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2020 Title IX Training: Foundations of Title IX

August 20, 2020, 8:30am-12pm





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.

Kate Hildebrandt

she/her

Civil Rights and Title IX Specialist

Oregon Department of Education

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503-551-5713



1. Name
2. Job Title and District
3. In addition to Title IX, what other responsibilities/roles do you have in your school or district?
4. What questions, concerns, or interests do you have for today's training?



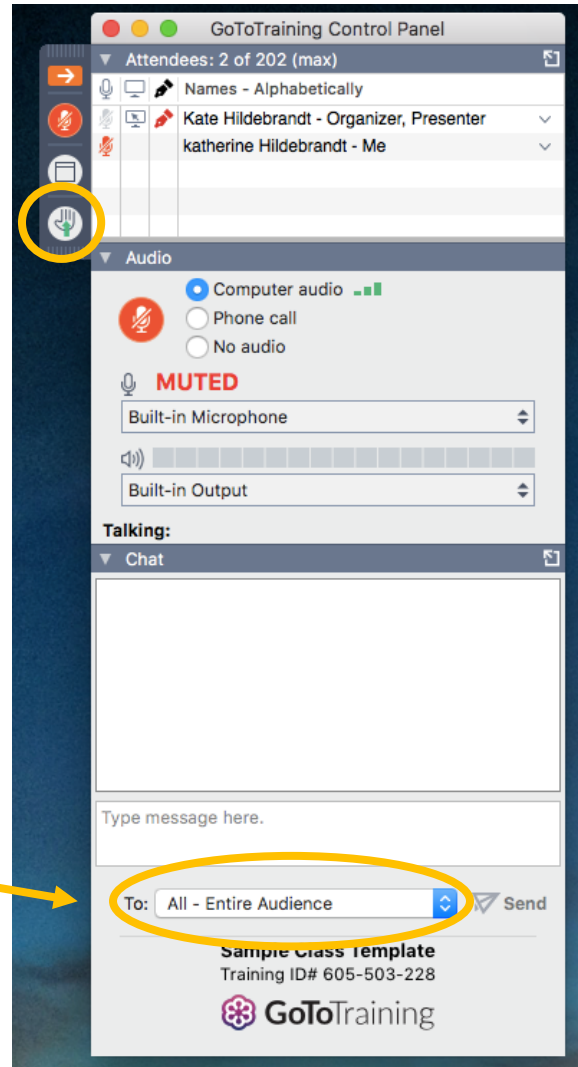
Before we get started...

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 GoToTraining

“raise your hand” to ask a question verbally – you will be unmuted



you can access the audio through either your computer or a phone

type a question to either the entire audience or to an individual



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TODAY'S AGENDA



The Groundwork: Intro to Title IX + Oregon Law



Elements of Title IX



The New Title IX Regulations: Sexual Harassment



Oregon Harassment Laws & Title IX



Coordinating Title IX



Student-Centered & Trauma-Informed Processes



THE GROUNDWORK: TITLE IX & OREGON LAW

In this section...

- Introduction to Title IX
- Introduction to Oregon's discrimination laws and protected classes

"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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Type in the chat box:

What is covered by Title IX?

What is covered by Title IX?

- Recruitment and admissions
- Financial assistance
- Curricular and co-curricular activities
- Athletics
- Sexual harassment and sex-based harassment
- Pregnant and parenting students
- Discipline
- Single-sex education
- Employment
- Retaliation



Intersecting Oregon Laws

Oregon's Civil Right's Bill

1953: Oregon's Civil Rights Bill made Oregon the 21st state to outlaw discrimination in public places

Current definition of discrimination

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



Oregon's Protected Classes

Race

Color

National
Origin

Religion

Disability

Sex

Sexual
Orientation
(and Gender
Identity)

Age

Marital/
Familial
Status



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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.



Harassment, Bullying, and Discrimination

If harassment or bullying is based on a protected class, it may be discrimination, and schools need to assess the behavior for civil rights implications.



It's discrimination if it:

- Is based on a student's protected class
- Creates a hostile environment or limits the ability to participate in or benefit from a school program or activity



Is it discrimination?

Teachers consistently provide more help to girls than boys.

A school chooses not to hire the most qualified candidate because she is an unmarried single parent in an area with many conservative families.

A student reports that she is being bullied by her classmates who are calling her a “slut” and making fun of her breasts.

Break for Questions



ELEMENTS OF TITLE IX

In this section...

A closer look at how Title IX relates to...

- Single-sex education
- Athletics
- Career and technical education
- LGBTQ+ discrimination

What is covered by Title IX?

- Recruitment and admissions
- Financial assistance
- Curricular and co-curricular activities
- Athletics
- Sexual harassment and sex-based harassment
- Pregnant and parenting students
- Discipline
- Single-sex education
- Employment
- Retaliation

What informs our interpretations of Title IX?

Regulations

- 34 CFR Part 106

Case Law

- Supreme Court decisions
- Circuit Court decisions (Oregon is the 9th Circuit)

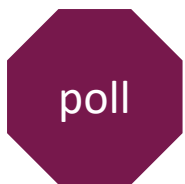
Guidance Documents published by OCR

- Dear Colleague Letters
- Handbooks

OCR Case Resolutions

What CAN be separated by sex/gender?

- Athletics
- Sexuality education courses
- Physical education during contact sports
- Boy scouts, girl scouts, YMCA/YWCA
- Voluntary Youth Service Organizations



See also: 34 CFR Part 106

Single-Sex Classes and Cocurriculars

Nonvocational classes or cocurricular activities may be offered on a single-sex basis under ***very specific, limited*** circumstances, provided all of the following are met:

- the course or program is to achieve a specific educational-related goal or outcome or in response to a specifically identified educational issue;
- a substantially equal activity for the excluded sex is offered; and
- the school conducts periodic evaluations

See also: 34 CFR Part 106, and OCR's 2014 DCL *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*



Case Study: Girls-Only STEM Programs

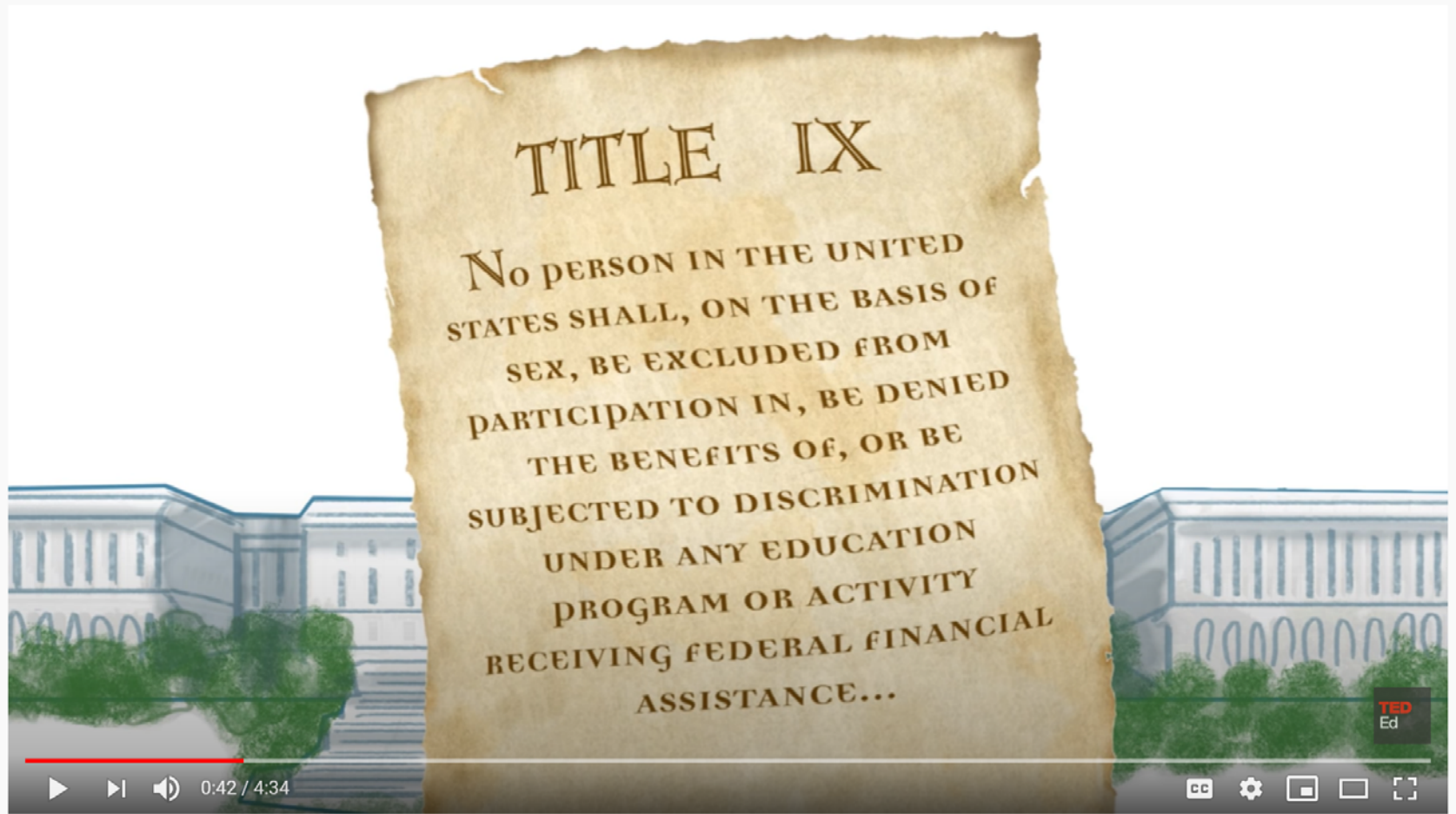
Re: OCR Docket No. 15-19-2052

Dear Ms. Smith:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 22, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Grand Valley State University (the University) alleging that the University discriminated against boys based on sex. Specifically, the complaint alleged that the University annually operates the Science Technology & Engineering Preview Summer (STEPS) Camp for Girls, a girls-only summer program that excludes boys from participation.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. As a recipient of federal financial assistance from the Department the University is subject to Title IX.

Based on the complaint allegation, OCR initiated an investigation of whether the University, on the basis of sex, excluded individuals from participation in, denied them the benefits of, or subjected them to discrimination with respect to any University program or activity, in violation of the Title IX implementation regulation at 34 C.F.R. § 106.31, and/or provided or otherwise carried out any of its educational programs or activities separately on the basis of sex, in violation of 34 C.F.R. § 106.34(a).



Equality, sports, and Title IX - Erin Buzuvis and Kristine Newhall

178,393 views • Jun 19, 2013

👍 955 🗨️ 485 ➦ SHARE ≡ SAVE ...

Athletics

The “three-part test” for meeting Title IX athletic compliance:

- (1) The number of male and female athletes is substantially proportionate to their respective enrollments; or
- (2) The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or
- (3) The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.





“The Laundry List”

- (1) Provision and maintenance of equipment and supplies;
- (2) Scheduling of games and practice times;
- (3) Travel and per diem expenses;
- (4) Opportunity to receive tutoring and assignment and compensation of tutors;
- (5) Opportunity to receive coaching, and assignment and compensation of coaches;
- (6) Provision of locker rooms, practice and competitive facilities
- (7) Provision of medical and training services and facilities;
- (8) Provision of housing and dining services and facilities;
- (9) Publicity;
- (10) Support services; and
- (11) Recruiting.



Common Athletics Areas of Concern

Facilities and equipment

- Many sports share facilities; baseball/softball is a common deficiency

Practice times and schedules

- What is the best time *for your school community*? After school, later evening?

Publicity and fundraising support

- Social media posts, announcements/board posts
- Booster clubs

Scholarship/recruitment opportunities

- Do some sports get more support than others in college recruitment opportunities?

Athletics Resources

OCR Athletics Resources

<https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html>

OSAA Title IX Resources

<http://www.osaa.org/equity>



Break for Questions

Is it discrimination?



ABC School has decided to add a cosmetology course co-taught with a local community college. The school sends this photo that ABC uses to advertise the class, and asks the school counselor to bring up the opportunity to enroll with any students she thinks might be interested.

Career and Technical Education (CTE)

CTE programs cannot discriminate by gender

- Recruitment and promotional materials
- Admissions and pre-reqs
- Counseling
- etc

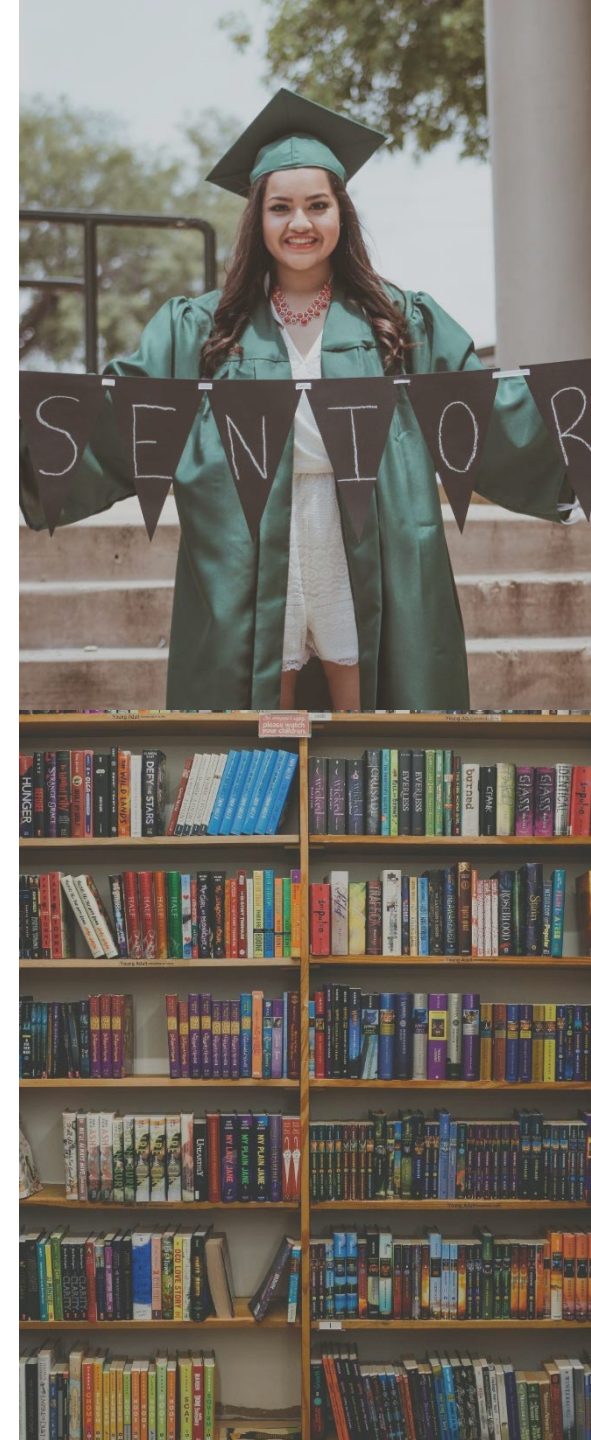
CTE programs may never be offered on a single-sex basis.

The Methods of Administration Program (MOA) provides additional guidelines for schools that offer CTE programs.

See also: 34 CFR Part 106, and OCR's 2016 DCL *Guidance on Gender Equity in Career and Technical Education*

Common CTE Areas of Concern

- Prerequisite classes that contribute to a gender imbalance
- Counseling and recruitment biases
- Intersecting areas of discrimination



Title IX and LGBTQ+ students

Does Title IX cover LGBTQ+ discrimination?

poll



ONE TO WATCH: TITLE IX & LGBTQ+ DISCRIMINATION?

US Dept of Education releases guidance stating discrimination based on gender identity violates Title IX

May 2016

Ninth Circuit Court upholds the dismissal of the Parents for Privacy v. Dallas School District case

Feb 2020

Bostock v. Clayton County: The Supreme Court determines that Title VII protects employees based on sexual orientation and gender identity

Jun 2020

US Dept of Ed revokes May 2016 transgender student guidance

Feb 2017

May 2016

Oregon Dept of Education releases Transgender Student Guidance

Nov 2017

Parents for Privacy sues the Dallas School District for allowing a transgender student to use the boys bathroom, consistent with his gender identity

Aug 2020

Citing Bostock, the 11th Circuit hold that a Florida school has violated Title IX by discriminating against a transgender student based on his gender identity



ODE's Transgender Student Guidelines

- Terminology
- Student Identity
- Pronouns, Name/gender changes
 - Gender and first name change process for transgender students in ODE system 6/26/2014
 - Graduation and transcripts
- Restroom/locker room usage
- Athletics, sports, and PE
- Over night field trips and other gender based activities
- Safety Plan/ Trusted Go to Adult

Case Study: GSAs

A group of students submit a petition to start a Gay-Straight Alliance club on campus. Is it discrimination if...

- The school board votes that the club is inappropriate and does not allow it to form?
- Students are required to get a permission slip signed to participate in the club?
- The club reports that it's signs are getting torn down and vandalized in the school hallways?

Break for Questions



THE NEW TITLE IX REGULATIONS: SEXUAL HARASSMENT

In this section...

- Terminology of Title IX
- Evolution of sexual harassment under Title IX
- A look at what's changing under the new regulations

Sexual Harassment

§ 106.44 Recipient's response to sexual harassment.

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

§ 106.45 Grievance process for formal complaints of sexual harassment.

(a) *Discrimination on the basis of sex.* A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.



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Title IX Sexual Harassment Terminology

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

-34 CFR 106.30(a)

Respondent “means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

-34 CFR 106.30(a)

Recipient means the school or district who is receiving Federal funding, and therefore subject to Title IX.

Title IX Sexual Harassment Terminology

Educational Program or Activity. For the purposes of Title IX, schools are required to respond to sexual harassment that occurs within “...locations, events, or circumstances over which the recipient exercised substantial control over both 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.”

-34 CFR 106.44(a)

TITLE IX HISTORY: SEXUAL HARASSMENT

Title IX is passed as part of the Education Amendments

1972

Sexual Harassment Guidance directs schools to address harassment of students and employees

1997/2001

1980s

Title IX is first applied to sexual harassment in the courts

2011

Dear Colleague Letter reiterates and expands protections for sexual assault; additional guidance and DCLs follow over the next several years

TITLE IX HISTORY: SEXUAL HARASSMENT

US Department of Education revokes 2011 and 2014 Title IX guidance; announces intent to replace with regulations

Sept 2017

Nov 2018

Draft regulations are released, previewing major changes to sexual harassment processes

Feb 2020

OCR announces a new initiative to engage in compliance reviews and data collection related to K-12 sexual harassment of students by employees

Final regulations released

May 6, 2020

Compliance deadline

Aug 14, 2020



2001 Definition of Sexual Harassment

“Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”

2001 Guidance

- Established that schools must respond to both quid pro quo and hostile environment (unwelcome conduct) sexual harassment
- Schools must respond if they “know or reasonably should have known,” including by conducting an investigation
- Schools must provide remedies for sexual harassment



2011 DCL Guidance

- Clarifies that sexual violence is a part of sexual harassment.
- Clarifies that schools may have the obligation to respond to violence that happened outside of the school community, if it interferes with the education program or activity of the student.
- Defines more clearly what schools should do in terms of grievance procedures.

The 2020 Regulations: Major Changes for K-12 Schools

- New definition of sexual harassment
- Defining the scope of jurisdiction
- Supportive measures and notification of options required
- New and specific grievance process (and policy requirements!)
- More specific notification requirements
- 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
- Advisors of choice
- **Oregon laws still apply!**
 - Sexual harassment policy requirements
 - SB155 – sexual abuse and sexual conduct
 - Mandatory reporting



Break for Questions

SEXUAL HARASSMENT

(1) Quid pro quo harassment

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

(3) Sexual assault, domestic violence, dating violence, and stalking as defined by the Clery Act



SCOPE OF JURISDICTION

Must occur within the United States

Must occur within the scope of an educational program or activity

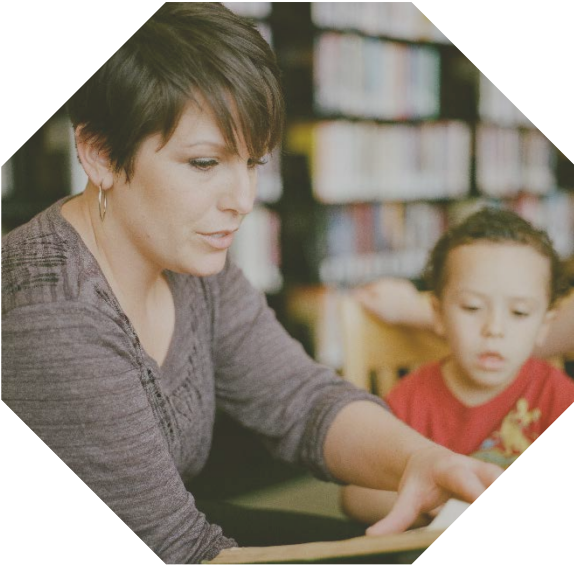
“...locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs...”



SUPPORTIVE MEASURES

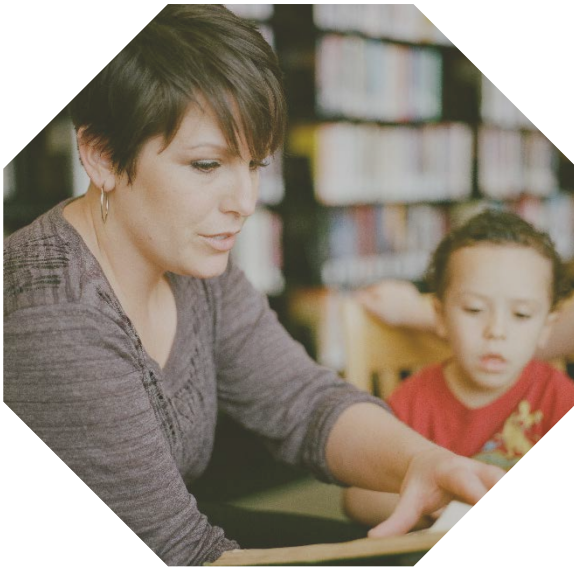
Anytime a school has **actual notice** of potential sexual harassment, the Title IX Coordinator must reach out to the complainant and:

- Discuss the availability of supportive measures
- Explain the process for filing a complaint



SUPPORTIVE MEASURES

*“...non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge...designed to restore or preserve equal access to the recipient’s education program or activity without **unreasonably burdening the other party**”*



Examples in the regulations include:

- counseling
- extensions of deadlines or other course-related adjustment
- modifications of work or class schedules
- mutual restrictions on contact between the parties
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

34 CFR § 106.30(a)

Requirements for Grievance Process

- Treat complainants and respondents equitably
- Require an objective evaluation of evidence
- Require no conflicts of interest or bias and require training for designated personnel
- Include a presumption of non-responsibility
- Include time frames that are “reasonably prompt”

Requirements for Grievance Process, cont.

- Describe the range or list possible sanctions and remedies
- State the standard of evidence
- Include procedures and bases for appeal
- Describe the range or list possible supportive measures available
- Not allow or use evidence that counts as privileged information without written consent of the party or their parent

Training Requirements

Schools are responsible for ensuring all designated personnel receive appropriate training.

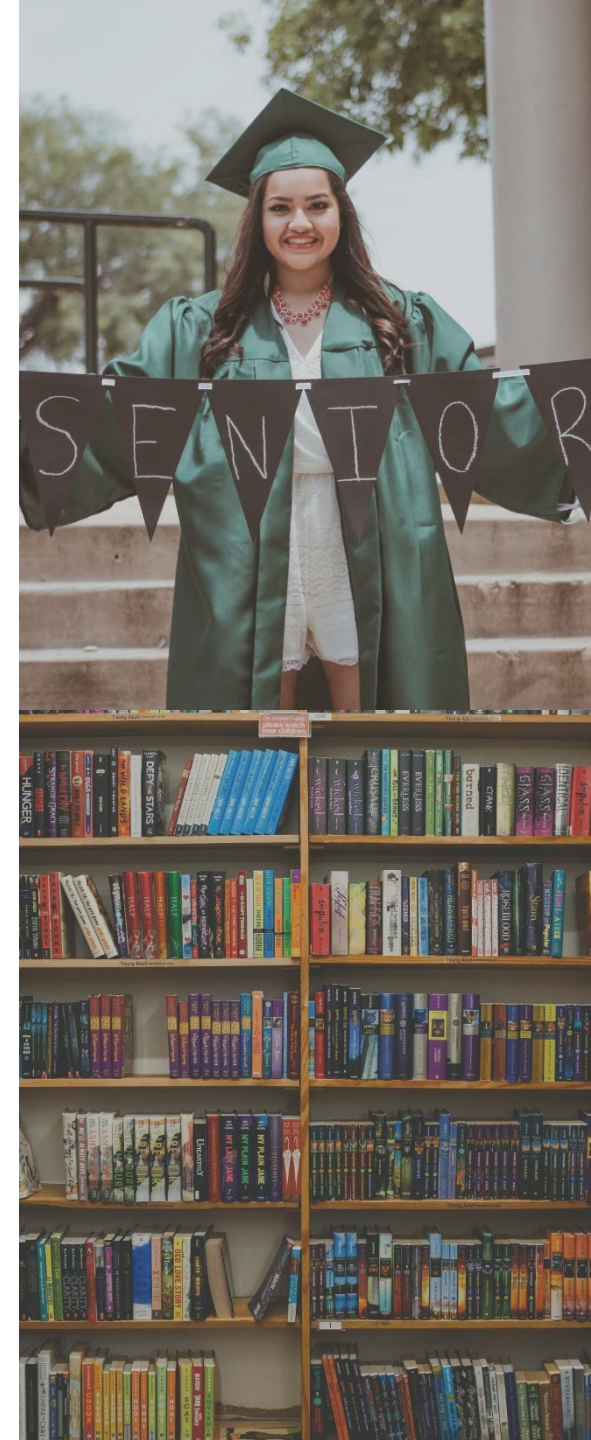
Personnel must:

“...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent”

34 CFR § 106.45(b)(1)(iii)

Training materials must:

- Be free of bias and sex stereotypes
- Be posted to the school’s website



	Title IX Coordinator	Investigator	Decision- Maker	Appeals Decision- Maker	Informal Process Facilitator
--	---------------------------------	---------------------	----------------------------	--	---

Definition of sexual harassment	X	X	X	X	X
Scope of “educational program or activity”	X	X	X	X	X
How to conduct the applicable portions of the grievance process	X	X	X	X	X
Avoiding prejudice 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	

Break for Questions



OREGON HARASSMENT LAWS & TITLE IX OVERLAP

In this section...

- Oregon's rules and laws, including:
 - Sexual harassment policies
 - Dating and domestic violence policies
 - Sexual conduct
 - Mandatory reporting

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

ORS 342.704; OAR 581-021-0038

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.



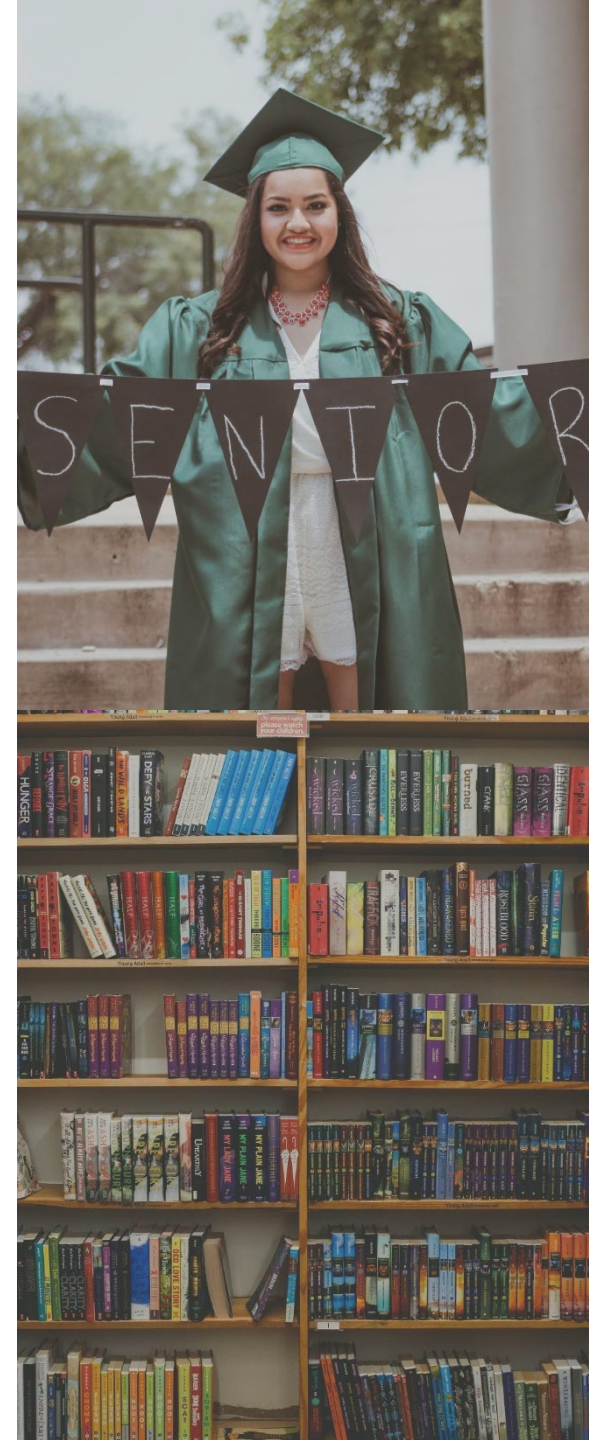
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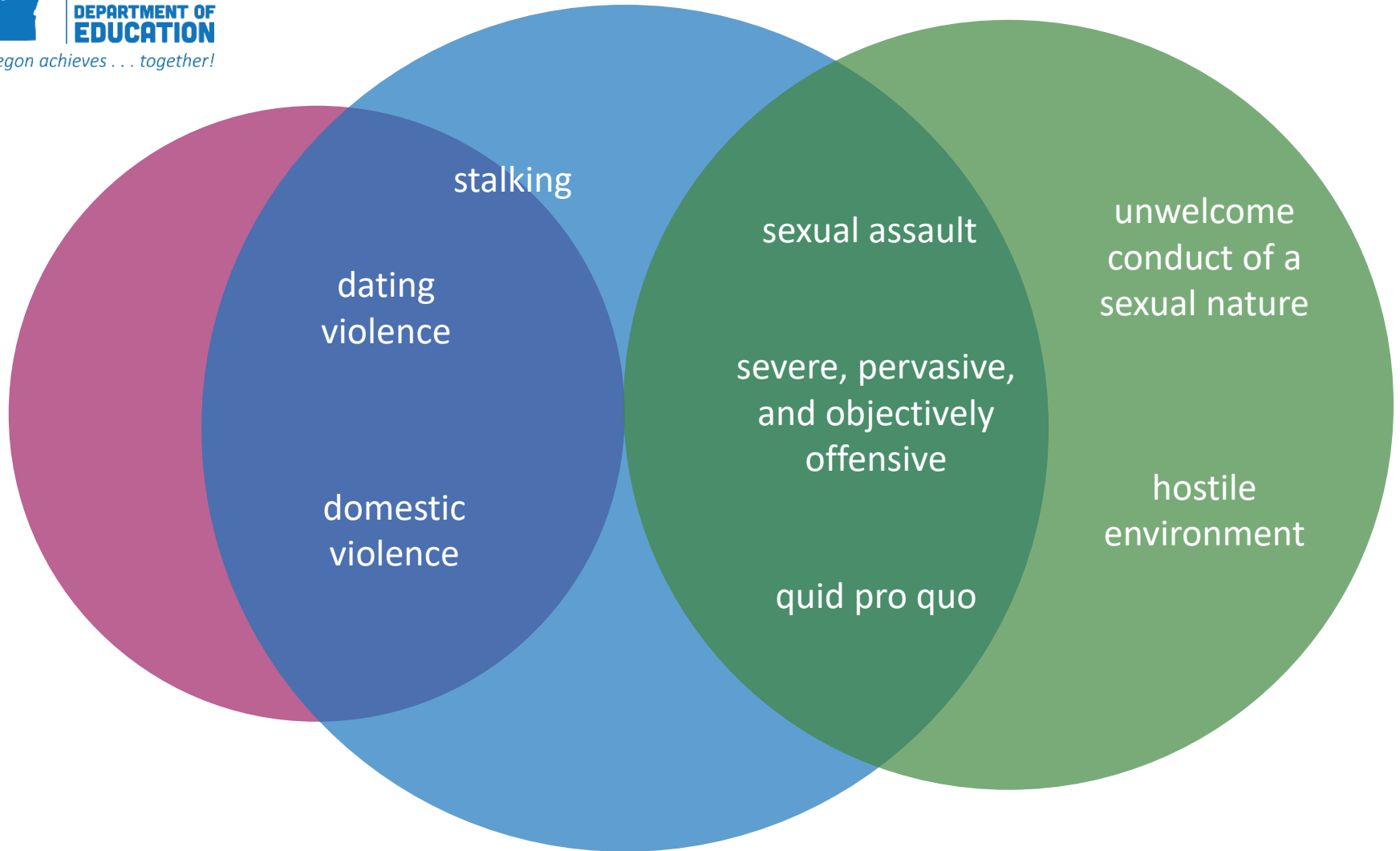
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Dating and Domestic Violence Policies

Requires that schools adopt policies that prohibit teen dating violence and domestic violence, including

- Identifying a staff member to take and respond to reports
- Adopting policies for how staff members should respond to reports
- Conducting educational programming in grades 7-12





Oregon's teen dating violence
and domestic violence policies
(ORS 339.366)

Title IX sexual
harassment
policies

Oregon's K-12 sexual
harassment policies
(OAR 581-021-0038)

SB155: Sexual Conduct

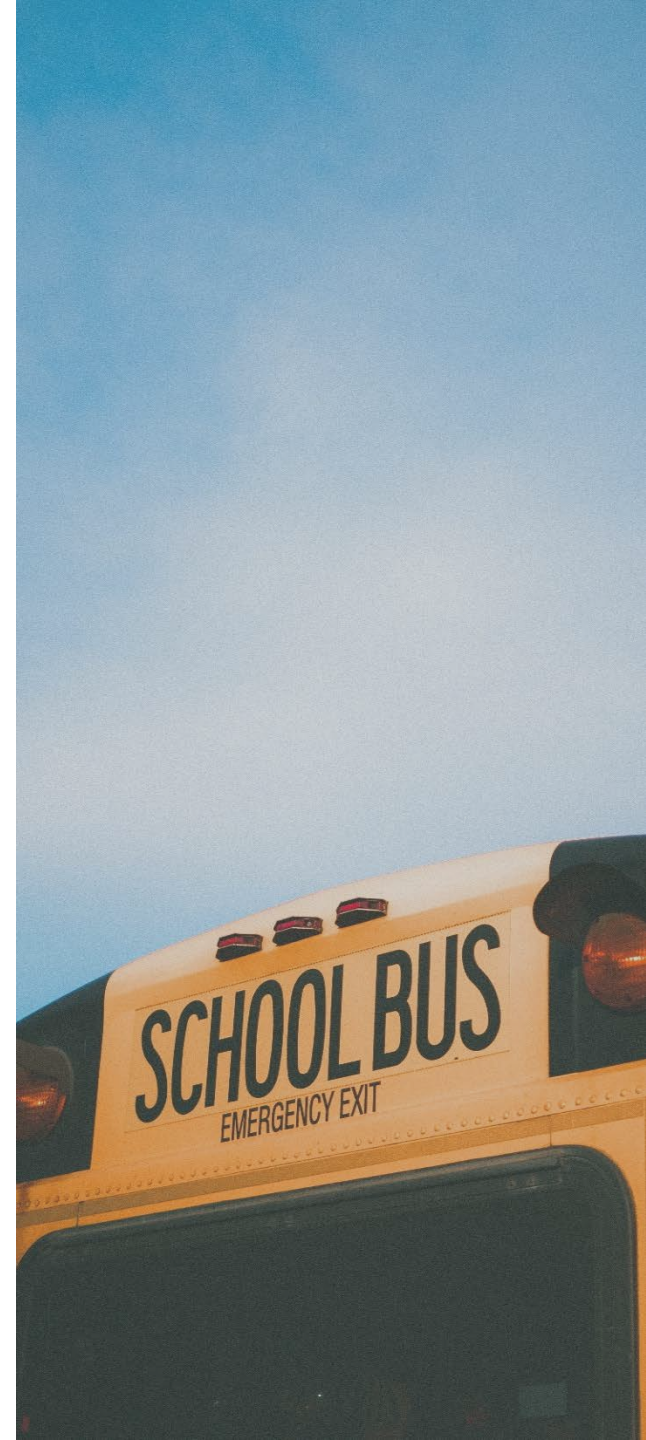
“Sexual Conduct” means:

(A) Conduct by a school employee, a contractor, an agent, or a volunteer that is verbal or physical in nature, that involves a student, and that is:

- (i) A sexual advancement or request for sexual favors directed toward a student; or
- (ii) Of a sexual nature that is directed toward a student or that has the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile, or offensive educational environment.

(B) Communications by a school employee, a contractor, an agent, or a volunteer that are verbal, written, or electronic in nature, that involve a student, and that are:

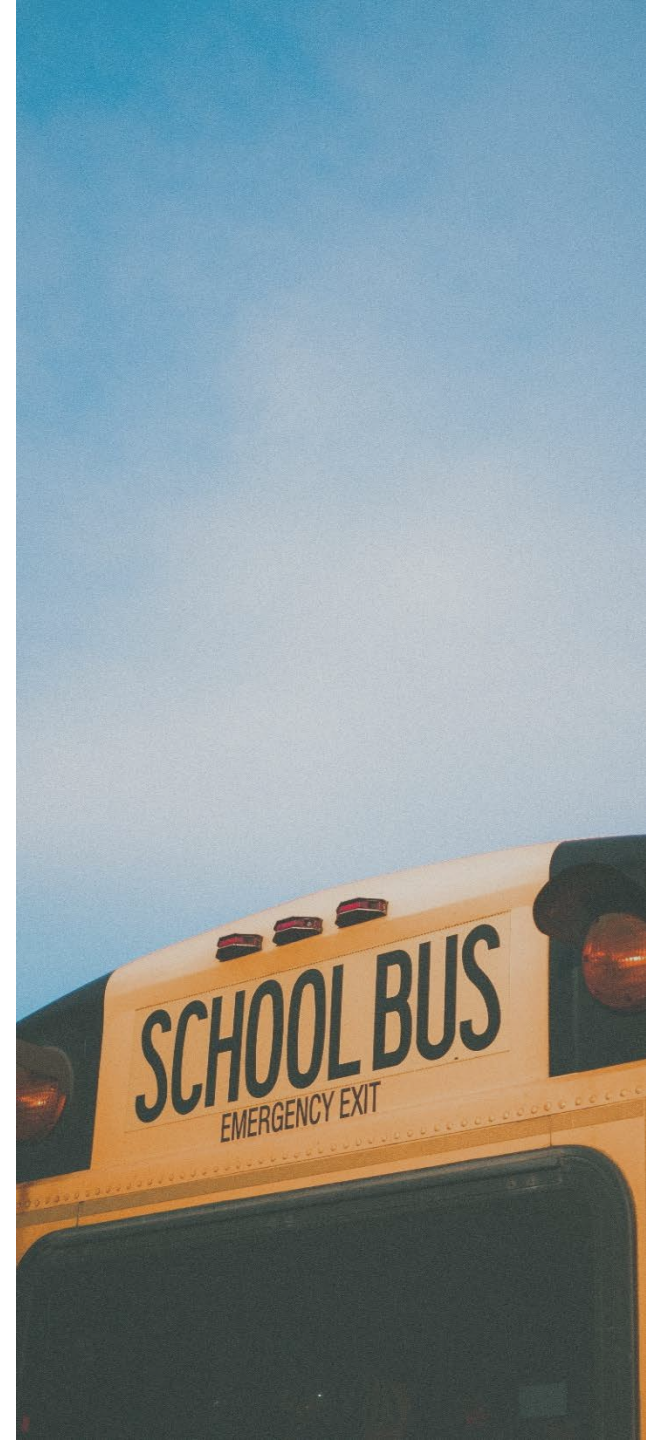
- (i) Sexual advances or requests for sexual favors directed toward a student; or
- (ii) Of a sexual nature that are directed toward a student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile, or offensive educational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

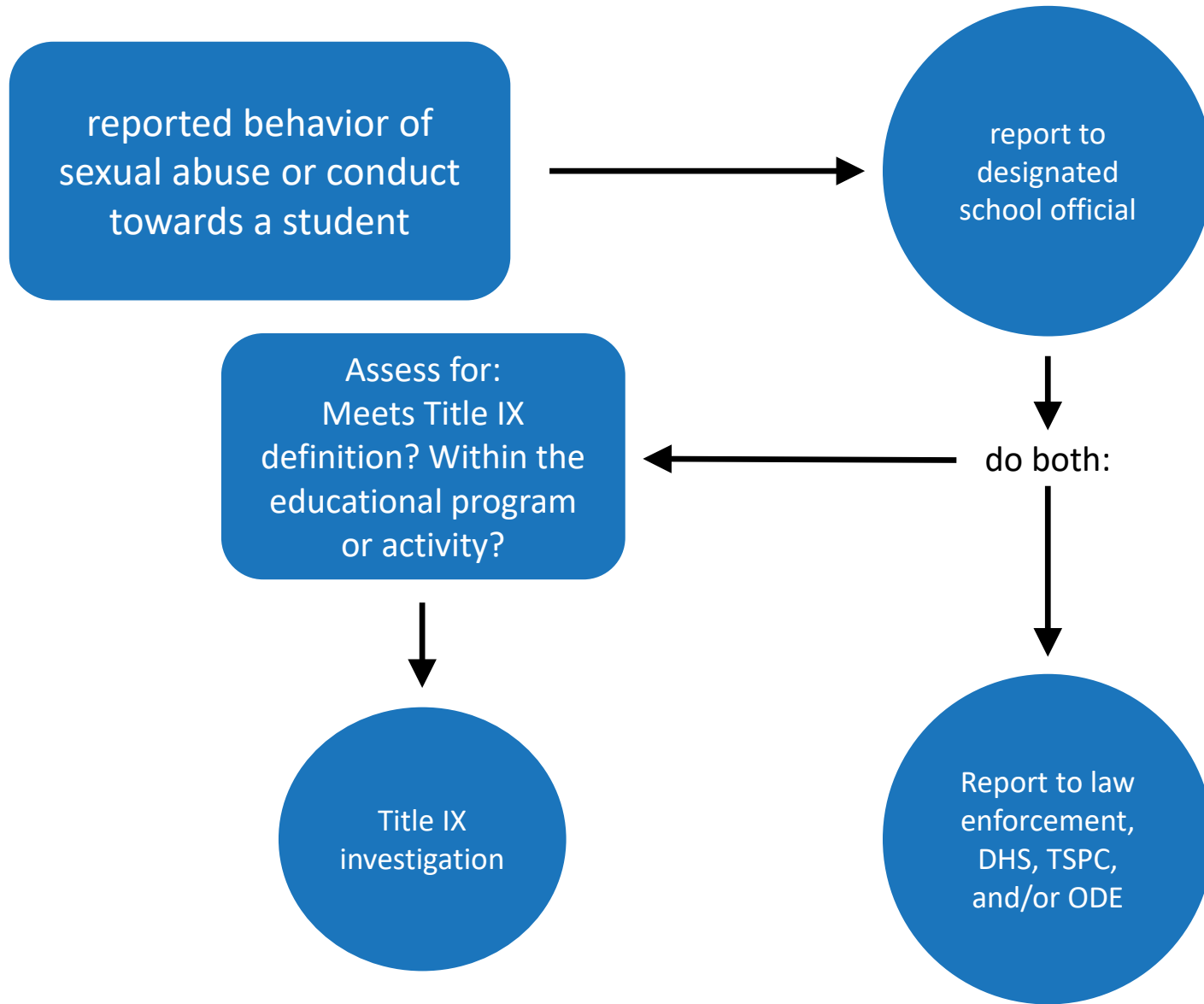


Mandatory Reporting & SB155

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





Break for Questions



COORDINATING TITLE IX

In this section...

- Title IX Coordinator responsibilities
- Public notification requirements
- Complaint procedural requirements
- Employee training
- Recordkeeping

Designation of a Title IX Coordinator

34 CFR Part 106.8(a) *Designation of coordinator.* Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the “Title IX Coordinator.”



Designation of a Title IX Coordinator

The 2015 Dear Colleague Letter on Title IX Coordinators provides further guidance:

- Sufficient independence to avoid conflicts of interest
- Sufficient authority to coordinate compliance and grievance processes
- Should be visible
- Thoroughly trained; recipient is responsible for ensuring training, either at hiring or once hired



Designation of a Title IX Coordinator

Multiple “deputy” coordinators

- May be a good practice for larger districts
- “A recipient that designates multiple coordinators should designate one lead Title IX coordinator who has ultimate oversight responsibility. A recipient should encourage all of its Title IX coordinators to work together to ensure consistent enforcement of its policies and Title IX.” – 2015 DCL, page 3



Public Notification

Who?

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

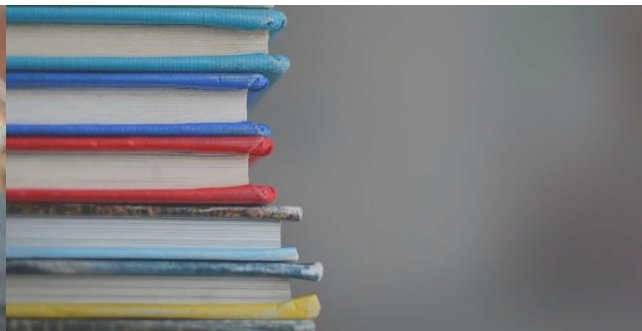
Of what?

- Title IX Coordinator's name, office address, email, and phone number
- "that the recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by title IX and this part not to discriminate in such a manner"

Where?

- "***prominently displayed*** on the website and in any published handbooks"

34 CFR § 106.8



Best Practices: Websites

- Link from your homepage, either through a drop-down menu, a footer, or similar.
- Use “Title IX,” “sex discrimination,” “sexual harassment,” as well as other terms more familiar to your communities.
- Use a central, standard email address, like titleix@district.k12.or.us
- Describe processes in plain language – don’t just link to your policies.

Check...

- Your search terms
- Hyperlinks

Complaint Policies and Processes

- Must have in place policies against sex discrimination, and complaint procedures to process to respond to and investigate reports of sex discrimination.
- All reports of sex discrimination need to be funneled to the Title IX Coordinator in some manner.
 - Documentation and recordkeeping
 - Tracking patterns
 - Ensuring compliance



Break for Questions

Does this need to be referred to the Title IX Coordinator? Is there potential sex discrimination?

A student complains that he received a low grade on a paper, in which he argued that it was unfair for courts to consistently side with mothers in parental custody hearings, and this this was discriminatory against men. The student argues that he is being discriminated against based on his views of male discrimination.

Does this need to be referred to the Title IX Coordinator? Is there potential sex discrimination?

At a school softball game, a parent comments to the coach that he wishes the team had access to better facilities. He states that he and some of the other parents are bothered by how nice the baseball stadium is compared to the softball field, and think that it's not fair to the girls team that their facility is so small and dirty in comparison.

Does this need to be referred to the Title IX Coordinator? Is there potential sex discrimination?

Many of the middle school science teachers go out to dinner once a month together; they often end up talking about school, and sometimes brainstorm new curriculum ideas. Last year three of these teachers won a district award for a collaborative curriculum idea they came up with during these dinners. Ms. Carrera, a new science teacher at the school this year, complains to one of her colleagues that she hasn't been invited to join the dinners. She notes that they are all male teachers, and it seems like a "boys club."



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Responsible Employees

- 2001 Guidance (p. 13)

*“A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or **an individual who a student could reasonably believe has this authority or responsibility.**”*

2020 Regulations (34 CFR Part 106.30(a))

*“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to **any employee of an elementary and secondary school.**”*



Employee Training

2001 Guidance

- responsible employees should be trained, at minimum, to recognize sexual harassment, and where to report it

2020 Regulations

- where to report and obligation to report



Prevention and Education

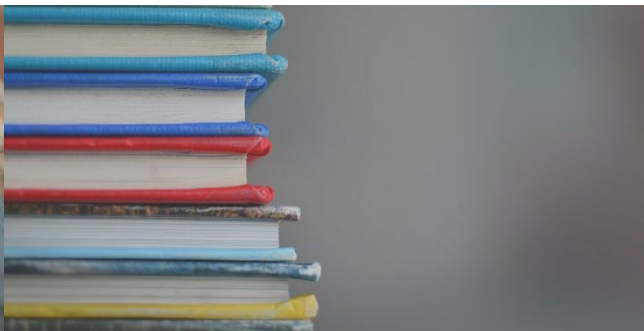
Educational mandates in Title IX?

- Students – where to report
- Staff/employees – where to report AND obligation to report

Oregon has state-based requirements (e.g., Erin's law)

Requirement to not be deliberately indifferent

Think about it – how much prevention and awareness programs be a part of a “non deliberately indifferent” response?



Working With Unions and Employee Organizations

Your collective bargaining agreements need to comply with Title IX.

- Standard of evidence
- Hearings
- Advisors and Union Reps

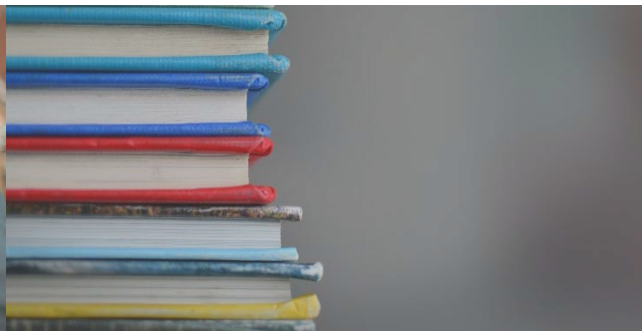


Recordkeeping

New regulations require that, related to sexual harassment, schools maintain for 7 years records of...

- Each incident of actual notice, including any supportive measures implemented, and why the school's response was not deliberately indifferent
- Full account of each sexual harassment investigation and decision, including any appeals and the results of remedies and sanctions
- Each informal resolution
- Materials used to train personnel

34 CFR § 106.45(b)(10)

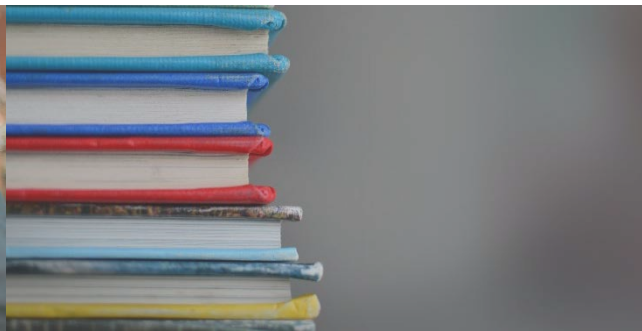


Recordkeeping

Title IX reports and investigations will become a part of a student or employee's record. Accordingly, it is protected as a FERPA record, BUT:

“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.”

-34 CFR 106.6(e) Effect of Section 444 of General Education Provisions Act (GEPA)/ Family Educational Rights and Privacy Act (FERPA).



Break for Questions



GROUNDING OUR PROCESSES: STUDENT-CENTERED AND TRAUMA- INFORMED

In this section...

- How can we make our processes more accessible and empowering for students and families?
- How can we avoid retraumatizing students during the response and investigation process?

Student-Centered Process

A student-centered process recognizes and validates the experiences of students, and grounds processes and procedures in methods and language that empower students and their supporters to engage with the process.

Type in the chat box:

What barriers might make it harder for a student or their family to engage with the Title IX process (on either the complainant or respondent side)?

This is such a minor issue – compared to what so many kids are going through, this is nothing.

Can you believe the stuff that kids get up to these days? In a relationship with two people at once, and I've never even heard of half these drugs! Things were never like this when I was in school.

This is the third time Connor has been in my office this month – they make a big deal out of everything.

Adultism

Prejudice, discrimination, and oppression against young people by adults.

Adultism is the flipside of ageism - whereas ageism is discrimination against older adults (roughly those 60 and older), adultism is discrimination against young people (usually under age 25). In American society, people roughly between the ages of 25-60 tend to have the most social, cultural, and political power when compared with older or younger people.



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How does adultism manifest?

Legally and politically

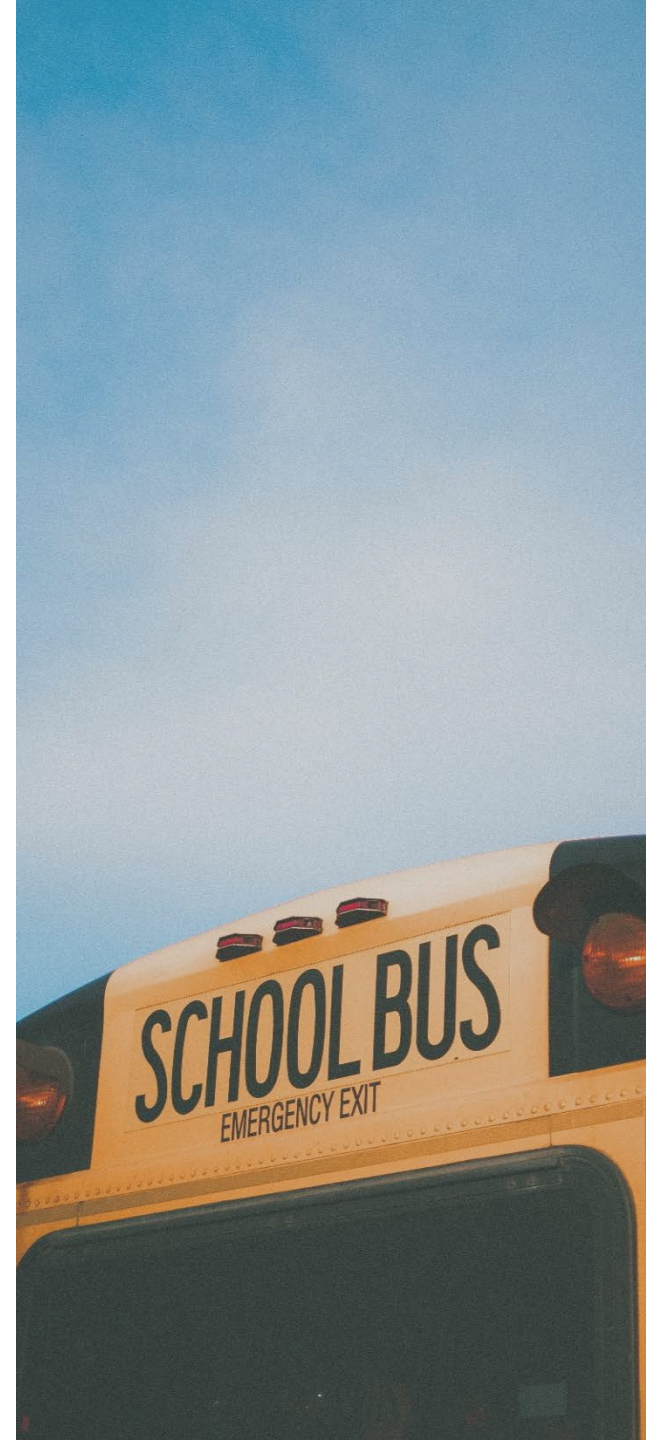
- Young people under 18 cannot vote
- Young people under 18 cannot (in most cases) visit the doctor or make healthcare decisions for themselves

Cultural and social conventions

- “You’ll understand when you’re older”
- “You’ll get over it, it’s just a phase”
- “You’re too young to know what you want to do”

School-specific dynamics

- Student representatives on school boards or administrative committees usually don’t have voting power
- Policies and procedures aren’t reviewed by students, even when they impact them



Type in the chat box:

How might adultist attitudes
and behaviors emerge in the
Title IX process?

“Kids today make a big deal out of everything” “They make such bad decisions” “They’re so entitled” “Can you believe the kinds of things kids are doing?”

Fewer case resolutions, students dissatisfied with process, creates/reinforces adversarial relationship between student body and administration

Lack of empathy for students/parties, pre-judgement and stereotyping

ADULTIST ATTITUDE & BEHAVIOR CYCLE

Less and lower quality of evidence and interviews provided/collected, poorer case

Students feel unsafe, less cooperative, provides little information, less empowered, more likely to disengage

“All students deserve to be safe and deserve an education. Students face unique barriers in accessing and participating in the process. I will view each student’s participation in good faith, and not make assumptions about complaints or respondents.”

Participants believe in the process, students more likely to report and trust administration, safer environments created in the school community

Empathy and empowerment for all parties are central to all interactions. Information and choices are shared processes.

STUDENT-CENTERED EMPOWERMENT MODEL

More and better quality of evidence and interviews, stronger case is build, more confident decisions reached

Student feels safer, is more likely to report or participate, is more cooperative, feels more in control

Strategies for Student-Centered Processes

- Involve students and families in the creation of policies, procedures, or new school initiatives
- Especially for older students, talk to them before automatically calling parents; explain parental involvement, assess for safety, and safety plan
- Include students in the process in age-appropriate ways rather than solely communicating with parents
- Check your (and your team's) bias about young people and decision-making, sexual decisions, cognitive abilities, etc.

Break for Questions

Trauma-Informed Organizations

“...recognize the widespread impact of trauma and attempt to mitigate its effects by integrating an understanding of trauma into their policies, procedures, and practices.”

-Substance Abuse and Mental Health Services Administration, 2014

Trauma is Common

Sexual harassment can be a trauma, and the experience of going through the reporting/investigation process can be traumatic.

But trauma will be common among many of the complainants and respondents you work with:



of children in the US experience at least one ACE



of children in the US experience 4 or more ACEs

Trauma-informed processes will aid and support ALL parties.



SAMHSA's Principles of Trauma-Informed Care

- Safety
- Trustworthiness and transparency
- Peer support (connection to others with similar experiences)
- Collaboration and mutuality
- Empowerment, voice, and choice
- Cultural, historical, and gender awareness (understands and works to undo bias)

Substance Abuse and Mental Health Services Administration.
SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach. HHS Publication No. (SMA) 14-4884.
Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014.



1

Safety

WHAT IT MEANS

Staff and those they serve feel physically and emotionally safe throughout service provision and engagement. Safety is prioritized.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Complainants and respondents are referred to advocates/resources for safety planning and support at the process onset. Investigators conduct interviews in safe, confidential spaces. Safety planning is revisited often.



2 Trustworthiness and Transparency

WHAT IT MEANS

Processes, procedures, and organizational policies are clear. Trust is prioritized, and is built through sharing information and clarity.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Policies are written in a clear manner which avoids overly legalistic or complicated language, and are accessible for all community participants. Title IX personnel share information with parties - and when they cannot, they explain why.



3 Peer Support

WHAT IT MEANS

Connection to others who have similar experiences, or to those who can support healing, is prioritized for clients.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Complainants and respondents are referred to advocates, counselors, or community partners who have training to support them. If school peer support groups or clubs exist, parties are informed about them.



4

Collaboration and Mutuality

WHAT IT MEANS

Collaboration between service providers, clients, and other members of the organization is prioritized. Power differentials are leveled whenever possible.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Title IX personnel empower parties to understand their rights and support them in exercising them. Title IX personnel share the roles, responsibilities, and limitations of all parties involved.



5

Empowerment, Voice, and Choice

WHAT IT MEANS

Clients are considered experts in their own lives. Clients are encouraged to participate in and direct services. Options, even if limited, are always offered.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Title IX personnel clearly lay out options for parties whenever possible (such as options to move forward with reporting, submitting evidence, etc), and openly discuss potential outcomes of those options.



6 Cultural, Historical, and Gender Awareness

WHAT IT MEANS

Organizations work to address bias. Organizations incorporate processes that are supportive of diverse cultural, racial, etc. backgrounds and needs of individuals served.

WHAT IT MIGHT LOOK LIKE IN THE TITLE IX PROCESS

Title IX personnel receive ongoing training on bias. Title IX offices partner with culturally-specific school and community resources, and offer those resources to all parties.

Title IX and trauma-informed care are not always a perfect match!

It's important to remember that we are effectively “retro-fitting” trauma-informed care onto the Title IX process - not all of these principles are going to fit perfectly within our investigations, and not all steps in the investigation are going to align with these trauma-informed principles. What's important is that we keep these practices and values in mind, and that we apply them when ethical, equitable, and possible.

Trauma, discrimination, and harm may happen to members of your school community in ways you can't control.

What you can control is how you respond to a disclosure or a report.

Strive to minimize retraumatization.

Institutional Betrayal

“...the psychological and physical harm that a school, the military or workplace can do to the people that depend on that institution.”

“[Institutional betrayal] can also mean *failing to do that what is reasonably expected* of the institution, such as not providing relief to disaster victims or failing to respond effectively to sexual violence. For instance, some victims of assault are punished or even demoted or fired for reporting the assault to their institution.”

-Dr. Jennifer Freyd, University of Oregon

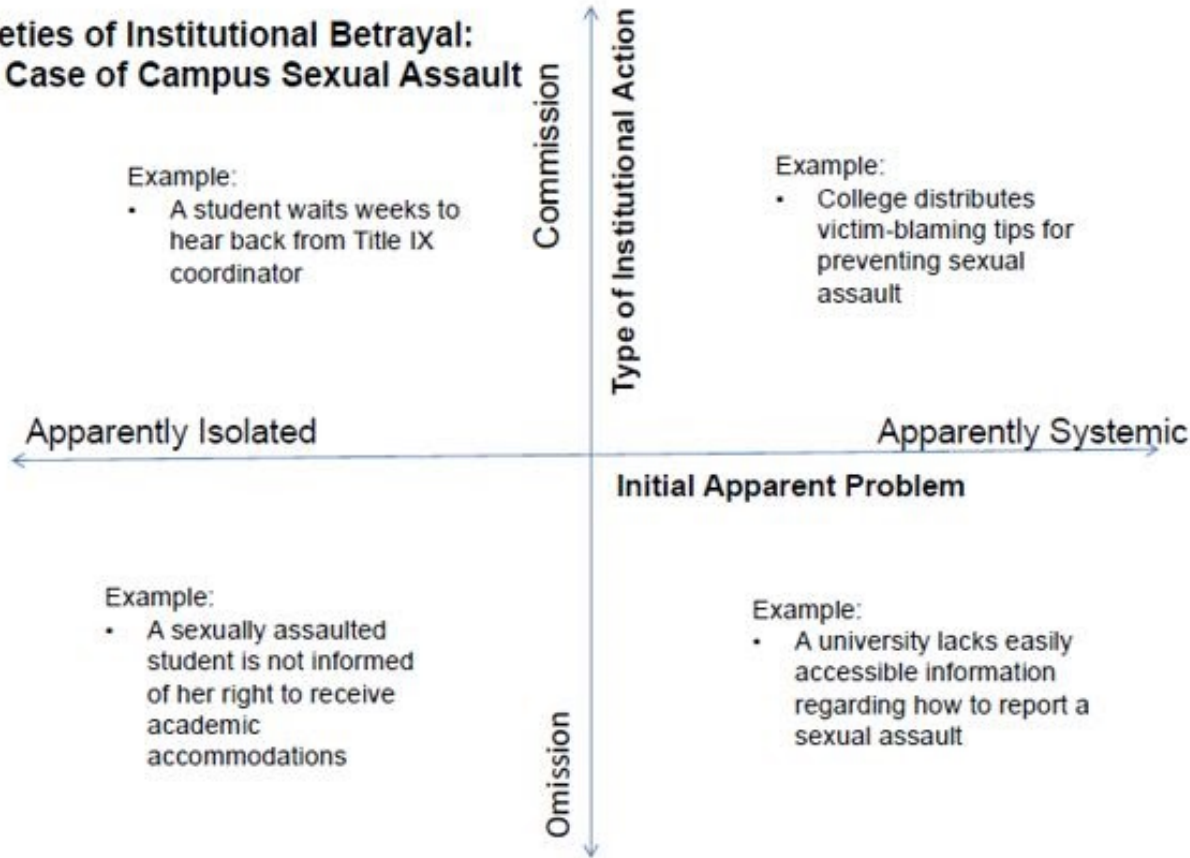


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Institutional Betrayal: Sexual Assault

Varieties of Institutional Betrayal: The Case of Campus Sexual Assault





Strategies for Minimizing Institutional Betrayal & Retraumatization

Set reasonable and accessible expectations

- “I’ll email you with next steps on Friday. If for some reason there’s a delay, I’ll still email to let you know.”

Don’t promise anything that cannot be delivered

- Ex: avoid “if there’s been a crime, they’ll go to jail” or “no one will ever hurt you at our school again”

Get training in trauma-informed interviewing and investigations



The Groundwork: Intro to Title IX + Oregon Law



Elements of Title IX



The New Title IX Regulations: Sexual Harassment



Oregon Harassment Laws & Title IX



Coordinating Title IX



Student-Centered & Trauma-Informed Processes

Break for Questions



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