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Sexual Harassment in Oregon K-12 Schools

Part 1: The New Title IX Regulations



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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.



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.

TODAY'S AGENDA

- Brief history of sexual harassment and Title IX
- (some of the) BIG CHANGES
- Step-by-step of the new grievance process under the regulations



Title IX & Sexual Harassment

No person in the United States shall, on the basis on 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.

academics

admissions

athletics

career and technical education

cocurricular activities

hiring and benefits

sexual harassment

summer programs

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

Compliance deadline*

Aug 14, 2020

Final regulations released

May 6, 2020

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



What's changed under the new regulations?



(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



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)

SPECIFIC GRIEVANCE PROCEDURES

Any time the school receives a formal complaint of sexual harassment, they must initiate specific grievance procedures.

The new regulations require:

- Specific steps
- Specific policy components (timelines, standard of evidence, range of supportive measures and sanctions, etc)
- No sanctions or disciplinary action can be levied against a respondent until the conclusion of a grievance process



What about interim
suspensions or
administrative leave?



EMERGENCY REMOVAL and ADMINISTRATIVE LEAVE

Emergency removal of a student is allowed:

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

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

OREGON LAW INTERSECTION: Requirements for administrative leave under SB155 will still apply

§ 106.44(c) and (d)

INFORMAL PROCESS

- Can, but not required to, offer informal resolution process for any case EXCEPT employee-on-student sexual harassment
 - Formal complaint must be filed
 - Notice must be given, which must include informal process information
 - Both parties must submit written consent





Sexual Harassment Grievance Processes Under the New Regulations



- 1 Actual Knowledge
- 2 Formal Complaint
- 3 Investigation
- 4 Decision-Making
- 5 Appeal
- 6 Sanctions and Remedies

1

ACTUAL KNOWLEDGE

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

Schools must respond in a manner that is not “deliberately indifferent,” which includes:

- Contacting the complainant
- Offering supportive measures
- Describing the process for filing a formal complaint
- *Potentially other steps*

OREGON LAW INTERSECTION:

- HB4150 “notice of rights and options” document
- mandatory reporting requirements (when implicated)
- SB155 reporting requirements (when implicated)

(a)



2

FORMAL COMPLAINT

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

If the conduct in the formal complaint does not constitute sexual harassment, or did not happen in the educational program or activity of the school or in the US, it must be dismissed under Title IX.*

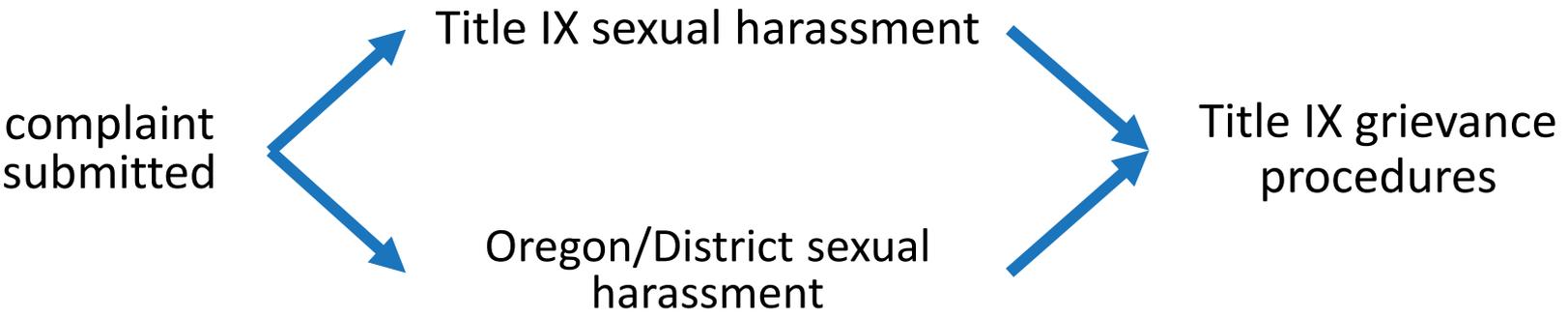
OREGON LAW INTERSECTION:

Schools may still investigate sexual harassment under other conduct policies, including those mandated by state law – *Oregon has these mandates!*

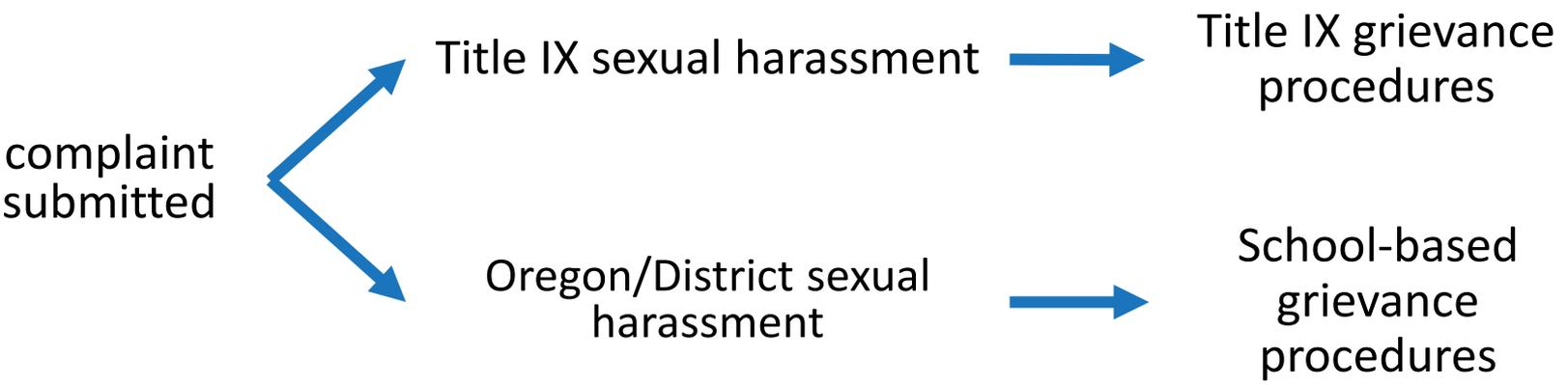
(3)



OPTION 1:



OPTION 2:



Can third parties submit
complaints?

An investigation includes:

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

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

34 CFR § 106.45(b)(5)



Possible Investigation Timeline*

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

Day 3-6: Conduct interviews and collect evidence.

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

Day 17: Receive responses and finalize investigative report.

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

Day 28: Decision-making process starts.

Day 30: Determination of responsibility issued

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



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



TEMPORARY DELAYS

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

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

How long is “temporary”?

34 CFR § 106.44(b)(1)(v)

4

DECISION-MAKING

The decision-making process must include:

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

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

34 CFR § 106.45(b)(6)

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



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

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

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

34 CFR § 106.45(b)(8)



6

SANCTIONS AND REMEDIES

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

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

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

34 CFR § 106.45(b)(7)





1

Actual Notice

2

Formal Complaint

3

Investigation

4

Decision-Making

5

Appeal

6

Sanctions and Remedies



What's Next?



Coming up...

Sexual Harassment in Oregon K-12 Schools, Part 2: Getting People, Policies, and Processes ready for August 14th

- What policies will need to be updated?
- What processes and infrastructure will need to be in place?
- Who needs to be identified and what training will they need?
- Working with external partners: law enforcement, advocates, and more

Contact ODE with questions about technical assistance or further training.



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