Title IX Sexual Harassment: Part 2

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Check-in

What was your biggest takeaway from Monday?

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.

Agenda



Part 1 Recap



Roles in the Title IX Process



Investigation and Adjudication Overview



Part 1 Recap



Title IX 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

Oregon's Definition of Consent

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

"Without consent" means an act performed:

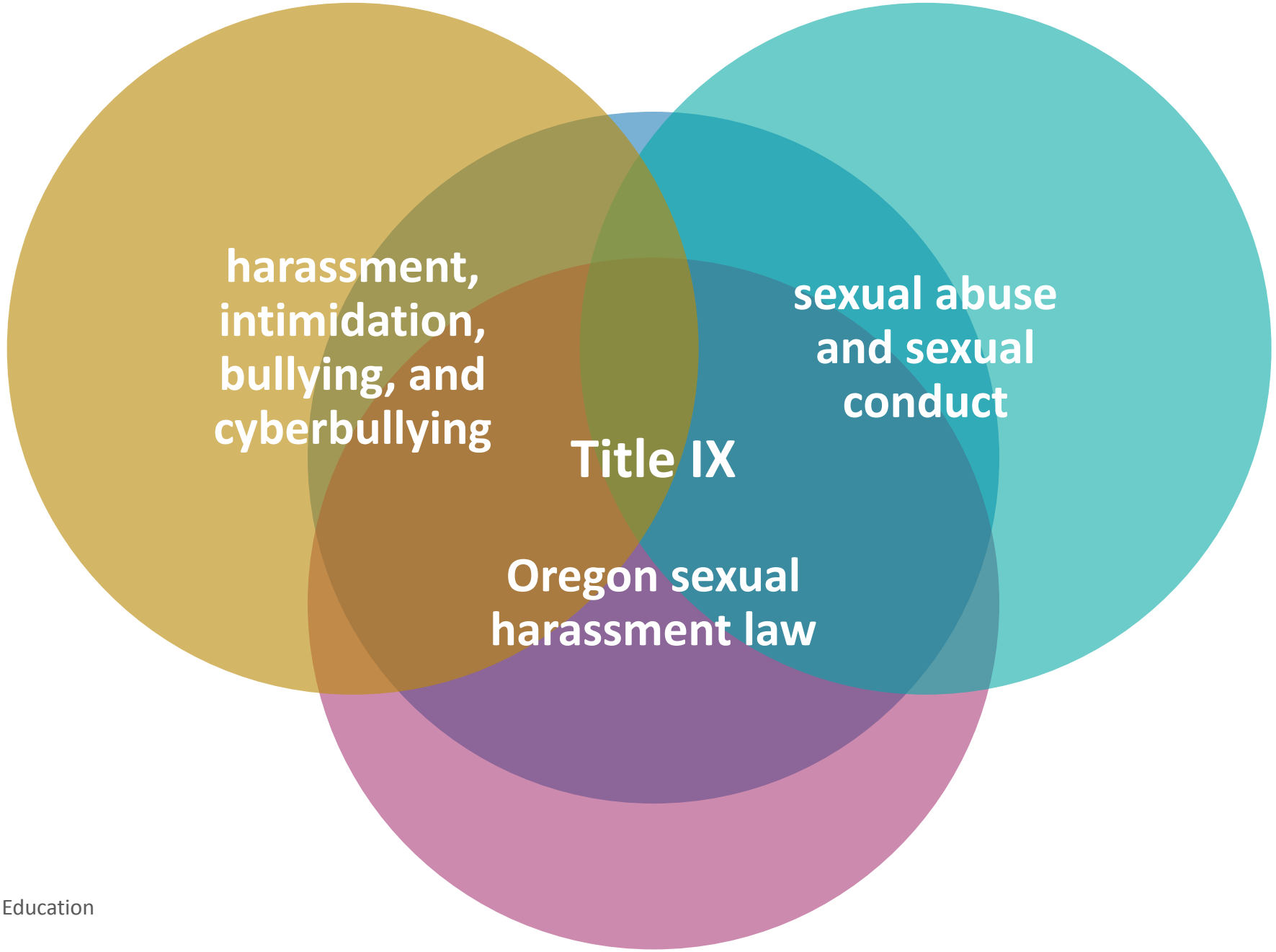
(A) Without the knowing, voluntary and clear agreement by all parties to participate in the specific act; or

(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.


harassment, intimidation, bullying, and cyberbullying
sexual abuse and sexual conduct
Title IX
Oregon sexual harassment law

Title IX Sexual Harassment

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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

Sexual Conduct

"Sexual conduct" means verbal or physical conduct or verbal, written or electronic communications by a **school employee, a contractor, an agent or a volunteer** that involve a student and that are:

(A) Sexual advances or requests for sexual favors directed toward the student; or

(B) 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.

Bullying, Intimidation, and Harassment

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

In these processes, we may bring implicit or explicit bias in the the room with us…

...which helps us form a “hunch” or “gut feeling” about a case...

...which then makes us vulnerable to confirmation bias.



Strategies to decrease bias and conflicts

- Increase your knowledge and research multiple perspectives about: sexual harassment, identities you don't share, investigation methods, etc.
- Slow down!
- Reduce subjectivity where possible – checklists? Templates?
- Question the subjective and objective
- Use peer-collaboration models
- Get an external evaluation
- Use hard data to check your processes – case reviews, statistics, etc
- Cross-train multiple individuals to account for potential conflict of interest
- Develop partnerships or external contracts to share investigators* and decision-makers when necessary



Who's Who in Title IX Sexual Harassment

Schools are required to designate, at minimum:

Title IX Coordinator

Investigator

Decision-Maker

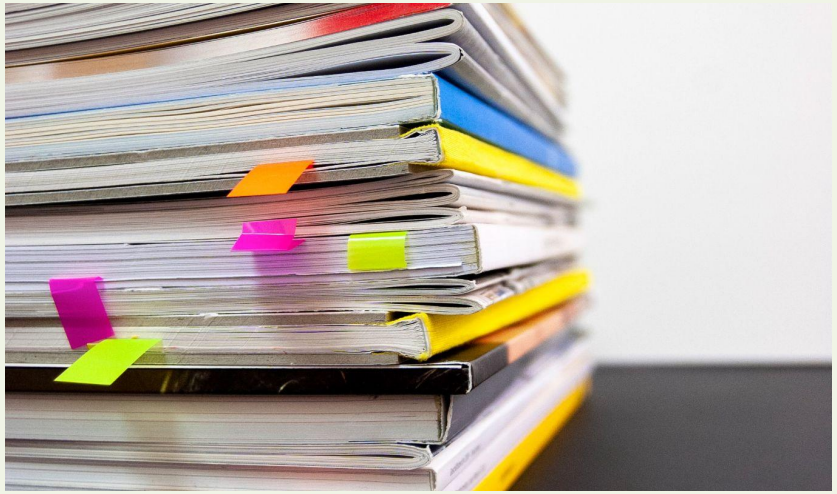
Appeals Decision-Maker

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.

Title IX Coordinator



Oversees overall Title IX compliance

For sexual harassment, must:

- Respond to all actual notice
- Coordinate supportive measures
- Coordinate implementation of remedies and sanctions
- Keep records

For sexual harassment, may:

- Investigate cases
- Issue notices
- Train other district personnel

Investigator



Investigates sexual harassment allegations

- Interviews complainants, respondents, and witnesses
- Collects and analyzes evidence

Writes investigative report

Keeps track of necessary records (given to Title IX Coordinator at the conclusion)

Schools may designate one investigator for each case, or multiple (dual-investigator model).

Decision-Maker



Conducts hearing process, if applicable

Facilitates “modified cross-examination” process

Determines if each allegation can be substantiated

Writes determination of responsibility

Schools may designate one decision-maker for each case, or a panel of decision-makers.

The decision-maker cannot be the Title IX Coordinator under any circumstances.

Appeals Decision-Maker



Facilitates appeals process

Based on a review of the documents, evidence, and any new documents/evidence that resulted in the appeal, may:

- Either alter or affirms the findings in the determination of responsibility
- Either alter or affirm the sanctions or remedies offered to the parties
-

Schools may designate one appeals decision-maker for each case, or a panel.

The appeals decision-maker cannot be the Title IX Coordinator under any circumstances.

Advisor



- Complainants and respondents must be allowed to bring an “advisor of choice” with them to all meetings, interviews, etc. as a support and advisor.
- Schools may not restrict who the advisor of choice can be.
- Schools “may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.”

Who else?



Informal Process Facilitator

If a school offers an informal process, a trained facilitator must be designated to oversee that process.

Parents

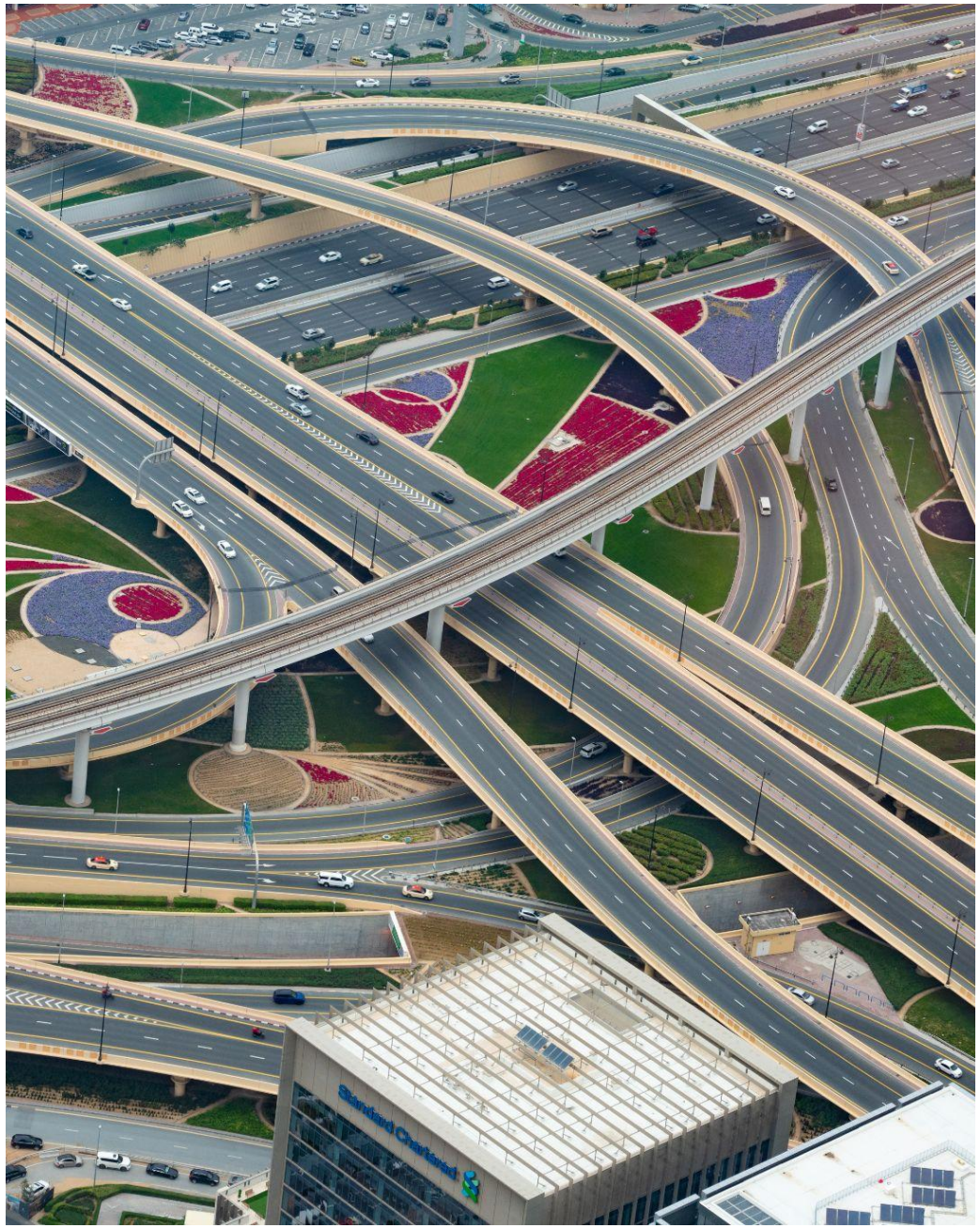
The 2020 regulations state that parents/guardians may act on behalf of their children for the purposes of Title IX if they otherwise have a legal right to do so.

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	



The 2020 Process: Response, Investigation, & Adjudication



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

Who's Involved?

	Actual Notice and Supportive Measures	Formal Complaint	Investigation	Decision-Making	Appeals	Sanctions and Remedies
Title IX Coordinator	X	X				X
Investigator			X			
Decision-Maker				X		X
Appeals Decision-Maker					X	X



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
- can engage in emergency removal

Who is involved?

- Title IX Coordinator, Complainant

Overlap your Oregon-specific processes:

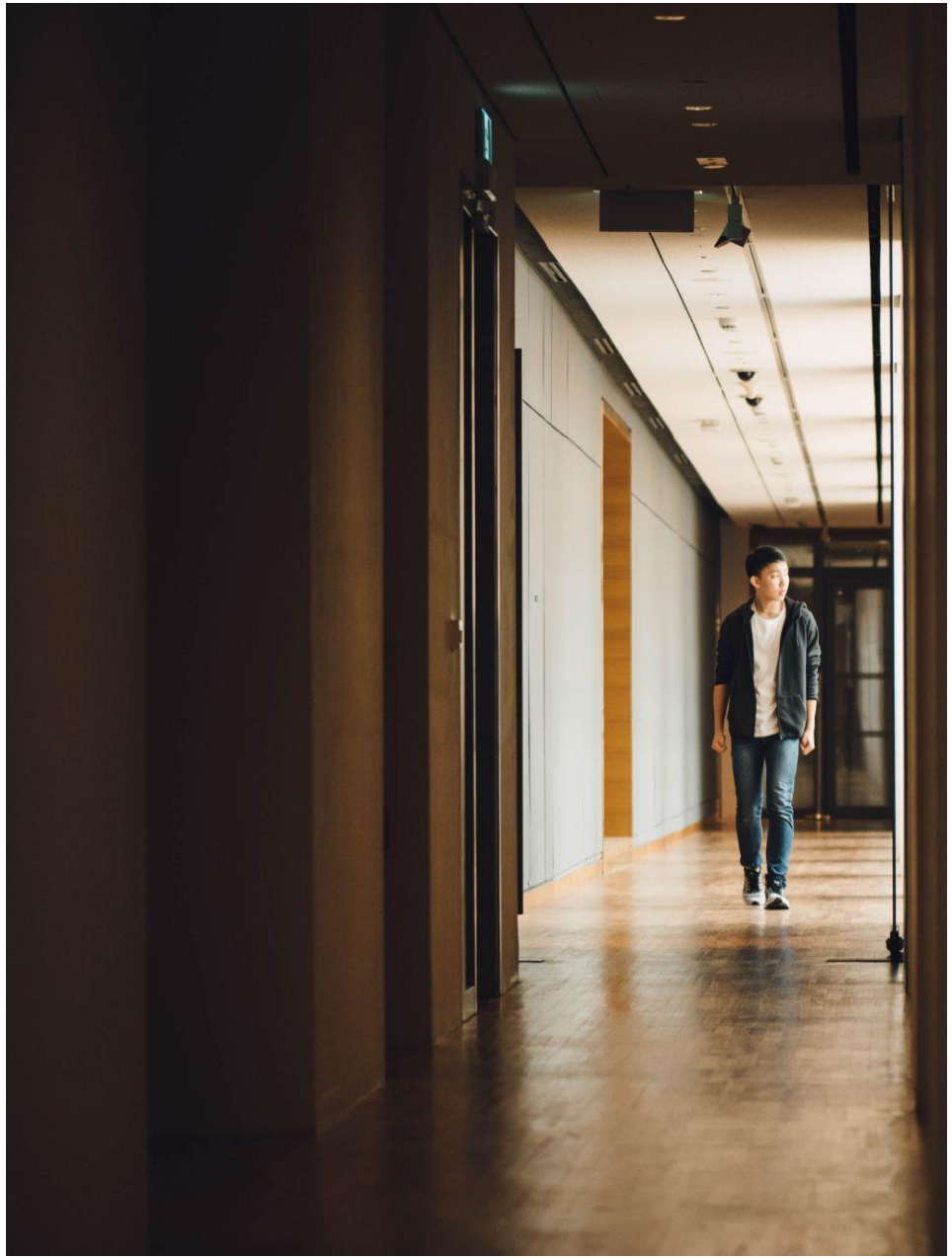
- mandatory reporting
- Oregon sexual harassment law "notification of rights and options"
- bullying and harassment parental notification

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

Schools must respond in a manner that is not "**deliberately indifferent**," which includes:

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

34 CFR § 106.30(a)





Harassment, Intimidation, Bullying, and Cyberbullying Parental Notification

- Parental notification is required “promptly” for physical acts and “within a reasonable period of time” for other acts.
- Must notify the parents of the student who was bullied and the student accused of engaging in bullying.
- Prior to notification, the school must inform the student that they are notifying the parent/guardian
- Notification is NOT required if:
  - The staff member believes notification would endanger the student, or
  - The student requests no notification AND the staff member believes notification is not in the best interest of the student AND the staff member informs the student about FERPA (and other) parental information rights.

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.



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

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



Emergency Removal (Student)

Emergency removal of a student is allowed if:

- an individualized risk analysis determines there is risk to the ***physical health or safety*** of an individual or the school community
- the respondent is provided with immediate notice and opportunity to challenge the removal
- the school continues to comply with IDEA, Section 504, and the ADA with respect to the student being removed and (and all other obligations)

34 CFR § 106.44(c)

Emergency Leave (Staff)

Schools may place a staff member on paid or unpaid leave if:

- the Title IX grievance process is being conducted and is pending
- the school continues to comply with Section 504 and the ADA with respect to the staff member being put on leave and (and all other obligations)

34 CFR § 106.44(d)



A student who graduated last year emails the school Vice Principal to report on “weird behavior” from the school’s AP History teacher. She says that during her junior year she developed a close relationship with him during class, and that he gave out his cell phone number to several students to “answer any study questions.” Over the course of the next two years, they started texting about life outside of school.

By the end of her senior year, they were talking on the phone at least once a week, and texting every day. The student reports that she felt like the teacher gave her extra opportunities other students didn’t get, like the opportunity to retake tests. She says that while she was a student he never explicitly asked for photos of her, but since she’s graduated, he’s started asking if she’ll send him sexual photos and voice notes.

Would you open a Title IX complaint?

2

Formal Complaint

Once a formal complaint has been filed, the Title IX grievance process begins.

- Schools must issue a **Notice of Allegations**
- Participants now have the option to opt into an informal process
- Schools may put employees on administrative leave

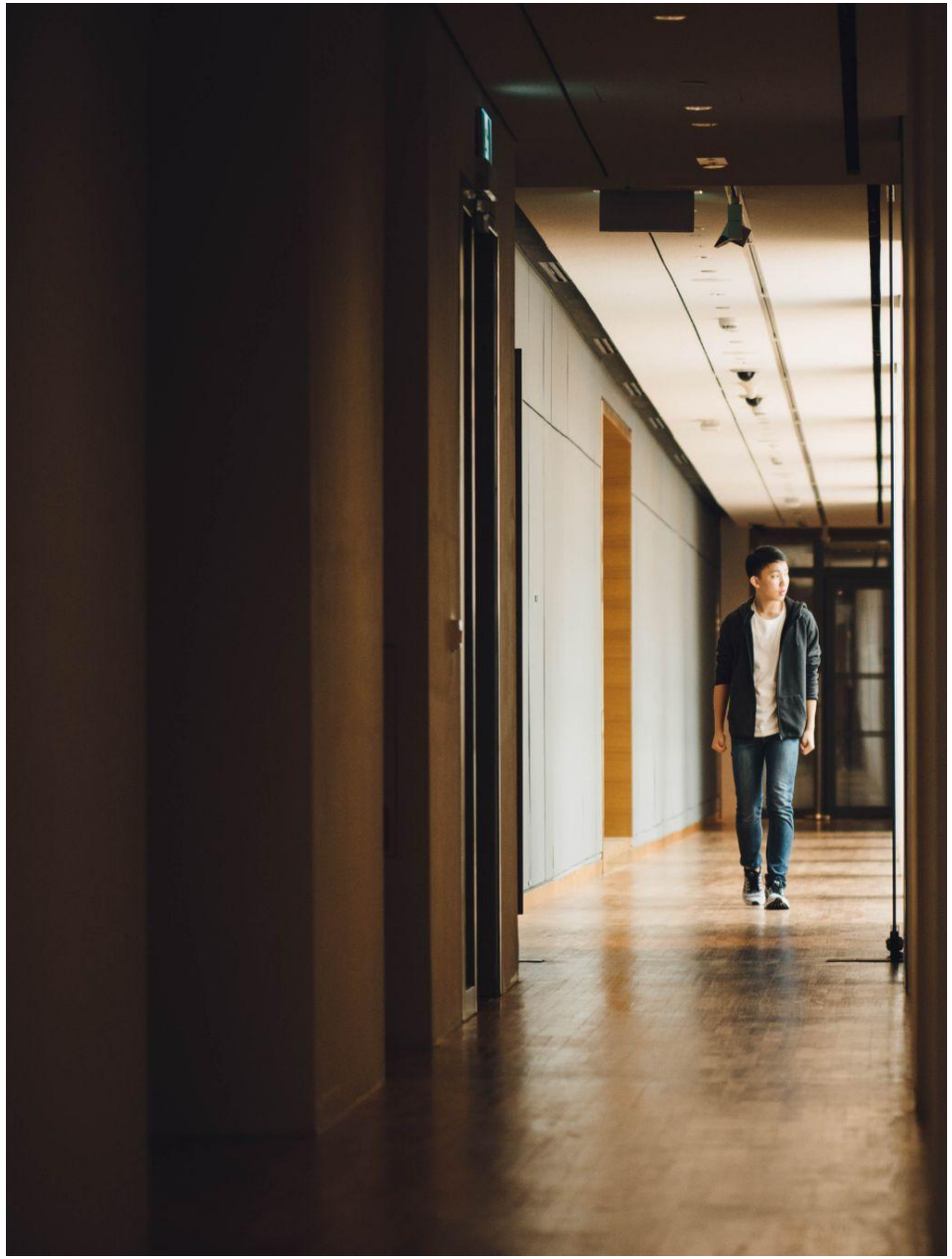
Who is involved?

- Title IX Coordinator, Complainant, Respondent, Advisors

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

At the time of filing a formal complaint, a complainant must be ***participating in or attempting to participate in*** the education program or activity of the recipient with which the formal complaint is filed.

34 CFR § 106.30(a)



“Education program or activity”

“… ‘education program or activity’ includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs…”

-34 CFR Part 106.44(a)

This doesn’t just include the school!

- Field trips
- Athletic games
- Buses and bus stops
- Fundraising events

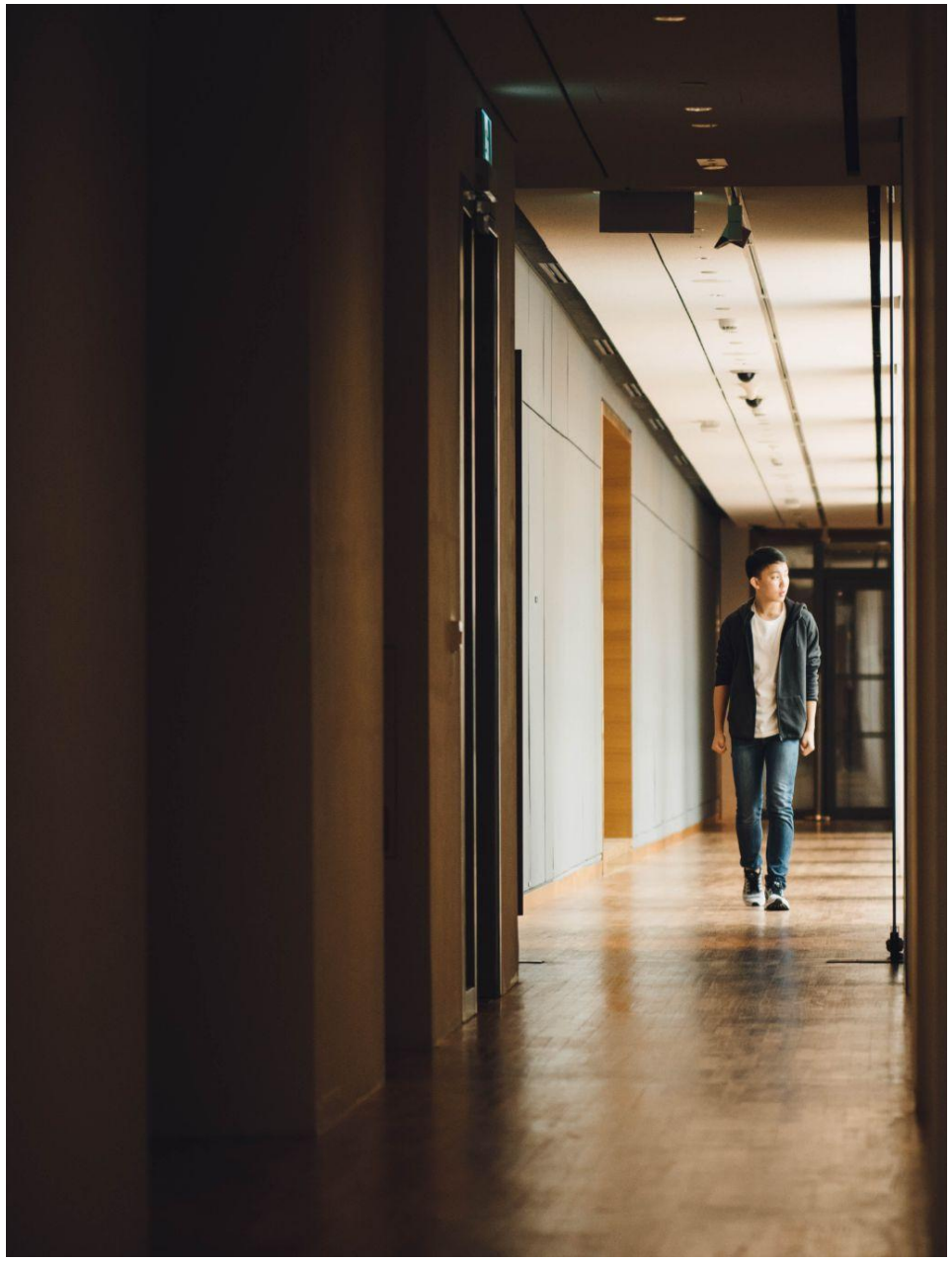
MUST dismiss under Title IX if:

- the conduct in the formal complaint does not constitute sexual harassment
- the conduct did not happen in the educational program or activity of the school
- the conduct did not happen in the United States

MAY dismiss under Title IX if:

- complainant asks to withdraw the complaint
- the respondent is no longer enrolled or employed by the recipient
- "specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

34 CFR § 106.45(b)(3)





2021 *Questions & Answers,* OCR

Question 24: If a complainant has not filed a formal complaint and is not participating in or attempting to participate in the school's education program or activity, may the school's Title IX Coordinator file a formal complaint?

Answer 24: Yes. A Title IX Coordinator may file a formal complaint even if the complainant is not associated with the school in any way.

In some cases, a school may be in violation of Title IX if the Title IX Coordinator does not do so. For example, the preamble explains that if a school "has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority," OCR may find the school to be deliberately indifferent (i.e., to have acted in a clearly unreasonable way) if the school's Title IX Coordinator does not sign a formal complaint, "even if the complainant . . . does not wish to file a formal complaint or participate in a grievance process."



Notice of Allegations

- Information about the grievance process, including any informal resolution processes if available
- Allegations including: identity of parties, conduct, date, location,
- Presumption of non-responsibility for respondent and that determination is made at the conclusion of the process
- Right to an advisor
- That they may inspect any submitted evidence that relates to the allegations
- Any prohibitions on submitting false information within the school's student code of conduct

Ongoing/amended notice must be provided if additional allegations are added to the initial report.

34 CFR Part 106.45(b)(2)

ORS 339.356 (2)(m) - Bullying/Harassment

A statement of the ***consequences and appropriate remedial action for a person found to have falsely accused another*** of having committed an act of harassment, intimidation or bullying or an act of cyberbullying as a means of reprisal or retaliation, as a means of harassment, intimidation or bullying or as a means of cyberbullying.

OAR 581-021-0038(5)(h) - Oregon Sexual Harassment

…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.



Informal Resolution

Can, but not required to, offer informal resolution process for any case EXCEPT employee-on-student sexual harassment.

- Formal complaint must be filed
- Notice of Allegations must be issued, which must include informal process information
- Both parties must submit written consent
- Identify and describe conditions under which parties can/cannot opt back into formal process, and must allow them to opt back into the formal grievance process prior to the parties agreeing upon a resolution.

34 CFR § 106.45(b)(9)

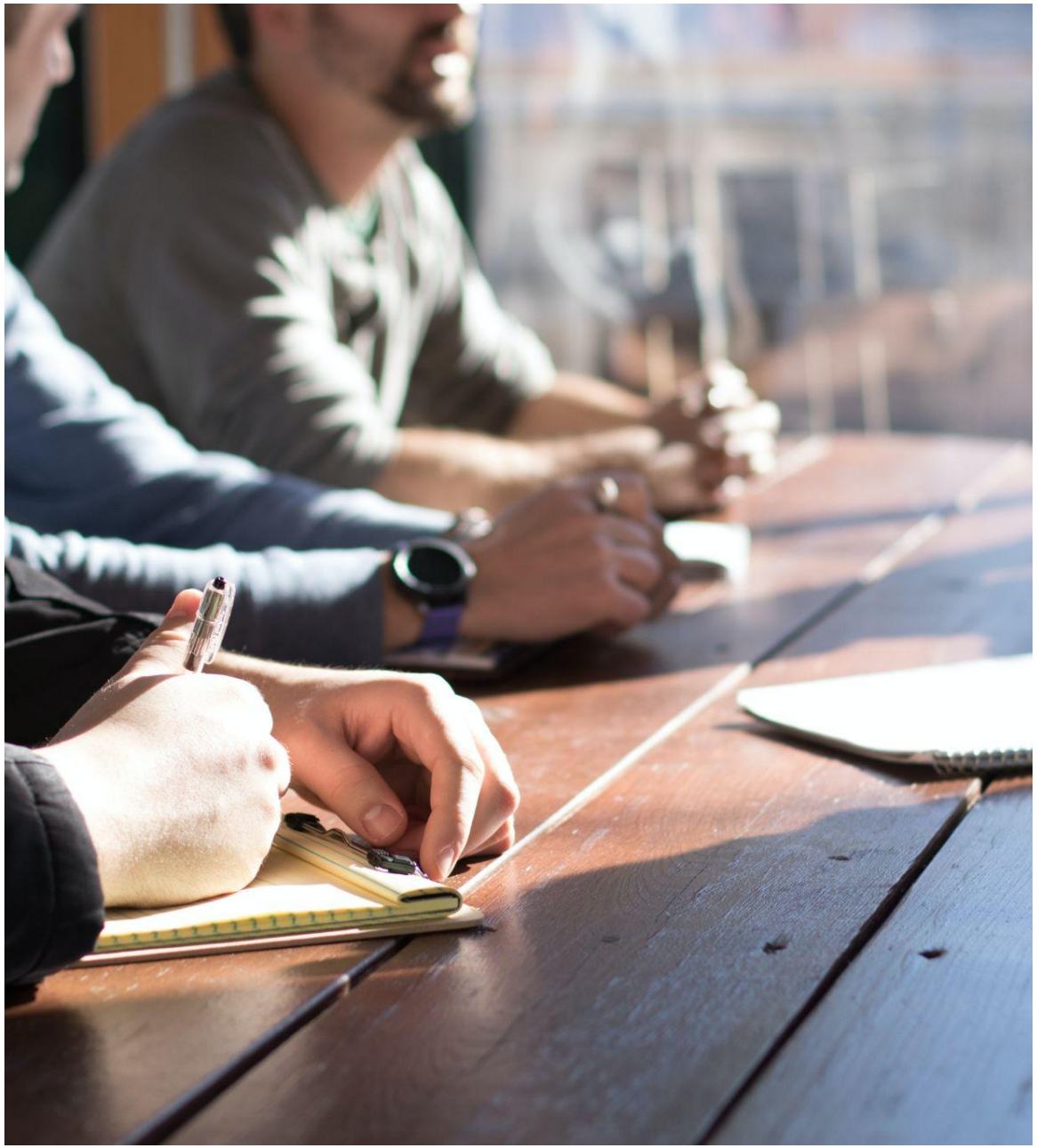
Advisors

Parties have a right to bring an advisor to any interviews, hearings, or meetings. Schools may not set limits on **who** can serve as an advisor.

Minor students may bring both an advisor AND a parent.

Schools can set limits on how advisors participate, as long as those limitations apply equally to all advisors.

34 CFR § 106.45(b)(2)(1)(B) and 106.45(b)(5)



3

Investigation

Investigating the allegations of sexual harassment under Title IX involves:

- Interviewing parties
- Gathering and reviewing evidence
- Writing and Issuing the **Investigation Report**

Who is involved?

- Investigator, Complainant, Respondent, Advisors, Witnesses, possibly the Title IX Coordinator

The burden of conducting the investigation must be on the school, not the complainant or respondent.

Parties must be provided an equal opportunity to present witnesses and evidence.

The complainant and respondent cannot be restricted from discussing the investigation, or from gathering and presenting witnesses and evidence.

34 CFR § 106.45(b)(5)



Conducting Interviews

Parties must be given written notice of the date, time, location, participants, and purpose of any interviews with sufficient time to prepare.

34 CFR § 106.45(b)(5)

Suggested tips:

- Prepare a standardized list of introductory (and closing) information/ground rules to go over at the beginning of every interview.
- Prepare for who will be in the room (advisors, parents, etc.)
- Gather any preliminary information you have access to
- Prepare a list of interview questions ahead of time (but be prepared to be flexible!)
- Take breaks as needed

Conducting Interviews

Using empathetic listening skills and trauma-informed practices can help create a positive, structured interview environment for every participant.

Tips for good questioning:

- Start broad, and work your way in (open-ended questions)
- Avoid closed-ended and blaming questions, or questions that try to “trap” a participant
- Provide context to your questions as necessary
- Use age-appropriate language and questioning - avoid overly legalistic language

Evidence

What kinds of evidence might you collect as part of an investigation?

- Emails
- Text message
- IT data records
- Video surveillance
- Police reports
- Social media posts
- Attendance records
- Course assignments
- Journal entries
- …all kinds of things!

Parties must be allowed to review any submitted evidence that directly relates to the allegations, even if the district does not intend to rely on it to make a determination of responsibility.

34 CFR § 106.45(b)(5)

Evidence

Privileged documents and communications may not be used in investigations without the express permission from the person who holds the privilege.

- Medical records
- Psychiatric records
- Advocacy records (ORS 40.264 – SADV advocates)
- Counseling records
- Legal records
- Any other privileged documents/communication

34 CFR § 106.45(b)(1)(x)

Investigation Timeline*

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

Day 3-6: Conduct interviews and collect evidence.

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

Day 17: Receive responses and finalize investigative report.

Day 18: Submit to parties and advisors; allow at least **10 days** to respond before determination of responsibility issued.

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



2020 *Preamble,* OCR

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

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

Temporary Delays

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

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

What else could cause a process delay?



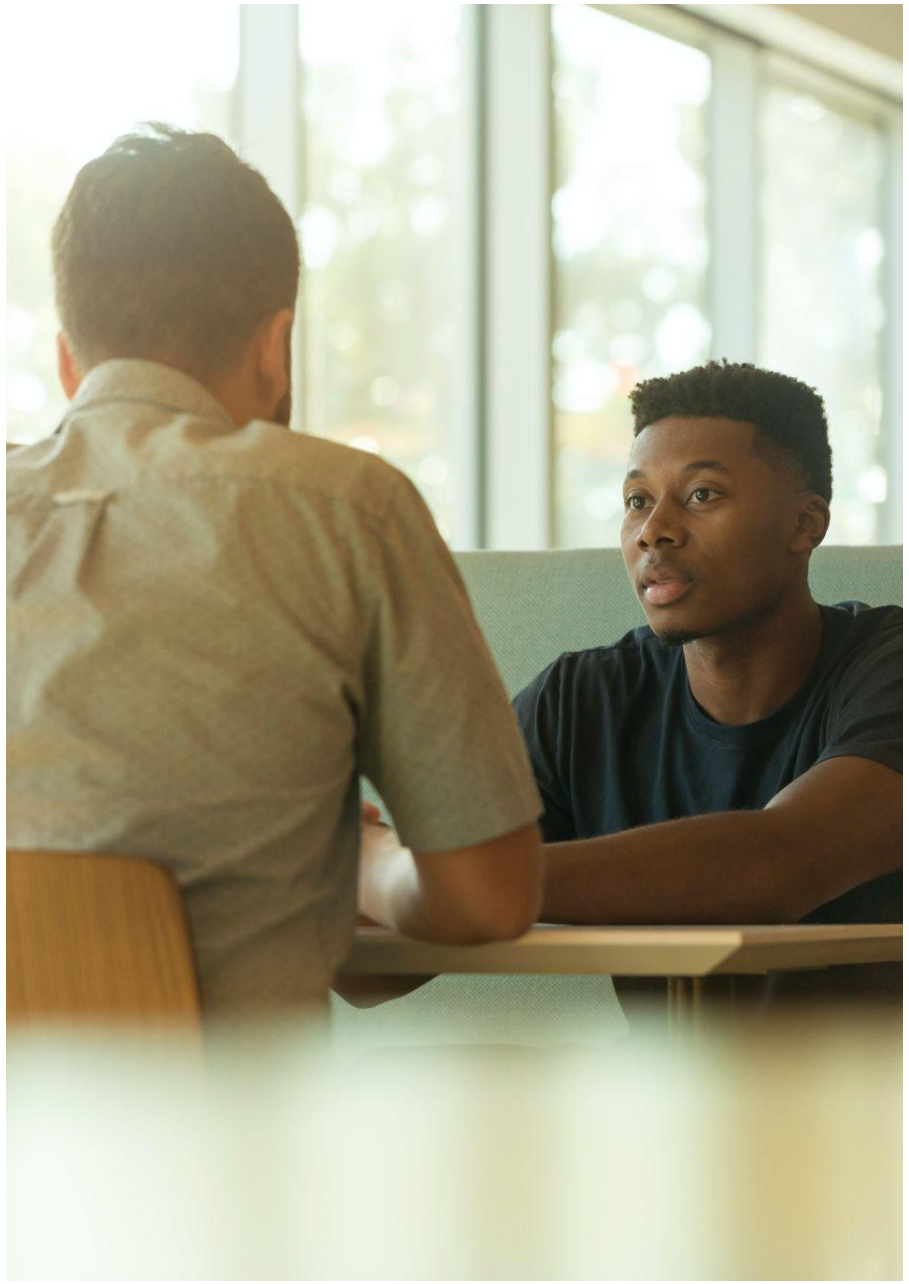
Investigation Report

The investigative report must “fairly summarize relevant evidence,” and must be sent to both parties and their advisors.

34 CFR Part 106.45(b)(5)

Best practice: create an investigative report template.

- Allegations and jurisdictional statement
- Timeline
- Summary of interviews
- Summary of supporting evidence
- Credibility assessment?
- Findings of fact



Tomorrow you are interviewing Jax. In their formal complaint, their statement said:

“This boy in my biology class won’t leave me alone. He texts and dms me all the time, even though I never respond and I’ve blocked him a couple times. We were put in the same group for a project, and last week we were all standing around after school in the parking lot dividing up the work. He said he missed some of the info and asked me to stay and explain it to him again, so I did even though it was awkward. Then he kissed me, and I had to push him off to get him to stop. I found out he told everyone that I was the one that kissed him and is spreading lies that I’ve been basically stalking him for months!”

What do you want to know from this interview? What evidence do you want?



Decision-Making

Investigating the allegations of sexual harassment under Title IX involves:

- Conducting the “modified cross-examination” process
- Independently reviewing the investigation report and evidence
- Determining responsibility and sanctions
- Writing and issuing the **Determination of Responsibility**

Who is involved?

- Decision-Maker(s), Complainant, Respondent, possibly Witnesses,

“Modified Cross-Examination”

Parties may submit written questions that are asked of the other party or witnesses. The written answers are submitted to that party, with limited follow up.

- Can be conducted during the 10-day review time

Exclude questions that:

- Are not related to the allegations
- Seek privileged information
- Are related to the complainant’s sexual predisposition or unrelated sexual behavior, unless it goes to prove consent or to “prove that someone other than the respondent committed the behavior”

34 CFR § 106.45(b)(6)



Exclude or allow?

Xavier has been accused of sexually assaulting Elliot on an overnight trip for an athletic away game. Xavier submits the following questions:

- Do you remember that three weeks before the trip, didn't you tell me you were gay and would be willing to hook up with anyone on the team?
- When we hooked up the night before the tournament, didn't you tell me you would bring a condom on the trip and leave it on the bathroom counter if you felt like hooking up?
- Didn't you tell your counselor that you were excited we had hooked up on the trip?

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

Specific Cross-Disciplinary Prohibitions

Drug and Alcohol Policies

…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)

Covid-19 Policies

Question 61: May a school discipline a complainant, respondent, or witness for violating the school's COVID-19 or other policy during a reported incident of sexual harassment?

Answer 61: No, unless the school has a policy that always imposes the same punishment for violating the COVID-19 or other policy regardless of the circumstances….

OCR; Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)

Sample Decision-Making Timeline

Day 1: Final investigative report sent to parties and advisors.* Parties are informed of their right to submit written questions; questions are due on Day 4.

Day 4: Decision-Maker screens the questions. Appropriate questions are forwarded; responses are due by Day 6.

Day 6: Answers are received by decision-maker, and shared with parties. Parties are informed of their right to ask follow-up questions (only those that pertain to clarifying or further elaborating on answers given); those questions are due on Day 8.

Day 8: Decision-maker screens follow-up questions. Appropriate questions are forwarded; responses are due by Day 10.

Day 10: Answers received, and shared with parties. Responses to investigative report received.*

Day 12: Determination of responsibility issued.

*The regulations require that parties and advisors have 10 days to view the investigative report and submit a response.



Determination of Responsibility

The written determination of responsibility should be sent simultaneously to both parties, and must include:

- The allegations
- Procedural steps from formal complaint through determination (including notifications, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held)
- Findings of fact
- Conclusions applying the findings to school/district policies
- Results of each allegation and rationale (responsible or not responsible)
- Sanctions provided and if remedies provided, as applicable
- Appeal bases and procedures

34 CFR § 106.45(b)(7)

Report-Writing Skills

- Reports should be neutral (e.g., “stated” versus “claimed”)
  - avoid use of unnecessary adjectives
  - avoid using the language of consensual sex to imply consent (caressed, performed)
- Make your language accessible
  - avoid overly legalistic language
- De-identify (use “Complainant, Respondent, Witness 1” instead of names)
- Use quotes when possible
  - Avoid sanitizing language from quotes
- Define terms for readers

5

Appeals

Investigating the allegations of sexual harassment under Title IX involves:

- Facilitating the appeals and response process.
- Independently reviewing the investigation, determination, and any newly submitted statement and evidence
- Writing and issuing the **Appeal Determination**

Who is involved?

- Appeals Decision-Maker(s), Complainant, Respondent, possibly Witnesses

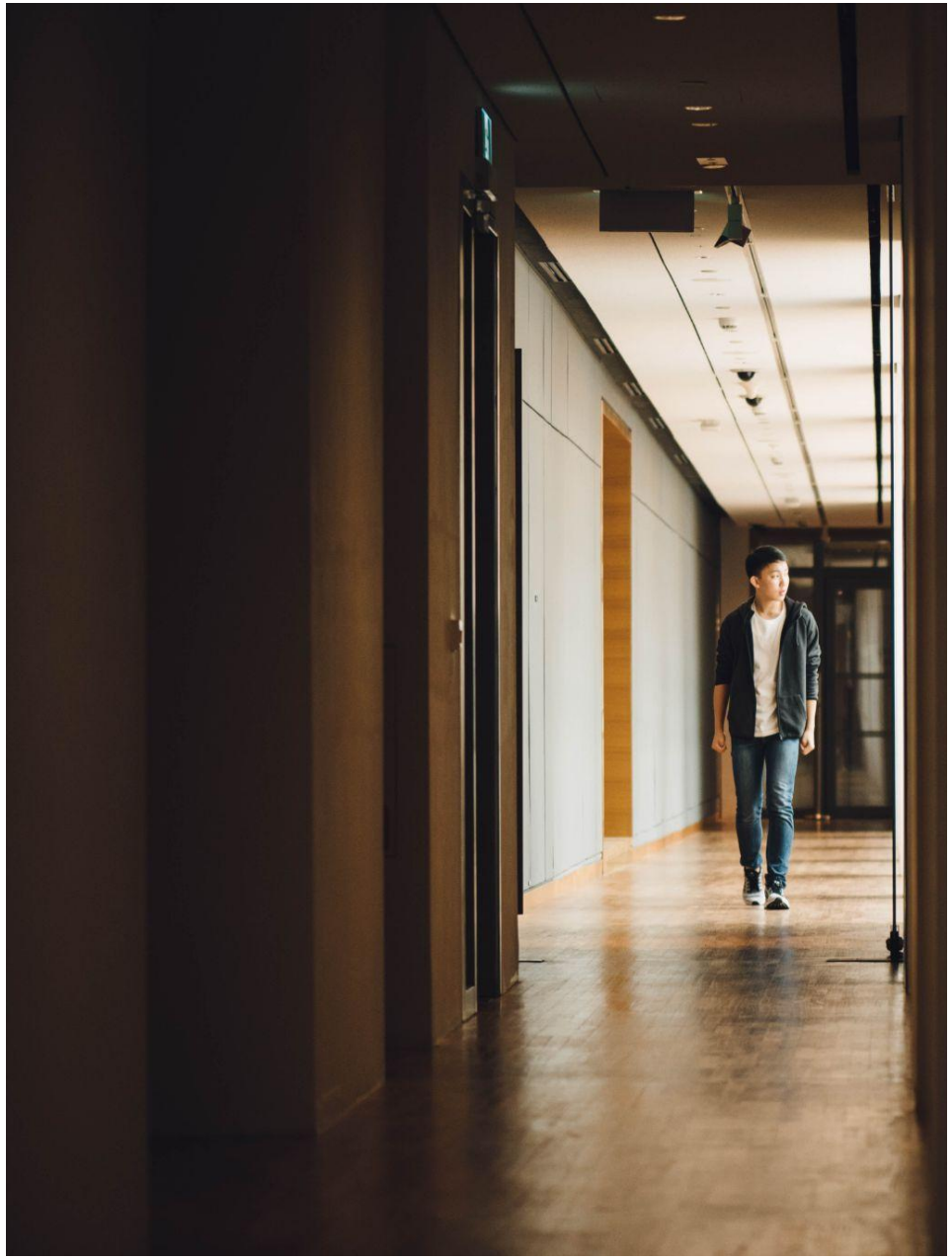
Parties must be allowed to appeal on **at least three grounds**:

- Procedural irregularity
- Newly discovered or newly available evidence
- Bias or conflict of interest from Title IX Coordinator, investigator, or decision-maker

Schools may designate other grounds and set time limits on appeals in their policies.

Appeals are **one level**.

34 CFR § 106.45(b)(8)



Appeal Process

Parties should be notified in writing when an appeal is submitted.

Parties should be given a reasonable, equal opportunity to provide a written response to any appeal.

The appeals decision-maker must be a different person from the investigator and the decision-maker.

34 CFR § 106.45(b)(8)



Appeal Determination

Must issue a written determination that describes:

- the results of the appeal
- the rationale of the appeal

The written determination must be issues simultaneously to both parties.

34 CFR § 106.45(b)(7)

6

Sanctions and Remedies

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

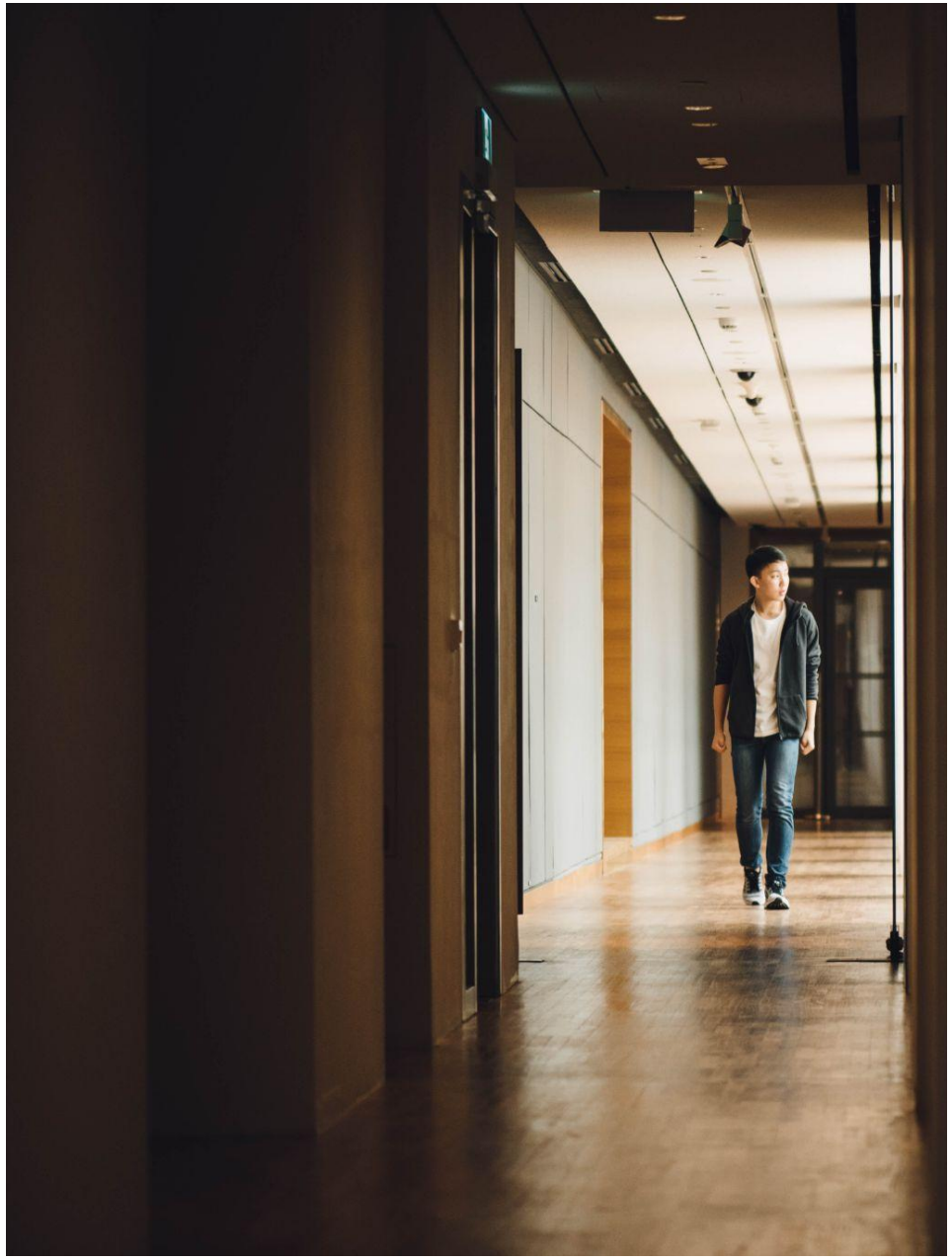
- **Sanctions** are disciplinary or other measures imposed on on a respondent found responsible.
- **Remedies** are measures designed to restore educational access for the complainant and remedy any harm caused.

Who is involved?

- Title IX Coordinator, Complainant, Respondent, others

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





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

Follow-Up

Title IX Coordinator should ensure that all sanctions, remedies, and supportive measures are implemented appropriately as required.

- Who needs to be involved to successfully each sanction/remedy?
- Who needs to be informed to successfully prevent retaliation or further harm?

Periodic check-ins with parties may be needed:

- Are sanctions/remedies having their intended effects?
- Have any additional issues arisen? Are additional supportive measures needed?

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

Who is involved?

- Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker

Recordkeeping

Records must be kept of:

- each record of actual notice and response (including supportive measures), and why that response was not deliberately indifferent
- each investigation, including the results and any sanctions or appeals
- each appeal
- each informal resolution
- all materials used to train Title IX personnel

Records must be maintained for a minimum of seven years.

34 CFR § 106.45(b)(10)

Wrapping Up

- Safely store or destroy lose information related to the case (ex - information from lose notes should be transferred to records, then destroyed)
- Ensure secure storage of all records.
- Debrief with team:
  - What went well? What didn't go well?
  - What was unexpected?
  - What do we need to know for next time?



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