involved?

- Investigator
- Complainant(s), Respondent(s), and Advisors (and families)
- Witnesses

What does the Investigation Entail?

- Interviewing parties and witnesses
- Gathering evidence, and determining relevance
- Keeping detailed documentation and writing reports

Required Documents

- Written "Investigation Report" with required party review period

Investigation: Investigatory Requirements

…the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient and not on the parties…
34 CFR 106.45(b)(5)(i)

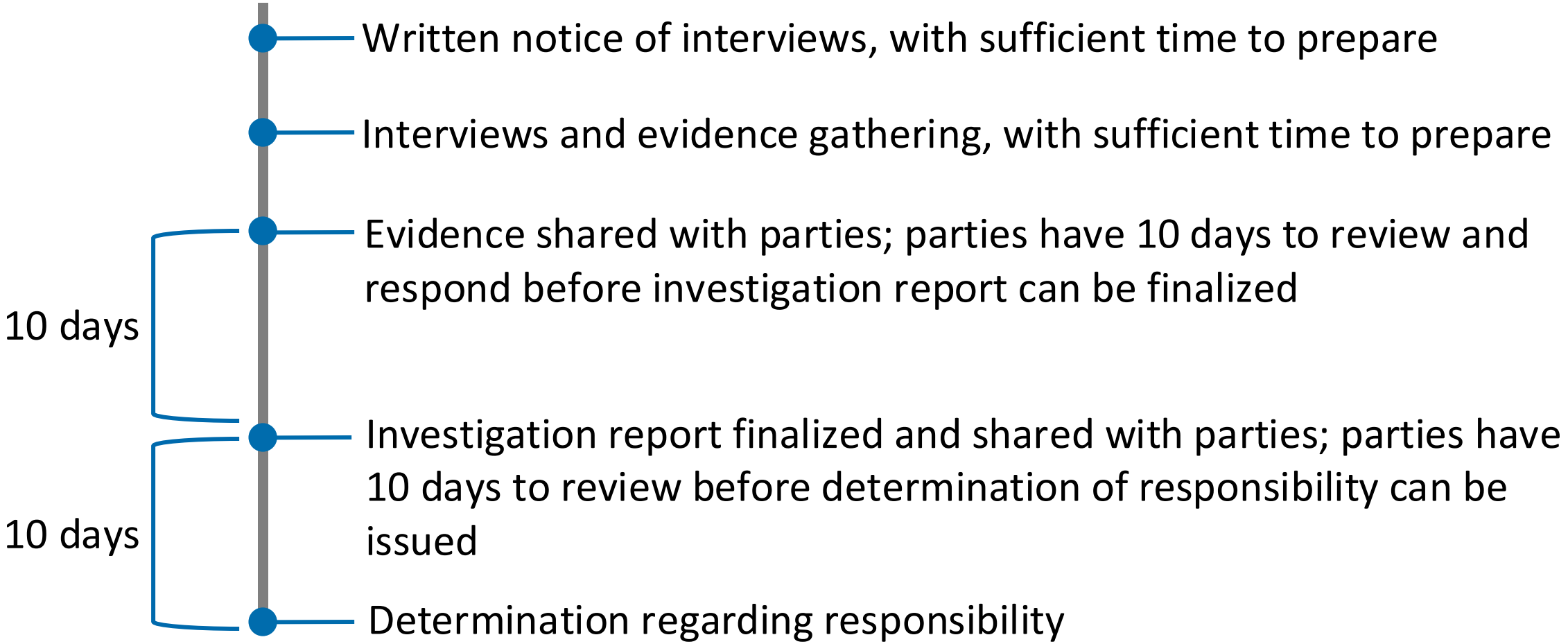
- Parties must be provided with an equal opportunity to present statements and evidence (inculpatory and exculpatory).
- Parties cannot be restricted from discussing the allegations or from gathering and presenting relevant evidence.
- Parties must be provided with ***written notice*** of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with ***sufficient time*** to prepare to participate.

Investigation: Investigatory Requirements, cont.

- Parties must be provided with the same opportunity to have others present, including the opportunity to have an advisor of choice present.
- Parties must have an equal opportunity to inspect and review any ***directly related*** evidence that is a part of the investigation.
  - Prior to completing the investigative report, parties and their advisors must be given a copy of all directly related evidence and must have at least ***10 days*** to review and respond.
- Parties must be given a copy of the investigative report and provided ***10 days*** to review and respond to the investigative report prior to the final determination of responsibility.

34 CFR 106.45(b)(5)

Investigation: Timeline



Investigation: Timeline Extensions

Include reasonably prompt time frames for conclusion of the grievance process, including... 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. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

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

Investigation: Timeline Extensions, cont.

> …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

- Communicate proactively with law enforcement, DHS, or any other agency about your Title IX responsibilities
- Consider what supportive measures you can implement during the delay

Investigation: Investigation Report

The investigative report must "fairly summarize relevant evidence," and must be sent to both parties and their advisors.

34 CFR 106.45(b)(5)(vii)

Best practice: create an investigative report template, one that includes

- Allegations and jurisdictional statement
- Timeline
- Summary of relevant interviews and evidence
- Credibility assessments
- Findings of fact
- May include conclusions; however, separate ***Decision-Maker*** must still come to independent determination

Actual Notice and Supportive Measures

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Formal Complaint

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Wrap-up and Compliance

Step 4: Decision-Making

Who is Involved?

- Decision-Maker
- Complainant(s), Respondent(s), and Advisors (and families)
- Witnesses

What does the Decision-Making Entail?

- Independently reviewing the investigation report and all evidence
- Conducting a facilitated question-and-answer opportunity
- Determining results of the allegations and responsibility

Required Documents

- Written "Determination of Responsibility"

Decision-Making: Overview

- In K-12 schools, a hearing is optional. May offer a hearing, but not required to.
- With or without a hearing, must offer "the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party," aka a "**modified cross-examination**."
  - The Decision-Maker must screen questions for relevance and exclusion.
- Must issue a written determination of responsibility simultaneously to involved parties.

34 CFR 106.45(b)(6)(ii) and (b)(7)

Decision-Making: "Modified Cross-Examination"

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)(ii)

Decision-Making: Standards of Evidence

Preponderance of Evidence:

‘‘[t]he burden of showing something by a ‘preponderance of the evidence,’ the most common standard in the civil law, ‘simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [they] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’’’

-Footnote 1441, p 30381, Federal Register, Vol. 85, No. 97

Clear and Convincing Evidence:

“[c]lear and convincing evidence requires greater proof than preponderance of the evidence. To meet this higher standard, a party must present sufficient evidence to produce ‘in the ultimate factfinder an abiding conviction that the truth of its factual contentions are [sic] highly probable.’’’

-Footnote 1441, p 30381, Federal Register, Vol. 85, No. 97

Decision-Making: Written Determination

The written determination of responsibility must include:

- The allegations
- Procedural steps from formal complaint through determination (including notifications, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held)
- Findings of fact
- Conclusions applying the findings to school/district policies
- Results of each allegation and rationale (responsible or not responsible)
- Sanctions provided and if remedies provided, as applicable
- Appeal bases and procedures

34 CFR § 106.45(b)(7)

Knowledge Check:

Investigation and Decision-Making

As part of a broader complaint regarding harassment and bullying, Serena is being investigated for potential sexual harassment against Bella, including allegations that Serena took and distributed photos of Bella changing in a school locker room, and made several comments and rumors that could fall under prong 2 sexual harassment.

- **Bella's family is working with a community-based advocate, while Serena's family has retained legal counsel. Can they bring these individuals to their interviews?**
- **Bella's family submitted copies of text messages between Bella and other students where Bella was informed about Serena's comments and distribution of the images. Serena has a right to...?**
- **Serena is found responsible for some, but not all of the allegations. What must the school tell Bella about the findings?**

Actual Notice and Supportive Measures

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Formal Complaint

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Informal Resolution

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Decision-Making

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Resolutions, Sanctions, and Remedies

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Wrap-up and Compliance

Step 5: Appeals

Who is Involved?

- Appeals Decision-Maker
- Complainant(s), Respondent(s), and Advisors (and families)

What does the Appeals Process Entail?

- Facilitating appeals review and timelines
- Independently reviewing all previous documentation and any newly submitted evidence and statements
- Determining results of the appeal and any changes needed

Required Documents

- Written "Determination of Appeal"

Appeals: Reasons for Appeal

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) ***Procedural irregularity*** that affected the outcome of the matter;
(B) ***New evidence*** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a ***conflict of interest or bias*** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

34 CFR 106.45(b)(8)(i)

Schools may allow additional reasons for appeal at their discretion, as long as those rights are applied equally.

Appeals: Appeal Process

- All appeal procedures must be implemented equally for both parties.
- All parties must be notified in writing when an appeal is filed.
- All parties must have a reasonable and equal opportunity to submit a written statement in support of or challenging the appeal.
- Must issue a written appeal decision.
- The Appeals Decision-Maker must be a different person than the Decision-Maker or Investigator (or the Title IX Coordinator).

34 CFR 106.45(b)(8)(iii)

Appeals: Written Appeal Determination

As to all appeals, the recipient must:

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

34 CFR 106.45(b)(8)(iii)

Actual Notice and Supportive Measures

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Formal Complaint

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Informal Resolution

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Investigation

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Decision-Making

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Appeal

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Resolutions, Sanctions, and Remedies

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Wrap-up and Compliance

Step 6: Resolution, Remedies, & Sanctions

Who is Involved?

- Title IX Coordinator
- Complainant(s) and Respondent(s) (and families)
- *As Needed:* School community

Implementing Remedies, Resolutions, and Sanctions

- Designating any implementing an appropriate resolution, including any needed/appropriate remedies and sanctions

Required Communications

- Any sanctions must be shared with Respondent(s) and Complainant(s), and any individual remedies share with the Complainant(s)

Resolution, Remedies, and Sanctions: Addressing the Discrimination

Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. Remedies must be designed to **restore or preserve equal access** to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

34 CFR 106.45(b)(1)(i)

Resolution, Remedies, and Sanctions: Remedies

Individual Remedies address the harm for the complainant (or other individuals impacted by the discrimination).

- Academic remediation
- Counseling
- Waiver/adjustment of academic, athletic, or cocurricular requirements
- Additional supportive measures

Community Remedies address broader harm that may have been sustained by the larger community and attempt to prevent future discrimination.

- Student educational programs
- Safety measures (hallway monitoring, additional staffing, etc.)
- Policy reviews
- Staff training

Resolution, Remedies, and Sanctions: Sanctions

- Detention
- Suspension
- Expulsion
- Community service
- Required courses or seminars
- Counseling
- Evaluation and treatment
- Removal from specific classes, sports, etc.
- Co-enrollment prohibition

Resolution, Remedies, and Sanctions: Oregon Discipline Requirements

Schools are required to adopt written rules with respect to student discipline. OAR 581-021-0050

Expulsion is limited to specific circumstances by OAR 581-021-0070, including threats to student and community safety. Expulsion of K-5 severely limited. Similarly, suspension is limited by OAR 581-021-0065.

Specific provisions apply to the discipline of students with disabilities:

- If the discipline constitutes a "significant change of placement", a manifestation determination review (MDR) is required by 34 CFR 300.530 and 34 CFR 104.35(a) as cited by Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline (OCR, 2022)
- A BIP based on an FBA is required if the student put themselves or others at risk of serious bodily injury by OAR 581-015-2181

Actual Notice and Supportive Measures

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Formal Complaint

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Informal Resolution

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Resolutions, Sanctions, and Remedies

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Wrap-up and Compliance

Step 7: Wrap-Up and Compliance

Who is Involved?

- Title IX Coordinator
- *As needed:* Investigator, Decision-Maker, Appeals Decision-Maker, Informal Resolution Facilitator

Compliance and Wrap-Up

- Documentation and storage of documents and evidence (confidentiality, recordkeeping requirements)
- Tracking outcomes for larger civil rights compliance
- Follow-up and check-in procedures for parties

Recordkeeping

- Ensure all records are stored appropriately (7-year requirement)

Wrap-Up and Compliance: Check-in

- ✓ Store all case information appropriately; consider records retention requirements, student records laws, confidentiality, etc.
- ✓ If any supportive measures, remedies or sanctions are in place, how long will those continue?
  - ✓ Consider periodic check-ins to determine effectiveness; communicate your check-in plan to parties.
- ✓ Are any check-ins or debriefs needed with designated personnel (Investigators, Decision-Makers, Appeals, etc.)?
- ✓ What lessons can be learned from this case?
- ✓ Can these lessons inform plans for future staff training, student education, policy development, etc.?

Wrap-Up and Compliance: Recordkeeping

Records must be kept of:

- each record of actual notice and response (including supportive measures), and why that response was not deliberately indifferent
- each investigation, including the results and any sanctions or appeals
- each appeal
- each informal resolution
- all materials used to train Title IX personnel

Records must be maintained for a minimum of **seven years**.

34 CFR § 106.45(b)(10)

Intersecting Oregon Laws

Four Oregon Intersecting Education Laws

Oregon Nondiscrimination Law
ORS 659.850

Oregon Sexual Harassment
ORS 342.704

Bullying, Intimidation, Harassment, and Cyberbullying
ORS 339.351

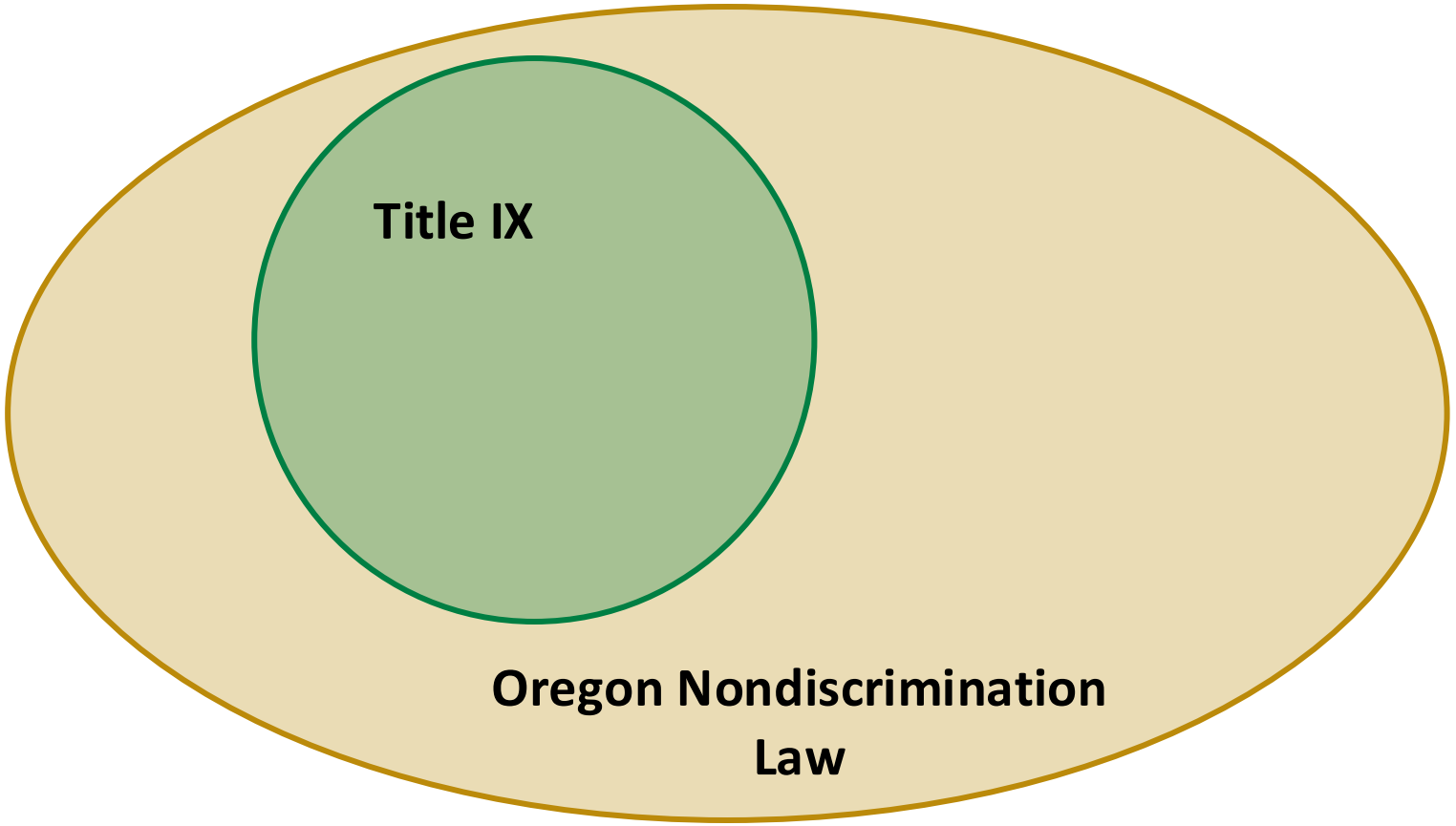
Child Abuse and Sexual Misconduct Reporting

Oregon Nondiscrimination Law

"Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, **sex**, sexual orientation, gender identity, national origin, immigration or citizenship status, marital status, age or disability.

ORS 659.850

- Schools must adopt nondiscrimination policies in compliance with OAR 581-021-0045
- In most cases, this will be the policy used to respond to sex discrimination that is not sexual harassment.


Title IX
Oregon Nondiscrimination Law

Oregon Nondiscrimination + Title IX SH

- All Title IX sexual harassment is also, by definition, discrimination under Oregon's nondiscrimination statute/rule.

Important Process Overlaps:

- Follow your Title IX sexual harassment process and document as both a Title IX sexual harassment case and as a sex-based discrimination case (for civil rights tracking purposes).

Oregon Sexual Harassment

ORS 342.700 - 342.708 and OAR 581-021-0038 require school districts to adopt policies on sexual harassment. The policies must:

- Adopt a specific **definition** of sexual harassment that applies to students, employees, and third parties.
- **Require** staff to **report** possible sexual harassment to a designated person
- **Require** schools to offer **supportive measures and investigate** all complaints
- Provide a **written notice** of **rights and options** to complainants and respondents
- Prohibit certain disciplinary actions related to school drug and alcohol policies **(amnesty policy)**

Oregon Sexual Harassment Definition

Sexual harassment includes:

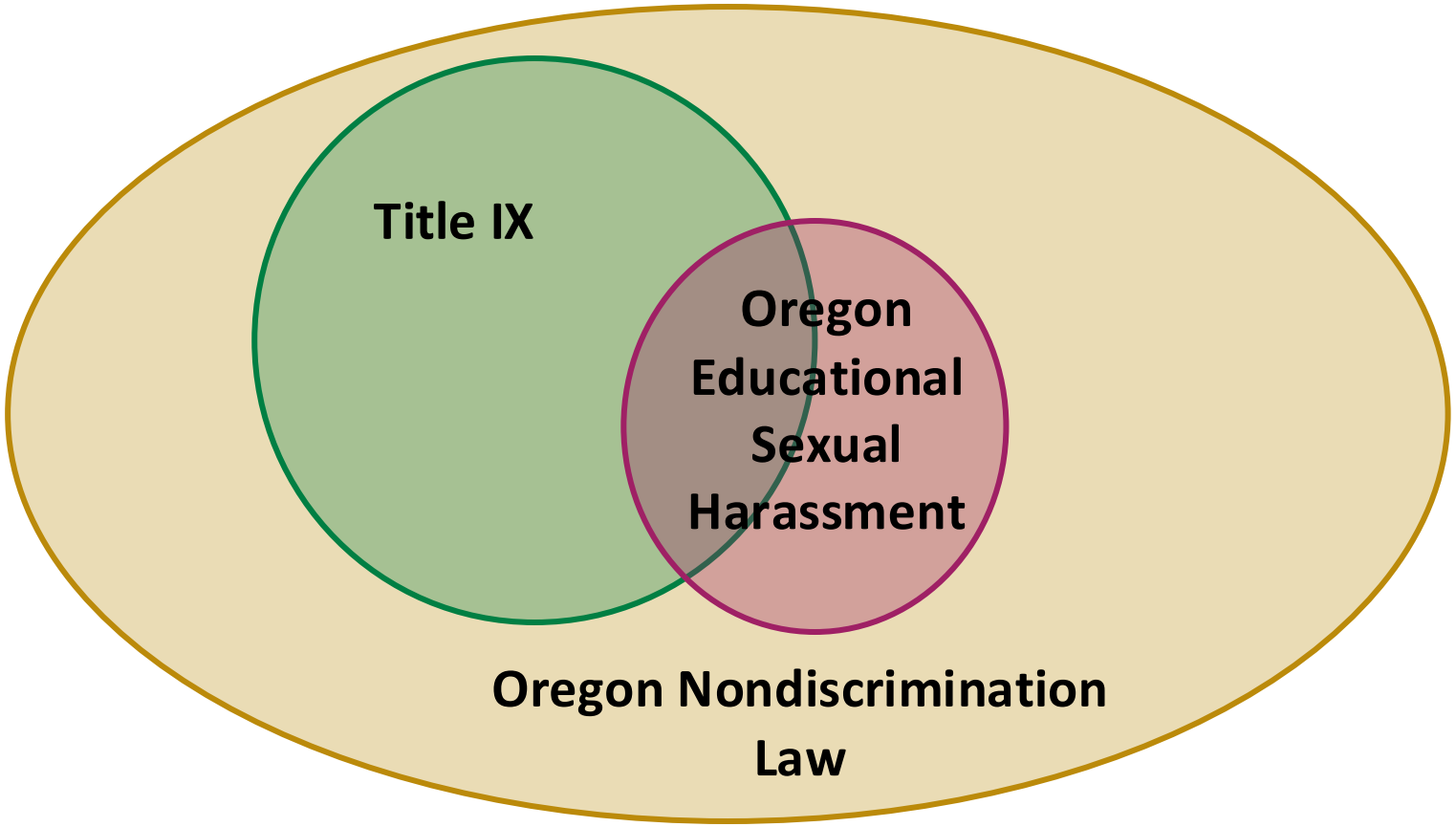
- A demand or a request for sexual favors in exchange for benefits.
- Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - (I) Interferes with a student's educational activity or program;
  - (II) Interferes with a school or district staff member's ability to perform their job; **or**
  - (III) Creates an intimidating, offensive, or hostile environment
- Assault, when sexual contact occurs without a person's consent.

ORS 342.704(3)(b)

Without consent means an act performed: Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or

- (A) When a person who is a party to the act is:
  - (i) Incapacitated by drugs or alcohol;
  - (ii) Unconscious; or
  - (iii) Pressured through physical force, coercion or explicit or implied threats to participate in the act.

OAR 581-021-0038


Title IX
Oregon Educational Sexual Harassment
Oregon Nondiscrimination Law

Title IX Sexual Harassment	Oregon Sexual Harassment
Prong 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.	A demand or a request for sexual favors in exchange for benefits.
Prong 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.	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
Prong 3	
Sexual assault, dating violence, domestic violence, and stalking.	Assault, when sexual contact occurs without a person's consent.

Oregon SH + Title IX SH

- Most Oregon sexual harassment will also fall under the definition of Title IX sexual harassment.
- There are jurisdictional differences between the two when it comes to school district responsibility

Important Process Overlaps:

- If Oregon SH and Title IX SH:
  - Run your **Title IX SH** process if requested in a formal complaint.
  - **Add in -** providing a written notice of rights and options to the complainant and respondent (Oregon)
  - **Remember -** drug and alcohol amnesty policy notice requirement (Oregon)

Harassment, Intimidation, Bullying, and Cyberbullying

Policies in compliance with ORS 339.351 must include, among other things, the following:

- A statement of the **scope**, including notice that the policy applies to school-sponsored activities, on school provided transportation and at bus stops
- Identify by job title the school **officials responsible** for receiving reports
- Require a school employee to **report instances** to said responsible individual
- Require **notification to parents/guardians** of a student who was subjected to the harassment/bullying and to the parents/guardian of the student who may have conducted the harassment (Note: there are specific **exceptions** to this requirement outlined in statute)
- **Procedure** for prompt investigation of a report and the title of the school officials responsible for investigating
- A statement of the **consequences** and appropriate **remedial** actions

Harassment, Intimidation, Bullying, and Cyberbullying

"Harassment, intimidation or bullying" means **any act** that:

(a) Substantially **interferes** with a student's educational **benefits, opportunities or performance**;

(b) **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**;

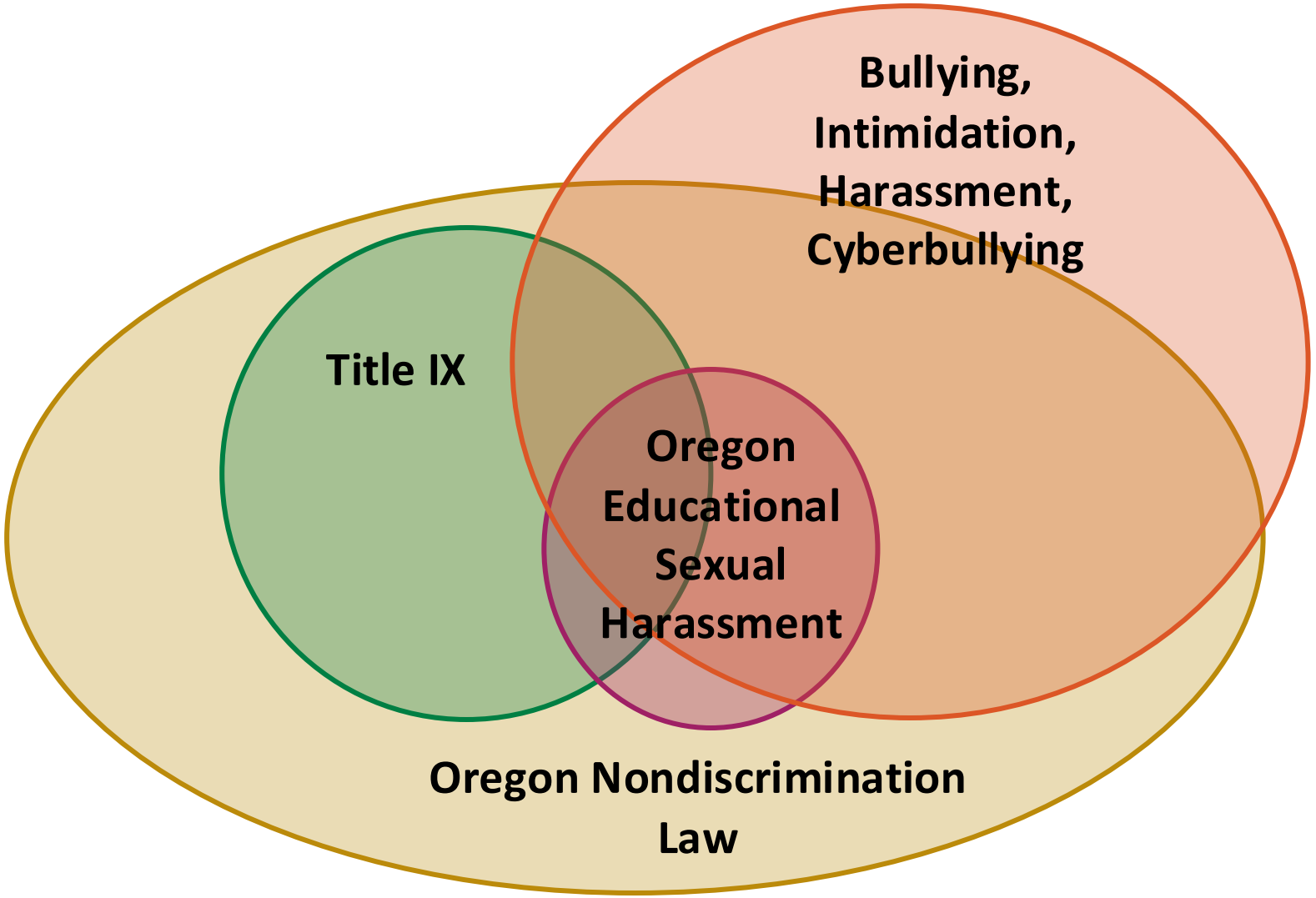
(c) Has the effect of:

(A) Physically **harming** a student or **damaging** a student's property;

(B) Knowingly placing a student in reasonable **fear of physical harm** to the student **or damage** to the student's property; or

(C) Creating a **hostile educational environment**, including interfering with the **psychological well-being** of a student; and

(d) May be based on, but not be limited to, the protected class status of a person.


Bullying,
Intimidation,
Harassment,
Cyberbullying
Title IX
Oregon
Educational
Sexual
Harassment
Oregon Nondiscrimination
Law

Oregon Harassment/Bullying + Title IX SH

- **Title IX SH will almost always also be harassment/bullying, by definition.**

Important Process Overlaps:

- When both are implicated, run your Title IX SH process.
- **Add -** direct parental notification
- **Remember -** false reports require consequences under harassment/bullying policies if they were made for the <u>purposes of retaliation or harassment</u>

Child Abuse Reporting

Oregon educators are required by law to report child abuse ("any action or inaction (neglect) that results in harm or serious risk to a child"), which includes:

- **Physical abuse**
- **Sexual abuse, including sexual exploitation and sex trafficking**
- **Neglect**
- **Mental injury**
- **Threats of harm**

Understanding Child Abuse, ODHS

Some child abuse may also constitute sexual harassment under Title IX.

Sexual Conduct Reporting

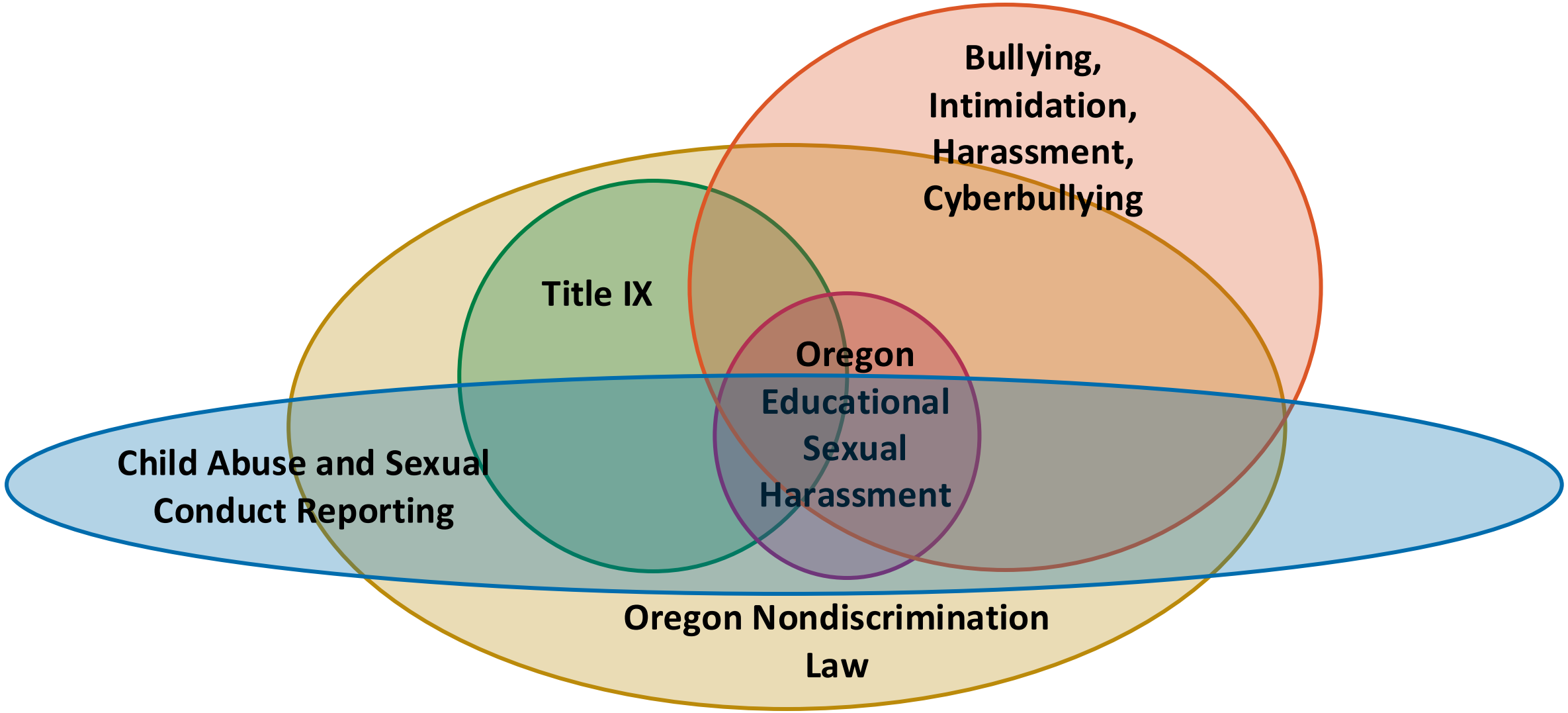
"Sexual conduct" means verbal or physical conduct or verbal, written or electronic **communications by a school employee, a contractor, an agent or a volunteer** that involve a student and that are:

(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 (12)(a)

Any school employee who knows about possible sexual conduct must report it to a designated school official.


Bullying, Intimidation, Harassment, Cyberbullying
Title IX
Oregon Educational Sexual Harassment
Child Abuse and Sexual Conduct Reporting
Oregon Nondiscrimination Law

Child Abuse/Sexual Conduct + Title IX SH

- Always consider if outside reporting is needed at the beginning of a SH process

Important Process Overlaps:

- When both are implicated, report to law enforcement/DHS/TSPC/ODE before beginning your Title IX SH process.
  - Title IX allows for reasonable time frame extensions for good cause, which includes concurrent investigations.
  - Continue to provide supportive measures and educational access.
- **Remember:** an investigation by law enforcement, DHS, TSPC, or ODE does not substitute for your own Title IX investigation and response requirements.

Knowledge Check:

Overlapping Laws

Sam, a sixth-grade student, confided in a few of her classmates that she has secretly started dating another girl in their school who is a year older. The classmates promised not to tell anyone, but by lunch the next day rumors about Sam have spread around the school. When Sam gets on the bus at the end of the day and goes to sit in her usual seat, she finds a printed picture of herself photoshopped into a picture of several naked women, with a homophobic slur and "*Sam's paradise*" written across the top. Several students start taunting her by singing "Sam likes vagina" on the way home. Sam's friend checks on her via text, mentioning that she's heard the rumors and that everyone is talking about Sam. Sam fakes being sick and refuses to go to school the next day.

In addition to Title IX, which other laws apply?

Avoiding Conflict of Interest and Bias

What is Bias?

"A tendency, inclination, or prejudice toward or against something or someone... Positive or negative, such cognitive shortcuts can lead to prejudgments and rash decisions, or discriminatory practices."

-Psychology Today

Bias can be…

- positive or negative
- morally neutral (or not…)
- conscious or unconscious
- personal or experience-based
- taught to us growing up
- societal or cultural



Image by Elijah Mears; Unsplash

SELF CHECK-IN: We all have biases!

What are some of your biases?
Examples:

- Where you grew up
- Where you went to school
- Your favorite/least favorite sports teams
- Occupations
- …and more!

What is Bias? **Implicit Bias**

"The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner."

-The Kirwan Institute for the Study of Race and Ethnicity

- develops from a natural tendency to utilize shortcuts and patterns
- is activated unconsciously and without a choice or control
- can affect the way we think, act, and interact with the world

More Info: What is Unconscious Bias?

family status

race

ability status

age

sexual orientation

social class

Many implicit biases come from our beliefs about identities and protected class groups.

national origin

gender identity

religion

social tradition

appearance

What is bias? Confirmation Bias

"The tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence."

-O'Brien & Ellsworth, 2006, Confirmation Bias in Criminal Investigations

- develops to find things that exist with our views instead of those that challenge them
- is an efficient, albeit ineffective, way to process information
- is strong and widespread because it minimizes discomfort



Image by Nick Quon; Unsplash

When responding to discrimination, we may bring implicit or explicit bias into the room with us…

...which helps us form a “hunch” or “gut feeling” about a situation...

...which then makes us vulnerable to confirmation bias.

Bias affects us most when we have...



Photo by Agnivesh Jayadeep; Unsplash

- Ambiguous or incomplete information
- Compromised cognitive loads (stress, multi-tasking)
- Time constraints
- Overconfidence in our objectivity
- Tired, hungry, or not operating at your “best self”

The Kirwin Institute, The Ohio State University; The New York Times Implicit Bias Series

Individual Strategies to Decrease Bias

Effective or promising research-driven strategies:

- Empathy-building
- Emotional regulation and mindfulness
- Engaging with counter-stereotypes
- Slow down, and build in extra time

FitzGerald, C., Martin, A., Berner, D. *et al.* Interventions designed to reduce implicit prejudices and implicit stereotypes in real world contexts: a systematic review. *BMC Psychol* **7**, 29 (2019). https://doi.org/10.1186/s40359-019-0299-7; U.S. Department of Health and Human Services, https://thinkculturalhealth.hhs.gov/maternal-health-care/assets/pdfs/Combating_implicit_bias_and_stereotypes.pdf

Structural Strategies to Decrease Bias

- Robust process training
- Reduce subjectivity where possible
  - Clear and specific procedures, checklists, templates, etc.
  - Reduce “gut feeling” or “hunch” decision-making
- Peer-collaboration models
- Use data and reviews to check your processes – case reviews, statistics, external evaluations, etc

Conflict of Interest

What is a conflict of interest?

"A situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties."

-The People's Law Dictionary

"A conflict of interest arises when what is in a person's best interest is not in the best interest of another person or organization to which that individual owes loyalty… A conflict of interest can also exist when a person must answer to two different individuals or groups whose needs are at odds with each other."

-McCombs School of Business at University of Texas

What could a conflict of interest look like?

Financial conflicts, such as yourself or a family member employing a student or a student's family member

Structural/job conflicts, such as directly supervising a student or staff member, or having another role that would benefit/be harmed by an outcome

Imbalance conflicts, where your different relationships with parties or different levels of interaction bias you

Personal conflicts, such as favoritism, bonds, or close relationships

Conflict of Interest: Two Examples

A school district received a Title IX complaint regarding sexual harassment allegations against a high school senior. The school's Title IX Coordinator, who investigated the complaint, used to babysit for the Respondent and is good friends with their mother.

The parent of a middle school student submitted a complaint of discrimination to the school district. The complaint stated that the school's "consult model" of special education services was discriminatory based on disability. The model is a point of pride for the district, and the school's administrative team was paramount in its implementation. The principal, in particular, is openly supportive of the model and the budgetary gains it brings.

Perceived vs. Actual Conflicts of Interest

- **Actual:** Staff are in a position to be influenced by private interests
- **Potential:** Staff *may* be influenced in the *future* by private interests
- **Perceived:** Staff *may appear* to be influenced by private interests

Accounting for Conflicts of Interest

- Consider: Is this an *absolute* conflict? Can you *screen* and provide notice? Will *consent* mitigate the conflict?
- Develop a school-specific conflict of interest protocol (consider integrating it into your discrimination policy)
- Cross-train multiple individuals to account for potential conflict of interest
- Develop partnerships or external contracts to share investigators* and decision-makers when necessary

What else can you think of?

*ORS 703.401-411 provides information on qualification of investigators

Upcoming Title IX Sexual Harassment Trainings

Title IX Sexual Harassment: Deep Dive

- ☐Thurs, Aug 20, 9:00 am-12:00 pm
- ☐Tues, Sept 15, 12:30-3:30 pm
- ☐Fri, Oct 30, 9:00 am-12:00 pm
- ☐Wed, Jan 27, 12:00-3:00 pm
- ☐Thurs, Apr 15, 12:30-3:30 pm

Title IX Sexual Harassment: Investigator

Requires Deep Dive Training Prerequisite

- ☐Thurs, Aug 27, 9:00-10:30 am
- ☐Tues, Sept 22, 12:30-2:00 pm
- ☐Fri, Nov 6, 9:00-10:30 am
- ☐Wed, Feb 3, 1:30-3:00 pm
- ☐Thurs, Apr 22, 12:30-2:00 pm

Title IX Sexual Harassment: Decision-Maker and Appeals

Requires Deep Dive Training Prerequisite

- ☐Thurs, Aug 27, 1:00-2:30 pm
- ☐Tues, Sept 22, 3:00-4:30 pm
- ☐Fri, Nov 6, 1:00-2:30 pm
- ☐Wed, Feb 3, 3:30-5:00 pm
- ☐Fri, Apr 23, 1:00-2:30 pm

Scan and Join!

Need to fulfill your Coordinator training requirements?

Seeking more information?

We have the listservs for you!

Title IX Listserv

Section 504 Listserv

Title VI Listserv

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