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EDUCATION

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Sexual Harassment in Oregon K-12 Schools

Part 2: Preparing People, Policy and Process for August 14th





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.

Education Equity Stance

Education equity is the equitable implementation of policy, practices, procedures, and legislation that translates into resource allocation, education rigor, and opportunities for historically and currently marginalized youth, students, and families including civil rights protected classes. This means the restructuring and dismantling of systems and institutions that create the dichotomy of beneficiaries and the oppressed and marginalized.

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Before we get started...

This webinar is not exhaustive of the new regulations and their requirements.

This webinar 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 technical assistance and training following these webinars.

(some of the)

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





1

Actual Knowledge

2

Formal Complaint

3

Investigation

4

Decision-Making

5

Appeal

6

Sanctions and Remedies

TODAY'S AGENDA

- People
 - Who's involved in K-12 Title IX responses?
- Policy
 - What policies need to be updated by August 14th?
 - What should districts ready to support their policies?
- Process
 - How will processes shift?
 - What are best practices?



People

Who's Involved?

Title IX Coordinator

Investigator

Decision-Maker

Appeals Decision-Maker

Informal Resolution Facilitator

may be the
same person

only required
if offered





Title IX Coordinator*

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

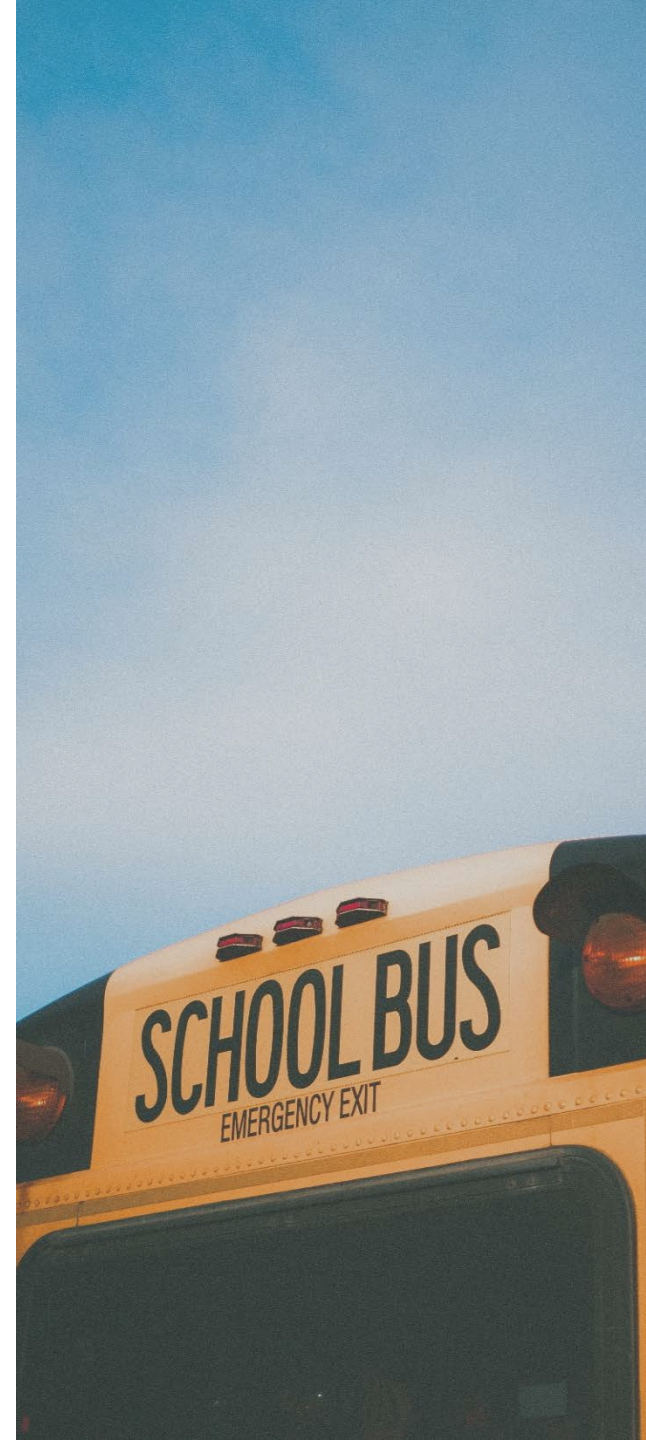
*According to the new regulations, “Title IX Coordinator” should be a part of the job title

Investigator

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

Informal Process Facilitator

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



Decision-Maker(s)

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

Appeals Decision-Maker(s)

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

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

Training Requirements

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

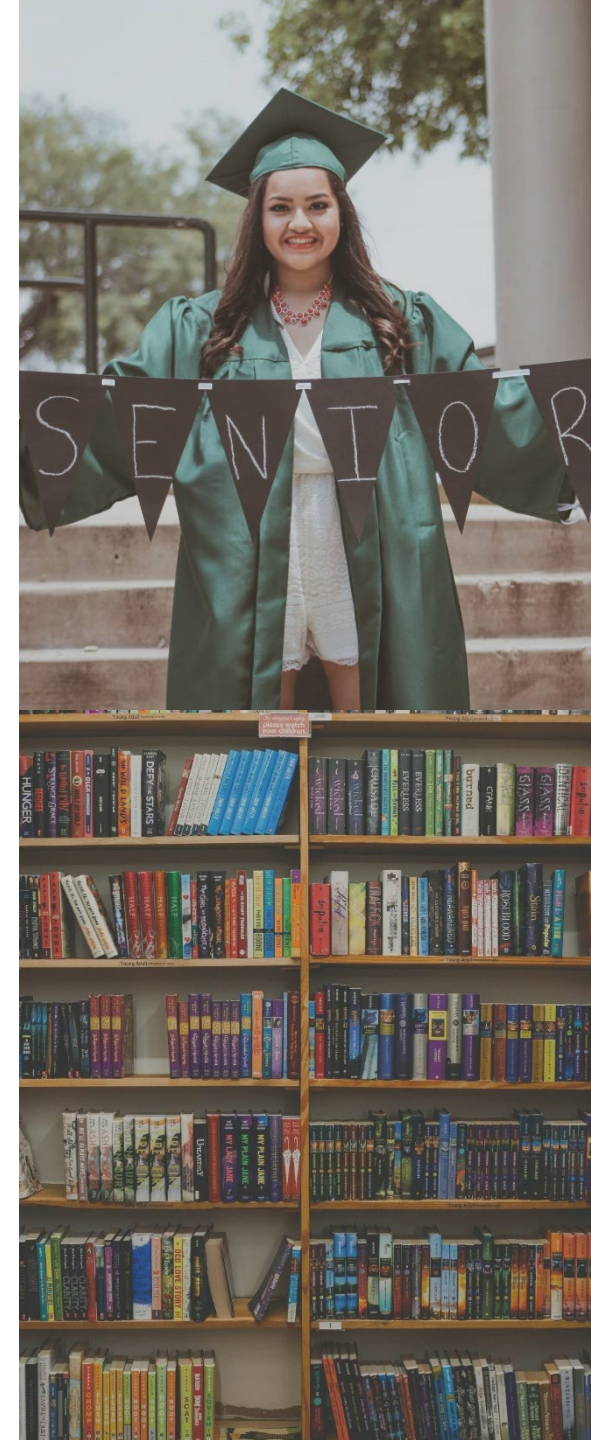
Personnel must:

“...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	

Best Practices: Training

In addition to the topics required in the regulations, some additional topics for training may include:

- Dynamics of sexual harassment and interpersonal violence
- Trauma-informed interviewing
- Child forensic interviewing
- Bias reduction trainings (such as implicit bias training, anti-racism education, etc)



Policy

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



Regulation-Mandated Notices and Documents

Notice of Allegations

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

Investigation Report

- “fairly summarizes relevant evidence”



Regulation-Mandated Notices and Documents

Determination of Responsibility

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

Appeal Decision

- “written decision describing the result of the appeal and the rationale for the result”

Best Practices: Template Documents

Four required Title IX docs:

- Notice of Allegations
- Investigation Report
- Determination of Responsibility
- Appeal Documents

Consider:

- Notification of rights and options
- Advisor info sheet
- Investigation notes and timeline
- Email templates
- Supportive measures, sanctions, and remedies follow-up templates
- ***What else?***



Process

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

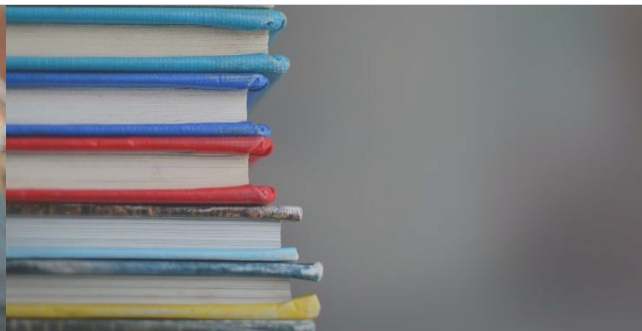
Of what?

- 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 both “Title IX” and “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

Concurrent Law Enforcement Activity

Time frames may be temporarily extended for good cause, which includes concurrent law enforcement activity.

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

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



Best Practices: External Partners

- Start developing relationships and meeting with agency partners early
- Identify a point-person for collaboration at each agency
- Develop an MOU
- Cross-train each other
- Stay in touch regularly (quarterly? monthly?) even when no overlapping cases are pending

Rights of Parents

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

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

34 CFR § 106.6



Best Practices: Safety Assessments and Safety Planning

“Typically in situations like this, we would directly notify your parent(s)/guardian(s) so they can support you throughout this process. Do you have any concerns about telling your parents?”

Look for fears around:

Physical harm

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

Emotional harm

Identity-based harm*

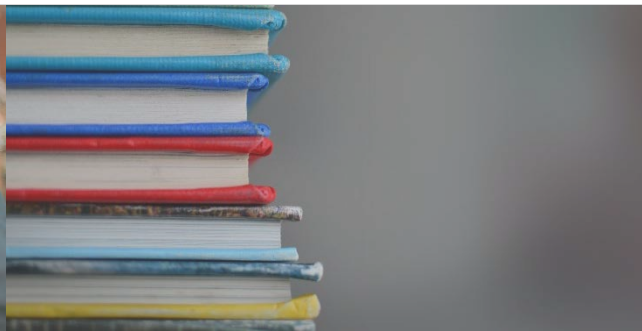
Make a safety plan with the student. Document the response and plan.

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

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)



Working With Unions and Employee Organizations

Your collective bargaining agreements need to comply with Title IX.

- Standard of evidence
- Hearings
- Advisors and Union Reps



Considerations for Small Districts

Supportive measures and remedies

- Get creative; brainstorm with the impacted party

Avoiding conflicts of interest

- Consider partnerships with your ESD or neighboring districts to investigate and adjudicate
- External contractors
- Consider double-training to avoid vacancies

Monitoring for retaliation



Prevention and Education

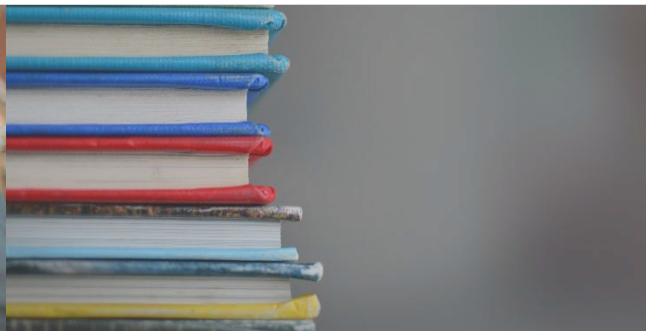
Educational mandates in Title IX?

- 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?





What's Next?



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