Title IX 2023 Review and Refresh

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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

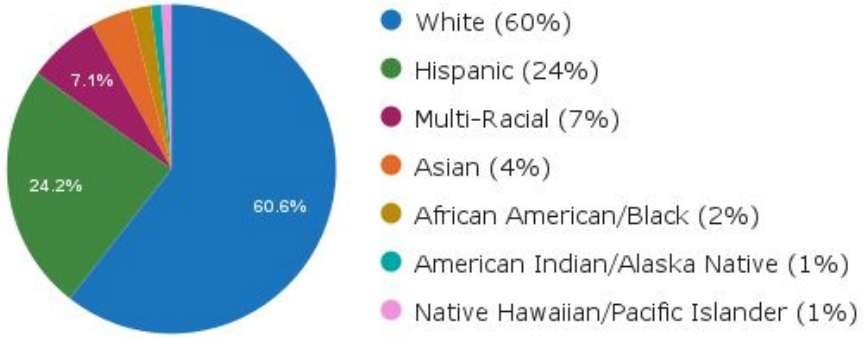
1,257 Schools

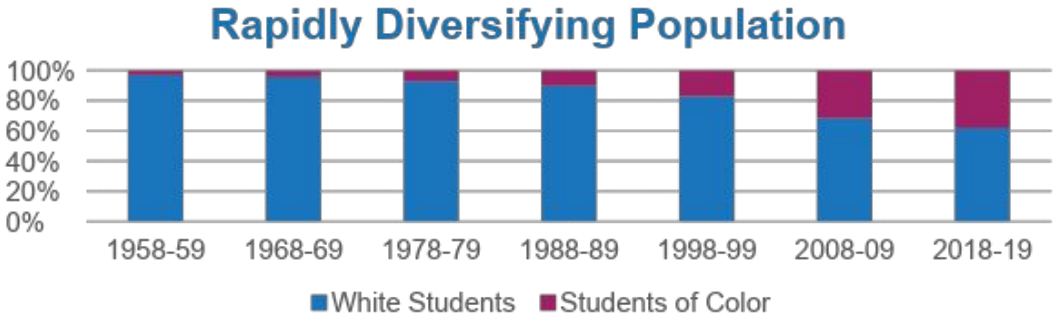
133 Charter Schools

19 Education Service Districts

Student Diversity

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





Oregon Department of Education, 2020-21 School Year

Introduce yourself!

Name

School District or School

Role/Job Title

Agenda

Title IX Fundamentals Review

Core Concepts

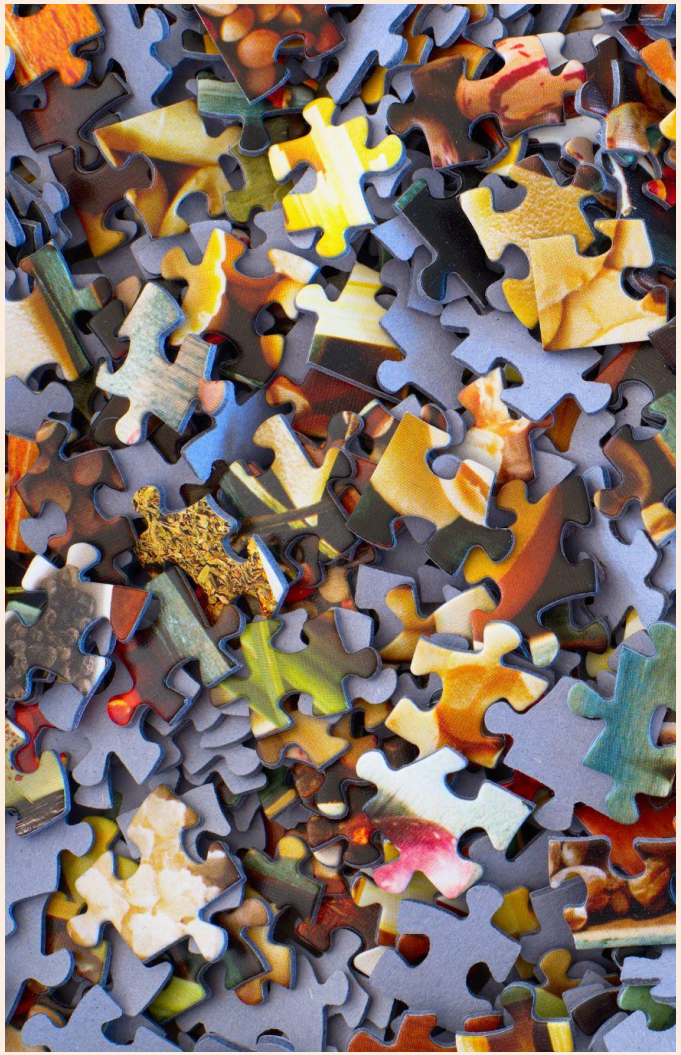
- Single-Sex Programs
- Pregnant and Parenting Students
- Title IX Sexual Harassment

Legal and Legislative Updates

Title IX, Section 504, and IDEA

ODE’s Gender Expansive Student Guidance

Looking Ahead to the New Title IX Regulations



Review: The Fundamentals of Title IX

“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."

academics and activities

sexual harassment, sexual assault, dating violence, stalking

pregnant and parenting students

athletics

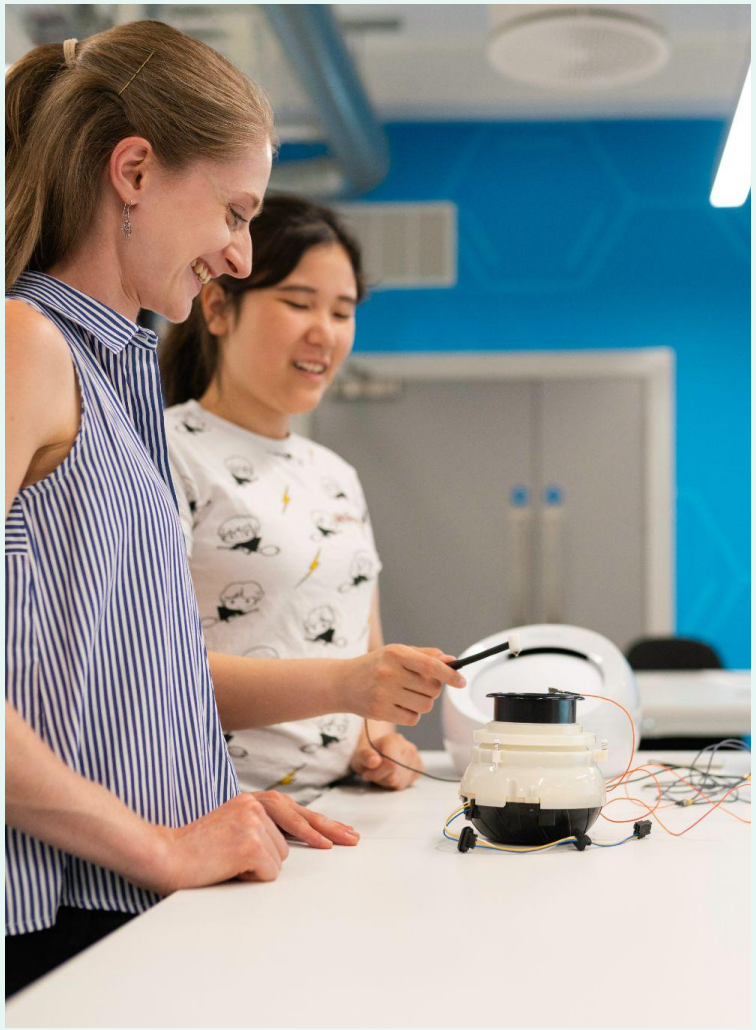
admissions, hiring, and access

sexual orientation and gender identity discrimination

Students in a middle school “Rainbow Club” have been repeatedly harassed. Other students text them sexual images, post content on snapchat calling them “digusting tr*nnies” and other demeaning names, rip down and deface GSA posters, and refuse to work with them on group projects. The Rainbow Club advisor sends an email to school leadership stating that she believes these students are being harassed and bullied because of their LGBTQ2SIA+ identities.

A high school robotics team is going to a national competition across the country. There are seven team members - six boys and one girl - but only four can travel for the competition. The high teachers who advise the club decide to take four boys to the competition, because it will be cheaper to get one hotel room that all four students can share rather than have to get a separate hotel room for the single girl on the team. The girl’s parents write a complaint to the school principal stating that this is unfair to their daughter.

In your breakout rooms, select one scenario and discuss how you would respond. What Title IX considerations are happening this scenario? Who should be involved? How will you remedy the situation?



Core Concepts and Common Concerns

Single-Sex Programs

Title IX heavily regulates single-sex programs in public education, which includes **any class, learning opportunity, extracurricular program, etc that is offered to only one sex or that separates students by sex**.

There are only two ways a school can offer a single-sex educational program:

- If it is specifically allowable in regulation (contact sports, instruction on human sexuality, choruses, etc.), or
- If it meets specific requirements outlined in 34 CFR 106.34(b):
  - based on an important educational objective that is implemented evenhandedly
  - enrollment is voluntary
  - excluded students are provided a substantially equal coeducational opportunity

Is this allowable under Title IX?

A group of high school girls approach the Assistant Principal and ask if the school can add a women's weightlifting course next semester. They complain that the current weightlifting class period is dominated by football players, and that the girls in the class don't get enough help from the teacher because he designs the class for the football team.

Would creating a women's weightlifting class be allowable under Title IX? How would you respond?

Community Partners and External Programs

External organizations partnering with the school to offer programs may still be a part of the school's education program (and may be subject to Title IX). Schools generally cannot provide **significant assistance** to external organizations that exclude students based on sex (i.e., single-sex programs).

Significant assistance takes into account:

- financial support,
- provision of tangible resources (e.g., staff, equipment, and facilities),
- intangible benefits (e.g., recognition and approval),
- whether the school district provides similar privileges and resources to other organizations,
- whether the relationship is occasional and temporary or permanent and long-term

Community Partners and External Programs

Schools may offer significant assistance to external programs that provide single-sex activities if the organizations are Voluntary Youth Service Organizations.

> *"...**tax-exempt organizations**, the membership of which has **traditionally been limited to persons of one sex** and principally to **persons of less than nineteen years of age**. A voluntary youth service organization also must **facilitate public service opportunities** for its members."*

In order for an external organization to offer a single-sex program as part of the school's education program:

- They must be a Voluntary Youth Service Organization (VYSO)
- The school must offer a substantially equal program to excluded students

Is this allowable under Title IX?

"Empower Girls CBO" is a community-based organization that offers co-curricular programs in schools. The mission of Empower Girls is "to provide educational and empowerment opportunities for girls and their families to make them leaders in their community."

A district wants to use federal grant funding they received to fund the Empower Girls' programs in their middle schools. Is this allowable under Title IX? What should the district do?

Pregnant and Parenting Students

A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's ***pregnancy****,* ***childbirth****,* ***false pregnancy****,* ***termination of pregnancy or recovery therefrom****, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.*

34 CFR 106.40(b)(1)

In 2020, U.S. the teen birth rate was **15.4 births per 1000 girls aged 15-19** - a decline of **8%** from 2019, and **75%** from 1991. In 2021, Oregon's teen birth rate was **9.5 births per 1000 girls aged 15-19**.

Unfortunately, **Oregon's birth rate is still higher than 44 countries**, including Canada and the U.K.

HHS, Trends in Teenage Pregnancy

72% of adolescent pregnancies (15-17-year-olds) are unintended. **58%** of adolescent pregnancies end in a live birth.

This means that **most youth pregnancies are unintended and are carried to term**.

Finer and Zolna, 2016; Maddow-Zimit and Kost, 2021

Only **half** of young mothers will earn a high school diploma by age **22**, and **1/3** will never earn a G.E.D. or diploma.

Perper, Peterson, and Manlove, Diploma Attainment Among Teen Mothers (2010)

Barriers to Graduation and School Access

- lack of affordable childcare options
- inflexibility in school options (online, asynchronous, extended options, etc)
- inflexibility in school options (excused absences, academic deadlines, etc)
- lack of accessible transportation
- isolation from peers
- low wages
- lack of familial and/or second-parent support
- lack of knowledge about resources and support available

"…young mothers typically report that becoming a parent gave them more motivation to succeed academically—even if they were previously disengaged in school."

National Women's Law Center

Title IX Requirements: Medical Certification

"A school may require a pregnant student or student who has given birth to submit medical certification for school participation only if the school also requires such certification from all students with physical or emotional conditions requiring the attention of a physician."

Supporting the Academic Success of Pregnant and Parenting Students, 2013

This includes for:

- CTE programs
- athletics
- returning to school

Title IX Requirements: Alternative Programs

"A school may offer separate programs or schools for a pregnant student, but participation in those programs or schools must be completely voluntary…

"If a school offers a voluntary alternative program, that program must provide academic, extracurricular, and enrichment opportunities comparable to those provided to the students in the regular school program."

Supporting the Academic Success of Pregnant and Parenting Students, 2013

Title IX Requirements: Leave

Students must be allowed to take leave either in alignment with the school's policies and procedures on temporary disabilities, or in alignment with recommendations from the student's doctor.

When a student returns to school, they must be allowed to return to the same academic and extracurricular status as before their medical leave began.

Oregon Requirements: ORS 336.640

(1) The State Board of Education shall establish by rule procedures for considering and obtaining special services for pregnant and parenting students. Such rules shall include, but not be limited to, the obligation of the school district to:

(a) Inform pregnant and parenting students and their parents of the availability of such services in the school district, education service district or in the community;

(b) Facilitate the provision of such services, including counseling, life skills and parenting education, child care, transportation, career development and health and nutrition services to pregnant and parenting students;

(c) Inform pregnant and parenting students and their parents of the availability of resources provided by other agencies, including health and social services;

(d) Provide educational programs and schedules that address the individual learning styles and needs of pregnant and parenting students; and

(e) Develop individualized educational programs or services, or both, to address the needs of pregnant or parenting students when their educational needs cannot be met by the regularly provided school program.

Troy University Pregnancy Discrimination Case

"…when the student became unable to fit into a classroom desk due to her pregnancy, she requested a table for one of her classes, but never received one. She also was penalized in a class for poor attendance and received a failing grade in another class because she was denied the ability to make up work.

OCR's investigation identified concerns that:

- *The university did not make reasonable and responsive adjustments responsive to the student's pregnancy-related requests.*
- *Those responses the university did offer to the student's requests were ad hoc and uncoordinated.*
- *The Title IX coordinator did not consistently or timely intervene when the student alerted him to issues with certain classes.*
- *No evidence reflected that the Title IX coordinator responded to a professor who sought guidance in addressing the student's requests. And,*
- *The absence of available information about how to obtain pregnancy-related adjustments contributed to the university's uncoordinated response and left the student to make multiple requests through both the university's Title IX coordinator and individual professors."*

U.S. Department of Education's Office for Civil Rights Announces Resolution of Pregnancy Discrimination Investigation of Troy University in Alabama

What can we learn from Troy's OCR case?

In the resolution agreement, the school was required to:

- update and/or draft policies on addressing accommodation requests for pregnant students
- add information to their website about the rights of pregnant students and how to request adjustments/accommodations
- provide training to staff
- track requests and responses for pregnancy adjustments/accommodations

Questions to ask:

- How do you know if you are serving any pregnant or parenting students?
- What services does your school or district provide to pregnant or parenting students?
- How do pregnant or parenting students learn about their rights?
- Do you have a process in place so that pregnant and parenting students can request and receive adjustments/ accommodations?

Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

(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).

-34 CFR Part 106.30

Jurisdictional Requirements

- The conduct must occur within the educational programs or activities offered by the school/district.
  - On school grounds
  - Off school grounds, including: field trips, athletic games, transportation, school fundraising events, etc.
- The conduct must occur within the United States.

Schools are required to designate, at minimum:

Title IX Coordinator

Investigator

Decision-Maker

Appeals Decision-Maker

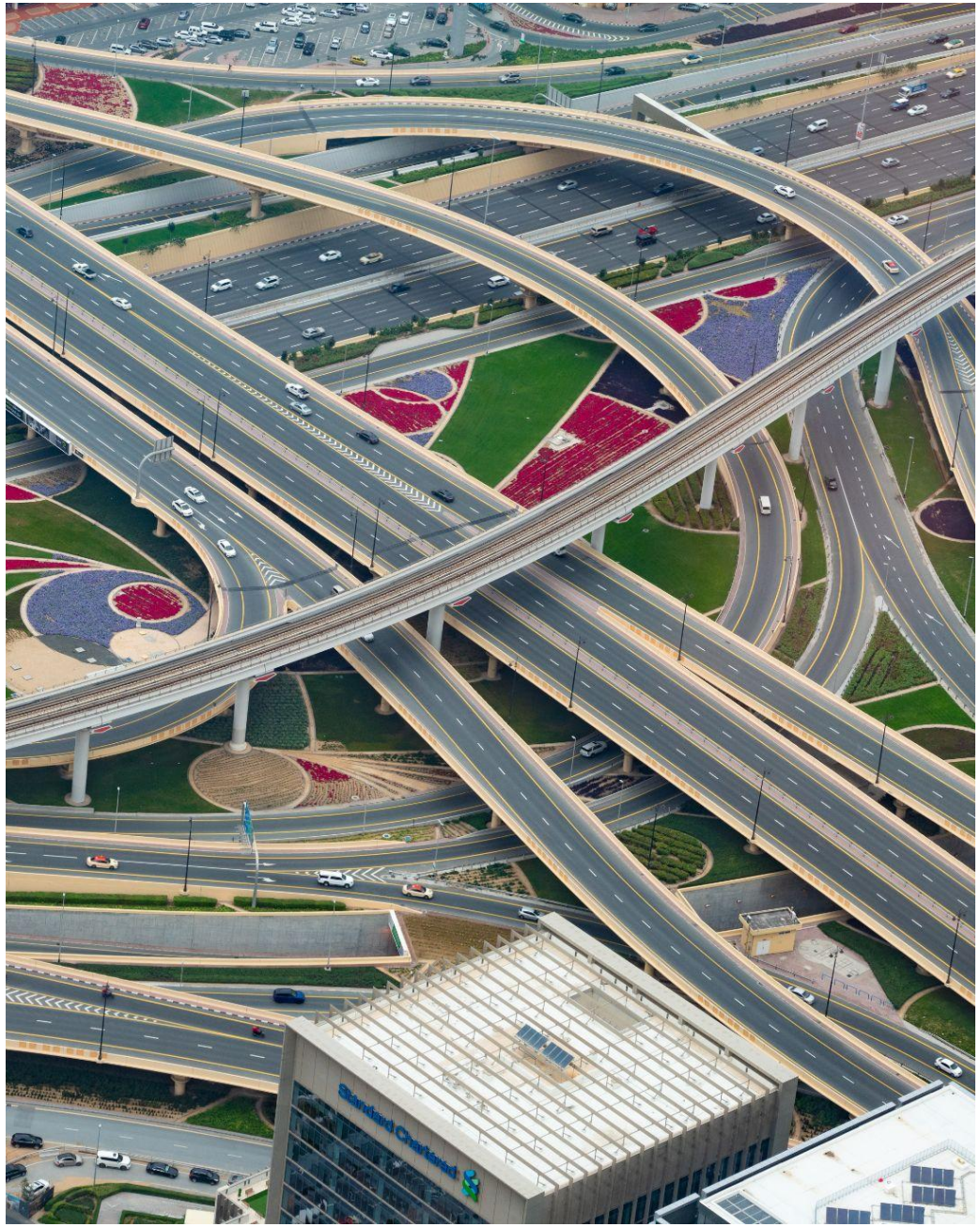
The Title IX Coordinator may also serve as the Investigator.

In each case the Investigator, Decision-Maker, and Appeals Decision-Maker must be different people.

The Decision-Maker and Appeals Decision-Maker CANNOT be the Title IX Coordinator.

Training Requirements

	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 prejudgment 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	



1. Actual Notice and Supportive Measures
2. Formal Complaint
3. Investigation
4. Decision-Making
5. Appeals
6. Sanctions and Remedies
7. Wrap-up and Compliance

1 Actual Notice and Supportive Measures

Whenever any school employee has knowledge of possible sexual harassment, the school is “on notice” and must respond:

- outreach to complainant
- provision of **supportive measures,** which are “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.”
- describe the option and process for filing a complaint
- may engage in emergency removal at this point

Overlap your Oregon-specific processes:

- mandatory reporting
- Oregon sexual harassment law “notification of rights and options”
- bullying and harassment parental notification

2 Formal Complaint

Once a formal complaint has been filed (either submitted by the complainant or signed by the Title IX Coordinator), the Title IX grievance process begins

- Schools must issue a **Notice of Allegations**
- Parties now have the option to opt into an informal process

3 Investigation

Investigating the allegations of sexual harassment under Title IX involves:

- Interviewing parties (must be given written notice of interviews)
- Gathering and reviewing evidence
- Writing and Issuing the **Investigation Report**

4 Decision-Making

The decision-maker(s) take the evidence from the investigation and:

- Conduct the “modified cross-examination” process
- Independently review the investigation report and evidence
- Determine responsibility and sanctions
- Write and issuing the **Determination of Responsibility**

5 Appeals

Appeals must be allowed on procedural irregularity, newly discovered/available evidence, or allegations of bias/conflict of interest.

If an appeal is submitted, the appeals decision-maker(s) will independently review the investigation, determination, and any newly submitted statement and evidence and write the **Appeal Determination.**

6 Sanctions and Remedies

Once the results of the grievance process are finalized, the school must implement sanctions and remedies.

- **Sanctions** are disciplinary or other measures imposed on on a respondent found responsible.
- **Remedies** are measures designed to restore educational access for the complainant and remedy any harm caused.

7 Wrap-Up and Compliance

The final steps of the process ensure the everything is finalized and the school has met the standards of compliance, including:

- Ensuring confidentiality
- Recordkeeping
- Debriefing and review

FERPA and Confidentiality in Title IX

Effect of Section 444 of General Education Provisions Act (GEPA)/Family Educational Rights and Privacy Act (FERPA). 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)

The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, ***or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.***

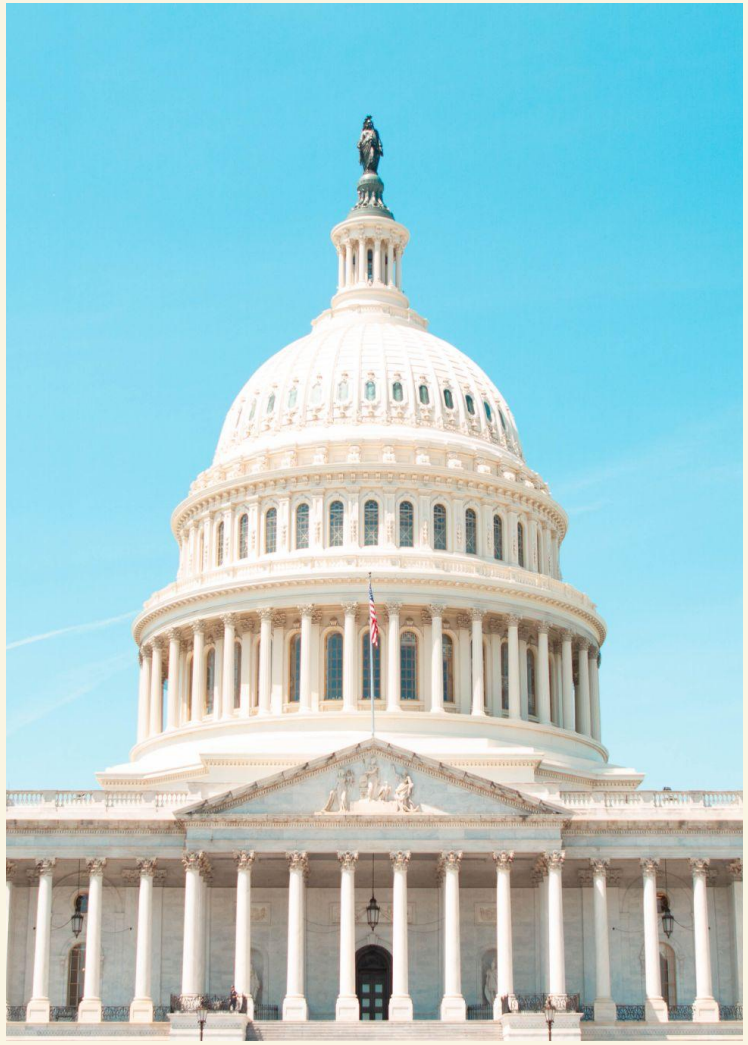
34 CFR 106.71(a)

Discuss in your breakout rooms…

- What have you had the most success with in implementing the Title IX sexual harassment process since 2020?What has been most challenging?
- How is the Title IX sexual harassment process different from your other disciplinary processes (bullying, other discrimination, bias incidents, etc)?
- What barriers have students or employees in your community faced to reporting or receiving help for sexual harassment? How are you addressing these barriers?

BREAK

come back at X:XX AM



2023 Legal and Legislative Updates

HB 2281: Civil Rights Coordinators

(2)(a) A district school board shall designate one or more civil rights coordinators for the school district. A civil rights coordinator may be an employee of the school district or the school district may enter into a contract with an education service district for the services of a civil rights coordinator. A civil rights coordinator, at a minimum, shall:

(A) Monitor, coordinate and oversee school district compliance with state and federal laws prohibiting discrimination in public education;

(B) Oversee investigations of complaints alleging discrimination in public education and ensure that the investigations are resolved;

(C) Provide guidance to school and school district personnel on civil rights issues in the school district, respond to questions and concerns about civil rights in the school district and coordinate efforts to prevent civil rights violations from occurring in the school district;

HB 2281: Civil Rights Coordinators

(D) Satisfy any training requirements prescribed by the State Board of Education by rule; and

(E) Comply with any rules adopted by the State Board of Education for the purpose of implementing this paragraph.

(c) For the purpose of this subsection, the Department of Education shall annually make available training for civil rights coordinators and the State Board of Education may adopt any necessary rules

Effective Date: January 1, 2024

Civil Rights Coordinator: What's Next?

- Rulemaking process
  - Opportunities to give input: community engagement sessions, Rules Advisory Committee, State Board of Education

What can you do now?

- Participate in the rulemaking process
- Discuss whether you might contract with an ESD for support
- Identify implicated individuals in your district - Title IX Coordinator, Section 504 Coordinator, etc.

HB 2280: Oregon SH Consent Definition

Updated to align with Comprehensive Sexuality Education rules and standards

(b) "Without consent" means an act performed:

(A) Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or

(B) 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.

Effective Date: July 13, 2023

SB 819: Abbreviated School Days

Impacts students with disabilities, including those with either IEPs or 504 plans.

- Redefines what is considered an abbreviated school day for these students
- Schools cannot place a student on an abbreviated school day without parental consent

Overlap with Title IX: may impact supportive measure and sanction options with working with students with disabilities.

We'll talk more about Section 504 and Title IX later on.

OAR 581-921-0045: Notice of Nondiscrimination

Discrimination-related OARs updated in Spring 2023.

What you'll need to do:

- Ensure the content of your notice is compliant with the rule
- Update your website
- Ensure the notice is included on necessary documents
- Create a plan for annual dissemination of the notice (if not already available)

(4)(a) A district must issue notice of nondiscrimination for the purpose of notifying students, staff, and third parties that the district does not discriminate on the basis of age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity.

(b) Notice of nondiscrimination as required by this subsection must:

(A) Be continuously available on the district website, accessible either by a direct link on the front page of the website or by a direct link on the footer of every page of the website.

(B) Be posted in multiple locations, including but not limited to public-facing documents such as staff and student handbooks, annual publications, official school board documents, bulletins, graduation announcements, catalogs, recruitment materials, and school related applications.

(C) Be made available in the languages of the communities served by the district.

(D) Be disseminated annually to staff, students, and families of students as an individual notice that is accessible and written in plain language.

(E) Contain:

(i) A statement of non-discrimination that specifies the basis for non-discrimination being age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;

(ii) The contact information of staff designated to respond to questions of discrimination, including their name or title, address, email address, and telephone number; and

(iii) A link to or the web address for the district's discrimination complaint process and procedures.

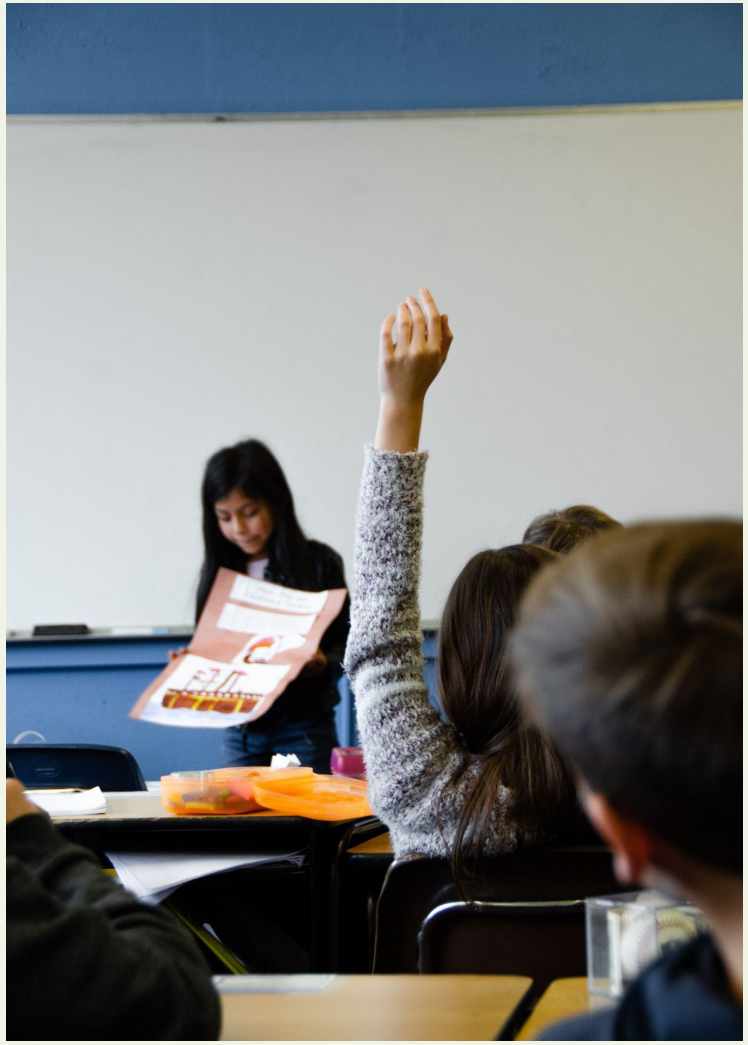
OAR 581-022-2370: Complaint Procedures

(1) Each school district must establish a process for the prompt resolution of a complaint by:

(a) A person who resides in the district;

(b) Any parent or guardian of a student who attends school in the district; or

(c) Any person who alleges that they have been subjected to discrimination, or a third party representing such persons or groups of persons.



Title IX Overlaps with Section 504 and IDEA

Individuals with Disabilities Education Act (IDEA)

IDEA is a **law and formula grant program** that is designed to provide FAPE to students with eligible disabilities through **special education** programs and related services.

Students who fall under one (or more) of 13 disability categories can receive services such as special education and an Individualized Education Plan (IEP).

Section 504

Section 504 is a **civil rights law** that requires schools to provide FAPE to all qualified students with disabilities in the district boundary and prohibits education programs from discriminating against persons with disabilities.

Under Section 504, a disability is a "mental or physical impairment that substantially limits a major life activity," or a student who has a record of or is regarding as having such an impairment.

- no specific disability categories
- no diagnosis required

Individuals with Disabilities Education Act (IDEA)

In the 2021-2022 school year, **14.2%** of Oregon students were receiving special education services.

Section 504

Currently, **3.8%** of Oregon students have a 504 plan. It is likely that many more qualify under Section 504.

All students with disabilities (as defined by Section 504) are covered by the civil rights protections of Section 504, regardless of whether they have an established 504 plan and/or IEP.

Complainant

Respondent

How could a student with a disability be involved in a Title IX investigation?

Witness

What does Title IX say about IDEA/Section 504?

Under the current regulations, the only explicit reference is under emergency removals and administrative leave, which states that these processes cannot violate an individual's rights under Section 504 or IDEA.

34 CFR 106.44(c) and (d)

Under the proposed regulations,

- The Title IX Coordinator must consult with the 504 or IEP team when implementing supportive measures for a student with a disability (*proposed 106.44(g)*)
- When a complainant or a respondent in an investigation has a disability, the Title IX Coordinator must consult with the IEP or 504 team during the process (*proposed 106.8(e)*)

How will you know if a student has an IEP/504?

How are you ensuring that all the rights and accommodations needed for students with disabilities are being respected in your Title IX process?

- Flags on student records or in SIS?
- Documentation on intake forms?
- Relying on student/parent/school staff information?

Keep in mind confidentiality and privacy concerns!

Could an act of sexual harassment be a manifestation of a student's disability?

Could these be manifestations?

A student with ADHD who struggles with impulse control is accused of sexual harassment after repeatedly calling another student a "bitch," "slut," "skank," and using other derogatory gendered language in the hallways between classes.

A student with a severe cognitive impairment bites the breast of a behavioral aide who is assisting her with a task.

Keep in mind: statistics show that students with disabilities are more likely to experience sexual harassment than to commit sexual harassment. For example, children with disabilities are nearly **3x as likely** to be sexually abused as children without disabilities.

Could an act of sexual harassment be a manifestation of a student's disability?

It's not our job to determine whether it is or not. We need to assemble our IEP or 504 team to do a **manifestation determination** or evaluation.

- **If yes**, this may impact the type of discipline we can utilize. IDEA and Section 504 provide specific restrictions related to exclusionary discipline for disability-related behavior.
  - **We still address the harassment, the methods might just look different.** Could utilize a functional behavior assessment (FBA) and behavioral intervention plan (BIP). Remedies and supportive measures are still provided.
  - If disciplinary measures will exclude a student from school (especially if it's more than 10 cumulative days of exclusion), or will result in a significant change in placement, be very careful and consult your IEP/504 team.

- **If no**, we can proceed with the process and discipline as typical.
  - Remember that students with disabilities should not be punished more harshly than other students - that would be discrimination.

Areas of Overlap:
Supportive Measures and Safety Planning

Supportive measures and safety plans may be implemented before, during, or after a Title IX investigation. When a student involved has a 504 or IEP…

- Ensure the measures do not conflict with the student's 504 or IEP, and that the student still has meaningful educational access.
- If any supportive measures may result in a change in placement, the IEP or 504 team should be involved. Limiting or changing their educational access may violate their rights under Title IX *and* Section 504.

If considering an emergency removal, involve the IEP or 504 team, especially if nearing the 10-day mark for exclusion.

Areas of Overlap:
Accommodations in Interviews and Meetings

Consider what accommodations or supports students with disabilities might need to successfully engage in the process. Steps you can take include:

- Review the student's IEP or 504 plan. Do they need extended time? An additional support person? Access to in-person/virtual interview options?
- Discuss directly with the student about any additional supports or accommodations they may need.
- May be helpful to discuss with school experts (Section 504 Coordinator, School Psychologist, Special Education Director, etc) how you can make your process friendly and accessible to students.

Areas of Overlap:
Sanctions and Remedies

When implementing disciplinary sanctions against a student with a disability…

- consider whether the harassment was a manifestation
- consider whether disciplinary sanctions will change placement or if they will create an abbreviated day for a student (will it violate SB 819)?
- consider how to appropriately maintain accommodations and access throughout any disciplinary actions

When implementing restorative remedies for a student with a disability…

- ensure that the remedies account for any accommodations or supports already included in the student's IEP or 504 plan - are the remedies accessible? Do they account for accommodations a student requires?

What can you do right now?

Connect with leaders and experts in your district - Section 504 Coordinator, Special Education Director, etc. - to discuss these overlaps and proactively brainstorm how you will address concerns.

- They could likely benefit from education on these overlaps as well, so they aren't sending mixed messages to students and families!

Check your process for accessibility (likely in consultation with partners listed above!)

Consider what protocols or procedures you may need to establish for a smoother work process.

ODE’s Gender Expansive Student Guidance

LGBTQ2SIA+ Student Data: Why it Matters

About 8% of Oregon youth are transgender, unsure, or gender-expansive

8% of 6th, 8th, and 11th Graders

OHA 2020 SHS Survey

About 1 in 3 of Oregon youth state a LGB+, other, or unsure sexual orientation

34.4% of 8th Graders
28.7% of 11th Graders

OHA 2020 SHS Survey

43% of gender expansive students report seriously considering suicide

OHA 2020 SHS Survey

LGBTQ+ students are 3x as likely to miss school due to fear

LGBTQ+ students are 2-3x as likely to experience sexual assault

OSSCC 2020 Oregon Safe Schools Report

Prioritizing Joy and Success for Students

When LGBTQ students of color have supportive educators, they have higher self-esteem and lower levels of depression.

GLSEN LGBTQ Students of Color Reports

LGBTQ youth who live in a community that is accepting of LGBTQ people reported significantly lower rates of attempting suicide compared to those who do not.

Trevor Project LGBTQ+ Youth Mental Health Survey, 2022

Youth find moments of joy in

- Therapy & medication
- Gender-affirming clothing
- Family & parental support
- The LGBTQ community
- Accepting & affirming friends
- Hope & excitement for the future
- Happy LGBTQ elders & married couples
- Athletics & Exercise
- LGBTQ student clubs
- Art, crafting, drawing
- Learning about LGBTQ history
- Supportive teachers
- Having a safe space to express gender, gender identity, and sexuality
- All gender restrooms
- Queer role models
- Going to college

Trevor Project LGBTQ+ Youth Mental Health Survey, 2022

Recent Court Rulings

- *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020)
- ***Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020)**
- *Doe v. Boyertown Area School District*, 897 F.3d 518 (3d Cir. 2018)
- *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. 2017)
- *Dodds v. U.S. Department of Education*, 845 F.3d 217 (6th Cir. 2016)
- *Parents vs Montgomery County Board of Education*, *8:20-3552-PWG*

Photo courtesy of GLSEN

What has OCR said about SOGI discrimination?

- *Tamalpais Union School District*, OCR Case No. 09-18-1466 (2022), Findings
  - Sex discrimination based on sex stereotyping occurred when a gender expansive student was harassed because their name, pronouns, clothing, manner of speaking, and presentation did not align with traditional gender roles.
- *Forsyth County Schools,* OCR Case No. 04-22-1281 (2023), Findings and Resolution Agreement
  - A district's response to a request to remove LGBTQ2SIA+ books from the library may have created a hostile environment for LGBTQ2SIA+ students, even though the books were not removed (or if removed/restricted, were removed for sexually explicit content)
- *Rhinelander School District*, OCR Case No. 05-22-1029 (2023), Findings and Resolution Agreement
  - A nonbinary student experienced sex discrimination when they were constantly misgendered and deadnamed, harassed by other students, and removed from a class because the teacher could not control other students' harassing behavior

Supporting Gender Expansive Students Guidance

Overview

Section 1: Recommended Nondiscriminatory Practices

- Equal Educational Access
- Student Identity and Expression
- Student Safety
- Student Privacy
  - Includes information on Parental Notification
- Gender-Affirming Care in Schools
- Student Records
  - Sex/Gender Marker and First Name Changes
- Facilities Access
- Instructional Materials, Education Standards, and Opt-Out
- School Programs and Activities
  - GSAs, Athletics, Travel
- Staff Training and Support

Student-driven scenarios included throughout, in the gray boxes

Section 2: Complaint Processes

- Discrimination Complaints
  - Covers District, State, and Federal Complaints and appeals processes
- Division 22 Complaints

Appendix

- **Terminology** used throughout the document

Guidance Supplemental Resources
Overview

Tools for School Staff
Educators, GSA Advisors, School-Based Health and Mental Health Professionals, Administrators

- ❑ **Gender-Affirming Schools Action Plan** (Word, PDF)
- ❑ **Student Support and Safety Plan Template** (Word)
- ❑ **Affirming Gender, Names, and Pronouns in Student Information Systems** (PDF)
- ❑ **Gender Expansive Individual Education Program** (PDF)

Tools for Students, Parents, Families, and Community Based Organizations

- ❑ **Gender-Affirming Care Resources** (PDF)
- ❑ **Oregon K-12 Discrimination Complaint Process FAQ** (PDF)
- ❑ **Supporting LGBTQ2SIA+ Students in Oregon** (PDF)

Exploring the Guidance

05:00

Part 1: Silent reading time

On your own, **take 5 minutes** to do one (or more!) of the following…

- Read the introduction of the main guidance document
- Go to the table of contents and choose a section to read/skim
- Choose a supplemental resource to read/skim

Part 2: Chatterfall

Reflection Questions

- What did you read?
- What is one thing that stood out? (e.g., ah-ha or wondering)
- How does this intersect with your work?

Oregon schools have faced challenges **and** experienced success this year!

Oregon districts have supported students when…

- School staff refuse to use student-asserted name/pronouns
- Parents request to opt their child (or all children) out of any school content, clubs, or programs that include or affirm gender identity or sexual orientation
- There are increases in LGBTQ2SIA+ book ban requests at school and local public libraries
- Outdoor school programs are challenged based on affirming policies for student counselors
- Addressing anti-LGBTQ2SIA+ bias-incidents in schools and communities, including threats of violence
- Individual queer or gender expansive staff are targeted
- Pride or LGBTQ2SIA+ events are challenged due to student safety concerns or pushback from community
- Parent permission policy is added or enforced for student GSA/pride clubs disproportionately, but not other student clubs

School Policies and Staff Actions Matter

A 2019 study found that states that had anti-bullying policies and procedures specific LGBTQ+ protected classes resulted in:

- lower rates of suicide ideation or attempts
- lower rates of sexual assault
- students feeling safer and less stressed at school.

These effects were seen for all students, regardless of LGBTQ+ status.

Meyer et. al, 2019

"students who say that they have learned about LGBT issues at school report less bullying, more safety, less absenteeism, and less homophobic language and negative remarks based on gender expression in their schools"

Russell et. al, 2021

"Students report less bullying in schools with multiple LGBT-supportive practices in place, including providing LGBT-related professional development and having an LGBT point-person available."

Gower et. al., 2017

Looking Ahead: Preparing for the New Title IX Regulations

President Biden announces intent to replace current Title IX regulations

Spring 2021

July 12, 2022

Draft regulations published on Federal Register

Draft athletics regulations published

April 6, 2023

?? Oct 2023 ??

OCR intends to release new Title IX regulations

Sex Discrimination: Harassment

Current Regulations and Guidance

SEXUAL HARASSMENT is "conduct on the basis of sex that satisfies one or more of the following:"

(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;" or
(3) Sexual assault, domestic violence, dating violence, or stalking.

§ 106.30

Proposed Regulations

SEX-BASED HARASSMENT includes

(1) Quid pro quo harassment.
(2) "***Hostile environment harassment.*** Unwelcome sex-based conduct that is ***sufficiently severe or pervasive***, that, based on the totality of the circumstances and evaluated subjectively and objectively, ***denies or limits*** a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment)."

Proposed § 106.2

Sex Discrimination: Hostile Environment

Proposed Regulations

"Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) "The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
(ii) "The type, frequency, and duration of the conduct;
(iii) "The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;
(iv) "The location of the conduct, the context in which the conduct occurred, and the control the recipient has over the respondent; and
(v) "Other sex-based harassment in the recipient's education program or activity."

Proposed § 106.2

"Proposed § 106.11 would also clarify that Title IX obligates a recipient to address a hostile environment occurring within the recipient's education program or activity, even if the underlying sex-based harassment contributing to the hostile environment does not occur in the recipient's education program or activity or occurs outside the United States." - NPRM, pg. 41402

What does this mean?

- The new definition will be closer to the pre-2020 definition of sexual harassment, including a return to hostile environment, and closer to Oregon's sexual harassment definition
- Clarification of term as sex-based harassment clarifies that it is harassment based on sex, including all types of sex discrimination, not only sexual conduct/acts

What should your school/district do now to prepare?

- Nothing needed - yet!
- Once the new definition is implemented you will still be working with the historical (current) definition for conduct that occurred prior to the effective date

Sexual Orientation and Gender Identity Discrimination

Current Regulations and Guidance	Proposed Regulations
Notice of Interpretation (June 2021) states that "sex discrimination" includes ***sexual orientation and gender identity*** discrimination.	Sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, ***sexual orientation, and gender identity***. Proposed 34 CFR § 106.10 Discrimination means that recipient must not subject a person to more than "de minimis" harm, and "***[a]dopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.***" Proposed § 106.31(a)(2)

What does this mean?

- The clarifying language aligns closely with Oregon's nondiscrimination law and with the 2023 Gender Expansive Student Guidance
- Building on the notice of interpretation, but does not create any major changes for Oregon

What should your school/district do now to prepare?

- Ensure your school is currently observing nondiscrimination law
- Consider utilizing the 2023 Gender Expansive Student Guidance and related resources to audit for your policies and programs for inclusive practices

General Response to Student Pregnancy

Current Regulations and Guidance

- Must allow students to take a leave of absence.
- May not require a physical exam to participate in any school activities, unless it is required of all students.
- May offer an alternative schooling program, but it must be voluntary

§ 106.40

Proposed Regulations

When an employee becomes aware of a student's pregnancy, must provide them with specific information about their rights and options.

Proposed § 106.40(b)(2)

Recipient is required to:

- ***Provide reasonable accommodations to the education program/activity***
- May offer voluntary enrollment in an alternative education program, but it must be comparable
- Allow voluntary leave of absence; "Upon the student's return… ***the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began***."
- "***Ensure the availability of a lactation space***, which must be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed."

Proposed § 106.40(b)(3)

What does this mean?

- Employees have to provide specific notifications to students.
- Clarifies language with stronger protections for student accommodations and supports
- Requires the availability of a lactation space that meets specific standards.

What should your school/district do now to prepare?

- Identify possible lactation spaces.
- Consider how you will train employees on their responsibility to notify students.

General Response to Sex Discrimination

Current Regulations and Guidance

Must follow a grievance procedures in response to any complaint of sex discrimination.

§ 106.8

FOR SEXUAL HARASSMENT ONLY:
Requires a response to actual knowledge of sexual harassment in a manner that is ***not deliberately indifferent*** (106.44(a))

Specifically schools must:

- Contact the complainant
- Describe to the complainant how to file a formal complaint
- Describe the availability of supportive measures
- Possibly take other steps that would be required to not be deliberately indifferent to sexual harassment

§ 106.44

Proposed Regulations

A recipient must take "***prompt and effective action*** to ***end any sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects.***"

Proposed § 106.44(a)

Title IX Coordinator must:

- Notify complainant of grievance procedures
- Offer and coordinate supportive measures
- If a complaint is filed or grievance process initiated, initiate the grievance process and notify all involved parties
- ***"Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur in the recipient's education program or activity, in addition to providing remedies to an individual complainant"***

Proposed § 106.44(f)

What does this mean?

- Language will return to that closer to pre-2020 intervention standards, and will more closely align with Title VI.
- Moving towards a more responsive framework (even somewhat proactive) rather than merely reactive.

What should your school/district do now to prepare?

- Nothing needed - yet!

Grievance Procedures, selected changes

Current Regulations and Guidance

No specific grievance requirements for general sex discrimination.

FOR SEXUAL HARASSMENT:

- Must involve ***3 separate individuals***: investigator, different decision-maker, different available appeal decider
- Required to give ***four written notices:***
  - Notice of Allegations, Investigation Report, Determination of Responsibility, Appeal Determination (if an appeal is filed)
- Includes a written question-and-answer requirements (***modified cross-examination)***
- ***Must allow a one-level appeal***
- ***Two required 10-day time windows***: to review evidence, and to review investigative report before a decision is made

§ 106.45

Proposed Regulations

- ***Allows single-investigator model*** (same person to investigate and make issue a determination)
- Must provide notices, ***but may provide them orally***:
  - Notice of allegations
  - A description provided to the parties by the recipient of the relevant and not otherwise impermissible evidence, as well as a reasonable opportunity to respond
  - Determination of responsibility
- ***Must use preponderance of the evidence*** standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings, including other discrimination complaints, in which case that standard may be used in determining whether sex discrimination occurred.
- ***May offer an appeal, but not required***
- ***Reasonably prompt timeframes, but not prescribed***

Proposed § 106.45

What does this mean?

- Creates a separate, less directive process for K-12 as compared with higher education.
- Keeps some of the elements of the current process, but relaxes many requirements: allows single investigator model, oral rather than written notification, etc.

What should your school/district do now to prepare?

- No policy changes needed yet - the regulations could change in their final implementation!
- Remember, you can always go above and beyond. Consider what you like and dislike about current processes.

Athletics

Current Regulations and Guidance

Allows schools to operate separate male and female athletic teams, provided they are operated in a way that provides equal opportunities and benefits to students.

§ 106.41

Proposed Regulations

"If a recipient adopts or applies sex-related criteria that would limit or deny a student's eligibility to participate on a male or female team consistent with their gender identity, such criteria must, for each sport, level of competition, and grade or education level:

(i) be substantially related to the achievement of an important educational objective, and

(ii) minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied."

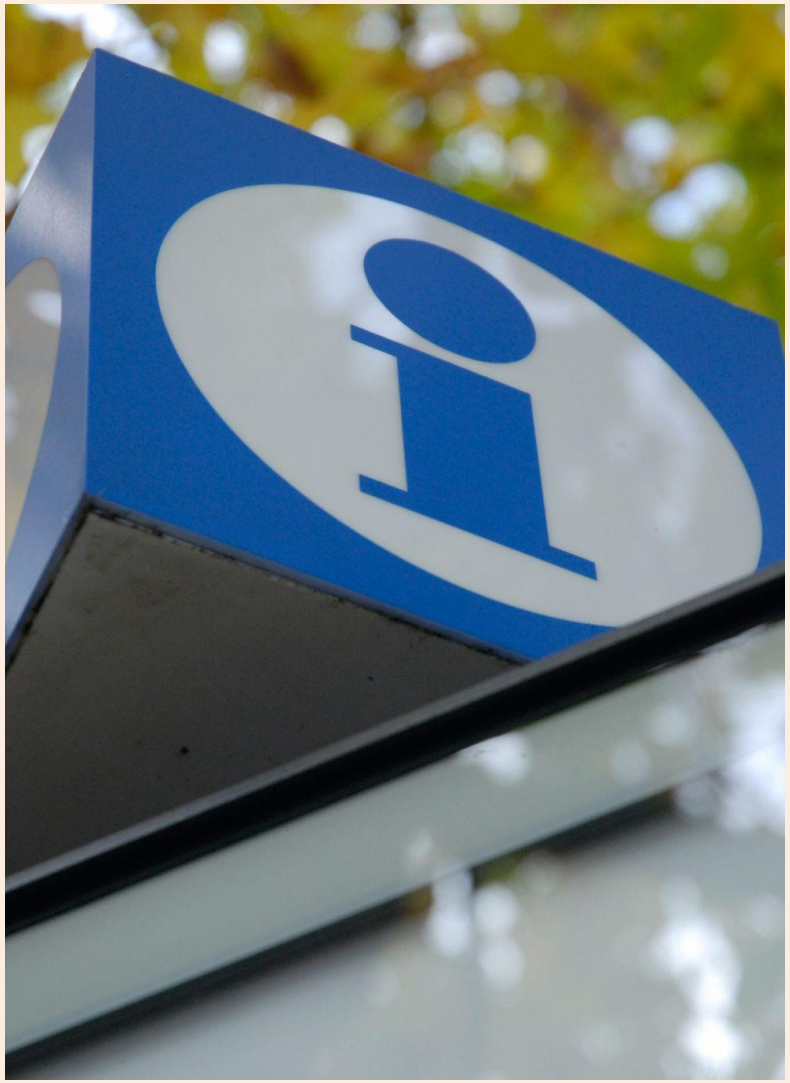
Proposed § 106.41(b)(2)

What does this mean?

- Allows, but does not require, school to adopt sex-related criteria that would limit students from participating in accordance with their gender identity at specific levels of competition.
- Oregon is unlikely to change our current rules and practices.

What should your school/district do now to prepare?

- No policy changes needed yet - the regulations could change in their final implementation!
- Continue to follow OSAA policies and Oregon nondiscrimination law.



Resources

Title IX Community of Practice

This is an opportunity for K-12 Title IX Coordinators and other designated Title IX personnel to gather on a regular basis to discuss current issues and connect with other public schools, districts, charter schools, and ESDs across Oregon. Each meeting will include a short update and training/discussion, as well as breakout time in small groups with similarly situated schools (breakouts will be by size, affiliation, etc).

Thursday, August 17, 9-10 am

Tuesday, September 12, 10-11 am

Thursday, October 19, 9-10 am

Tuesday, November, 14, 10-11 am

Office of Civil Rights (OCR) Resources

Title IX Regulations (34 CFR Part 106)

Policy Guidance Portal

- Search for “Title IX” to find guidance documents

OCR Blog

Department of Education Youtube Page

LGBTQI+ Student Resources Page

OCR Hotline and Contact Information

ODE and Oregon Resources

ODE Civil Rights Page

ODE Title IX Coordinators Resource Page

- Webinars and recordings will be added here when available

OSAA Title IX Page

Who Can I Call?

OCR Seattle Office - 206-607-1600

ODE Civil Rights Support - 503-551-5713

You should always contact legal counsel for legal advice, such as your district legal counsel or organizations you belong to (OSBA, ATIXA, etc).

CONTACT US

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