

# North Central Education Service District

## Title IX Procedural Requirements



### Prepared for Membership Districts

Arlington School District  
Sherman County School District  
Mitchell School District

Condon School District  
Fossil School District  
Spray School District

Robert Dais  
Director of Human Resources  
North Central Education Service District



**North Central Education Service District  
Title IX Changes – Membership Districts**

---

Table of Contents	Page 1
Preface	Page 1
Introduction	Page 2
Oregon Department of Education – Introduction	Page 2
Who Can Report Sexual Harassment	Page 3
Key Provisions of the Department of Education – Title IX Regulation	Pages 3 - 4
New Roles and Responsibilities to Address Title IX Complaints	Pages 4 - 5
Investigator	Page 5
Informal Process Facilitator and Inform Resolution	Pages 5 - 6
Decision Maker	Pages 6 - 7
Appeals Decision Maker	Page 7
Training	Page 8
What Superintendents/District Must Do	Page 9
Reminders from ODE – Title IX	Page 9
Sample Policy GBN/JBA	Pages 10 - 15
Sample Policy GBS/JBA (AR)	Pages 16 - 21

---

**Preface**

The information presented in this brief overview of the revised Title IX regulations serves as an introduction to the new requirements that went into law in August of 2020.

Additional Training will be offered to Districts to obtain the necessary skills in serving in the various roles outlined in the new law.

*Bob Dais*

## Introduction

Title IX of the Education Amendments Act of 1972 is a federal law that states: "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."

On May 6th, the U.S. Department of Education published its long-awaited final regulations regarding sexual harassment under Title IX of the Education Amendments of 1972. The final regulations take effect on August 14, 2020 and, as expected, they will have a significant impact on the manner in which educational institutions investigate and address claims of sex discrimination and harassment.

## What Does Title IX Cover



## Oregon Department of Education – Introduction to Title IX

State and federal laws prohibit discrimination based on gender and sexual orientation. Schools have an obligation to protect students, teachers, staff and other people within the school community. Schools also have an obligation to ensure that its programs and curriculum are free of bias and prejudice.

Title IX of the Education Amendments of 1972 was the first comprehensive federal law to prohibit sex discrimination against students and employees of educational institutions. It is one of several federal and state antidiscrimination laws that define and ensure equality in education. The regulations implementing Title IX, published in 1975, prohibit discrimination, exclusion, denial, limitation, or separation based on gender. Title IX states:

*"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."*

Title IX requires that each school district have at least one person designated as the Title IX Coordinator. These pages are designed to provide information to those seeking assistance with complaints and to those individuals who are responsible for enforcement and oversight.

In May 2020 (effective August 14, 2020), new Title IX regulations were released that require specific training for the Title IX Coordinator pertaining to sexual harassment:

1. the definition of sexual harassment within Title IX
2. the scope of the recipient's educational program or activity
3. how to conduct an investigation or grievance process
4. how to serve impartially by avoiding prejudgment of facts at issue, conflicts of interest, and bias

**Who Can Report Sexual Harassment?**

1. Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
2. Reports can be made by mail, telephone, email by contacting the Title IX Coordinator at any time.
3. Note: Once a school has received notice of an allegation, it must take steps to investigate to determine next steps. Must have respond if school has actual knowledge of sexual harassment in an education program or activity against a person in the United States.

**Key provisions of the Department of Education's Title IX Regulation:**

Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex

1. Provides a consistent, legally sound framework on which survivors, the accused, and schools can rely
2. Requires schools to offer clear, accessible options for any person to report sexual harassment
3. Empowers survivors to make decisions about how a school responds to incidents of sexual harassment
4. Requires schools to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders
5. Protects K-12 students by requiring elementary and secondary schools to respond promptly when *any* school employee has notice of sexual harassment
6. Holds colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities
7. Restores fairness on college and university campuses by upholding a student's right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing
8. Shields survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
9. Requires schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard, and to apply the selected standard evenly to proceedings for all students and employees, including faculty
10. Provides "rape shield" protections and ensures survivors are not required to divulge any medical, psychological, or similar privileged records
11. Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
12. Gives schools flexibility to use technology to conduct Title IX investigations and hearings remotely
13. Protects students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment
14. Requires a K-12 school to respond whenever *any* employee has notice of sexual harassment, including allegations of sexual harassment.

**North Central Education Service District**  
**Title IX Changes – Membership Districts**

---

15. Defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:
  - a. Any instance of quid pro quo harassment by a school's employee;
  - b. Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
  - c. Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence
16. The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States.
17. The Title IX statute and existing regulations contain broad definitions of a school's "program or activity" and United States" the Department will continue to look to these definitions for the scope of a school's education program or activity.
18. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).
19. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

**New Roles and Responsibilities to Address Title IX Complaints**

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

1. Oversees overall Title IX compliance for District
2. For sexual harassment:
  - a. MUST respond to all actual notices of complaints
  - b. Coordinate supportive measures
  - c. Coordinate implementation of remedies and sanctions
  - d. Keep records
3. For sexual harassment, may:
  - a. Investigate cases - *not in all complaints*
  - b. Issue notices
  - c. Train other district personnel
4. The Title IX Coordinator is the sole administrator who determines if an Informal Resolution (hereafter IR) is appropriate given the allegations.
5. Develop a working knowledge of the federal Title IX of the Education Amendments of 1972 law and its implementation regulations. Have a copy of Title IX readily available and understand the requirements and the intent of the law. Keep informed of current research, and legal and judicial decisions related to Title IX and gender equity.
6. Be informed about state laws, regulations and policies on all equity issues; including bullying and harassment, and child abuse laws.

**North Central Education Service District  
Title IX Changes – Membership Districts**

---

7. Be knowledgeable of federal and state laws (e.g., ADA, Section 504, IDEA) prohibiting discrimination against all protected classes (including race, religion, and sexual orientation) and assist whenever possible.
8. Be sure female and male students participating in work-based learning programs are guaranteed equal treatment by their employers.
9. Coordinate with other staff to document an internal self-evaluation of practices and policies with respect to treatment of female and male students. If the evaluation was completed by a previous Title IX Coordinator, determine if the evaluation’s suggestions for eliminating segregation and discrimination were carried out.
10. Provide program development (including in-service training) to eliminate sex discrimination in the district. The new regulations require informing students and staff of district policies and procedures on sexual harassment. This can be done through a schoolwide in-service or assembly on sexual harassment. Gender-segregated classes in workforce development education courses should prompt Title IX Coordinators to plan special on-going activities for lessening students’ gender-role stereotypes

**Sample Notice – Should be posted on District Web Site and Handbooks**

<p><b>Compliance Officer</b> for Title VI, Title VII, Title IX and other civil rights or discrimination issues and Health Insurance Portability and Accountability Act (HIPAA)  <b>Compliance Officer</b> for the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973</p>	<p>Name: Title  School District  Address  City, State, Zip Code  Phone Number</p>
---	---

**Investigator**

1. Must be trained before being assigned to investigate an allegation
2. Identify and Interview Parties and Witnesses
3. Gather and assess evidence
4. Share evidence with parties and provide written response
5. Write and share investigative report
6. They MUST be trained
7. Have no bias: conflict of interest, prejudice
8. Must treat all parties equally

**Informal Process Facilitator and Informal Resolution**

1. The Title IX Coordinator may offer the parties the opportunity to become involved in an informal resolution process. Likewise, either party (complainant or respondent) may petition the Title IX Coordinator in writing to offer an informal resolution process to the other party.
2. The facilitator will present the option of an Informal Resolution and proposed terms to each Party independently and in writing. All related communication will go through the facilitator.
3. Participation in an Informal Resolution is voluntary for all Parties and requires full informed and written consent. If either Party does not agree with the proposed terms, or is uninterested in engaging in negotiations, the party may continue with the University’s grievance process at any time before signing the Informal Resolution Agreement.

**North Central Education Service District**  
**Title IX Changes – Membership Districts**

---

4. The IR will be voluntary for both parties and each party must submit a written request to become involved in the IR. An informal resolution cannot be offered if the complainant is a student and the respondent is an employee.
5. The IR will not require the parties to confront each other or even be present in the same room.
6. The parties may consult their advisor or have their advisor present at any time an IR meeting occurs.
7. Either party may withdraw, without penalty, from the IR up until a written resolution agreement is signed by both parties. If either party withdraws from the IR, the formal grievance process will resume.
8. A signed resolution agreement is binding on both parties.
9. The facilitator(s) has the authority to end the resolution process if the facilitator(s) believes that one or both parties are not operating in good faith. If this happens, the formal grievance process will resume.
10. Both parties and the facilitator (s) will have an opportunity to offer proposals to become a part of the final outcome(s)/agreement. An IR agreement may include, but is not limited to, an admission of responsibility, an admission of false allegations, disciplinary/punitive sanctions, counseling, and involvement in an educational program.
11. The Facilitator(s) and both parties must all agree to the outcome(s) of the IR. In doing so the facilitator will write a binding agreement based upon the party's verbal agreement with the negotiated outcome(s). Separately, both parties will then be offered the opportunity to sign this IR agreement. If either party refuses to sign this agreement, the IR will be considered failed and the grievance process will resume.

**Decision Maker**

1. School systems or other recipients of federal funds (including all public schools, charter schools and magnet schools), must designate at least one employee as the Decision-Maker to evaluate evidence of sexual harassment and determine responsibility in Title IX cases. Recipients may allow for multiple Decision-Makers; some schools may prefer a panel rather than one person.
2. School systems can choose to fill the Decision-Maker role with one person or a team of people. The Decision-Maker(s) can be contracted, newly hired, or a current member of the school community. The Decision-Maker(s) cannot be the Investigator or Title IX Coordinator.
3. The Title IX regulations of 2020 created the position of Decision-Maker to separate the determination of guilt or innocence from the investigative process.
4. The Decision-Maker is effectively the judge of Title IX cases:
  - a. The Decision-Maker is effectively the judge of Title IX cases
  - b. They preside over hearings, if applicable, and issue the verdict in the form of written determinations.
  - c. Decision-Makers monitor the questioning and cross-examination process and identify irrelevant questions.
  - d. At the end of the process, they weigh the evidence to determine if it meets the school's standard of sexual harassment allegations.
  - e. Decision-Makers produce a written statement to both parties describing their verdict. Like judges, Decision-Makers cannot have a conflict of interest or bias for or against any member in the proceedings.
  - f. The Title IX Coordinator should vet Decision-Makers prior to their designation in this role



**North Central Education Service District**  
**Title IX Changes – Membership Districts**

---

5. A school must ensure that decision-makers receive training on any technology to be used at a live hearing.
6. A school's decision makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants
7. Decision-Makers must allow each party to ask relevant and follow-up questions to the other party and any witnesses. If the parties choose to have a hearing; cross-examination must be done directly, orally, and in real time by the party's advisor. The parties do not need to be in the same room, but all must have technology that enables the Decision-Maker(s) and parties to see and hear the party or witness answering questions. If the parties do not have a hearing, Decision-Makers must allow each party the opportunity to question other parties and witnesses. Parties can submit written, relevant questions:
8. The Decision-Maker will share the answers, and parties are allowed to ask follow-up questions. If the Decision-Maker identifies a question as "irrelevant," they must explain their reasoning. Should any party or witness not participate in cross-examination during a live hearing, the Decision-Maker cannot use any part of their testimony in reaching final determination regarding responsibility.
9. The hearing and/or questioning should be conducted within a "reasonably prompt" time frame.
10. Decision-Makers must share their written determination with both parties simultaneously. The written determination must include the six following components:
  - a. identification of the sexual harassment allegations
  - b. a description of the grievance procedure steps taken
  - c. findings and evidence that support the determination
  - d. conclusions regarding the application of the recipient's code of conduct to the facts
  - e. a statement of and rationale for the results for each allegation, including:
    - o determining responsibility: if the respondent's alleged actions broke school policy
    - o for the respondent: any disciplinary sanctions that the school imposes
    - o for the complainant: any remedies (provided by the school) designed to restore or preserve equal access to the school's education program or activity
  - f. permissible grounds for appeal, as well the school's appeal procedures

**Appeals Decision Maker**

1. Must be a trained facilitator
2. Be Neutral Party/Impartial/Unbiased
3. Should NOT be involved in investigation
4. As to all appeals, the recipient must:
  - a. Offer the appeal to either party-Let both parties know when an appeal has been filed
  - b. Give both parties a reasonable and equal opportunity to submit a written statement in support of or challenging the appealed decision
  - c. Issue a written decision describing the result of the appeal and the rationale for the result
  - d. Provide the written decision simultaneously to both parties

**North Central Education Service District  
Title IX Changes – Membership Districts**

**Training**

This is from the new regulations, 34 CFR 106.45 (b) (iii) “A recipient must ensure 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.

School districts need to ensure that they train the Decision-Maker, Investigator, and Title IX Coordinator in preparation for their roles in the Title IX grievance procedure. This training must include the following:

1. The definition of sexual harassment
2. The scope of the school’s education program or activity
3. How to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes)
4. How to serve impartially (including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias)
5. The Decision-Maker needs to receive two additional pieces of training:
  - a. any technology to be used at a live hearing
  - b. issues addressing relevance of questions and evidence during the live hearing
6. As a best practice, always encourage seeking ongoing training when possible to increase skills and get updates, but it’s definitely up to each district to decide what to prioritize.

**ODE Reminder - Frequency of Training**

1. Final regulations do not impose an annual or other frequency condition on the mandatory training required in § 106.45(b)(1)(iii).
2. The Department interprets this provision as requiring that any Title IX Coordinator, investigator, decisionmaker, or person who facilitates an informal resolution process will, when serving in such a role, be trained to serve in that role.
3. The Department wishes to leave recipients flexibility to decide to what extent additional training is needed to ensure that Title IX personnel are trained when they serve so that recipients efficiently allocate their resources among Title IX compliance obligations and other important needs of their educational communities.”

	<b>Title IX Coordinator</b>	<b>Investigator</b>	<b>Decision-Maker</b>	<b>Appeals Decision-Maker</b>	<b>Informal Process Facilitator</b>
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	

**North Central Education Service District  
Title IX Changes – Membership Districts**

---

**What Superintendents/District MUST DO**

1. Update all Handbooks, Web Commination, and Policies reflecting changes in Title IX
2. Required by 34 C.F.R. §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website
3. Identify Title IX (Coordinator, Investigators, Decision Makers, Appeal Officer/s
4. Remember that you are responsible for ensuring that all your identified personnel (coordinators, investigators, decision-makers, informal resolution facilitators) have the required training necessary to complete their roles.

**Reminders from ODE - Title IX Updates and New Resources**

1. Are your policies and procedures updated yet? If you haven't updated your sexual harassment policies and procedures since this summer, you may still need to do so - in Oregon, we must consider both the new Title IX regulations as well as Oregon's laws, including our [sexual harassment policy requirements](#).
2. At issue for districts looking to find creative solutions for filling the investigator role in the process: If you are planning to utilize an outside investigator in your Title IX process (i.e. one that is not employed by your district), we encourage you to consult with both your outside investigators and your legal counsel to discuss how the [investigator requirements listed in ORS 703.401-411](#) will apply. This statute lists requirements for investigators, and exceptions to those requirements. ODE does not provide legal advice, so we encourage you to consult with legal counsel for further guidance.
3. The US Department of Education's Office for Civil Rights has released a number of regulatory clarifications and training guidance in both blog posts and webinars posted to their websites. Several of these provide important clarifying updates, including:
  - a. An [October 7th blog post clarified the definitions under "prong 3" of the sexual harassment definition](#), which includes sexual assault, dating violence, domestic violence, and stalking. Pay particular attention to their definitions of sexual assault - the options available under the FBI Uniform Crime Reporting System (and therefore those definitions utilized by Title IX) are changing in 2021.
  - b. An [August 5th blog post clarified that the new regulations apply only to behavior that occurs on or after August 14th](#). This clarification is important, as school districts may still be receiving this semester regarding behavior that occurred during the previous Spring (prior to the implementation of the new regulations).

**Contract**

Katherine Hildebrandt  
Civil Rights and Title IX Specialist  
Government of Legal Affairs  
Oregon Department of Education  
[Katherine.hildebrandt@ode.state.or.us](mailto:Katherine.hildebrandt@ode.state.or.us)  
(503) 947-5667

### Sample Policy – Sexual Harassment

Code: GBN/JBA  
Adopted: TBA

#### Sexual Harassment

The district is committed to the elimination of sexual harassment. Sexual harassment will not be tolerated in the district. All students, staff members and other persons are entitled to learn and work in an environment that is free of harassment. All staff members, students and third parties are subject to this policy. Any person may report sexual harassment.

The district processes complaints or reports of sexual harassment under Oregon Revised Statute (ORS) 342.700 et. al. and federal Title IX laws found in Title 34 C.F.R. Part 106. Individual complaints may require both of these procedures, and may involve additional complaint procedures.

#### General Procedures

When information, a report or complaint regarding sexual harassment is received by the district, the district will review such information, report or complaint to determine which law applies and will follow the appropriate procedures. When the alleged conduct could meet both of the definitions in ORS Chapter 342 and Title IX, both complaint procedures should be processed simultaneously (*see* GBN/JBA-AR (1)

Sexual Harassment Complaint Procedure and GBN/JBA-AR (2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure). The district may also need to use other complaint procedures when the alleged conduct could meet the definitions for other complaint procedures.

#### Oregon Definition and Procedures

**Oregon Definition** - Sexual harassment of students, staff members or third parties (1) shall include:

1. A demand or request for sexual favors in exchange for benefits;
2. Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
  - a. Interferes with a student’s educational activity or program.
  - b. Interferes with a school or district staff member’s ability to perform their job; or
  - c. Creates an intimidating, offensive or hostile environment.
3. Assault when sexual contact occurs without the students, staff members or third party’s consent because the student, staff member or third party is under the influence of drugs or alcohol, is unconscious or is pressured through physical force, coercion or explicit or implied threats.

Sexual harassment does not include conduct that is necessary because of a job duty of a school or district staff member or because of a service required to be provided by a contractor, agent, or volunteer, if the conduct is not the product of sexual intent or a person finding another person, or another person’s actions offensive because of that other person’s sexual orientation or gender identity.

Examples of sexual harassment may include, but not be limited to, physical touching or graffiti of a sexual nature; displaying or distributing of sexually explicit drawings; pictures and written materials; sexual gestures or obscene jokes; touching oneself sexually or talking about one’s sexual behaviors in front of others; or spreading rumors about or rating other students or others as to appearance, sexual activity or performance.

- 
1. “Third Party means a person who is not a student or a school or district staff member and who is on or immediately adjacent to school grounds or district property; 2) At a school-sponsored activity or program; or 3) Off school grounds or district property if a student or a school or district staff member acts toward the person in a manner that creates a hostile environment for the person while on school or district property, or at a school- or district-sponsored activity.

**Oregon Procedures**

Reports and complaints of sexual harassment should be made to the following individual/s

<b>Position</b>	<b>Title IX Position</b>	<b>Phone</b>	<b>Email</b>
-----------------	--------------------------	--------------	--------------

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to a district official. The district official (with coordination involving the reporting staff member when appropriate) will take any action necessary to ensure the:

**Response**

Any staff member who becomes aware of behavior that may violate this policy shall immediately report to a district official. The district official (with coordination involving the reporting staff member when appropriate) will take any action necessary to ensure the:

1. Student is protected and to promote a nonhostile learning environment;
2. Staff member is protected and to promote a nonhostile work environment; or
3. Third party who is subjected to the behavior is protected and to promote a non-hostile environment.

This includes providing resources for support measures to the student, staff member or third party who was subjected to the behavior and taking any actions necessary to remove potential future impact on the student, staff member or third party, but are not retaliatory against the student, staff member or third party being harassed or the person who reported to the district official.

Any student or staff member who feels they are a victim of sexual harassment are encouraged to immediately report their concerns to district officials, this includes officials such as the principal, compliance officer or superintendent. Students may also report concerns to a teacher, counselor or school nurse, who will promptly notify the appropriate district official.

**Investigation**

All reports and complaints about behavior that may violate this policy shall be investigated. The district may use, but is not limited to, the following means for investigating incidents of possible harassment:

1. Interviews with those involved;
2. Interviews with witnesses;
3. Review of video surveillance;
4. Review of written communications, including electronic communications;
5. Review of any physical evidence; and
6. Use of third-party investigator.

The district will use a reasonable person standard when determining whether a hostile environment exists. A hostile environment exists if a reasonable person with similar characteristics and under similar circumstances would consider the conduct to be so severe as to create a hostile environment.

The district may take, but is not limited to, the following procedures and remedial action to address and stop sexual harassment:

1. Discipline of staff and students engaging in sexual harassment;
2. Removal of third parties engaged in sexual harassment;
3. Additional supervision in activities;
4. Additional controls for district electronic systems;
5. Trainings and education for staff and students; and
6. Increased notifications regarding district procedures and resources.

When a student or staff member is harassed by a third party, the district will consider the following:

1. Removing that third party's ability to contract or volunteer with the district or be present on district property;
2. If the third party works for an entity that contracts with the district, communicating with the third party's employer;
3. If the third party is a student of another district or school, communicate information related to the incident to the other district or school;
4. Limiting attendance at district events; and
5. Providing for additional supervision, including law enforcement if necessary, at district events.

**No Retaliation**

Retaliation against persons who initiate complaint or otherwise report sexual harassment or who participate in an investigation or other related activities is prohibited. The initiation of a complaint, reporting of behavior, or participation in an investigation, in good faith about behavior that may violate this policy may not adversely affect the:

1. Educational assignments or educational environment of a student or other person initiating the complaint, reporting the behavior, or participating in the investigation; or
2. Any terms or conditions of employment or of work or educational environment of a school or district staff member or other person initiating the complaint, reporting the behavior, or participating in the investigation.

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 and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.

**Notice**

When a person who may have been affected by this policy files a complaint or otherwise reports behavior that may violate the policy, the district shall provide written notification to the following:

1. Each reporting person;
2. If appropriate, any impacted person who is not a reporting person;
3. Each reported person; and
4. Where applicable, a parent or legal guardian of a reporting person, impacted person, or reported person.

The written notification must include:

1. Name and contact information for all person designated by the district to receive complaints;
2. The rights of the person that the notification is going to;
3. Information about the internal complaint processes available through the school or district that the student, student's parents/guardians, staff member, person or person's parent who filed the complaint may pursue, including the person designated for the school or district for receiving complaints and any timelines;
4. 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;
5. Information about services available to the student or staff member through the school or district, including any counseling services, nursing services or peer advising;
6. Information about the privacy rights of the person and legally recognized exceptions to those rights for internal complaint processes and services available through the school or district;

—

7. Information about, and contact information for, services and resources that are available to the person, including but not limited to:
  - a. For the reporting person, state and community-based resources for persons who have experienced sexual harassment; or
  - b. For the reported persons, information about and contact information for state and community- based mental health services.
8. Notice that students who report about possible prohibited conduct and students who participate in an investigation under this policy may not be discipline for violations of the district’s drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered as a result of a prohibited conduct 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; and
9. Prohibition of retaliation.

Notification, to the extent allowable under state and federal student confidentiality laws, must be provided when the investigation is initiated and concluded. The notification at the conclusion must include whether a violation of the policy was found to have occurred.

The notice must:

1. Be written in plain language that is easy to understand;
2. Use print that is of a color, size and font that allows the notification to be easily read; and
3. Be made available to students, students, parents, staff members and members of the public at each office, at the district office and on the website of the school or district.

#### **Oregon Department of Education (ODE) Support**

The ODE will provide technical assistance and training upon request.

#### **Federal Definition and Procedures**

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

1. An employee of the district conditioning the provision of an aid, benefit, or service of the district on an individual’s participation in un-welcome 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 district’s education program or activity;
3. Sexual Assault: an offensive classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;
4. Dating Violence: Violence committed by person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;
5. Domestic Violence: 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 of violence law of the jurisdiction; or
6. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person fear for the person’s own safety or the safety of others, or suffer substantial emotional distress.

This definition only applies to sex discrimination occurring against a person who is a subject of this policy in the United States. A district’s treatment of a complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

### **Federal Procedures**

The district will adopt and publish grievance procedures that provide for the prompt and equitable resolution of the student and employee complaints alleging any action that would be prohibited by this policy. See GBN/JBA-AR (2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure.

### **Reporting**

Any person may report sexual harassment. This report may be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The report can be made at any time.

### **Response**

The district will promptly respond to information, allegations or reports of sexual harassment when there is actual knowledge of such harassment, even if a formal complaint has not been filed. (2) The district shall treat complainants and respondents equitably by providing supportive measures (3) to the complainant and by following a grievance procedure (4) prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes, with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. (5)

If after an individualized safety and risk analysis, it is determined that there is an immediate threat to the physical health or safety of any person, an emergency removal of the respondent can take place. (6) The district must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. A non-student employee may also be placed on non-disciplinary administrative leave pending the grievance process.

### **Notice**

The district shall provide notice to all applicants for admission and employment, students, parents or legal guardians, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the district of the following:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s);
2. That the district does not discriminate on the basis of sex in the education program or activity that it operates, as required by Title IX. This includes admissions and employment; and
3. The grievance procedure and process, how to file a formal complaint of sex discrimination or sexual harassment, and how the district will respond.

Inquiries about the application to Title IX and its requirements may be referred to the Title IX Coordinator or the Administrative Assistant Secretary (7), or both.

---

2. (Title 34 C.F.R. §106.44(a)) Response cannot be deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
3. (Title 34 C.F.R. § 106.44(a)) 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 measure designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. (Title 34 C.F.R. § 99.30(a))
4. This grievance procedure must meet the requirements of Title 34 C.F.R. § 106.45 (included in accompanying administrative regulation, see GBN/JBA-AR(2) - Federal Law (Title IX) Sexual Harassment Complaint Procedure)
5. The Title IX Coordinator may also discuss that the Title IX Coordinator has the ability to file a formal complaint.
6. The district may still have obligations under Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act (ADA). (Title 34 C.F.R. § 106.44(c))
7. Of the United States Department of Education.



**No Retaliation**

Neither the district or any person may retaliate (8) against an individual for reporting, testifying, providing evidence, being a complainant, otherwise participating or refusing to participate in any investigation or process in accordance with this procedure. The district must keep confidential the identity of parties and participating persons, except as disclosure is allowed under Family Educational Rights and Privacy Act (FERPA), as required by law, or to carry out the proceedings herein. Complaints of retaliation may be filed using these procedures.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation.

**Publication**

This policy shall be made available to students, parents of students and staff members. This policy and contact information for the Title IX Coordinator shall be prominently published in the school student handbook and district staff handbook and on the school and district website. This policy shall also be made available at each school office and at the district office. The district shall post this policy on a sign in all grade 6 through 12 schools, on a sign that is at least 8.5 inches by 11 inches in size. A copy of the policy will be made available to any person upon request.

---

8. Retaliation includes, but is not limited to, intimidation, threats, coercion, and discrimination.

End of Policy

**Legal References**

ORS 243.706	ORS 342.708	ORS 659A.029
ORS 342.850	ORS 342.850	ORS 659A.030
ORS 332.107	ORS 342.865	OAR 581-021-0038
ORS 342.700	ORS 659.850	OAR 584-020-0040
ORS 342.704	ORS 659A.006	OAR 584-020-0041

**North Central Education Service District  
Title IX Changes – Membership Districts**

---

**Sample Policy - Federal Law (Title IX) Sexual Harassment Complaint Procedure**

**Code:** GBN/JBA-AR (2) **Adopted:** TBA

**Additional Definitions**

**“Actual Knowledge”** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the district who has authority to institute corrective measures on behalf of the district, or to any employee of an elementary or secondary school. (1)

**“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. (3)

**“Formal Complaint”** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent (2) and requesting that the district investigate the allegation of sexual harassment.

**“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 activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the districts educational environment or deter sexual harassment. (4) The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures.

**Formal Complaint Procedures**

Upon receipt of a formal complaint, the district will provide the parties (5) written notice of the following:

1. Notice of the district’s grievance process, including any informal resolutions process.
2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details (6) known at the time and with sufficient time to prepare a response before any initial interview.
3. That the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility be made at the conclusion of the grievance process.
4. That the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
5. The parties may inspect and review evidence.
6. A reference to any provision in the district’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The Title IX Coordinator will contact the complainant and the respondent to discuss supportive measures. If necessary, the Title IX Coordinator will arrange for an individualized safety and risk analysis. If necessary, a student or non-student employee may be removed or placed on leave.

- 
1. This standard is not met when the only official with knowledge is the respondent.
  2. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
  3. A complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.
  4. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
  5. Parties include the complainant and the respondent, if known.
  6. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

## North Central Education Service District Title IX Changes – Membership Districts

---

### Investigation

The Title IX Coordinator will coordinate the district's investigation. The investigation must:

1. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence.
2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the district and not on the parties. (7)
3. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. (8) The district may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. (9) Prior to the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report.
8. Create an investigative report that fairly summarizes relevant evidence and is sent to each party and provided) or other time of determination of responsibility. The party and advisor will be allowed to review and provide a written response.

After the district has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision maker(s) must afford each party the opportunity to submit written, relevant questions (10) 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. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Credibility determinations are not based on the person's status as a complainant, respondent or witness.

---

7. The District cannot access, consider, disclose, or otherwise use a party's records that are made of maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting on the professional capacity, and which are maintain in connection with the provisions of treatment to the party, unless the district obtains the party' (or eligible student's parents) voluntarily consent to do so.
8. In addition to an advisor, complainants and respondents may also be entitled to other accompaniment as required by law or as necessary for conducting of grievance procedures, including but not limited to translators, services for students with disabilities and parents of minor students.
9. This includes the evidence upon which the district does not intent to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the investigation. The district must make all such evidence subject to the party's inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
10. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the responded committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

## North Central Education Service District Title IX Changes – Membership Districts

---

No person designated as a Title IX Coordinator, investigator, decision-maker, or any person designated by the district to facilitate an informal resolution process may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

If, in the course of an investigation, the district decides to investigate allegations about the complainant or respondent that are not included in the notice previously provided, the district must provide notice of the additional allegations to the parties whose identities are known.

At no point in the process will the district, or anyone participating on behalf of the district, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **Determination of Responsibility**

The respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The standard to be used for formal complaints in determining whether a violation has occurred is the preponderance of the evidence (11) standard.

The person deciding the question of responsibility (the “decision maker”) must be someone other than the Title IX Coordinator or the investigator(s). The decision-maker must issue a written determination which must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the district’s code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including:
  - a. A determination regarding responsibility;
  - b. Any disciplinary sanctions the district imposes on the respondent; and
  - c. Whether remedies designed to restore or preserve equal access to the district’s education program or activity will be provided by the district to the complainant; and
6. The district’s procedures and permissible bases for the complainant and respondent appeal;
7. The district must provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

11. [A preponderance of the evidence standard is understood to mean concluding that a fact is more likely than not to be true. U.S. Department of Education, Title IX Regulations commentary, p. 1268, FN 1409.](#)

## North Central Education Service District Title IX Changes – Membership Districts

---

### Remedies

The Title IX Coordinator is responsible for effective implementation of any remedies. The disciplinary sanctions may include:

1. Discipline up to and including suspension and expulsion;
2. Removal from various activities, committees, extra-curricular, positions, etc.
3. Disqualification for awards and honors;
4. Discipline up to and including termination, in accordance with laws, agreements, contracts, handbooks, etc.

Other remedies may include:

1. Educational programming.

### Dismissal of a Formal Complaint

The district must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:

1. Would not constitute sexual harassment, even if proved;
2. Did not occur in the district's education program or activity (11)
3. Did not occur against a person in the United States.

The district may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or hearing, if provided:

1. A complainant notifies the Title IX Coordinator in writing that the complaint would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the district; or
3. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint, the district must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

The dismissal of a formal complaint under Title IX does not preclude the district from continuing any investigation and taking action under a different process. The district may have an obligation to continue an investigation and process under a different process.

### Consolidation of Complaints

The district may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by one or more complainant against one or more respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

12. Includes locations, events, or circumstances over which the district exercised substantial control over both the respondent the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution]. (Title 34 C.F.R. §106.44(a))

## North Central Education Service District Title IX Changes – Membership Districts

---

### Informal Resolution

If the district receives a formal complaint, at any time prior to reaching a determination regarding responsibility, the district may offer an optional informal resolution process, provided that the district:

1. Provides written notice to the parties disclosing:
  - a. The allegations;
  - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, 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 with respect to the formal complaint; and
  - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### Appeals

Either party may file an appeal from a determination regarding responsibility or from a dismissal of a formal complaint, within 15 days of the decision, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. 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; or
3. 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.
4. Additional bases may be allowed, if made available equally to both parties.

When an appeal is filed, the district must:

1. Notify the other party in writing;
2. Implement appeal procedures equally for both parties;
3. Ensure the decision-maker(s) for the appeal is not the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
4. Ensure the decision-maker for the appeal is free from conflicts of interest and bias;
5. Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging the outcome;
6. Issue a written decision describing the result of the appeal and the rationale for the result; and
7. Provide the written decision simultaneously to both parties.

### Timelines

The district will complete the following portions of the grievance process within the specified timelines:

1. General grievance process (from receipt of formal complaint to determination of responsibility): 90 days;
2. Appeals (from receipt of appeal): 60 days;
3. Informal resolution process: 60 days.

Temporary delays of the grievance process, or limited extensions of time will be allowed for good cause (13) with written notice to the parties.

## North Central Education Service District Title IX Changes – Membership Districts

---

### Records

Records will be created and maintained in accordance with the requirements in Title 34 C.F.R. §106.45(a)(10). (14)

### Training

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal education resolution process must receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and information resolution processes. The training must also include avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Decision-makers must receive training on any technology to be used at a live hearing and on issues of relevance of question and evident, including when questions about evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment and must be made publicly available on the district's website.

---

13. 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. (Title 34 C.F.R. § 106.45(b)(1)(v))
14. This includes creating a record for each investigation. This record must include:
  - a. Supportive measures, or reasons why the response was not clearly unreasonable under the circumstances.
  - b. Basis for the conclusion that the district's response was not deliberately indifferent; and
  - c. What measures were taken to restore or preserve equal access to the district's educational program or activity. (Title 34 C.F.R. § 106.45(a)(10)(ii))
  - d. Most records (including training) must be retained for at least seven years.

