

Session 1: Foundations of K-12 Title IX Compliance

Understanding Legal Duties,
Impartiality, and Compliance
Essentials

OSPA Summer Retreat
July 28-29, 2025



Presented By

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About ECR Solutions

- Most educational administrators lack the time, specialized expertise, and staff to fully meet their institutions' civil rights obligations.
- ECR Solutions PLLC fills those gaps through holistic legal guidance, strategic consulting partnerships, and interim or external civil rights staffing.
- This support helps institutions manage legal risk, reduce the likelihood of public scrutiny, and uphold the rights of their communities.



WELCOME

Getting Education Civil Rights Right, The First Time

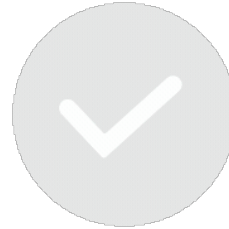
Expert services to help you
understand civil rights laws and
industry standards for K-12, higher
ed, and beyond



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Reminders!

- This is not legal advice; contact me for specific help
- Training materials must be posted online
- Keep it hypothetical
- Ask questions
- Have fun!



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Agenda

Title IX: The Basics

Definitions & Duties

Bias, Conflicts of Interest, and Prejudgment

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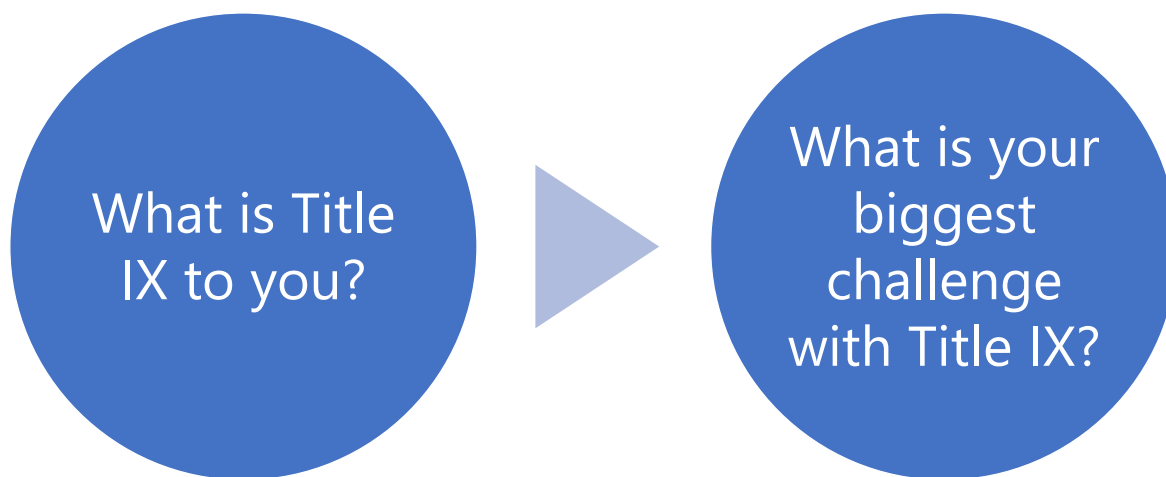
Work Alike Groups

- You should be seated with others **who serve in similar roles to you**
 - ✓ Title IX Coordinators/Deputy Coordinators (Intake & Coordination)
 - ✓ Investigators
 - ✓ Decision-Maker (Initial Decision)
 - ✓ Appeals Decision-Maker
 - ✓ Informal Resolution Facilitator
 - ✓ Other
- Each breakout group will examine the requirements covered **through the lens of their specific responsibilities**, allowing every attendee to understand how their role connects to the broader Title IX framework



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Work Alike: What's Title IX?



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Title IX: The Basics



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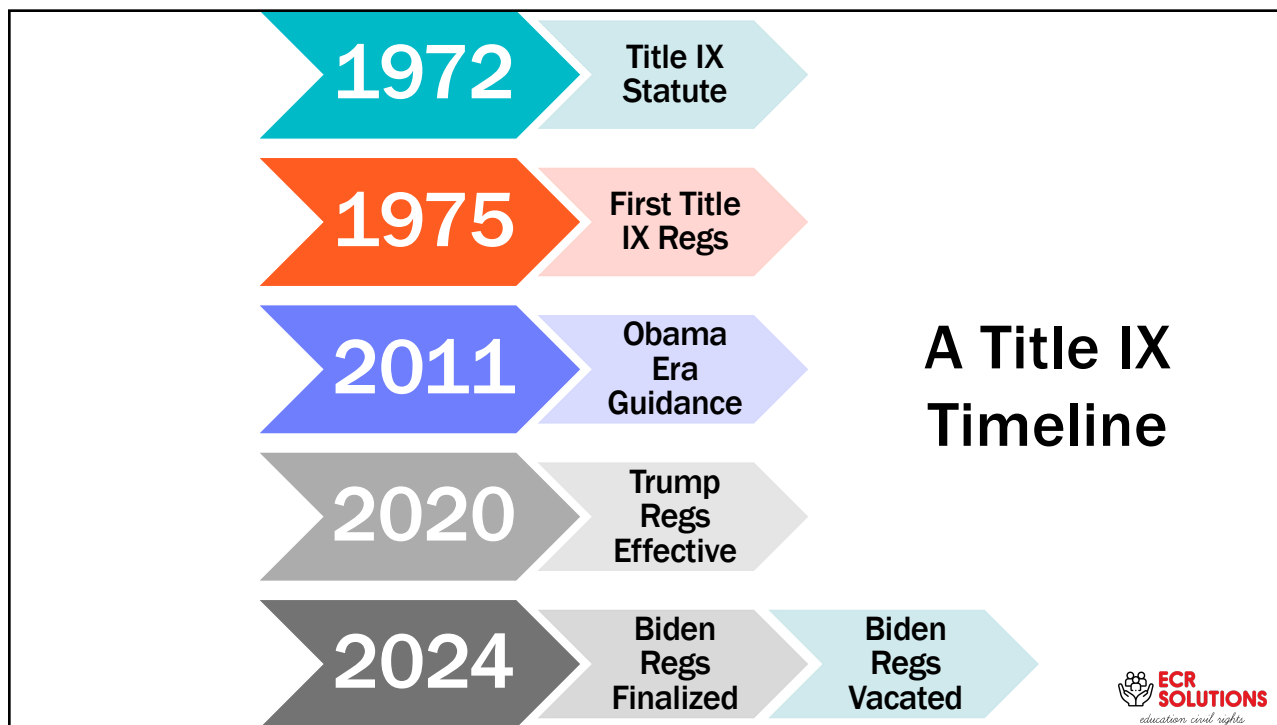
TITLE IX STATUTE

20 U.S.C. 1681(A)

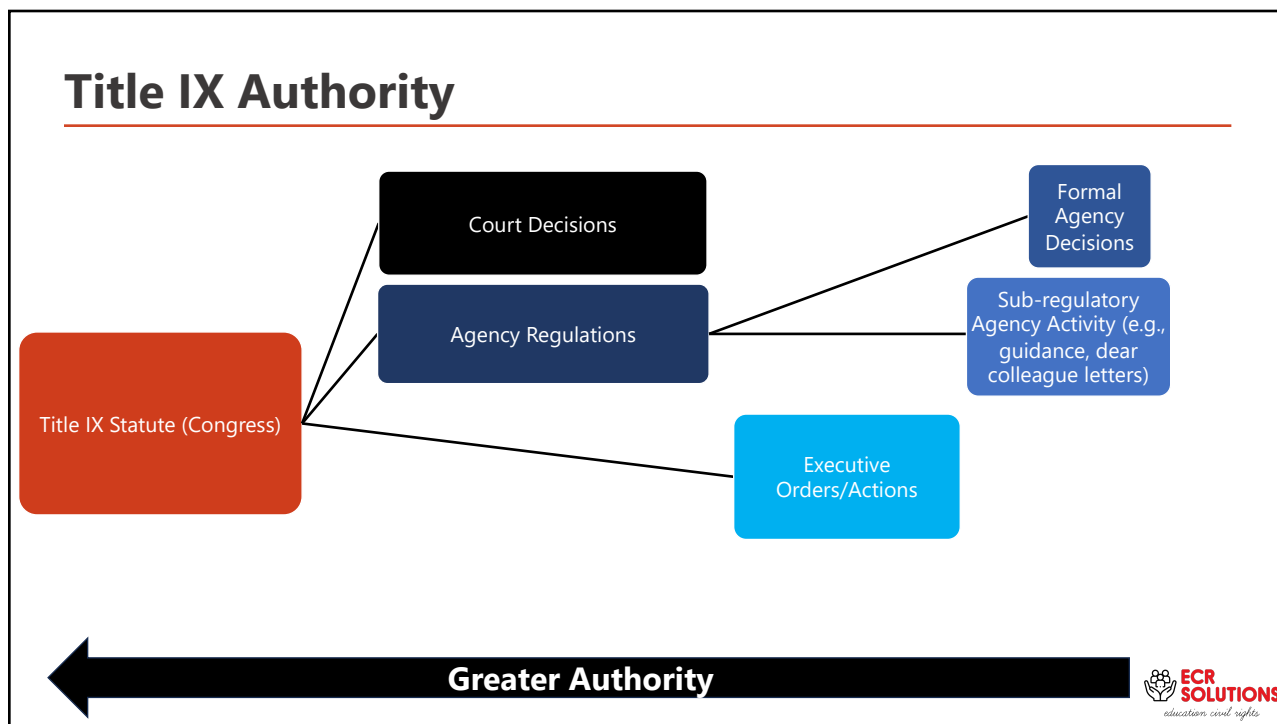
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance.”



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RECORDS

- Retain all records for at least 7 years
- Post training materials on your website under 2020 rules



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TRAINING REQUIREMENTS

ALL TITLE IX TEAM MEMBERS

- Definition of sexual harassment in §106.30
- Scope of the “education program or activity”
- How to conduct their part of the grievance process
- How to serve impartially

SPECIFIC ROLES

- Issues of relevance of questions and evidence (decision-makers)
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence (investigators)



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TRAINING RECOMMENDATIONS

ALL TITLE IX TEAM MEMBERS

- Practical training based on past or current cases
- Training on credibility determinations
- Consultant or legal “on the job” training

ALL EMPLOYEES

- What is sexual harassment (Title IX and other)—with real-life examples
- Where and when to report sexual harassment
- What happens when a report is made



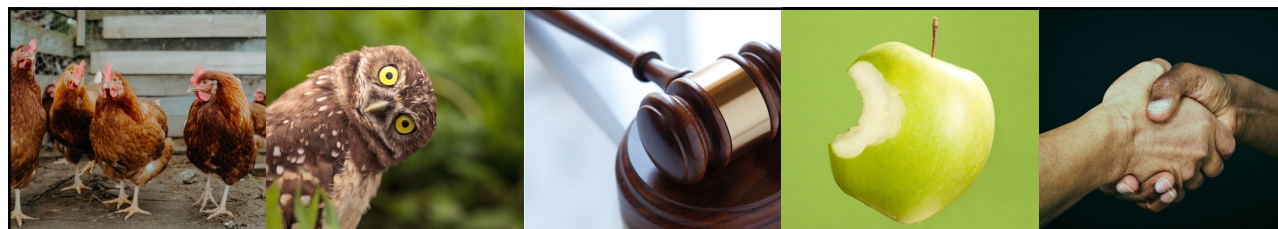
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Parental Rights

- Both Title IX and Oregon law require granting parents/guardians of minor parties full rights to participate in the process
- HB 2631 requires that parents or guardians be notified for both the student alleged to have experienced and the student alleged to have engaged in bullying, cyberbullying, harassment, or intimidation. Prior to the notification, the student must be informed that such notice will be provided.
 - If the incident involves physical acts, the notification must be made promptly.
 - For other types of incidents, notification must be provided within a reasonable time.
- An exception applies if there is a reasonable fear that notification would endanger the student, or if the student requests that notice not be given and there is a reasonable belief that notification is not in the student’s best interest.
 - Schools are still required to inform students that their parents or guardians may be able to access the information through their education records.



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SERVING IMPARTIALLY

- Title IX Coordinator
- Investigator
- Decision-maker
- Appellate Decisionmaker
- Informal Resolution Facilitator

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IMPARTIALITY

BIAS

- Assumptions based on characteristics of a person or thing
- Examples include status as a party and “protected statues”

CONFLICT OF INTEREST

- Investment in the outcome of the matter
- Carefully consider your connections, background, experiences, etc.
- Consider perceptions, not just fact

PREJUDGMENT

- An opinion about a situation of a person that is formed before knowing or considering all of the facts
- Do not speculate, infer, connect the dots, rely on personal experience or belief, weigh credibility if you're not the decision-maker

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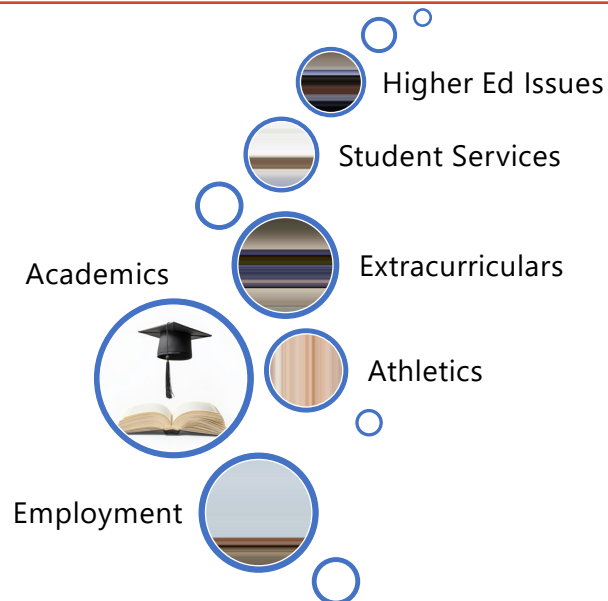
REMEDYING RISKS

- Disclosure/written consent from parties
- Recusal
- Levels of review



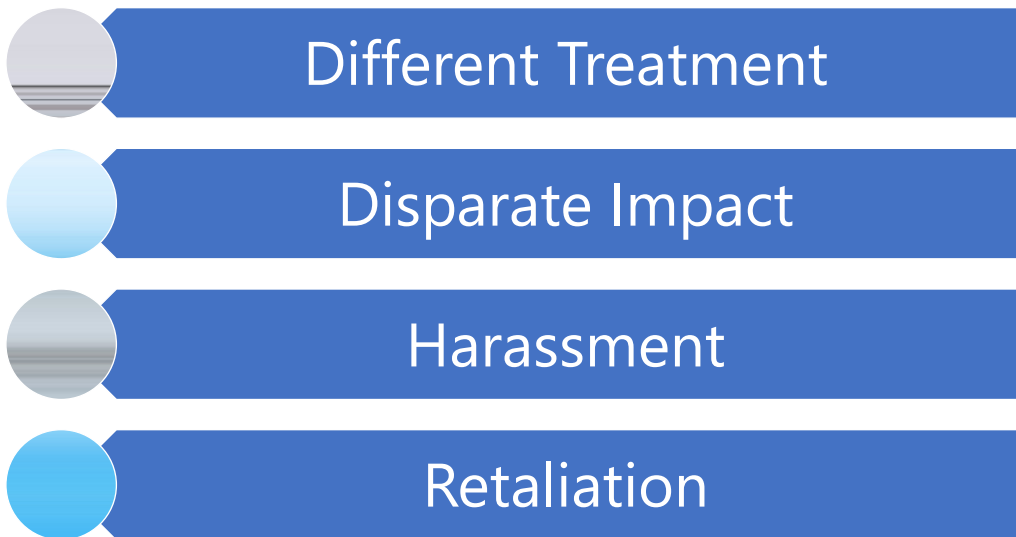
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Title IX's Reach – Areas of Concern



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Title IX's Reach – Types of Discrimination



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TITLE IX SEX DISCRIMINATION IS NOT JUST HARASSMENT

Harassment	Different Treatment	Disparate Impact	Retaliation
<ul style="list-style-type: none"> Unwelcome conduct Based on sex Creates a hostile environment 	<ul style="list-style-type: none"> Intentional different treatment (treating someone differently without a legitimate, non-retaliatory, non-pretextual reason) Complaints common in athletics, with pregnant or parenting students, with student discipline, and with single sex programs and activities 	<ul style="list-style-type: none"> Unintentional disparate impact without a strong reason and showing of no alternative to reach that goal Same areas of concern as different treatment 	<p>Intimidation, threats, bullying, harassment, different treatment, and other adverse actions <i>because</i> someone engaged in activity protected by Title IX (made a report or complaint, defended oneself, served as a witness, etc.)</p> <p><i>Includes "peer retaliation"</i></p>



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Let's Talk Oregon – Different Treatment Examples

Discrimination includes...

- Treating one person differently from another in determining whether such person satisfies any requirement of condition for the provision of such aid, benefit, or service
- Providing different aid, benefits, or services; or provide aids, benefits, or services in a different manner
- Denying any person such aid, benefit, or service
- Subjecting any person to separate or different rules of behavior, sanctions, or other 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

"Exceptions": These rules shall not affect attendance boundaries, limit placement of students in programs of desegregation, nor supersede any specific statutory requirement for any educational program.



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DIFFERENT TREATMENT BASED ON WHAT?

"BASED ON SEX"

- Sex (actual or perceived sex as male or female)
- Sexual characteristics and traits (private anatomy, chromosomes, hormone levels, intersex variations)
- "Sexual" (related to the act of sexual activity)
- Sex stereotyping (conformity with gender norms)
- **Sexual orientation?** (gay, bisexual, etc.)
- **Gender identity?** (transgender, nonbinary, etc.)
- Pregnancy or parenting status



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LGBTQ+ & TITLE IX

TRUMP ADMINISTRATION STEPS

- Officially rejected 2024 Title IX regulations, which explicitly included sexual orientation and gender identity as protected categories
- Issued executive orders and guidance purporting to narrow the definition of “sex” under Title IX to biological sex assigned at birth
- Initiated challenges and removed grant funding from schools that respect students’ gender identity in facilities, sports, etc.
- This issue is currently being litigated in Federal courts across the country



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Let's Talk Oregon

OAR 581-021-0045 “Discrimination Prohibited”

- Prohibits “Discrimination” which includes “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**”
- “Sexual orientation” means an individual’s actual or perceived heterosexuality, homosexuality, bisexuality **or gender identity**, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth



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Let's Talk Oregon

OSAA Policy

- The Oregon School Activities Association has a Gender Identity Participation Policy that generally **allows transgender, non-binary, and intersex students** to participate on the team of their identified gender, even if it does not match their sex assigned at birth.



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Grabowski v. Arizona Bd. of Regents (9th Cir. 2023)

Ninth Circuit Court of Appeals (Federal Court)

"In *Bostock v. Clayton County*, the Supreme Court brought sexual-orientation discrimination within Title VII's embrace. The Court held that discrimination 'because of' sexual orientation is a form of sex discrimination under Title VII. **We conclude that the same result applies to Title IX.**"



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Roe v. Critchfield (9th Cir. 2025)

- Transgender student and LGBTQ+ group challenged Idaho's law requiring restroom use by "biological sex."
- Claimed violations of Equal Protection, Title IX, and informational privacy.
- Court upheld the law, finding it supported by privacy interests—especially in communal spaces.
- **Did not decide if Title IX protects gender identity in this context**; ruled Idaho lacked clear notice under federal funding rules so a Title IX claim could not succeed for procedural reasons.
- Use of single-user facilities by any student meant no automatic "outing" of transgender students.



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Price Waterhouse v. Hopkins (U.S. 1989)

- Ann Hopkins was denied partnership at Price Waterhouse for being "too aggressive" and not "feminine" enough
- Evaluators suggested she should "walk more femininely" and "wear makeup"
- Supreme Court held: Sex stereotyping = sex discrimination under Title VII
- Introduced mixed-motive framework: If sex was a motivating factor, the burden shifts to the employer
- Landmark case for recognizing bias based on nonconformity to gender norms
- Often cited in Title IX cases involving gender identity and expression, including those involving sexual orientation and gender identity



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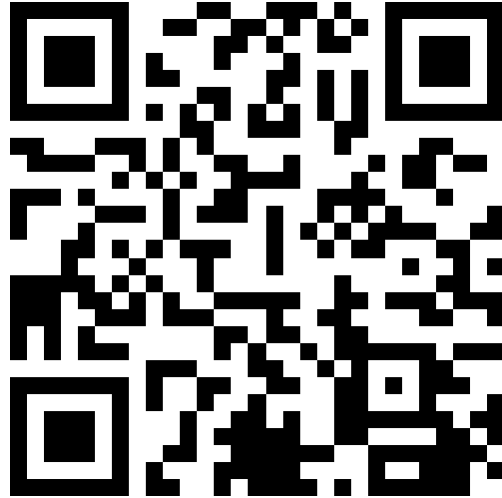
Work Alike: LGBTQ+ Issues

Review the "LGBTQ+" document

<https://tinyurl.com/OSPAT9Session1>

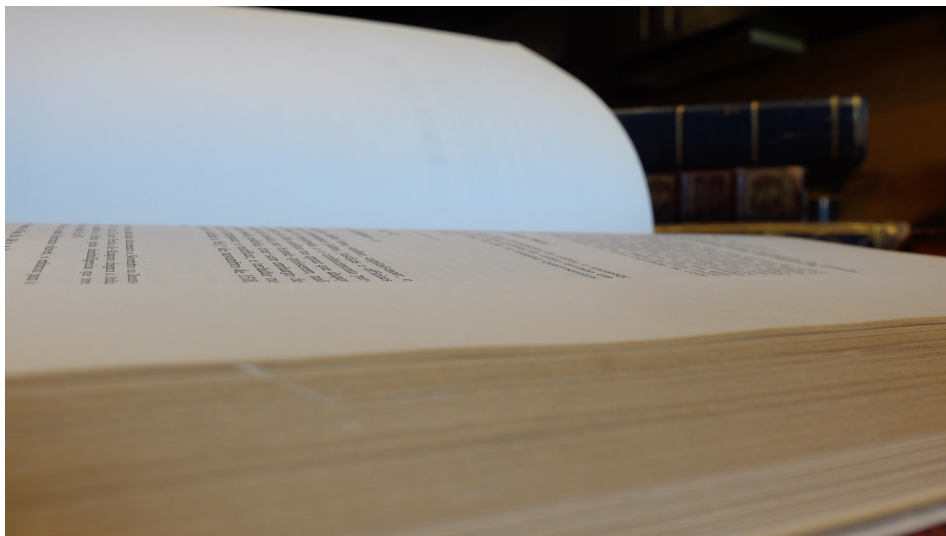
***What types of discrimination is
Carson Complainant raising?***

***Thinking about your district, how
would you approach the questions
of whether Carson's complaint
should be handled under Title IX,
state law, or other policies?***

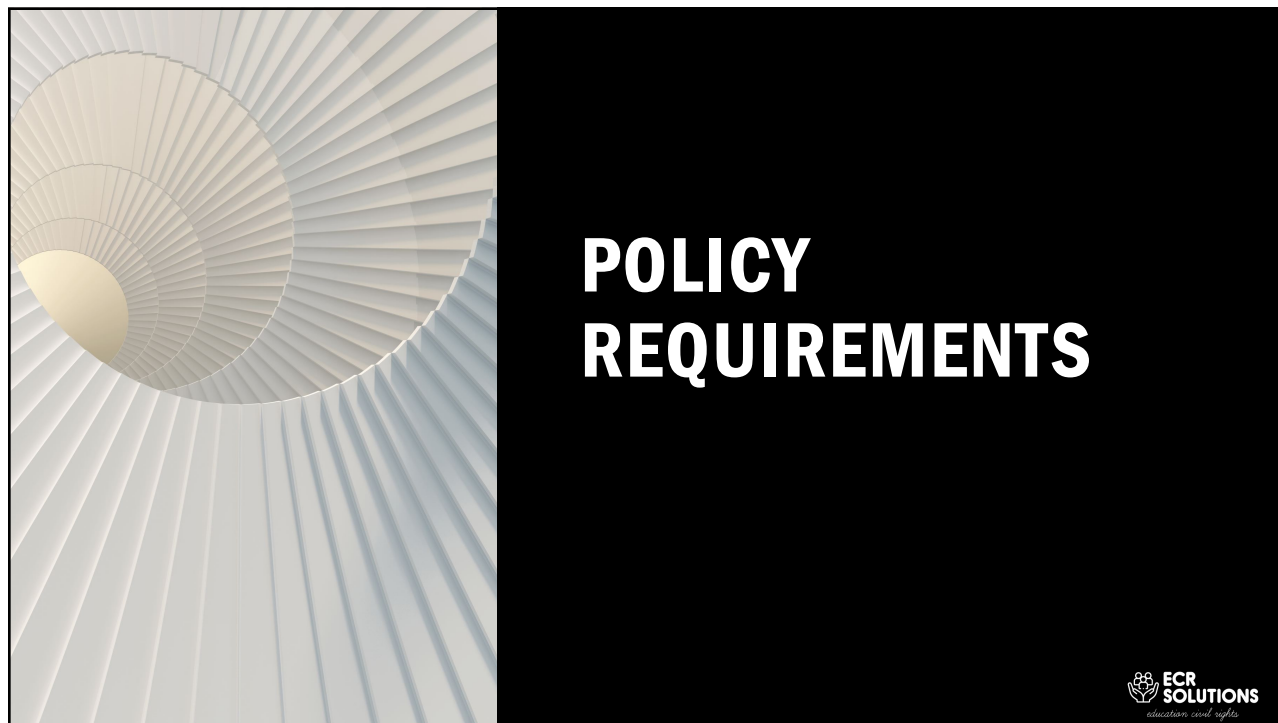


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Definitions & Duties



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Title IX SH Policy Requirements

Content of Policy

1. Designation of Coordinator

Must designate a "Title IX Coordinator"

2. Nondiscrimination Policy

Must have a policy that

- prohibits discrimination based on sex in all education programs and activities, including employment;
- affirms that Title IX mandates such nondiscrimination; and
- explains that inquiries about the policy can be directed to the Title IX Coordinator, OCR, or both

3. Grievance Procedures

Must publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX, including several specific requirements from Title IX for such process

Availability and Posting

Must notify community members of:

- the Title IX Coordinator's contact information;
- the nondiscrimination notice; and
- the grievance procedures, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the District will respond

Must publish the Title IX Coordinator's contact information in each handbook or catalog

Must not use or distribute a publication stating that the District treats applicants, students, or employees differently based on sex, except as permitted by Title IX (e.g., bathrooms, sports teams)



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Let's Talk Oregon (ORS 342.700–.704; OAR 581-021-0038, 0045, 0230, 0238)

Sexual Harassment Policy Requirements

Policy must include:

- A statement of commitment to eliminating sexual harassment
- A declaration that the policy applies to all students, staff, and third parties if on or near school property, at school/district events, or hostile environment created by student or staff member in those areas
- Definitions & examples of sexual harassment
- Names, roles, and contact information for complaints
- Mandatory reporting requirements
- Requirement to take proactive, non-retaliatory action for the impacted person
- Assurance that good faith participation won't affect education/employment
- Drug/alcohol amnesty provisions for students (unless intentional drugging)
- Requirement to notify all relevant parties (reporting, reported, impacted, parents, as applicable) of the complaint, investigation status, and outcome, within confidentiality limits

- Obligation to investigate all reports
- Investigation procedures, including procedures for third party complaints
- Standards for identifying a hostile environment
- Required remedial steps to stop and prevent harassment
- A clear prohibition on retaliation
- Commitment to remedial action to stop/prevent recurrence

Availability & Posting

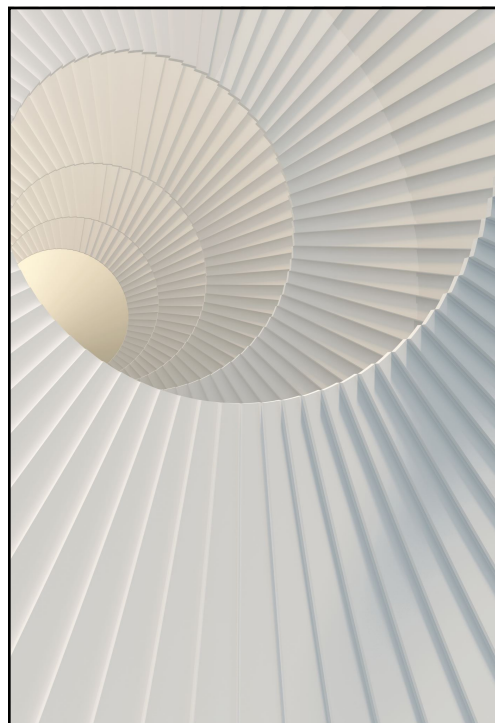
Policy must be:

- Available to students, parents, staff, and third parties at each school office, at the district office, and upon request
- Published in handbooks, on website, and
- Posted on 8.5x11" signs in all grade 6–12 schools

** A notice must be sent to involved parties upon receipt of a complaint, which must also be made available at school and district offices and on the district's website



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GRIEVANCE PROCEDURES



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Title IX SH Grievance Procedure Requirements

Fair Treatment of Parties

- ✓ Remedies for complainants after finding of responsibility
- ✓ Disciplinary sanctions only after completing grievance process
- ✓ Presumption of non-responsibility
- ✓ Equal access to supportive measures

Objective & Impartial Process

- ✓ Objective evaluation of all relevant evidence (inculpatory & exculpatory)
- ✓ No credibility judgments based on status (e.g., complainant/respondent/witness)
- ✓ No conflict of interest or bias by Title IX personnel
- ✓ Training must avoid sex stereotypes and promote impartiality

Procedural Safeguards

- ✓ Clearly stated standard of evidence (e.g., preponderance)
- ✓ Reasonably prompt timeframes (with written notice of delays for good cause)
- ✓ Description or list of possible disciplinary sanctions and remedies
- ✓ Appeal procedures and permissible appeal bases

Privacy & Access

- ✓ Description of available supportive measures
- ✓ No use of privileged information without voluntary waiver



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WHEN DOES TITLE IX APPLY?



Knowledge



Prohibited
Conduct



In an Ed
Program or
Activity



In the U.S.



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IF TITLE IX APPLIES...

You must use the
**Title IX grievance
procedure** to
address the conduct

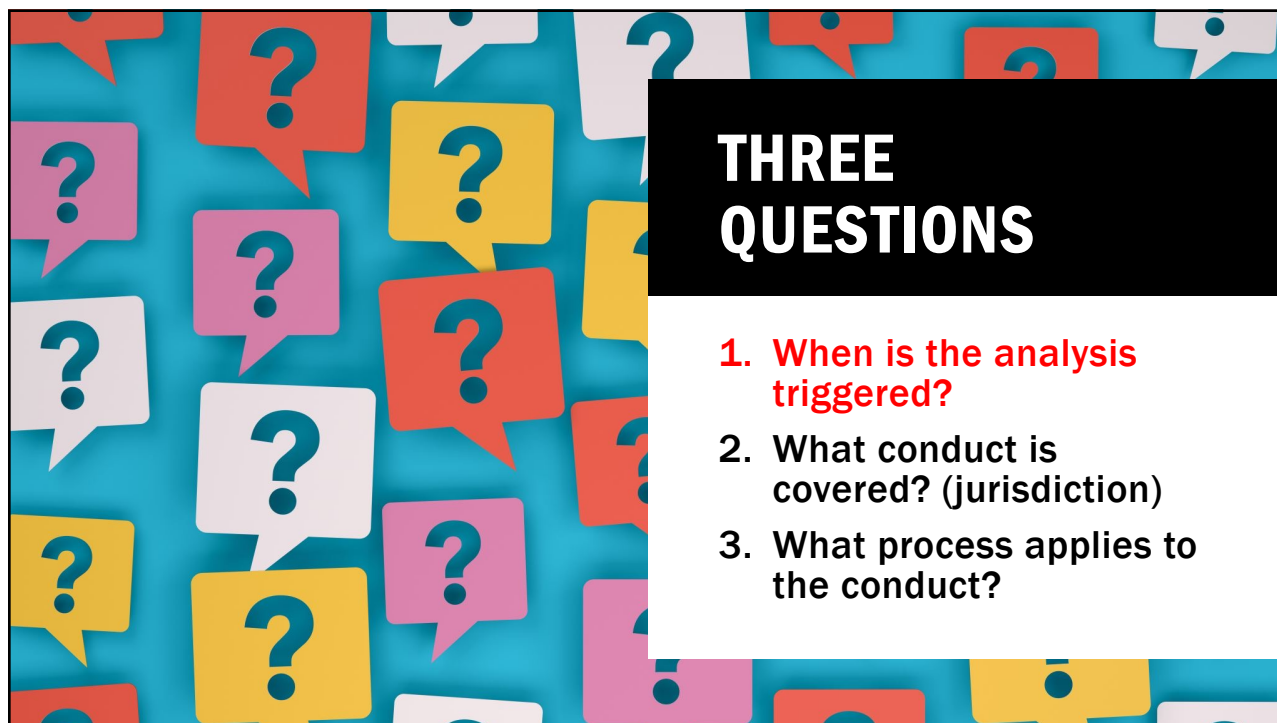


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THREE QUESTIONS

1. When is the analysis triggered?
2. What conduct is covered? (jurisdiction)
3. What process applies to the conduct?

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WHEN IS THE ANALYSIS TRIGGERED?

“Actual knowledge” of sexual harassment is received by the Title IX Coordinator or another official with authority to institute corrective measures for sexual harassment

Does not apply when the only employee aware is the *alleged perpetrator (the respondent)*



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K-12 Employees Must Report

All K-12 employees are "officials with authority"

As a result, all K-12 employees **must** report any information of which they become aware that could be Title IX sexual misconduct

Recommended to require all K-12 employees to report regarding **any civil rights violation** of which they learn, whether or not it is "Title IX" sexual misconduct



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Compare to Oregon

Title IX

The requirement that any employee or official with authority to institute corrective measures on the district's behalf must report known or alleged sexual harassment **is inferred** from provisions providing that a district is deemed to know about such conduct when either a K-12 employee of an elementary or secondary school or an official with authority to take corrective action has notice of the conduct or allegations

Oregon Law

When a staff member (other than the staff member who is the alleged victim of the behavior) becomes aware of behavior that may violate the policy, the staff member **shall report** to an official of the district so that the official and the staff member may coordinate efforts to take any action necessary to ensure the student or staff member complainant is protected and to promote a nonhostile learning or work environment



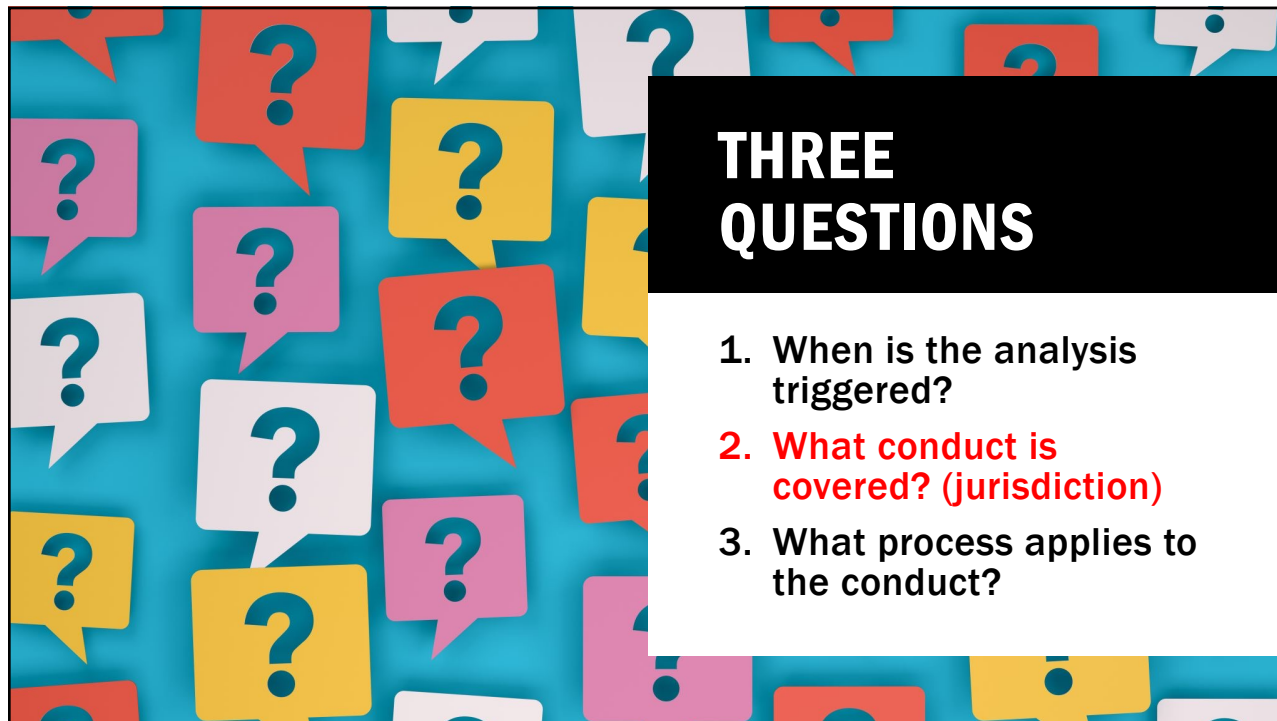
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Sticky Situations

- A principal receives an order of protection requiring one student to have no contact with another student due to "sexual assault" but does not indicate where the conduct occurred
- A teacher hears "gossip" about another teacher and a senior in high school "dating" but has never seen any evidence of it directly or heard any specific details
- A coach hears about kids horseplaying around during practice poking each other in the rear ends with sticks, but no one mentions sexual penetration or assault and the coach believes this is just harmless hazing
- A provider of school health services and supports believes that their licensing requires them to maintain the confidentiality of information shared during sessions



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THREE QUESTIONS

1. When is the analysis triggered?
2. What conduct is covered? (jurisdiction)
3. What process applies to the conduct?

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WHAT CONDUCT IS COVERED BY TITLE IX?

- Title IX “Sexual Harassment”
- In an “Education Program or Activity”
- Against a person in the United States



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WHAT CONDUCT IS COVERED BY TITLE IX?

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Key Requirements – “Sexual Harassment”

Title IX

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 (*quid pro quo* harassment by an employee)
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, dating violence, domestic violence, or stalking

Oregon Law

1. A demand or request for sexual favors in exchange for benefits (*quid pro quo* by anyone)
2. Unwelcome conduct of a sexual nature that is physical, verbal or nonverbal and that interferes with a student's educational program or activity or a staff member's ability to perform the job or that creates an intimidating, offensive, or hostile educational, work, or other environment
3. [Sexual] Assault
Exceptions for conduct that is necessary for a job duty that is not the product of sexual intent, and a person finding another person or their actions offensive solely because of sexual orientation or gender identity

ORS 342.700-708 and OAR 581-021-0038



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Key Requirements – “Sexual Assault”

Title IX

- **Not clearly defined**
- Includes rape and fondling
 - Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim
 - Fondling: Touching the private body part of another person (above or below the clothing) without consent
- Title IX does not define consent

Oregon Law

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.

ORS 342.700-708 and OAR 581-021-0038



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Let's Talk Oregon

ORS 339.370 defines prohibited "sexual conduct" (which must be reported to law enforcement, DHS, ODE, or TSPC) as "verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student and that are:

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

Such conduct *may also* violate State law and Title IX regarding sexual harassment.



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Let's Talk Oregon

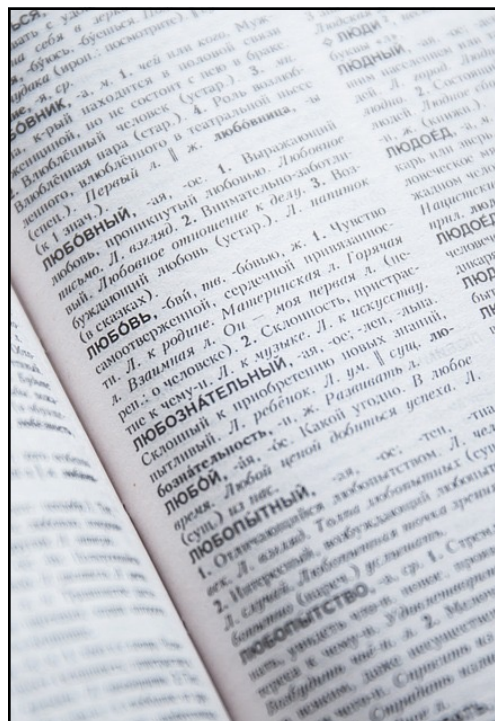
ORS 342.704/OAR 581-012-0038 defines "without consent" as an act performed:

- Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or
- When a person who is a party to the act is: (i) Incapacitated by drugs or alcohol; (ii) Unconscious; or (iii) Pressured through physical force, coercion or explicit or implied threats to participate in the act.

Also potentially relevant is the age of consent in Oregon (18 years old, although a "Romeo and Juliet" provision says that criminal charges can be avoided if lack of consent is due solely to an age difference of less than 3 years.



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DOMESTIC VIOLENCE

Felony or misdemeanor crimes committed by a person who:

Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim

Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner

Shares a child in common with the victim or

Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction



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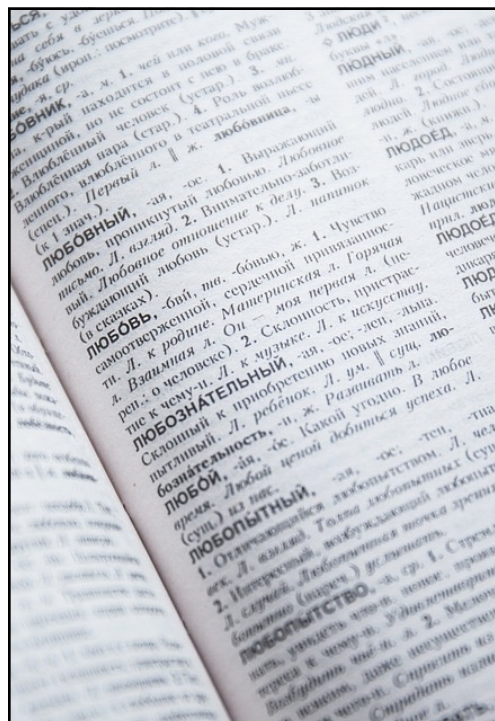
DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship



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STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

Fear for the person's safety or the safety of others or

Suffer substantial emotional distress



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HOSTILE ENVIRONMENT

UNWELCOME

- The complainant did not solicit or invite the conduct and found it to be objectionable or offensive (subjective)
- However, must be reasonable under the context and circumstances

SEVERE

- More than just juvenile, crass behavior, even if sex-based
- Not as high a standard as used in the courts

PERVASIVE

- Often refers to repeated conduct
- Can also be widespread in other ways (e.g., technology, number of witnesses, maybe even severity)

OFFENSIVE

- 2020 rules require only consideration of objective offensiveness



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HOSTILE ENVIRONMENT FACTORS

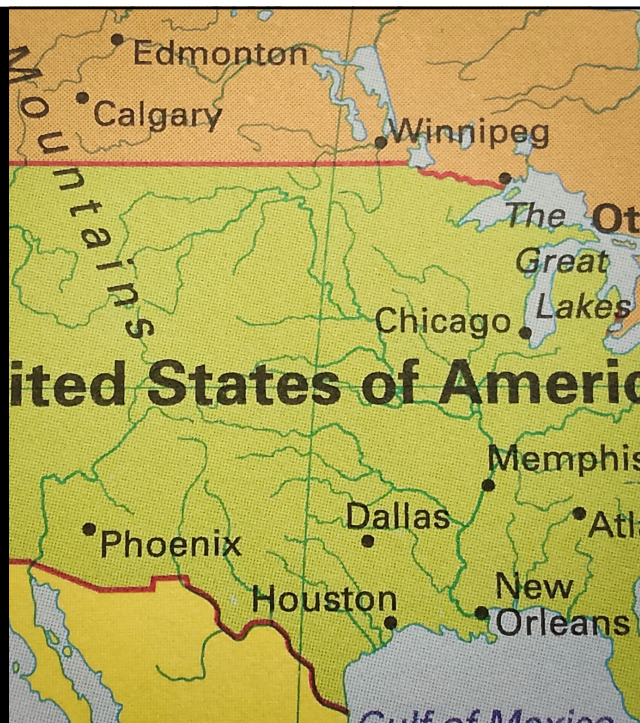
- The degree to which the conduct affected the complainant's ability to access the education program or activity (including work)
- The type, frequency, and duration of the conduct
- The parties' ages, roles within the education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct
- The location of the conduct and the context in which the conduct occurred
- Other sex-based harassment in the recipient's education program or activity (including work)



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WHAT CONDUCT IS COVERED BY TITLE IX?

- Title IX "Sexual Harassment"
- In an "Education Program or Activity"
- Against a person in the United States



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**Title IX applies in an educational
institution's "education program or
activity" against a "person in the United
States"**
(It's in the statute)




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EDUCATION PROGRAM OR ACTIVITY

- School operations
- Conduct on school-owned or -operated technology
- Locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred




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OFF CAMPUS CONDUCT

- Always required to address an on-campus hostile environment, even under the 2020 rule
- But what constitutes a “hostile environment” can be confusing when some conduct occurs off campus



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Let's Talk Oregon

- Oregon's bullying/harassment law defines prohibited conduct to include acts that occur “on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation, or at any official bus stop”
- Oregon's sexual harassment law and related administrative rules emphasize **environment and impact** more than location



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Sticky Situations

- A student reports being sexually assaulted at a party over the weekend and that there is gossip around school about it
- A student reports being sexually assaulted at a party over the weekend and being afraid of seeing the alleged perpetrator at school
- A student reports being harassed by classmates online through their own personal devices and on their own (non-school time)
- Parents report that a teacher has made anti-trans comments on a public website on their own personal time
- A student reports that a teacher sexually harassed them while on a non-school sponsored trip abroad



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Work Alike: Report of Concerns

Review the "Report of Concerns"
document

<https://tinyurl.com/OSPAT9Session1>



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Session 1: Foundations of K-12 Title IX Compliance

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OSPA Summer Retreat
July 28-29, 2025



Thank you!

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