



Sexual Harassment Case Study Workshop

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This training is not intended as legal advice and should not be taken as such; 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.

About Us

- The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;
- Together, we serve over 560,907* K-12 students and support 75,807* school employees, including teachers, administrators and classified staff;
- We believe every student should have access to a high-quality, well-rounded learning experience; and
- We work to ensure every student in Oregon graduates with a plan for their future.

*Data from October 2021

Who We Serve

560,907 Students

More than 200 languages spoken

75,807 Educators
Staff of Color

- 11.4% of Teachers
- 12.3% of Administrators
- 16.4% of Counselors
- 21.1% of Educational Assistants

197 Districts

1,257 Schools

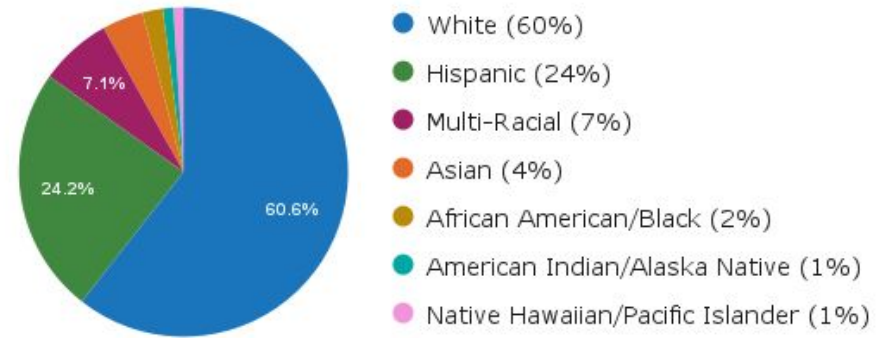
133 Charter Schools

19 Education Service Districts

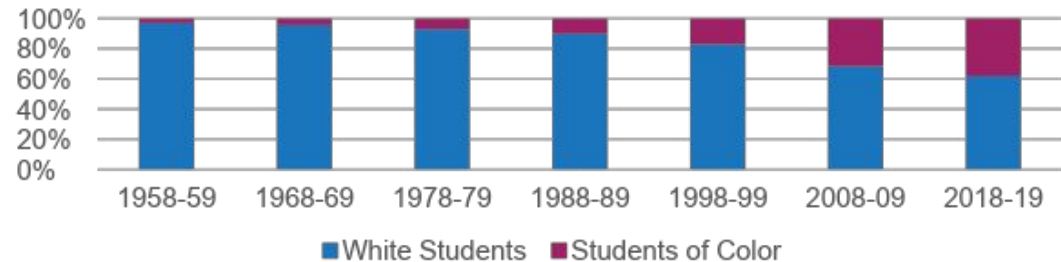
Oregon Department of Education, 2020-21 School Year

Student Diversity

- Economically Disadvantaged: 53%
- Ever English Learners: 18%
- Homeless: 3%
- Lesbian/Gay /Bisexual: 12.6%
- Mobile Students: 11%
- Students with Disabilities: 15%



Rapidly Diversifying Population



Agenda/Logistics

- ★ Three-part case study
- ★ In each part:
 - Read scenario
 - Breakout groups
 - Group discussion and review

Part 1

You are the Title IX Coordinator for your school/district.

On a Thursday afternoon in late September, you receive a call from the school counselor who wants to report possible sexual harassment involving an 8th grade student, A. A was sent to see the counselor after she got into an argument in the hallway with another student, B, that a teacher intervened on. A told the counselor that B is her ex-girlfriend. She and B broke up at the beginning of the school year after B was anonymously texted a picture of A kissing a boy in their grade while at camp over the summer. Since then, B has been sending A mean text messages and spreading rumors at school and on snapchat about A, calling her a slut and saying she's "pretending to be gay for attention." B has also threatened to out A to A's parents, who don't know A is bisexual.

A told the counselor that she's had trouble focusing in school this year because she feels like everyone took B's side in the breakup and that everyone thinks she's a cheater. She's even pretended to be sick in order to stay home from school a few times so that she doesn't have to deal with B or the boy from camp. A also told the counselor that the only reason she's been able to keep her grades up is because she's been getting tutoring and support from the math teacher, Mr. Simpson, who has been helping her navigate the breakup.

The counselor wants to send A to your office to talk with you about her options.

BREAKOUT DISCUSSION

1. What stands out to you about this scenario? What do you notice that needs to be addressed?
2. Is there sexual harassment in this scenario? What laws or policies are you using to make your decision?
3. What steps do you want to take today after you talk with A?

7 minutes in breakout rooms.

GROUP DISCUSSION

Is there sexual harassment in this scenario? What laws or policies are you using to make your decision?

Title IX Sexual Harassment

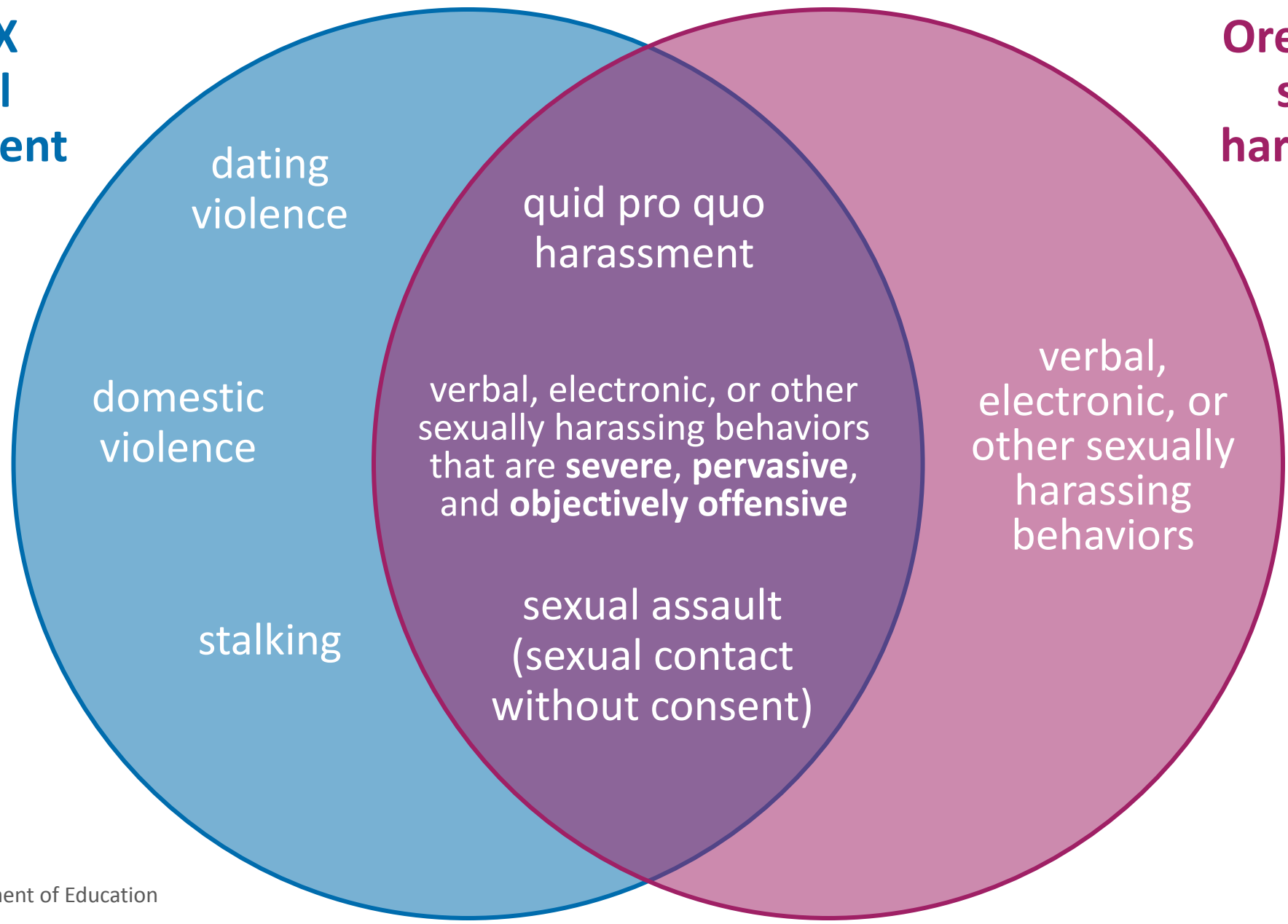
- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively 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).

Oregon Sexual Harassment Law

- (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.

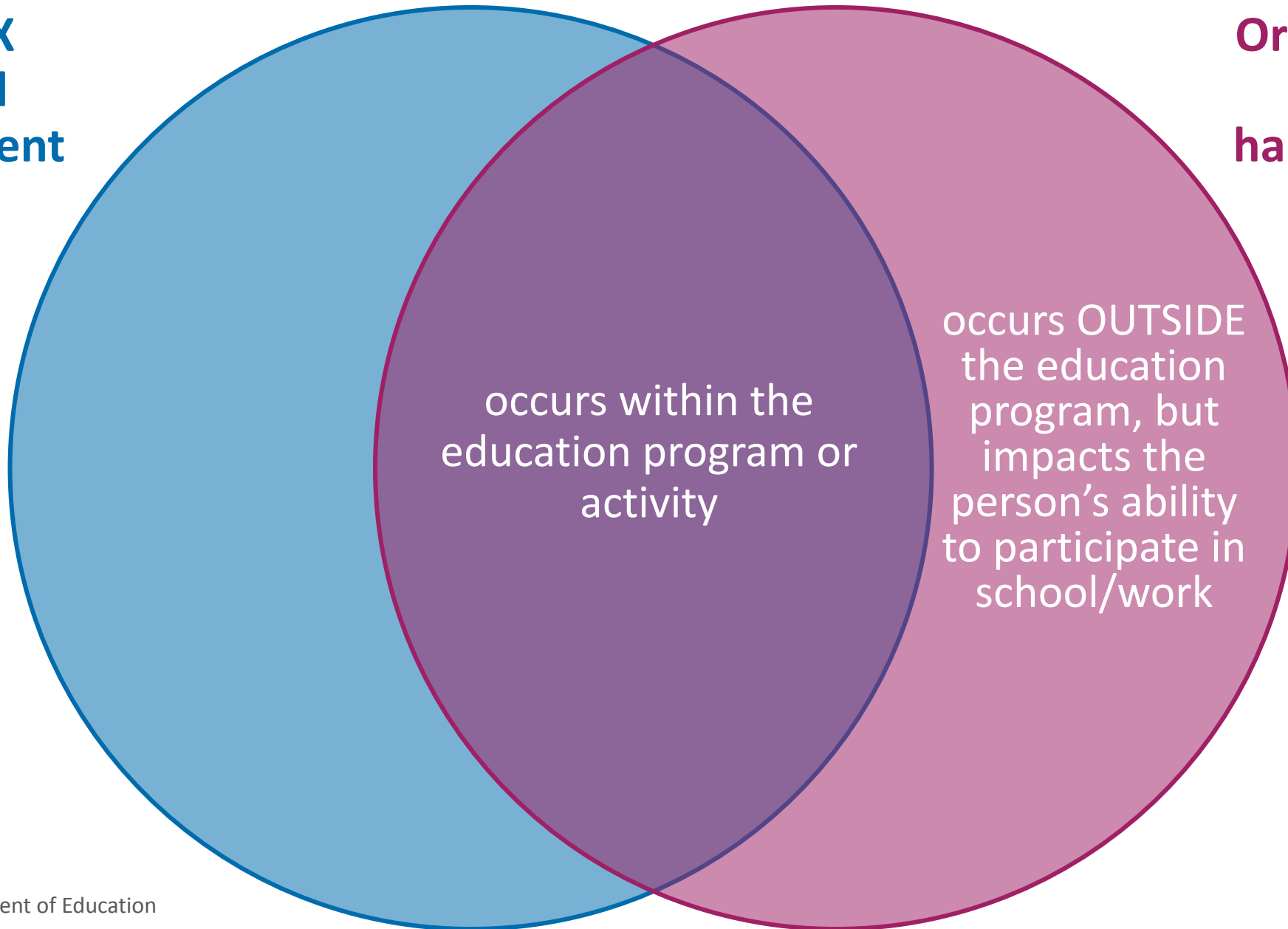
Title IX sexual harassment

Oregon law sexual harassment



**Title IX
sexual
harassment**

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harassment**



GROUP DISCUSSION

What steps do you want to take today after your talk with Student A?

ORS 342.704/OAR 581-021-0038

Notice of Rights and Options

- (a) Name and contact information for all persons designated by the district to receive complaints;
- (b) The rights of the person;
- (c) Information about the privacy rights of the person and legally recognized exceptions to those privacy rights for internal complaint processes and services available through the school or school district;
- (d) Information about the complaint process, including any applicable timelines;
- (e) Notice that civil and criminal remedies that are not provided by the school or district may be available to the person through the legal system, and that those remedies may be subject to statutes of limitation;
- (f) Information about services available to the person through the district, including any counseling services, nursing services, or peer advising;
- (g) Information about and contact information for support services available to the person;
- (h) Notice of the prohibitions of discipline as described in subsection (5)(h); and
- (i) Notice of prohibition of retaliation

Part 2

A tells you more about B's actions over the past few weeks:

- Since school started, B has been posting things to snapchat about A. B has written things like “my ex is a slut” and “anyone go in for a hookup with A, she’s open for business.”
- At school, some of B’s friends have dropped condoms on the floor in the hallway or cafeteria and picked them up and loudly handed them to A, claiming they must belong to her.
- The fight on Thursday happened when A confronted B and asked her to stop saying mean things about her and spreading lies. B called A a bitch and said that B would tell A’s mom she was a “bisexual ho.” A yelled back at B that she was being biphobic and that she had no idea what she was talking about. At that point, a teacher stepped in and sent A to the counselor’s office and B to the vice principal.

A also tells you that she thinks that B is being unfair to blame her for what happened at summer camp. She says that a boy in their class, C, was “basically stalking” her for the two weeks they were going to camp. She didn’t know him that well, but hung out with him and his friends because she didn’t know anyone else. He flirted with her and made it clear that he liked her, but she tried to talk about her girlfriend a lot and show everyone pictures so they would get the message that she wasn’t interested.

On the last night of camp, C and his friends managed to get a bottle of vodka into the camp. A felt like she couldn’t say no to drinking without being ostracized, so she drank some even though she didn’t want to. After a few swigs, C’s friends started pressuring A to make out with C. A protested that she had a girlfriend and she didn’t want to, but some of C’s friends grabbed her and pushed her towards C. A felt like they weren’t going to stop pressuring her, so she let C kiss her, and then left. The next day, A avoided C and his friends until her mom came to get her. She planned to tell B the whole story, but by the time she got home B had already blocked her number and was refusing to talk to her.

A wants to avoid both B and C, but she shares classes with both of them. She also doesn’t want her parents to know because she is afraid they will be upset if they find out she is bisexual and had a girlfriend.

BREAKOUT DISCUSSION

1. What stands out to you about this additional information?
2. What next steps are you legally required to take? What additional next steps will you take?
3. How will you approach this report of sexual harassment? Form an investigation plan.

7 minutes in breakout rooms.

GROUP DISCUSSION

What next steps are you legally required to take? What will you take?

- Provide notice of rights and options
- Discuss options of filing a discrimination/sexual harassment complaint
- Provide bullying and harassment notification

Harassment, Intimidation, and Bullying

“Cyberbullying” means the use of any electronic communication device to harass, intimidate, or bully

“Harassment, intimidation, or bullying” means any act that:

- Substantially interferes with a student’s educational benefits, opportunities, or performance;
- Takes place on or immediately adjacent to school grounds, at any school-sponsored activity, on school-provided transportation or at any official school bus stop;
- Has the effect of:
 - Physically harming a student or damaging a student’s property
 - Knowingly placing a student in reasonable fear of physical harm to the student or damage to the student’s property; or
 - Creating a hostile environment, including interfering with the psychological well-being of a student; and
- May be based on, but not limited to, the protected class status of a person

ORS 339.351

HB 2631: Parental Notification

- Requires parent/guardian notification if a student experiences or commits bullying, cyberbullying, harassment, or intimidation, with an opt-out option.
- Notification must occur:
 - Promptly for physical acts, or
 - Within a reasonable time period
- Prior to notification, the school must inform the student that they are notifying the parent/guardian.

HB 2631: Parental Notification

Notification is not required if:

- a school official reasonably believes notification could endanger the student, **OR**
- the student requests that the school not notify their parents, a school official believes that notification is not in the best interest of the student

Schools must still notify students that their parents/guardians may become aware of the incident through accessing their educational records.

Best Practices: Safety Planning

“Typically in situations like this, we call your parent(s)/guardian(s) so they can support you throughout this process. How do you feel about us calling your parents today?”

Look for fears around:

- Physical harm
- Stability-related harm (loss of housing, withdrawal from school, etc)
- Emotional harm
- Identity-based harm (e.g., LGBTQ+ students)

Make a safety plan with the student. Refer them to a supportive adult.
Document the response and plan.

Supportive measures means non-disciplinary, non-punitive *individualized services offered as appropriate, as reasonably available, and without fee or charge* to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Such measures are designed to *restore or preserve equal access* to the recipient's education program or activity *without unreasonably burdening the other party*, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

34 CFR § 106.30(a)



Examples of supportive measures

- No-contact directives
- Changing class, work, or other schedules
- Academic accommodations, including extensions, academic rehabilitation, etc.
- Policy/procedural accommodations, such as waiving or modifying specific requirements (school transfers, absence policies, etc)
- Increased monitoring and safety measures
- Privacy measures (keeping additional information confidential)
- Transportation accommodations



GROUP DISCUSSION

How will you approach this investigation of sexual harassment?

- **Two investigations** - allegations of harassment by Student B, and allegations of harassment by Student C

Part 3

BREAKOUT DISCUSSION

Read the **FINDINGS OF FACT** for your assigned group:

ODD numbered rooms (1, 3, 5...) - Student B and Student A

EVEN numbered rooms (2, 4, 6...) - Student C and Student A

1. Based on these findings, and using a preponderance of the evidence standard, would you find Student B or Student C in violation of any of your school/district policies? Which policies?
2. If you substantiate the findings, what disciplinary sanctions will you implement for Student B and/or Student C?
3. Whether or not you substantiate the findings, what remedies or supportive measures will you implement for Student A to remedy the effects on their educational access?

12 minutes in breakout rooms.

GROUP DISCUSSION

Based on these findings, and using a preponderance of the evidence standard, would you find Student B or Student C in violation of any of your school/district policies? Which policies?

Standards of Evidence

Preponderance of Evidence

“[t]he burden of showing something by a ‘preponderance of the evidence,’ the most common standard in the civil law, ‘simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’”

Clear and Convincing

“[c]lear and convincing evidence requires greater proof than preponderance of the evidence. To meet this higher standard, a party must present sufficient evidence to produce ‘in the ultimate factfinder an abiding conviction that the truth of its factual contentions are [sic] highly probable.’”

-Footnote 1441, p 30381, Federal Register, Vol. 85, No. 97

What is consent?

Schools are not required to adopt a particular definition of consent for Title IX.

It is crucial to have a clear, consistent understanding of consent in order to have fair investigations and due process for all students.

Oregon has an “implied definition” in ORS 342.704/OAR 581-012-0038

sexual assault includes when a person cannot consent because that person is:

- under the influence of drugs or alcohol;
- unconscious; or
- pressured through physical force, coercion or explicit or implied threats

Drug and Alcohol Amnesty

“...students who initiate a complaint or otherwise report harassment covered by the policy or who participate in an investigation may not be disciplined for violations of the district’s drug and alcohol policies that occurred in connection with the reported prohibited conduct and that were discovered because of the report or investigation, unless the student gave another person alcohol or drugs without the person’s knowledge and with the intent of causing the person to become incapacitated and vulnerable to the prohibited conduct.”

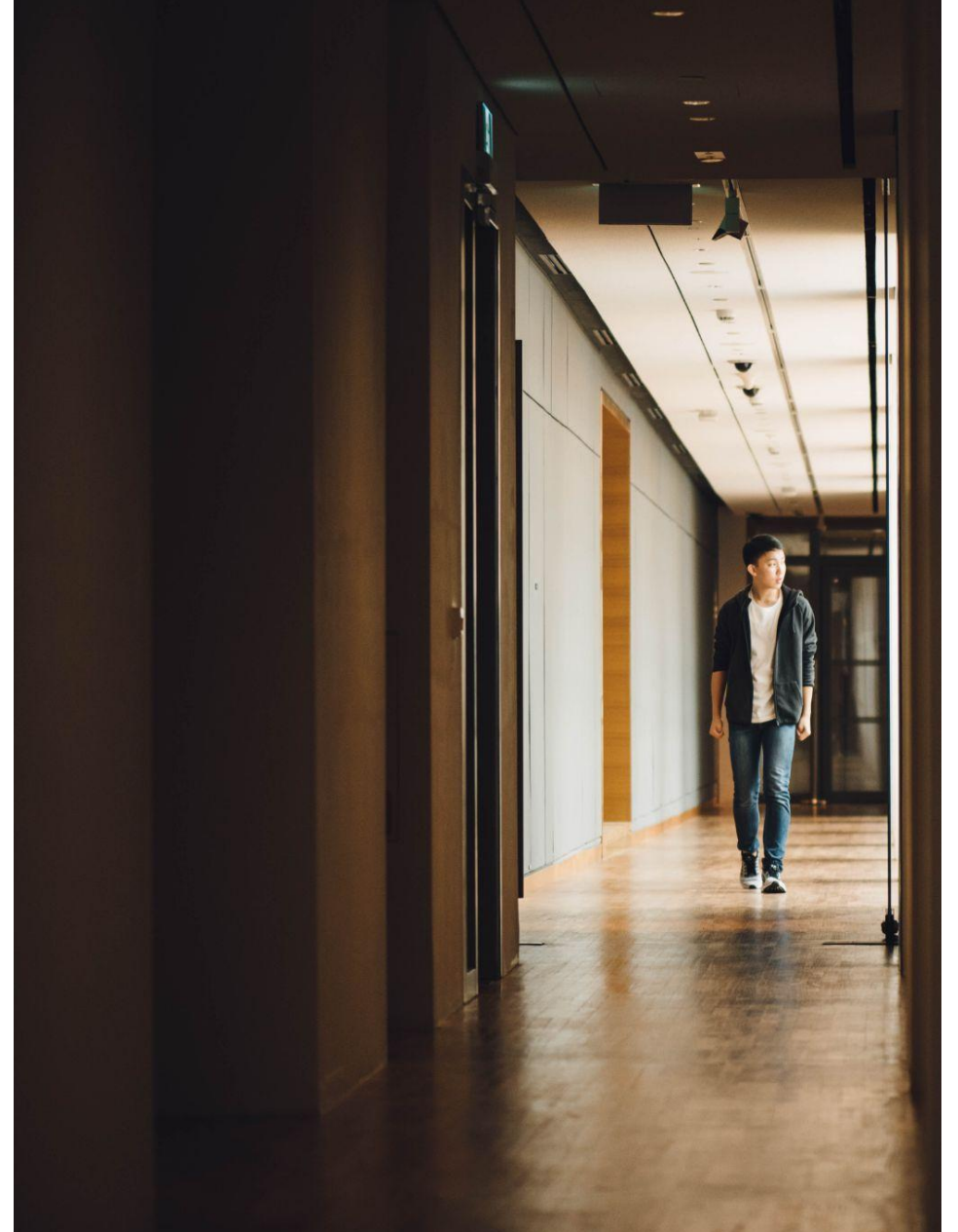
OAR 581-021-0038(5)(h)

GROUP DISCUSSION

If you substantiate the findings, what disciplinary sanctions will you implement for Student B and/or Student C?

Examples of Sanctions

- Detention
- Suspension
- Expulsion
- Community service
- Required courses or seminars
- Counseling
- Evaluation and treatment
- Removal from specific classes, sports, etc.
- Co-enrollment prohibition



GROUP DISCUSSION

Whether or not you substantiate the findings, what remedies or supportive measures will you implement for Student A to remedy the effects on their educational access?



Examples of Remedies

Individual Remedies

- Academic remediation
- Counseling
- Waiver/adjustment of academic, athletic, or cocurricular requirements
- Additional supportive measures

Community Remedies

- Educational programs
- Safety measures (hallway monitoring, etc)
- Policy reviews
- Staff training



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