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Title IX Training: The New Sexual Harassment Regulations

February 2, 2021, 9 am-12 pm



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she/her

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Oregon Department of Education

Equity and Excellence for Every Learner

- The Oregon Department of Education works in partnership with school districts, education service districts and community partners;
- Together, we serve over 580,000 K-12 students;
- We believe every student should have access to a high-quality, well-rounded learning experience;
- We work to achieve the Governor's vision that every student in Oregon graduates with a plan for their future.

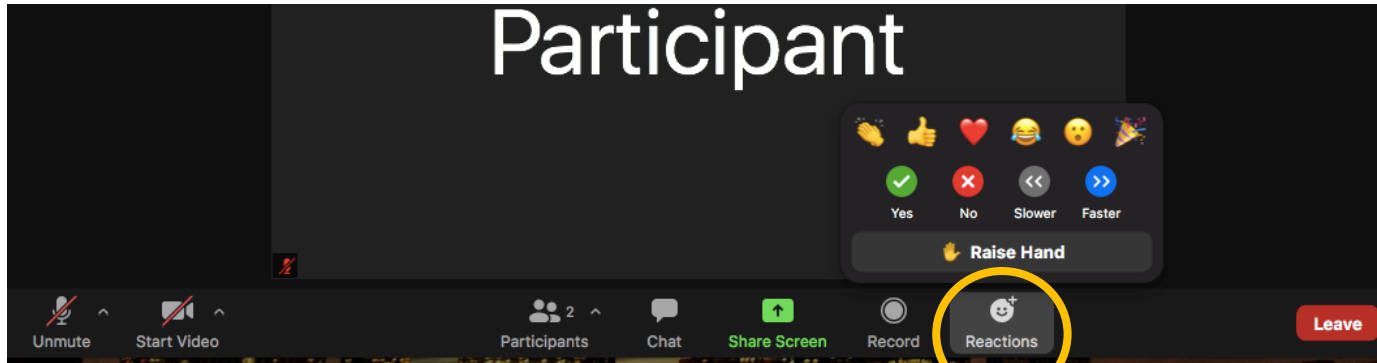


Before we get started...

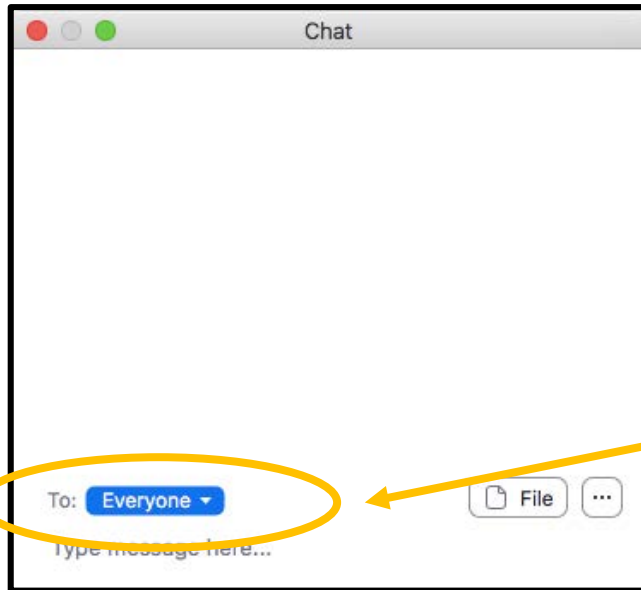
This training is not intended as legal advice; we advise you to consult with your legal counsel before making policy or process changes.

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

Using Zoom



click on "Reactions" to raise your hand



toggle the "To" button to send a question privately or publicly

TODAY'S AGENDA



The Groundwork: Introduction to Title IX



Sexual Harassment: Definitions & Dynamics



Intersecting Oregon Laws



Who's Who in Title IX



Response, Investigation, & Adjudication



Conflict of Interest & Bias



THE GROUNDWORK: INTRODUCTION TO TITLE IX

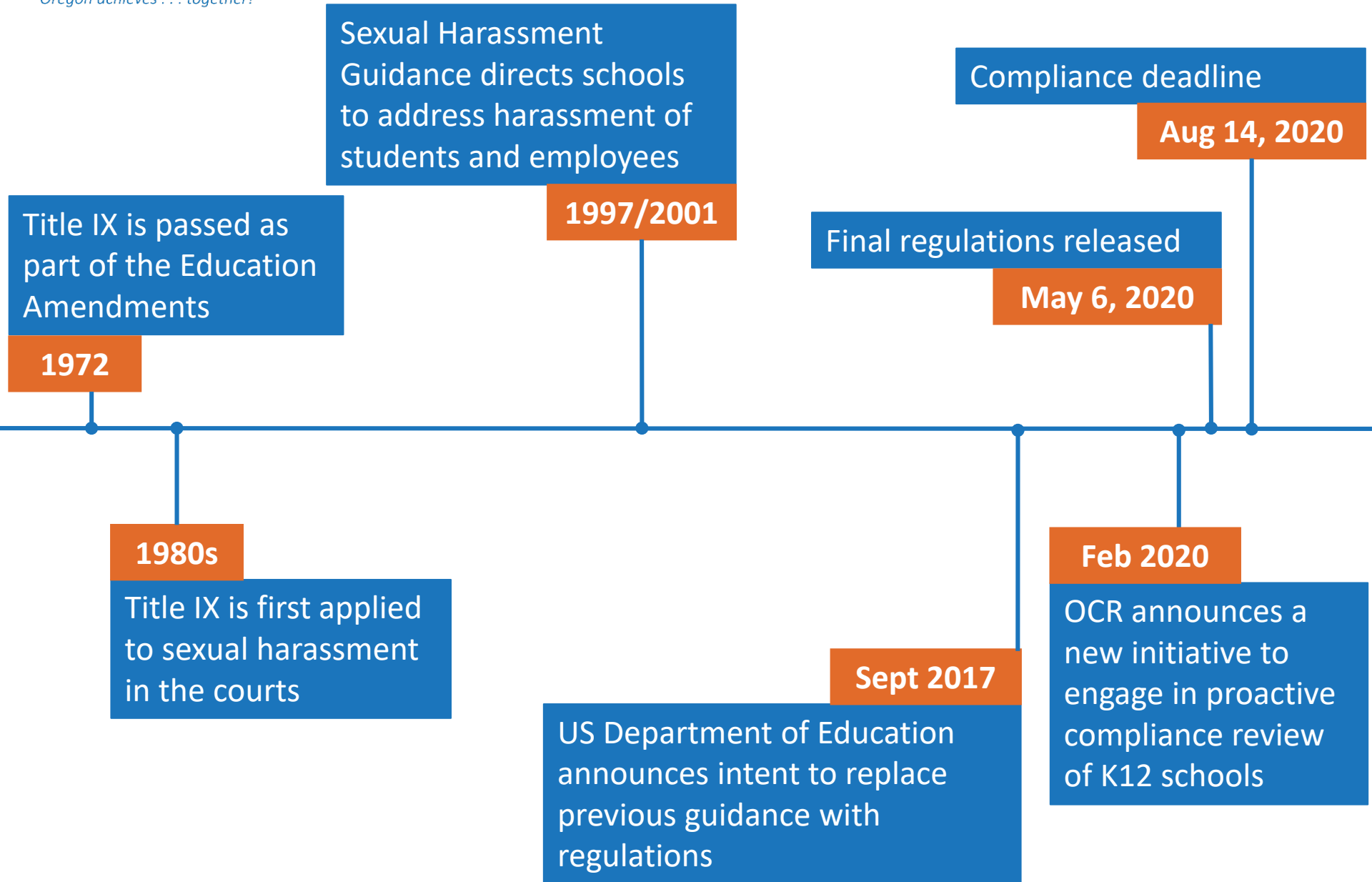
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



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TITLE IX HISTORY: SEXUAL HARASSMENT



The 2020 Regulations: Major Changes for K-12 Schools

- New definition of sexual harassment
- Restriction to occurrences “within educational program or activity”
- Supportive measures required
- New and specific grievance process (and policy requirements!)
- Specific notification requirements
- Advisors of choice
- Specific training and personnel requirements
- Informal processes allowed

WHAT'S THE SAME?

- Students are entitled to an education free from sexual harassment
- All K-12 school employees must still report sexual harassment
- Schools must have a designated Title IX Coordinator, and make information easily accessible
- **Oregon laws still apply!**
 - Sexual harassment policy requirements
 - SB155 – sexual abuse and sexual conduct
 - Mandatory reporting





What changes should we expect with the new administration?

- Expect potential guidance changes!
- **BUT**, don't expect the May 2020 regulations to change anytime soon...
- Title IX, LGB+, and trans students
 - [Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation](#)
 - Look to [2016 Dear Colleague Letter](#) for potential hints
 - *Bostock* Supreme Court decision impacts?

Break for Questions



SEXUAL HARASSMENT: DEFINITIONS & DYNAMICS

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



Does this meet prong 2 (severe, pervasive, objectively offensive, denies equal access)?

Oliver is in the school's coding club that meets at lunch; everyone has been practicing making websites, and a group of students in the club use their website to rank everyone in the class by how "slutty" or "virginal" they are.

The website proclaims Oliver as the "top virgin," and includes a photoshopped picture of him made to look like he's naked, looking scared of a several nearby naked girls. Someone anonymously emailed it to everyone in the club during the last meeting, and Oliver has heard several classmates mutter "virgin" under their breath when he walks down the hall.

Select Yes  or No 

Sexual Assault

Rape: (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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.

-20 U.S.C. 1092(f)(6)(A)(v) and the FBI Uniform Crime Reporting System (NIBRS-version)



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Type in the chat box:

How do you define
consent?

How will your school define consent?

“Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. To be effective, consent must be informed and reciprocal, freely and actively given, and mutually understandable.”

-Oregon State University

Consent is not present for sexual activity when a person is:

- under the influence of drugs or alcohol;
- unconscious; or
- pressured through physical force, coercion or explicit or implied threats.

-ORS 342.704/OAR 581-012-0038

Is there consent?

Lacey and her girlfriend Mira are at a football game. Towards the end of the game, Mira reminds Lacey that Mira needs to get home before her curfew. They head out to the car, when Lacey asks if they can make out for bit before they go home. “I don’t really feel like it, I’m tired,” Mira says. Lacey pouts and says “come on, we never get to be alone together!” Mira responds that they won’t ever get to be alone together again if she gets grounded for missing her curfew. Lacey tells Mira, “if we’re not even gonna make out, what was the point of me driving you here tonight? Who even cares if you’re grounded if you never even act like my girlfriend. I’m going back to hang out with everyone else then if you’re gonna be boring.” Lacey starts to open her car door. Mira looks at the clock and says “ok fine, as long as you promise we can leave in five minutes.”

Select Yes  or No 

Break for Questions

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)(8)

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)(10)



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VIOLENCE



VIOLENCE

Stalking

Stalking is “engaging 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)(30)



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Stalking Dynamics



- Show up at your home, school or place of work unannounced or uninvited.
- Send you unwanted text messages, letters, emails and voicemails.
- Leave unwanted items, gifts or flowers.
- Constantly call you and hang up.
- Use social networking sites and technology to track you.
- Spread rumors about you.
- Wait at places you hang out.
- Use other people as resources to investigate your life. For example, looking at your facebook page through someone else's page or befriending your friends in order to get more information about you.
- Damage your home, car or other property.

Type in the chat box:

Why is it important to address sexual harassment within our schools?

Prevalence of Sexual Harassment

In 2011, **48%** of students reported experiencing sexual harassment at school.

In 2017, **1.4%** of public schools received frequent reports of sexual harassment.

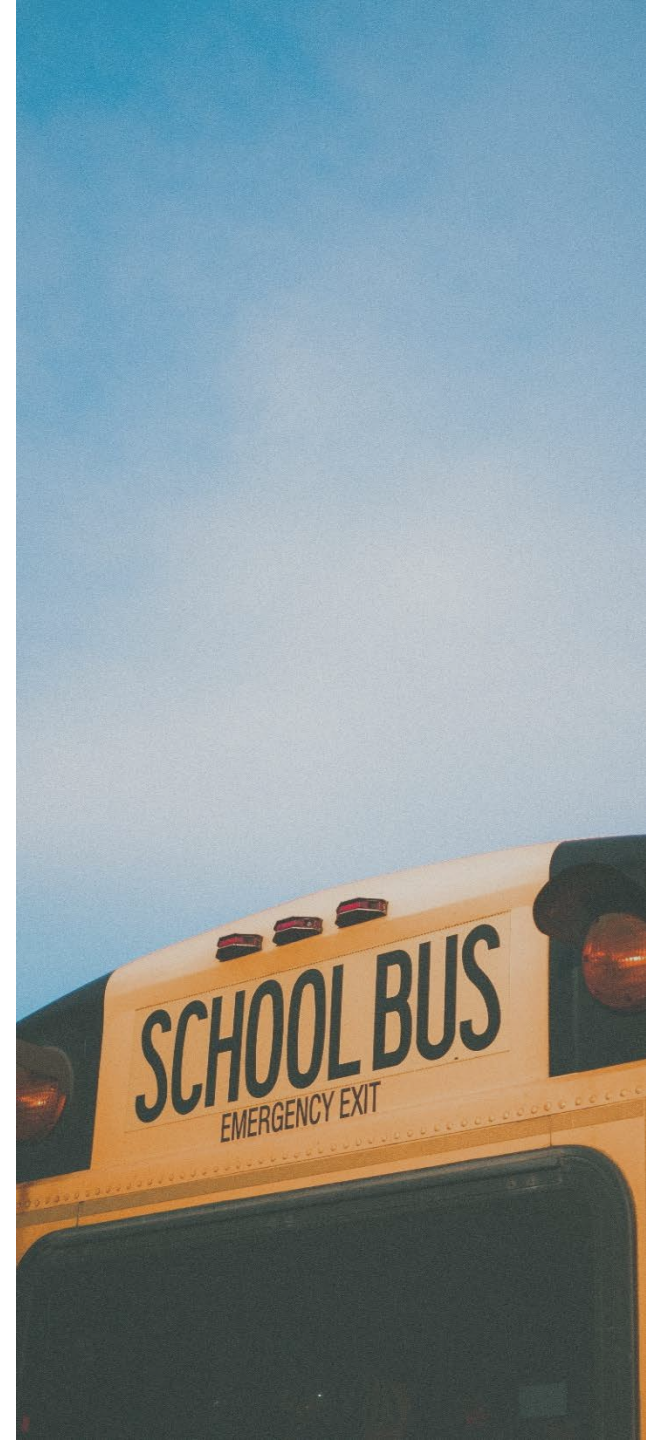
<https://www.aauw.org/app/uploads/2020/03/Crossing-the-Line-Sexual-Harassment-at-School.pdf>

<https://nces.ed.gov/pubs2019/2019061.pdf>

Impacts of sexual harassment in the school environment

- Lower grades
- Dropping out of sports and cocurriculars
- Missing school
- Leaving school

The toll of sexual harassment can extend to friends of the student who was harassed.



Institutional Betrayal

When there is an expectation of school safety, not following or clearly communicating policy can perpetrate institutional betrayal, which exacerbates trauma.

Clear, consistent, caring responses help mitigate the impacts of trauma.

**We can help make the difference
between protracted trauma and
positive healing!**

Break for Questions



INTERSECTING OREGON LAWS

Discrimination Prohibited

School districts cannot discriminate by:

- Treating one person differently from another in determining whether a person satisfies any requirement or condition for aid, benefits, or services
- Providing different aid, benefits, or services
- Denying any person aid, benefits, or services
- Subjecting a person to separate or different rules of behavior or treatment
- Aiding or perpetuating discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees
- Otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.



Oregon's Protected Classes

Race

Color

National
Origin

Religion

Disability

Sex

Sexual
Orientation
(and Gender
Identity)

Age

Marital/
Familial
Status



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Sexual Harassment Policies

Oregon school districts are required to adopt policies that prohibit sexual harassment, and that:

- Require employees to report harassment
- Require schools to implement supportive measures to reporting or impacted parties
- Require investigation of reported harassment
- Require specific types of notification to students who report or are reported to commit harassment

Sexual Harassment: Title IX compared to Oregon law

- (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).

(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;

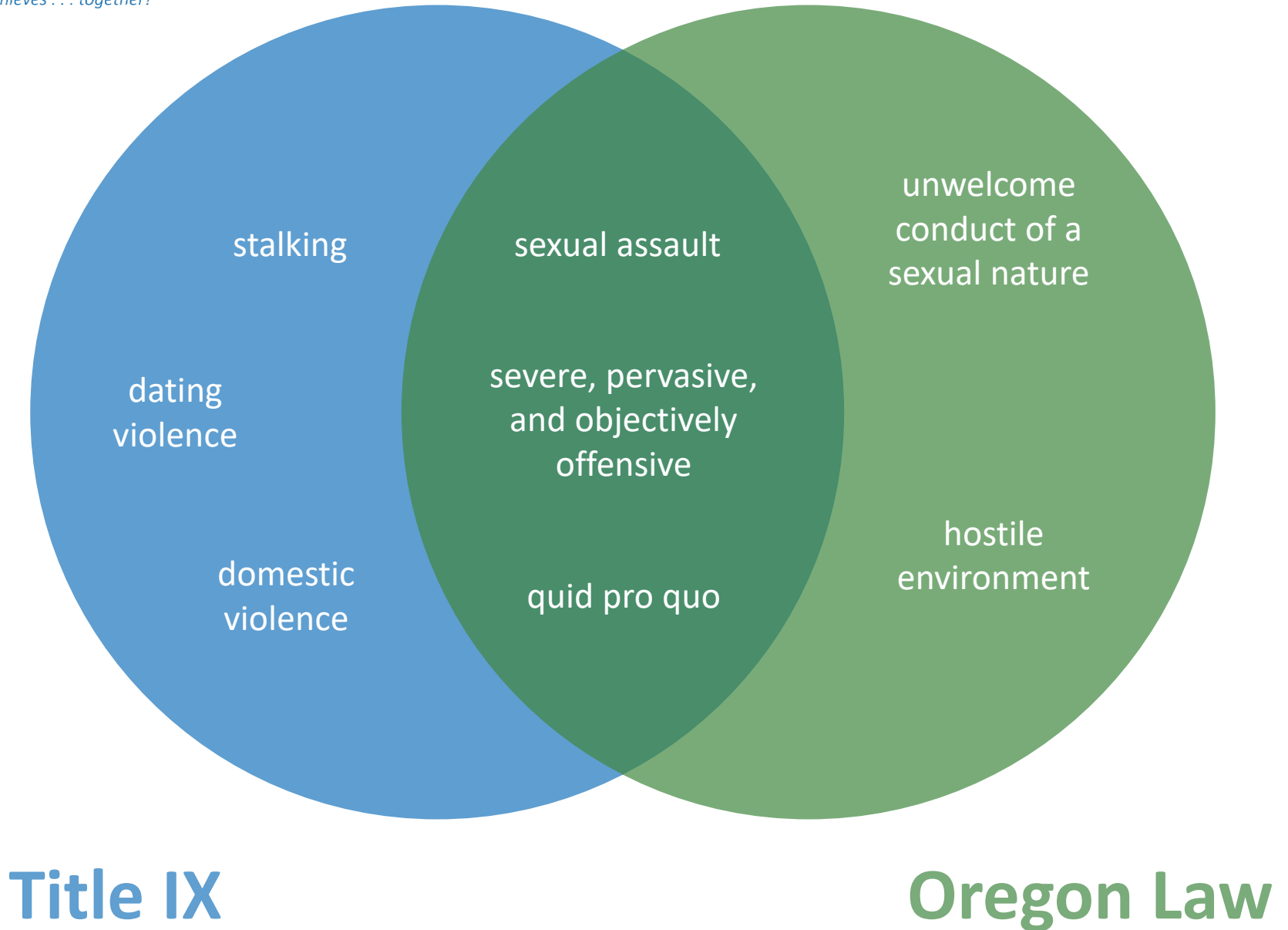
(II) Unconscious; or

(III) Pressured through physical force, coercion or explicit or implied threats.



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Harassment, Intimidation, Bullying, and Cyberbullying

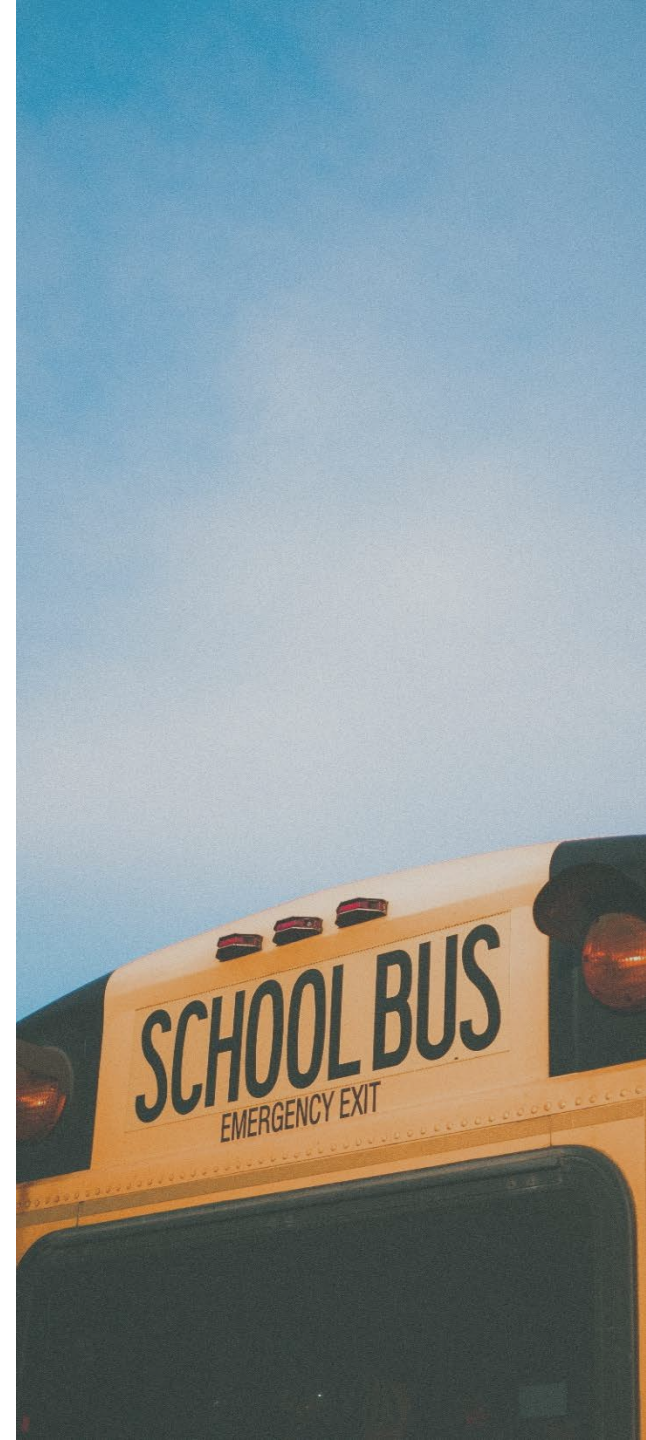
- Policy required that defines and prohibits
- School official(s) to take reports and coordinate investigations
- Investigate reports
- Take action to stop incidents and remedy effects
- Prohibit retaliation for reporting

ORS 339.356

Mandatory Reporting & SB155

When sexual abuse or sexual conduct is identified, employees must:

- Report to a designated school official
- Report to law enforcement, DHS, TSPC, and/or ODE as required



REPORT:

Is it sexual conduct or child abuse?

YES

NO

Report to law enforcement, DHS, TSPC, or ODE as required

THEN SCREEN:

Is it Title IX sexual harassment? Within educational program and in the US? Complainant is a community member? Respondent within District control?

If sexual conduct or child abuse AND another policy violation, overlay processes. Where they *directly conflict*, Title IX preempts Oregon state law.

NO

YES

Does it meet Oregon's definition of sexual harassment?

Does it meet Oregon's definition of sexual harassment?

YES

NO

YES

NO

Run Oregon Sexual Harassment Process

Check for other policy violations – discrimination, bullying, etc

Run Title IX process; overlay Oregon additional reqs

Run Title IX process

Break for Questions



WHO'S WHO IN TITLE IX

Who's Involved?

Title IX Coordinator

Investigator

Decision-Maker

Appeals Decision-Maker

Informal Resolution Facilitator

may be the
same person

only required
if offered





Title IX Coordinator*

- Oversees overall Title IX compliance
- For sexual harassment, must:
 - Respond to all actual notice
 - Coordinate supportive measures
 - Coordinate implementation of remedies and sanctions
 - Keep records
- For sexual harassment, may:
 - Investigate cases
 - Issue notices
 - Train other district personnel

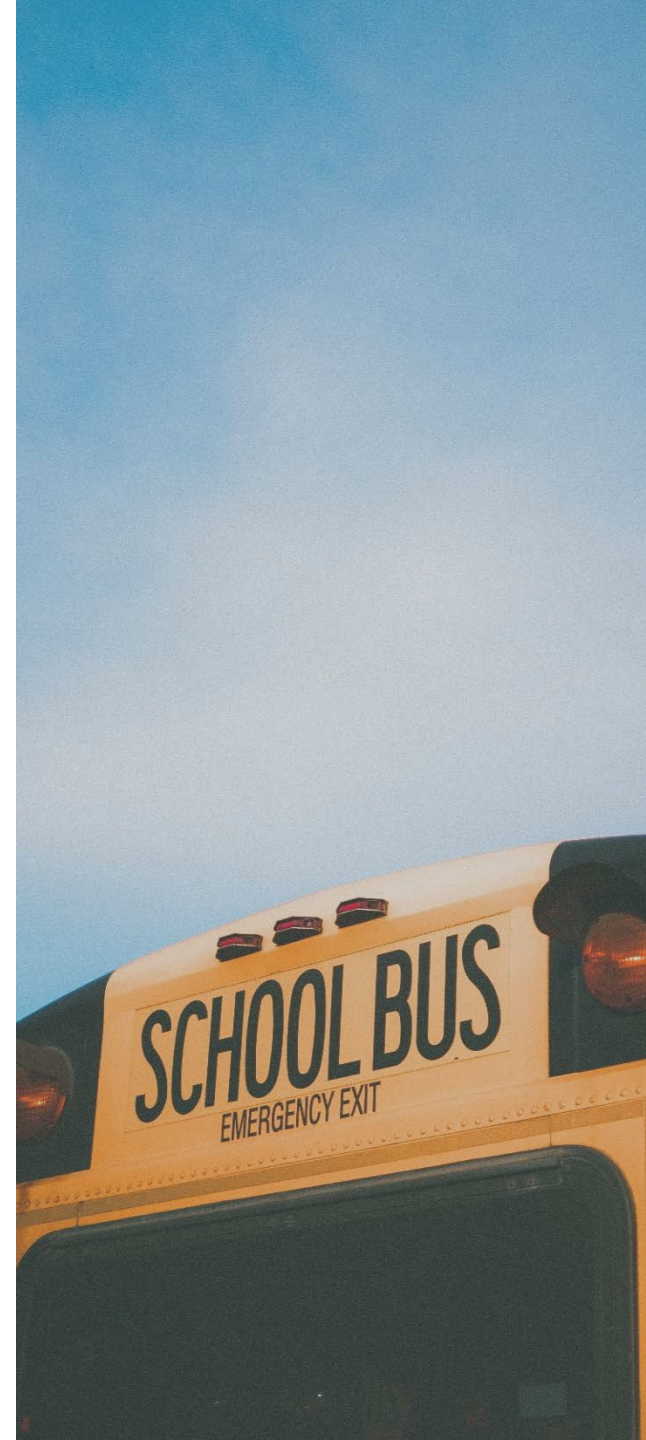
*According to the new regulations, this person “must be referred to as the Title IX Coordinator”

Investigator

- Conducts interviews
- Gathers and reviews evidence
- Writes the investigative report

Informal Process Facilitator

- Coordinates informal process
- Must be separate from formal complaint and grievance process





Decision-Maker(s)

- Conducts hearing, if applicable
- Facilitates “modified cross-examination” questioning for K-12
- Writes determination of responsibility

Appeals Decision-Maker(s)

- Facilitates appeal process, including notification and written opportunity to respond
- Writes appeal decision



RESPONSE, INVESTIGATION, & ADJUDICATION



1

Actual Knowledge

2

Formal Complaint

3

Investigation

4

Decision-Making

5

Appeal

6

Sanctions and Remedies

	Title IX Coordinator	Investigator	Decision- Maker	Appeals Decision- Maker	Informal Process Facilitator
Actual Notice	X				
Supportive Measures	X				
Formal Complaint	X				
Investigation		X			
Decision			X		
Appeal				X	
Sanctions and Remedies	X		X	X	
Informal Process					X

1

ACTUAL KNOWLEDGE

Actual knowledge to a K-12 school includes notice to **any** school or district employee.

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*

OREGON LAW INTERSECTION:

- Oregon sexual harassment policy rules
- mandatory reporting requirements (when implicated)
- SB155 reporting requirements (when implicated)

(a)



Supportive Measures

- No-contact orders
- Changing class, work, or other schedules
- Academic accommodations, including extensions, academic rehabilitation, etc.
- Increased monitoring and safety measures
- Privacy measures and accommodations
- Transportation accommodations

Supportive measures may impact the other party, but must not ***unreasonably burden*** them such that it impacts their access to the educational program or activity.

Disciplinary measures may not be imposed on the respondent until the conclusion of grievance procedures.

ORS 342.704/OAR 581-021-0038

Notice of Rights and Options

- (a) Name and contact information for all persons designated by the district to receive complaints;
- (b) The rights of the person;
- (c) Information about the privacy rights of the person and legally recognized exceptions to those privacy rights for internal complaint processes and services available through the school or school district;
- (d) Information about the complaint process, including any applicable timelines;
- (e) Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system, and that those remedies may be subject to statutes of limitation;
- (f) Information about services available to the person through the district, including any counseling services, nursing services, or peer advising;
- (g) Information about and contact information for support services available to the person;
- (h) Notice of the prohibitions of discipline as described in subsection (5)(h); and
- (i) Notice of prohibition of retaliation;

2

FORMAL COMPLAINT

A formal complaint is a **document submitted by the complainant or signed by the Title IX Coordinator** requesting the initiation of grievance procedures.

Must dismiss under Title IX if:

- complainant is not “availing themselves, or attempting to avail themselves,” of the educational program
- 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

OREGON LAW INTERSECTION: Oregon law will still require response to sexual harassment even if it must be dismissed under Title IX. (3)



“Educational program or activity”

“... ‘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 Part 106.44(a)

This doesn't just include the school!

- Field trips
- Athletic games
- Buses and bus stops
- Fundraising events

Can third parties submit
complaints?

2

FORMAL COMPLAINT

A formal complaint is a **document submitted by the complainant or signed by the Title IX Coordinator** requesting the initiation of grievance procedures.

However, a third party could:

- Provide notice under Title IX and trigger associated responsibilities
- File a complaint under Oregon's sexual harassment guidelines



Emergency Removal and Administrative Leave

Emergency removal of a student is allowed:

- following a risk analysis that determines there is risk to the physical health or safety of the school community
- respondent is provided notice and opportunity to challenge
- must comply with 504 and IDEA

Administrative leave of employees, paid or unpaid, is allowed while grievance process is pending

34 CFR § 106.44(c) and (d)

Informal Process

Can, but not required to, offer informal resolution process for any case EXCEPT employee-on-student sexual harassment

- Formal complaint must be filed
- Notice must be given, which must include informal process information
- Both parties must submit written consent
- Identify and describe conditions under which parties can/cannot opt back into formal process

34 CFR § 106.45(b)(9)

Break for Questions

2

FORMAL COMPLAINT

A notice of allegations must be issued simultaneously to complainant(s) and respondent(s), and must include:

- Information about the grievance process
- Allegations including: identity of parties, conduct, date, location,
- Presumption of non-responsibility for respondent
- Advisor of choice rights
- Any prohibitions on submitting false information

Ongoing/amended notice must be provided if additional allegations are added to the initial report.

OREGON LAW INTERSECTION:

Oregon's laws on harassment, intimidation, bullying, and cyberbullying policies require a statement of consequences for false reports.

(2)



2

FORMAL COMPLAINT

OREGON LAW INTERSECTION:

...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.

OAR 581-021-0038(5)(h)



Rights of Parents

“The obligation to comply with this part is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.”

“Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a ‘complainant,’ ‘respondent,’ ‘party,’ or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.”

34 CFR § 106.6



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Best Practices: Safety Assessments and Safety Planning

“Typically in situations like this, we would directly notify your parent(s)/guardian(s) so they can support you throughout this process. How do you feel about us calling your parents today?”

Look for fears around:

Physical harm

Stability-related harm (loss of housing, withdrawal from school, etc)

Emotional harm

Identity-based harm*

Make a safety plan with the student. Document the response and plan.

Is any follow-up needed to ensure safety at home?

Advisors

Parties must be told of their right to bring an advisor to any interviews, hearings, or meetings. Schools may not set limits on who can serve as an advisor.

Minor students may bring both an advisor AND a parent.

Schools can set limits on how advisors participate, as long as those limitations apply equally to all advisors.

An investigation includes:

- Interviews with parties and witnesses (may be multiple)
 - Remember: right to bring advisor of choice
- Collection and reviews of evidence
 - Parties must also be allowed to examine all directly related submitted evidence
- Writing an investigative report

School districts must set investigation steps, processes, and timelines in their policies.

34 CFR § 106.45(b)(5)



Possible Investigation Timeline*

Day 1: Provide notice to the applicable party or witness, with **sufficient time** to prepare.

Day 3-6: Conduct interviews and collect evidence.

Day 7: Send evidence and draft report to parties and advisors; must allow **10 days** to review and submit written response.

Day 17: Receive responses and finalize investigative report.

Day 18: Submit to parties; allow at least **10 days** to respond before decision-making.

Day 28: Decision-making process starts.

Day 30: Determination of responsibility issued

*with the exception of bolded minimum time frames required in the regulations, school districts will make their own timing decisions in their individual sexual harassment policies.



Interview Skills

- Draft a list of questions ahead of time, but be flexible
- Open the interview by setting ground rules and sharing information
- When questioning...
 - Start broad, and work your way in
 - Use open-ended questions
 - Use the terminology and language of the person you're talking to
- Take breaks (for you and the interviewee)

Evidence

What kinds of evidence might you collect as part of an investigation?

- Emails
- Text message
- IT data records
- Video surveillance
- Police reports
- Social media posts
- Attendance records
- Course assignments
- Journal entries
- ...all kinds of things!

Parties must be allowed to review any submitted evidence that directly relates to the allegations, even if the district does not intend to rely on it to make a determination of responsibility.

Evidence

Privileged documents and communications may not be used in investigations without the express permission from the person who holds the privilege.

- Medical records
- Psychiatric records
- Advocacy records (*ORS 40.264 – SADV advocates*)
- Counseling records
- Legal records
- Any other privileged documents/communication

What if there's also a law enforcement investigation, or something else impacts the speed of an investigation?

Temporary Delays

Temporary delays are allowed for good cause, which could include:

- Absence of a party
- Concurrent law enforcement activity
- Language translation needs
- Accommodations for students with disabilities

...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

34 CFR § 106.44(b)(1)(v)



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

Best practice: create an investigative report template.

- Allegations and jurisdictional statement
- Timeline
- Summary of interviews
- Summary of supporting evidence
- Credibility assessment?
- Findings of fact

34 CFR § 106.45(b)(5)(vii)



Report-Writing Skills

Reports should be:

- Neutral (e.g., “stated” versus “claimed”);
 - avoid use of unnecessary adjectives
 - avoid using the language of consensual sex to imply consent (caressed, performed)
- Accessible (avoid overly legalistic language)
- De-identified (use “Complainant, Respondent, Witness 1” instead of names)

Use quotes when possible

- Avoid sanitizing language from quotes

Define terms for readers

Break for Questions

4

DECISION-MAKING

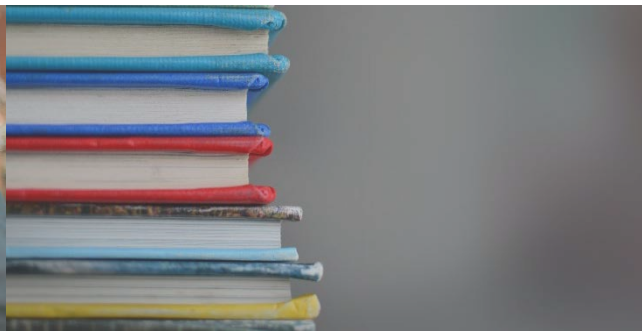
The decision-making process must include:

- Independent review of the investigative report and all directly related evidence, as well as party responses, by a person who did NOT serve as the investigator.
- A “modified cross-examination” process of allowing parties to submit written questions, read written responses, and submit limited follow-up questions.*

K-12 schools are not required to hold live hearings.

34 CFR § 106.45(b)(6)

*these questions must be directly related to the allegations, and must not be relating to the complainant’s sexual predisposition or unrelated sexual behavior, except in limited circumstances; the decision-maker may exclude irrelevant questions



“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
- What if a party or witness refuses to answer the question?

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”

4

DECISION-MAKING

Possible Decision-Making Timeline*:

Day 1: Final investigative report sent to parties and advisors. Parties are informed of their right to submit written questions; questions are due on Day 4.

Day 4: Decision-Maker screens the questions. Appropriate questions are forwarded; responses are due by Day 6.

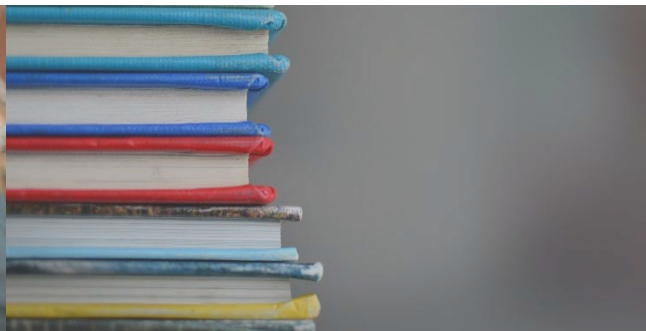
Day 6: Answers are received by decision-maker, and shared with parties. Parties are informed of their right to ask follow-up questions (only those that pertain to clarifying or further elaborating on answers given); those questions are due on Day 8.

Day 8: Decision-maker screens follow-up questions. Appropriate questions are forwarded; responses are due by Day 10.

Day 10: Answers received, and shared with parties.

Day 12: Determination of responsibility issued.

*school districts will make their own timing decisions in their individual sexual harassment policies



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 [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’”

Clear and Convincing

“[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.’”



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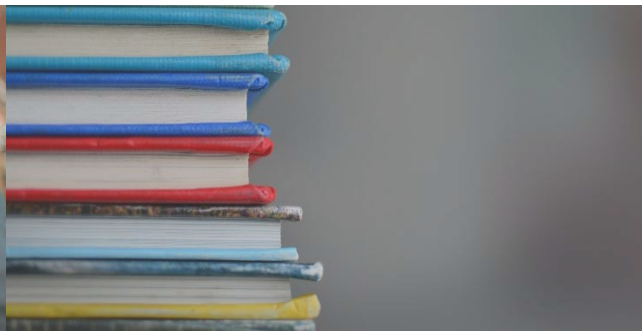
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DECISION-MAKING

The written determination of responsibility should be sent simultaneously to both parties, and should include:

- The allegations
- Procedural steps from formal complaint through determination
- Findings of fact
- Conclusions of fact
- Results of each allegation and rationale (responsible or not responsible)
- Sanctions and if remedies provided
- Appeal bases and procedures

34 CFR § 106.45(b)(7)



Parties must be allowed to appeal on at least three grounds:

- Procedural irregularity
- Newly discovered or available evidence
- Bias or conflict of interest

Schools may designate other grounds and set time limits on appeals. Appeals are **one level**.

OREGON LAW INTERSECTION:

In Oregon, individuals may appeal the final result of a discrimination complaint process (including sex-based discrimination such as sexual harassment) to ODE. (8)



6

SANCTIONS AND REMEDIES

If there is a finding of responsibility, sanctions and remedies should be implemented.

- **Sanctions** are disciplinary measures imposed on the respondent.
- **Remedies** are designed to restore educational access for the complainant.

Regardless of finding, supportive measures may stay in place or be further implemented for the complainant and respondent.

34 CFR § 106.45(b)(7)



Examples of Sanctions and Remedies

Sanctions

- Detention
- Suspension
- Expulsion
- Community service
- Counseling
- Evaluation and treatment
- Removal from activities, classes, sports, etc.

Individual Remedies

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

Community Remedies

- Educational programs
- Policy reviews
- Staff training

Break for Questions



CONFLICTS OF INTEREST & BIAS

Bias

“A tendency, inclination, or prejudice toward or against something or someone.”

-Psychology Today

Implicit Bias

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

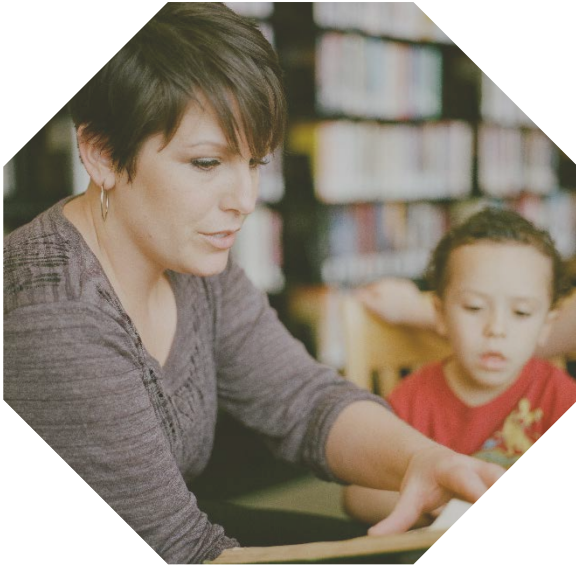
-The Kirwin Institute for the Study of Race and Ethnicity

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

We bring **implicit bias** into the room with us....



...and then we're vulnerable to **confirmation bias** in order to prove our "hunch" was correct.

The Impact of Bias: An Example

Teachers view Black students as “less innocent,” “more sexual,” and “older for their age” than their White peers.¹



Black girls make up 8% of enrollment in K-12 schools, but 13% of students suspended.²

Black girls are 2-3x as likely as their White peers to be disciplined for subjective infractions like class disruption and dress code violations; compared to White boys, Black boys are 1.5x as likely.¹



Black girls are 2.7x as likely to be referred to the juvenile justice system than their White peers.¹



1. Epstein, R., Blake, J.J., & Gonzalez, T. (2017). *Girlhood interrupted: The erasure of Black girls' childhood*. Center on Poverty and Inequality, Georgetown Law. <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>
2. Office for Civil Rights, US Dept of Ed, Civil Rights Data Collection. (2016). *First look: Key data highlights on equity & opportunity gaps in our nation's public schools*.

What biases does society hold about victims and perpetrators of sexual harassment and assault?

A study found that we are more likely to believe someone experienced sexual assault if...

- They are female
- They are emotionally distressed
- They display more stereotypically gendered behaviors in terms of clothing, mannerisms, way of speaking, and social interactions

Schuller, McKimmie, Masser, & Klippenstine, 2010. Judgements of Sexual Assault. *New Criminal Law Review*, 13(4)

Conversely, what phrases, personality traits, or dispositions are commonly associated with perpetrators of sexual assault?

- evil
- angry
- hostile
- unwilling to submit to authority
- unapologetic
- pattern of previously documented bad behavior
- outbursts
- uncontrolled



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When complainants and respondents conform to OR defy our expectations, it can bias us.



How do I avoid bias in my
Title IX work?

Implicit bias affects us most when we have...

- Ambiguous or incomplete information
- Compromised cognitive loads (stress, too much multi-tasking)
- Time constraints
- Overconfidence in our objectivity



Strategies to Address Bias

- Increase your knowledge and research multiple perspectives about: sexual harassment, identities you don't share, investigation methods, etc.
- Slow down!
- Reduce subjectivity where possible – checklists? Templates?
- Question the subjective and objective
- Use peer-collaboration models
- Get an external evaluation
- Use hard data to check your processes – case reviews, statistics, etc
- ***What else?***



Break for Questions

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

Does this present a conflict of interest?

Your school board serves as your appeal decision-makers. One of your school board members tells you that they go to church with the families of the respondent and complainant, and taught Sunday school to both the respondent and complainant for two years approximately five years ago.

Select Yes  or No 

Does this present a conflict of interest?

The high school principal is acting as an investigator for a case at the middle school. The complainant has an older sister who is a junior at the high school; this sister has been suspended twice, both times involving disciplinary meetings with the high school principal.

Select Yes  or No 

Strategies to Address Conflict of Interest

- Develop a district-specific conflict of interest protocol (*consider integrating it into your Title IX 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



*ORS 703.401-411 provides information on qualification of investigators

Strategies to Address Conflict of Interest

January 15 OCR Webinar: Regional Centers and School Consortia

- Schools can act together to fulfill Title IX obligations
- You are still responsible for ensuring the training and qualifications of personnel not at your district
- Notifications still apply



Break for Questions

What's next?

- Update your policies
 - Draft notification documents
- Update website
 - Title IX Coordinator contact info
 - Nondiscrimination notice
- Train all Title IX personnel
 - Seek additional, role-specific training where applicable; best practice is to go above and beyond compliance!
- Train all employees on new definition of sexual harassment



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