



# Title IX Coordinator Training

Southern Oregon ESD  
August 16, 2024

ODE Civil Rights Staff  
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Download today's  
materials



**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

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- Title IX 101
- The Current Title IX Landscape
- Title IX Coordinator Designation and Supporting Roles
- Required Policies, Procedures, and Notices
- Specific Responsibilities
  - Pregnancy and Related Conditions
  - Gender Identity and De Minimis Harm
  - Responding to Sex Discrimination
  - Monitoring and Addressing Barriers
- Recordkeeping

This training is designed to fulfill the training requirements under 34 CFR § 106.8(d)(4) *Title IX Coordinators and Designees*, when combined with ODE's Title IX Investigations and Responses.

# Title IX 2024 Action Plan

Create a copy for your school or district; we'll be using this throughout the training today!

Fillable PDF



Google doc



## 2024 Title IX Regulations: Action Plan

|                      |  |
|----------------------|--|
| School/District      |  |
| Person(s) Completing |  |
| Date Completed       |  |

### Title IX Personnel

Personnel may be listed by individual name or role (e.g., Principals, Contract Investigator Firm, etc)

|                                                                                                            |                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| Title IX Coordinator:                                                                                      |                                                                                                                                                 |
|                                                                                                            | Designee/Deputy Title IX Coordinators                                                                                                           |
| Name:                                                                                                      | Specific Role/Responsibilities:                                                                                                                 |
|                                                                                                            |                                                                                                                                                 |
|                                                                                                            |                                                                                                                                                 |
| Supportive Measures Personnel                                                                              |                                                                                                                                                 |
| Supportive Measures Authorities<br>(Authority to design, modify, deny or terminate measures)               | Supportive Measures Appeals Decisionmakers<br>(An individual appeals decisionmaker cannot be the same person as SMA who made original decision) |
|                                                                                                            |                                                                                                                                                 |
| <input type="checkbox"/> Check this box if you plan on utilizing an informal process                       |                                                                                                                                                 |
| Describe your informal process options:                                                                    |                                                                                                                                                 |
| Informal Process Facilitators<br>(Cannot be the same person as investigator or decisionmaker in that case) |                                                                                                                                                 |

This is a sample resource prepared by the Oregon Department of Education for Oregon K-12 schools in alignment with the 2024 Title IX regulations, 34 CFR Part 106. This document is not legal advice and should not be taken as such. You may wish to consult with legal counsel. Contact [ode.civilrights@ode.oregon.gov](mailto:ode.civilrights@ode.oregon.gov) for more information.

# Norms and Expectations

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## Participants

Ask relevant questions as they arise

Remain engaged

Be open to learning

Break as needed

## Presenter

Keep us on task and going at a peppy pace!

Answer questions as they arise

Provide a copy of the slides

Schedule technical assistance for individualized questions

## **Content Note:**

**This training discusses protected class discrimination.**

**Explicit and discriminatory language is occasionally used. All examples are solely for educational purposes and are designed to contain elements of situations you may respond to in your school/district.**



# Title IX 101

# Title IX: Sex, Sexual Orientation, Gender Identity

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1972 civil rights law that prohibits sex discrimination in federally funded education programs.

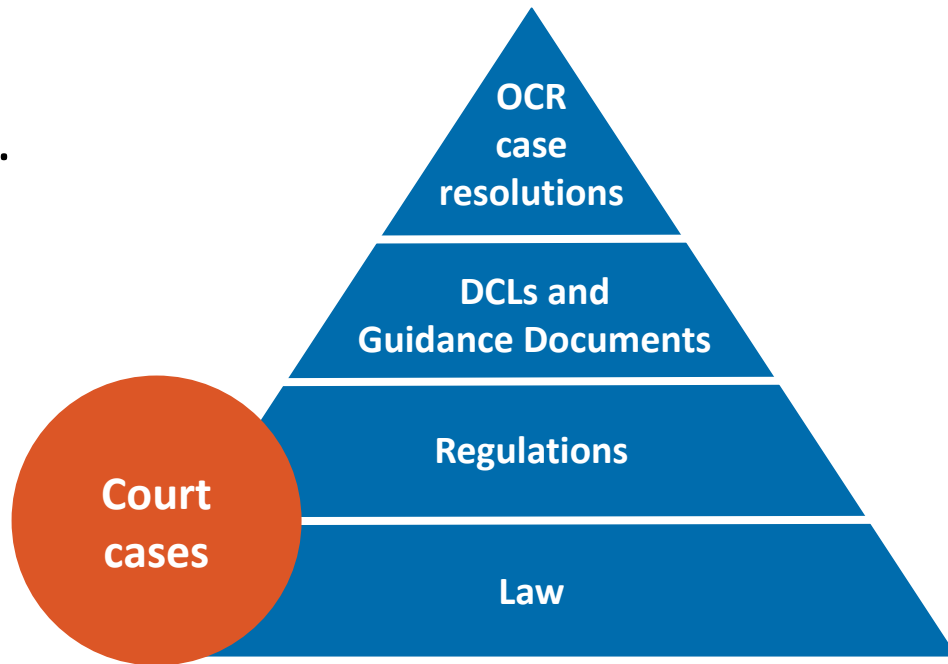
This includes discrimination based on **sex, sexual orientation,** and **gender identity**.

*“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.”*

# Title IX is an evolving and living law!

Over the past 50 years, Title IX has evolved and expanded.

The Office of Civil Rights, Congress, and the Courts have all impacted how Title IX is implemented and enforced through:



# Core Resources

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[eCFR.gov, 34 CFR § 106](#) - searchable, readable text of the Title IX regulations

OCR's [Reading Room](#) and [Policy Guidance Portal](#)

OCR's [Case Resolution Database](#)

## 2024 Final Rule

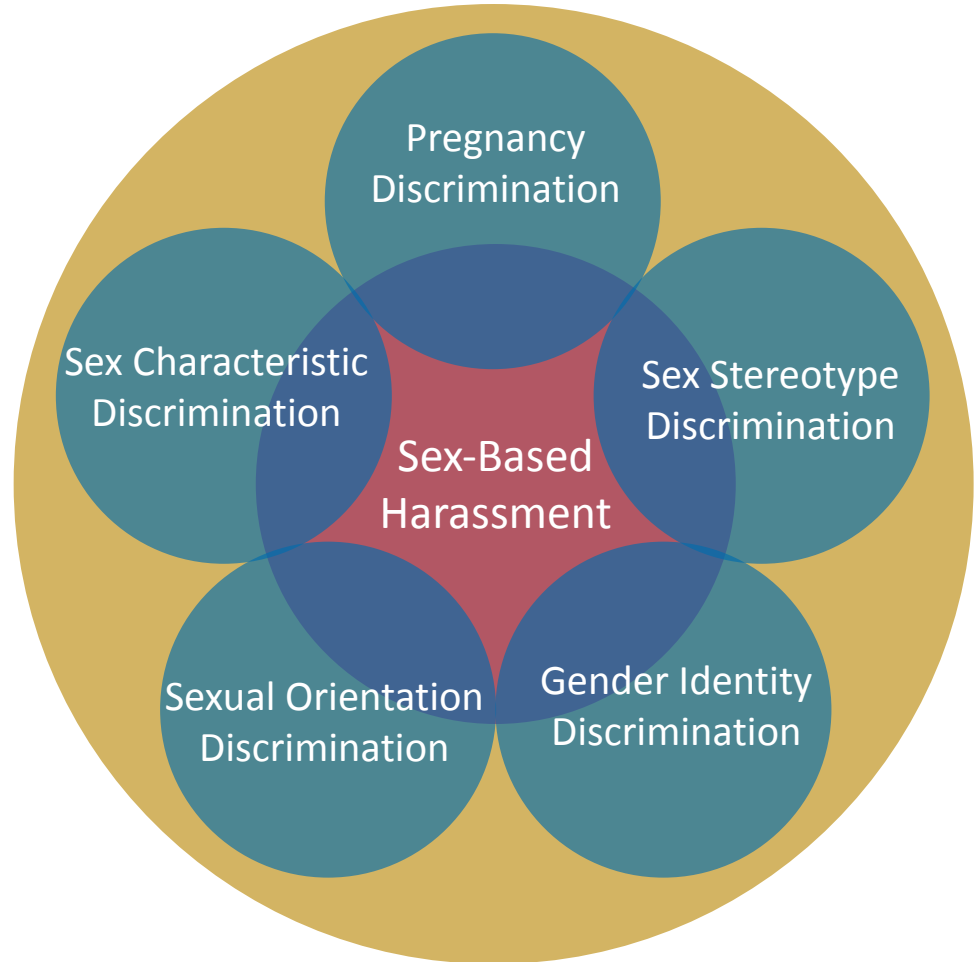
- [Unofficial Copy \(double-spaced, 1500 pages\)](#)
- [Federal Register](#)
- [SUMMARY CHART: Brief Overview of Key Provisions of the Department of Education's 2024 Title IX Final Rule](#)
- [Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures](#)
- [Pointers for Implementation](#)

# Sex Discrimination

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*...“conduct that could constitute sex discrimination” includes both a recipient’s actions and its inaction in derogation of its Title IX obligations.*

-Final Rule (unofficial copy), pg. 34



# Specific Focus Areas of Title IX

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## **Athletics**

Schools have to provide equal opportunities for boys and girls teams, as well as equal benefits (facilities, equipment, travel, etc)

## **Pregnant and Parenting Students**

Access to all programs, supportive accommodations, and medical leave

## **Sex-Based Harassment**

Sex-based harassment, including sexual harassment, requires a school response

## **Sexual Orientation and Gender Identity (SOGI) Discrimination**

SOGI discrimination is a form of sex discrimination covered by Title IX, and should be treated as such.

## **Single-Sex (or Sex-Segregated) Programs and Activities**

Single-sex programs, or separate programs by sex/gender, are only allowed in specific, limited circumstances.

# Athletics: Benefits and Opportunities

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## The “Three-Part Test”

Schools have to provide equal opportunities for students to participate in athletics.

- Opportunities = spots on competitive athletic teams
- Schools are not required to have an equal number of spots; parts two and three offer options focusing on opportunities and support for the underrepresented sex

## The “Laundry List”

Schools have to provide equal benefits for girls and boys sports teams.

- Benefits = facilities, equipment and supplies, coaching, travel, medical support, media support, etc.
- Benefits are compared overall (total program comparison), not sport-to-sport.
- ALL sources of benefits count!

**TIP: Work collaboratively with your Athletic Director(s)**

# Pregnant and Parenting Students

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Title IX has covered pregnancy and related conditions since its inception. Schools are required to provide specific supports and cannot take specific potentially adverse actions. See for example:

[Supporting the Academic Success of Pregnant and Parenting Students](#), 2013

The 2024 Title IX regulations put many of these requirements into regulation, and added a few additional requirements.

**We'll discuss more today!**

# Sex-Based Harassment: 2020 Regs vs. 2024 Regs

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## **2020 Definition**

Sexual harassment is conduct on the basis on sex that occurs within the educational programs and activities of the school:

- quid pro quo harassment (employee respondent)
- unwelcome conduct: severe, pervasive, objectively offensive, denies equal access
- sexual assault, dating violence, domestic violence, stalking

34 CFR 106.30(a), 2020

The 2024 regulations updated the definition of sex-based harassment to include all harassment on the basis of sex.

**The Investigations and Responses Training discusses this update in-depth.**

# SOGI Discrimination

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OCR's stance on sexual orientation and gender identity, and how it fits under Title IX has evolved many times over the last decade.

- In 2021, OCR issued a Notice of Interpretation stating that sexual orientation and gender identity fell under the umbrella of sex discrimination.
- In 2024, OCR included sexual orientation and gender identity in their new regulations, effective August 1.
- These specific provisions have been the subject of a number of lawsuits and injunctions over the summer.

Oregon law (ORS 659.850) also prohibits SOGI discrimination in education.

**We'll discuss more today and in the Investigations and Responses training!**

# Single-Sex Programs

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There are only two ways a school can offer a single-sex or sex-separated educational program (which includes classes, clubs, field trips, etc.):

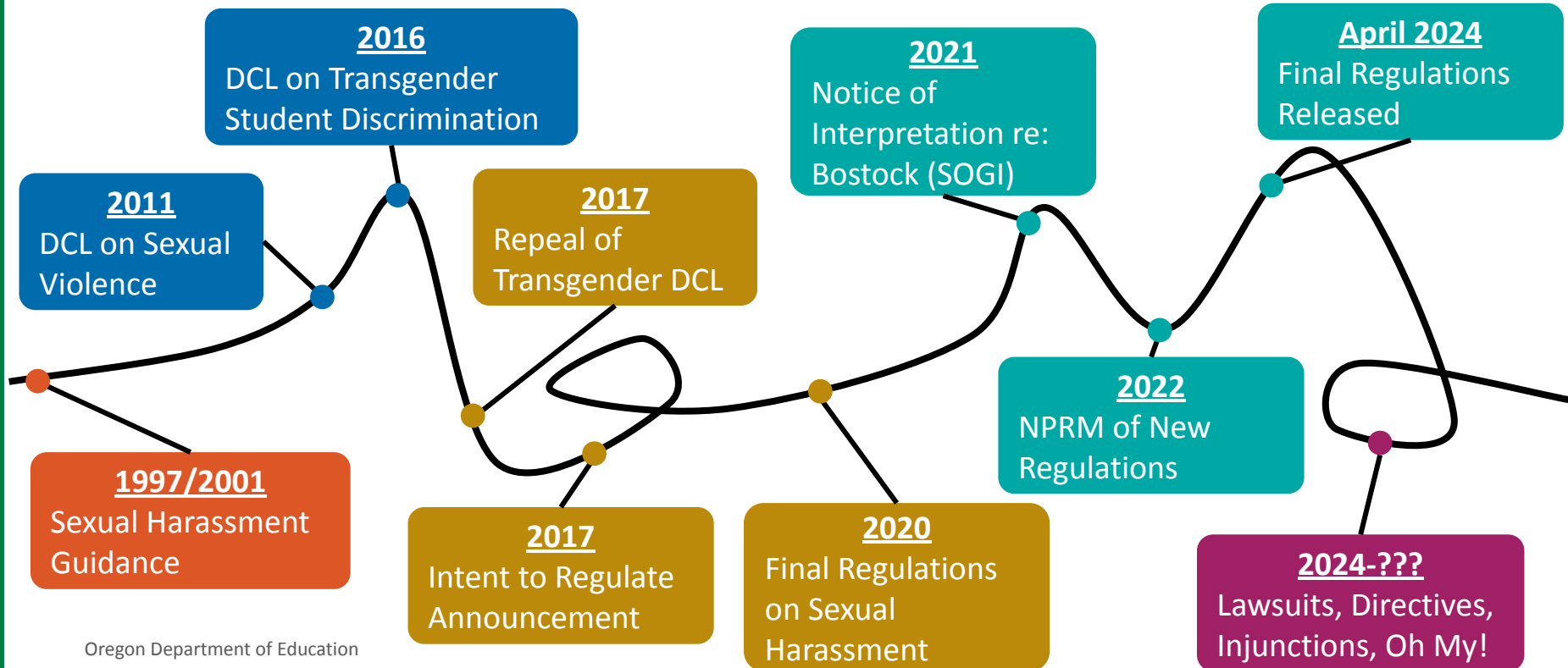
- If it is [specifically allowable in regulation](#) (contact sports, instruction on human sexuality, choruses, etc.); or
- If it meets specific requirements outlined in 34 CFR 106.34(b):
  - based on an important educational objective that is implemented evenhandedly
  - enrollment is voluntary
  -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

Educational programs or activities run by external partners are also subject to these requirements. See: [Dear Colleague Letter on Voluntary Youth Service Organizations](#)



# Current Title IX Landscape

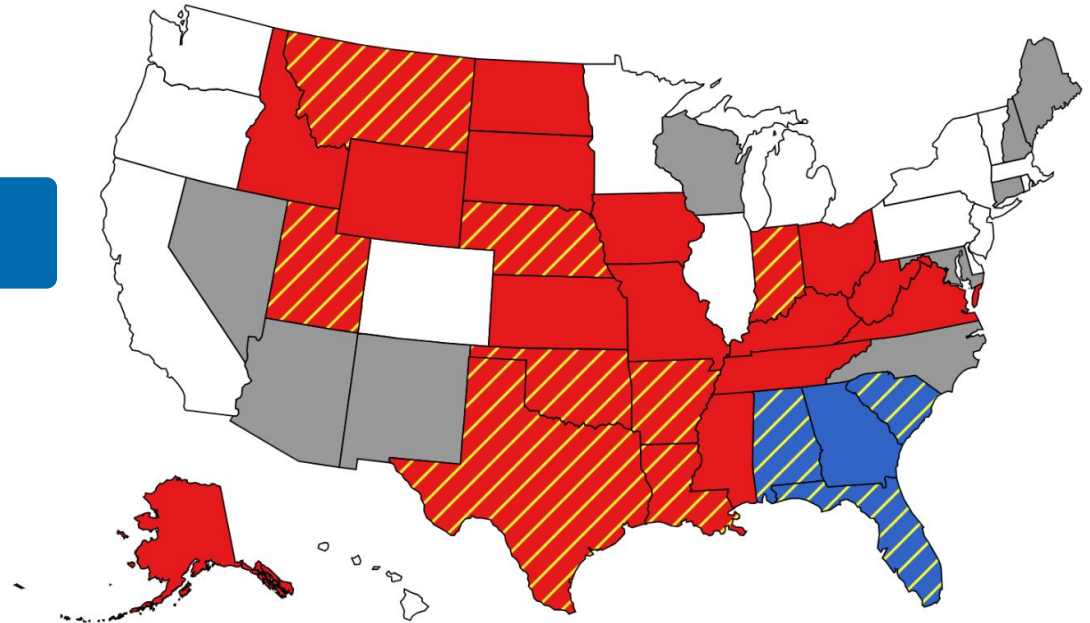
# The Rollercoaster of Title IX!



# Injunctions and Legal Updates (as of 8/8/24)

■ No Action ■ Amicus Brief ■ Complete Injunction ■ Do Not Implement (DNI) Directive  
■ Current or Pending Litigation ■ Litigation & DNI ■ Injunction and DNI

## ATIXA's Injunctions Tracker



# Injunctions Affecting Oregon

A federal district court in Kansas has approved a preliminary injunction naming specific schools nationwide, where members of specific organizations, or their minor children, are enrolled. The following Oregon K-12 districts have at least one school named in the injunction:

Adrian  
Forest Grove  
Grants Pass  
Hillsboro  
La Grande

Port Orford Langlois  
PPS  
Roseburg  
Salem-Keizer  
Winston Dillard

**July 15 list and July 29 list**

“nothing in [its] order limits the ability of any school to adopt or follow its own policies, or otherwise comply with applicable state or local laws or rules regarding the subjects addressed herein. Rather, it simply prohibits [the Department] from demanding compliance with the [2024 regulations] by the schools affected by this order, or imposing any consequences for such schools' failure to comply with the [2024 regulations].” - [Holland and Knight](#)

# K-12 vs. Higher Ed

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Some elements of the new regulations apply broadly, while some only apply to K-12 (elementary and secondary education) and others only apply to higher ed (postsecondary education).

**Example:** § 106.46 contains requirements for grievance procedures that apply only to postsecondary institutions in cases of sex-based harassment.

Don't get hung up on the difference!

# Oregon's Context

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The logo consists of a purple silhouette of the state of Oregon. Inside the silhouette, the words "OREGON" and "OVERLAP" are written in white, stacked vertically.

OREGON  
OVERLAP

Oregon has our own strong nondiscrimination and civil rights laws that will apply, unless specifically preempted by Title IX. These include:

- ORS 659.850, [OAR 581-021-0045](#), and [581-021-0046](#) prohibit schools from discriminating against students based on protected classes.
- [OAR 581-021-0655](#) and [581-021-0660](#) requires schools to designate a Civil Rights Coordinator to oversee compliance with state discrimination law.
- [Oregon Sexual Harassment Law](#) defines sexual harassment, a form of sex discrimination, for Oregon K-12 schools
- [The CROWN Act](#) modified Oregon nondiscrimination law to include protected hairstyles.
- [Every Student Belongs](#) prohibits symbols of hate and requires schools to respond to bias incidents.
- [ORS 338.351-654 Harassment, Bullying, and Intimidation](#) requires policies that prohibit harassment, including based on protected classes.



# Title IX Coordinator: Designation and Supporting Roles

# Title IX Coordinator Designation

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(1) **Title IX Coordinator.** Each recipient must designate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX and this part. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part.

(2) **Delegation to designees.** As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.

34 CFR § 106.8(a)

# Designees

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If more than one Title IX Coordinator, one must retain ultimate oversight

- Does not necessarily have to be a supervisory relationship
- Some responsibilities may be contracted out

OCR maintains that decisions should be made on a case-by-case basis, given the unique environment and factors of the recipient themselves (see preamble, p. 252).

**Keep in mind that all designees must also be trained!**

# Civil Rights Coordinators

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ORS 332.505 requires districts and charter schools to designate one or more Civil Rights Coordinators. Core responsibilities:

- Monitor, coordinate and oversee school district compliance with state and federal laws prohibiting discrimination in public education
- Oversee investigations of complaints alleging discrimination in public education and ensure that the investigations are resolved
- 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

**CRC Duties & Training Rules**

# Confidential Employees

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## Who can be a confidential employee?

- Person whose communications are privileged under state or federal law
- Person who is designated as confidential by the school district

Confidential designation applies only for the purposes of Title IX; Title IX confidential employees are not alleviated of other reporting responsibilities.

## Obligations

**Schools must:** notify participants who the confidential employees are.

**Confidential employees must:** inform people who disclose to them of:

- their confidential status
- how to contact the Title IX Coordinator and make a complaint
- the availability of supportive measures and informal resolution options

§ 106.2 and 106.44

## **Title IX Coordinator**

At least one central designated authority. May have more than one, and may assign some duties to designees. Title IX Coordinators may also serve in one or more of the roles described below.

### Response Personnel:

#### **Supportive Measures Authority (SMA)**

Individuals with the authority to assign, modify, deny or terminate supportive measures, or otherwise have authority over supportive measures. Does not include all individuals who assist with supportive measure implementation.

#### **Supportive Measures Appeals**

##### **Decisionmaker**

Hears appeals of decisions to provide, deny, modify, or terminate supportive measures. *Must be a different person than the SMA who made the initial decision.*

#### **Complaint Dismissal Appeals Decisionmaker**

Hears appeals of complaint dismissals. *Cannot have taken part in investigation of the allegations or the decision to dismiss the complaint.*

## **Title IX Coordinator**

At least one central designated authority. May have more than one, and may assign some duties to designees. Title IX Coordinators may also serve in one or more of the roles described below.

### Response Personnel:

#### **Complaint Investigator**

Individual who investigates a complaint of sex discrimination. *May be the same person as the decisionmaker.*

#### **Complaint Decisionmaker**

Individual who makes a determination about whether sex discrimination occurred. *May be the same person as the investigator.*

#### **Informal Process Facilitator**

Individual trained to facilitate the school's optional informal process. *Cannot be the same person as the investigator or decisionmaker in the grievance process.*

#### **Complaint Appeals Decisionmaker**

Appeals processes must be the same as those in the school/district's similar processes (i.e., discrimination processes). *Any prohibitions on personnel in those processes would apply here.*

# Personnel Designations, cont.

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**You don't have to designate an separate individual for every single one of these roles (though you can)!**

Examples:

- The Title IX Coordinator may also act as complaint investigator and decisionmaker, **OR** may serve as an appeals body for any of the necessary appeals steps; **AND/OR**
- The same person may hear appeals for supportive measures, complaint dismissals, and grievance procedures; **AND/OR**
- Investigators, decisionmakers, and informal process facilitators can serve as SMAs

*Always check any overlapping prohibitions before assigning roles/duties.*

# Staff Training Requirements

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## ALL Employees

- School's obligation to address sex discrimination
- What is sex discrimination (scope of conduct, including sex-based harassment)
- Staff requirements when responding to notification of student pregnancy or notification of sex discrimination

## Investigators, Decisionmakers, Individuals with Supportive Measure Modification Authority

- Training required of all employees AND
- Requirements upon receiving notice (§ 106.44)
- Grievance procedures (§ 106.45)
- Avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Meaning and application of relevant in relation to grievance process

# Staff Training Requirements, cont.

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## Informal Resolution Process Facilitators

- Training required of all employees AND
- Requirements of informal processes under Title IX (§ 106.44(k))
- Rules and practices of the recipient's informal resolution processes
- Avoiding prejudice of the facts at issue, conflicts of interest, and bias

## Title IX Coordinators and Designees

- Training required of all employees, investigators/decisionmakers/SMAs, informal resolution facilitators AND
- Any other training necessary to fulfill their required duties
- Responding to pregnancy and related conditions (§ 106.40(b)(3))
- Responding to notice of sex discrimination (§ 106.44(f) and (g))
- Recordkeeping systems (§ 106.8(f))

# Activity:

## Identify Personnel

Fillable PDF:



Google doc:



Oregon Department of Education

## In Your Title IX Action Plan...

Take 4 minutes to identify your Title IX personnel who will be coordinating supportive measures, conducting investigations, hearing appeals, etc in the **BLUE** section, and your staff training plan in the **GREEN** section.

### Title IX Personnel

*Personnel may listed by individual name or role (e.g., Principals, Contract Investigator Firm, etc)*

|                                       |                                 |
|---------------------------------------|---------------------------------|
| Title IX Coordinator:                 |                                 |
| Designee/Deputy Title IX Coordinators |                                 |
| Name:                                 | Specific Role/Responsibilities: |
|                                       |                                 |

### Staff Training Plan

| Personnel Designation                           | Training Plan<br><i>(methods, providers, dates if applicable)</i> |
|-------------------------------------------------|-------------------------------------------------------------------|
| All Staff<br><a href="#">34 CFR 106.8(d)(1)</a> |                                                                   |

04:00



# Required Policies, Procedures, and Notices

# Notice of Nondiscrimination

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Must contain specific items:

- A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates
- A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both
- The name or title, office address, email address, and telephone number of the Title IX Coordinator
- How to locate the recipient's nondiscrimination policy and grievance procedures
- How to report information about conduct that may constitute sex discrimination and how to make a complaint of sex discrimination

Must be posted on “website and in each handbook, catalog, announcement, bulletin, and application form.”

34 CFR § 106.8(c)

May provide a shortened version of the notice in some locations, with a link to the full notice online.

# Oregon Notice of Nondiscrimination

The logo is a purple silhouette of the state of Oregon. Inside the silhouette, the words "OREGON" and "OVERLAP" are written in white, stacked vertically.

OREGON  
OVERLAP

[OAR 581-021-0045](#) requires a notice of nondiscrimination:

- (i) A [statement of nondiscrimination](#) that specifies the basis for nondiscrimination being age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, and gender identity;
- (ii) The [contact information of each civil rights coordinator](#) designated pursuant to OAR 581-021-0655 and each coordinator designated pursuant to Title IX of Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990, including their name or title, work address, email address, and telephone number; and
- (iii) A [link to or the web address for the district's discrimination complaint process](#) and procedures.

Must be:

- Continuously available on the district website by a direct link on the front page or by a direct link on the footer of every page of the website
- Available in the languages of the community and accessible
- Disseminated annually

# Policies and Procedures

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## **Nondiscrimination Policy**

“Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates...”

## **Grievance Procedures**

Must adopt, publish, and implement procedures that comply with the requirements of § 106.45.

- Must include reasonably prompt time frames for major states of the process (ex: evaluation, investigation, determination, appeal, etc.)

34 CFR § 106.8(b)

# Activity:

## Notices and Policies

### Fillable PDF:



### Google doc:



Oregon Department of Education

## In Your Title IX Action Plan...

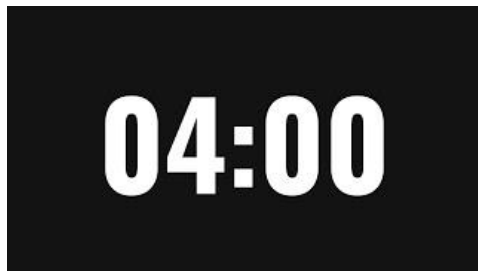
Find your notice, policy, and procedures on your website, and fill out the **YELLOW** section.

### Policies and Notices

| Item                                                        | Location (web link) |
|-------------------------------------------------------------|---------------------|
| Notice of Nondiscrimination <a href="#">34 CFR 106.8(c)</a> |                     |
| Policy <a href="#">34 CFR 106.8(b)(1)</a>                   |                     |

## If you have time...

Use the Notice of Nondiscrimination Checklist to check if your notice is compliant with the new Title IX regulations and Oregon's requirements.





# Specific Responsibilities: Pregnancy and Related Conditions

# Student Pregnancy Prior to 2024 Regs

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Pregnancy has been protected by Title IX since its inception. Prior guidance included:

- Regulatory Requirements
- [Supporting the Academic Success of Pregnant and Parenting Students](#), 2013

## Many requirements stay the same:

- Must provide reasonable modifications (example modifications are listed)
- Access to separate/modified educational settings on voluntary basis only
- Must allow leave of absence
- Medical certification allowed in limited comparable circumstances

## Some NEW requirements:

- All employees must provide Title IX contact info to pregnant students
- Once Title IX Coordinator is notified, obligation to provide notice of recipient's obligations to pregnant students
- May only require documentation in limited circumstances
- Provision of lactation space

# Pregnancy or Related Conditions

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Pregnancy or related conditions means:

- (1) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (2) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- (3) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

34 CFR § 106.2



Photo by Media Modifier on [Unsplash](https://unsplash.com/photos/5YUWUWUWUW)

# Staff Notification Responsibilities

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Whenever a student (or a “person who has a legal right to act on behalf of the student”) informs **any employee** of the student’s pregnancy or related conditions, must:

- Provide contact information for the Title IX Coordinator, and
- Inform them that the Title IX Coordinator can “coordinate specific actions to prevent sex discrimination and ensure the student’s equal access to the recipient’s education program or activity.”

34 CFR § 106.40(b)(2)

**Note: Requirement is NOT to notify the Title IX Coordinator.**

# Obligations Upon Receiving Notice

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Once a student, or person with a legal right to act on behalf of a student, notifies the Title IX Coordinator about their pregnancy or related conditions, must:

Provide notice of recipient obligations

Coordinate reasonable modifications

Allow voluntary leave of absence

Voluntary access to separate, comparable portion of ed program

Comparable treatment to other temporary medical conditions

Provide lactation space

# Notice of Recipient Obligations

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Photo by Christina on [Unsplash](#)

Must inform the student (and if applicable the “person who has a legal right to act on behalf of the student” who notified the Title IX Coordinator) of:

- Recipient’s obligations (listed on previous slide)
- Privacy protections (§ 106.44(j))
- Notice of nondiscrimination

34 CFR § 106.40(b)(3)(i)

# Reasonable Modifications

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The recipient must make reasonable modifications to the recipient's policies, practices, or procedures as necessary to prevent sex discrimination and ensure equal access to the recipient's education program or activity.

- Must be individualized to the specific student and must consult with the student
- Student has the right to accept or reject offered modifications

Modifications may include:

- Class break to breastfeed, express breast milk, or other health needs (eating, drinking, restroom)
- Intermittent absences to attend medical appointments
- Access to online or homebound school
- Changes in schedule or course sequence
- Elevator access
- extensions of time for coursework
- changes in physical space or supplies (for example, access to a larger desk or a footrest)
- allowing a student to sit or stand

34 CFR § 106.40(b)(3)(ii)

# Separate Programs

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The recipient must allow the student to voluntarily access any separate and comparable portion of the recipient's education program or activity under paragraph (b)(1) of this section.

34 CFR § 106.40(b)(3)(iii)



Photo by ThisIsEngineering on [Unsplash](#)

# Voluntary Leaves of Absence

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Must allow voluntary leaves of absence.

- at minimum should cover time “deemed medically necessary by the student’s licensed healthcare provider”
- “To the extent that a student qualifies for leave under a leave policy maintained by a recipient that allows a greater period of time than the medically necessary period, the recipient must permit the student to take voluntary leave under that policy instead if the student so chooses.”
- “When the student returns to the recipient’s education program or activity, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.”

34 CFR § 106.40(b)(3)(iv)

# Lactation Space

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Must provide a lactation space for expressing breast milk or breast feeding that is:

- A space other than a bathroom
- Clean
- Shielded from view
- Free from intrusion

34 CFR § 106.40(b)(3)(v)

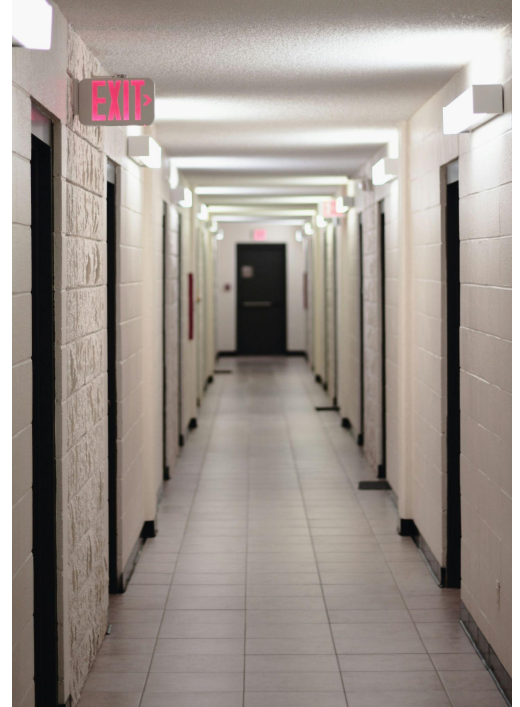


Photo by Obed Hernandez on [Unsplash](https://unsplash.com/photos/9Z8vZ8vZ8vZ)

# Supporting Documentation

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“A recipient must not require supporting documentation under paragraphs (b)(3)(ii) through (v) unless the documentation is necessary and reasonable for the recipient to determine the reasonable modifications to make or whether to take additional specific actions under paragraphs (b)(3)(ii) through (v).”

Examples of times supporting documentation is not necessary:

- When the need for support or modification is obvious, such as a pregnant student requesting a bigger uniform
- When previous supporting documentation has already been provided
- When the modification is allowing the student to carry water, use a bigger desk, sit or stand, take breaks, use the restroom
- Lactation needs
- When specific supports would be available to students for reasons other than pregnancy without supporting documentation

34 CFR § 106.40(b)(3)(vi) and (vii)

# Comparable Treatment

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To the extent consistent with paragraph (b)(3) of this section, a recipient must treat pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's education program or activity.

34 CFR § 106.40(b)(4)

# Certification to Participate

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Cannot require certification to participate in any part of the educational programs and activities of the school unless:

- The certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;
- All students participating class, program, or extracurricular activity are required to receive certification; AND
- The information obtained is not used as a basis for discrimination

34 CFR § 106.40(b)(5)

# Oregon Requirements: ORS 336.640

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The logo is a purple silhouette of the state of Oregon. Inside the silhouette, the words "OREGON" and "OVERLAP" are written in white, stacked vertically.

OREGON  
OVERLAP

(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.

# Pregnancy and 504 Plans

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Student pregnancy, parenting, or related conditions are not considered impairments under Section 504 or the ADA.

If a student suffers medical complications from a pregnancy or related condition that substantially limit a major life activity, then the medical condition may be considered a (temporary or ongoing) disability under Section 504 and the ADA.

Cases should be evaluated on an individual basis.



# Specific Responsibilities: Gender Identity and De Minimis Harm

# Gender Identity: De Minimis Harm

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In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by 20 U.S.C. 1681(a)(1) through (9) and the corresponding regulations §§ 106.12 through 106.15, 20 U.S.C. 1686 and its corresponding regulation § 106.32(b)(1), or § 106.41(b).

Adopting 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.

§ 106.31(a)(2)

# Gender Identity and De Minimis Harm

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The Department has determined, based on a careful reading of Title IX and each of its statutory provisions, that sex separation in certain circumstances, including in the context of bathrooms or locker rooms, is not presumptively unlawful sex discrimination. However, when such separation imposes more than de minimis injury on a protected individual, see *Bostock*, 590 U.S. at 681, such as when it denies a transgender student access to a sex-separate facility or activity consistent with that student's gender identity, this would violate Title IX's general nondiscrimination mandate, 20 U.S.C. 1681

-p. 1268, unofficial copy of the Preamble

# Oregon Nondiscrimination Law

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No person in Oregon shall be subjected to discrimination in any public elementary or secondary school, educational program or service, or interschool activity where the program, service, school, or activity is financed in whole or part by monies appropriated by the Legislative Assembly.

“Discrimination” means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, color, marital status, religion, sex, sexual orientation, or **gender identity**.

OAR 581-021-0045

# Supporting Gender Expansive Students Guidance



## Section 1: Recommended Nondiscriminatory Practices

**Student-driven scenarios** included throughout, in the gray boxes

- **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**

## Section 2: Complaint Processes

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

## Appendix

- **Terminology** used throughout the document<sub>59</sub>



# Specific Responsibilities: Responding to Sex Discrimination

***More information provided in the Investigations and Responses Training***

# Title IX Coordinator Responsibilities

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A recipient must require its Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX or this part, to take the following actions to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

34 CFR § 106.44(f)(1)

“...effective action to mean that a Title IX Coordinator, upon learning of conduct that reasonably may constitute sex discrimination, takes reasonable steps calibrated to address possible sex discrimination based on all available information... [if those actions] are not effective at ending sex discrimination and preventing its recurrence, the prompt and effective response requirement means that the Title IX Coordinator must reevaluate the response and take additional steps to end sex discrimination in the recipient’s education program or activity.”

-Final Rule, pg. 427; unofficial copy

# Whose Responsibility?

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“The Title IX Coordinator is responsible for coordinating the recipient’s compliance with its obligations under Title IX and this part.”

34 CFR § 106.44(f)

Specific responsibilities may be delegated to other trained staff, but it is ultimately your responsibility to ensure requirements and procedures are followed on behalf of the recipient (school).

- Who will have any delegated responsibilities under this part?
- How will you monitor and ensure compliance with these requirements?

# Title IX Coordinator Requirements

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Treat complainant and respondent equitably

Offer and coordinate supportive measures

Notify the complainant of grievance procedures and informal resolution process

If complaint is filed, initiate complaint process

In the absence of a complaint, determine whether to initiate

Take other prompt and effective steps to ensure sex discrimination does not continue

# Equitable Treatment

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“...the requirement for equitable treatment recognizes that the interests of a respondent and complainant may differ. Thus, it is appropriate and necessary for a recipient to treat complainants and respondents differently in some respects during the course of the grievance procedures and the outcomes of the grievance procedures will necessarily have different consequences for the complainant and the respondent.”

-Final Rule, pg. 672; unofficial copy

- Equitable treatment is fair, unbiased, compliant with the regulations

# Supportive Measures

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Offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, for the complainant. In addition, if the recipient has initiated grievance procedures under § 106.45, and if applicable § 106.46, or offered an informal resolution process under paragraph (k) of this section to the respondent, offer and coordinate supportive measures under paragraph (g) of this section, as appropriate, for the respondent.

§ 106.44(f)(1)(v)(B)

***Requirements and processes for offering supportive measures are discussed in Investigations and Responses Training***

# Title IX Coordinator-Initiated Complaints

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In the absence of a filed complaint, can initiate when “...the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the recipient from ensuring equal access on the basis of sex to its education program or activity.”

§ 106.44(f)(1)(v)(B)

- Should only be used in “very specific, limited circumstances”
- Utilize the information known at the time (from the report, discussions with the complainant) and relevant experience

# Title IX Coordinator-Initiated Complaints

---

Must consider the following factors:

- (1) Complainant's request to not proceed with the complaint
- (2) Complainant's reasonable safety concerns regarding initiation
- (3) Risk of additional discrimination or harassment
- (4) Severity
- (5) Age and relationship of parties
- (6) Scope of conduct, including patterns and how many individuals are affected
- (7) Available evidence
- (8) Whether alternative methods are available to end the discrimination and prevent recurrence

§ 106.44(f)(1)(v)(A)

# Title IX Coordinator-Initiated Complaints

---

## Complainant's Wishes § 106.44(f)(1)(v)(A)(1)

“a recipient should honor a complainant’s request not to proceed with a complaint investigation when doing so is consistent with a recipient’s obligation to ensure it operates its education program or activity free from sex discrimination.”

-Final Rule, pg. 439; unofficial copy

## Severity § 106.44(f)(1)(v)(A)(4)

- “the seriousness of alleged sex discrimination, such as whether the alleged incident involved violent acts, threats of violence or retaliation, and use of a weapon”; and
- “whether the alleged conduct, if established, might require a respondent’s removal or imposition of another disciplinary restriction”

-Final Rule, pg. 440; unofficial copy

# Title IX Coordinator-Initiated Complaints

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## Age and Relationship § 106.44(f)(1)(v)(A)(5)

- Employee or student status
- Power differentials

## Alternative Options to End Sex Discrimination § 106.44(f)(1)(v)(A)(8)

“For example, if an employee decides to pursue remedies under an applicable collective bargaining agreement instead of Title IX grievance procedures, the Title IX Coordinator might determine that the collective bargaining agreement affords a process outside of a recipient’s Title IX grievance procedures that can end sex discrimination and prevent its recurrence

-Final Rule, pg. 441; unofficial copy

# Title IX Coordinator-Initiated Complaints

---

If initiating a complaint under this provision, must:

- Notify the complainant prior to doing so
- Take steps to address reasonable complainant safety concerns

§ 106.44(f)(1)(vi)

Not required to follow these steps if the conduct, as reported, would not constitute sex discrimination even if substantiated.

§ 106.44(f)(2)

# “Other Prompt and Effective Steps”

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“Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual complainant, if any, to ensure that sex discrimination does not continue or recur within the recipient’s education program or activity.”

§ 106.44(f)(1)(vii)

- These steps cannot be disciplinary or unduly burdensome in nature for the complainant or respondent
- May include: student education, employee training, remedies for the complainant such as allowing them to retake a class, etc.



# Specific Responsibilities: Monitoring for and Addressing Barriers

# Why This Requirement?

---

A recipient must require its Title IX Coordinator to:

- (1) Monitor the recipient's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX or this part; and
- (2) Take steps reasonably calculated to address such barriers.

§ 106.44(b)

“barriers to reporting sex discrimination in a recipient's education program or activity impede recipients from realizing Title IX's promise of an educational environment free from such discrimination. This includes barriers for students with disabilities, individuals with limited English proficiency, and other populations.”

-Final Rule, pg. 328; unofficial copy

# Monitoring Actions

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Monitoring is specific to barriers to reporting sex discrimination; the rules do not require active monitoring for sex discrimination itself.

Example:

“A recipient may set up an online reporting system for sex discrimination complaints; if individuals who wish to report information about possible sex discrimination cannot access the reporting system, however, the lack of access would constitute a barrier to reporting possible sex discrimination. The recipient should therefore monitor the efficacy of this online reporting system for access issues and take steps reasonably calculated to address those issues to fulfill its obligations under § 106.44(b).”

-Final Rule, pg. 330; unofficial copy

# Monitoring Actions: Examples

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Photo by Sam Balye on [Unsplash](#)

OCR does not require any specific monitoring actions; they should be specifically tailored to your educational environment and population. Could include:

- Surveys for students or staff, including campus climate surveys
- Focus groups (staff, student)
- Soliciting feedback from parties at the conclusion of the Title IX process
- Anonymous feedback forms
- Comparing data year to year

# Barriers: Examples

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The preamble gives various examples of barriers:

- inaccessible complaint reporting processes,
- confusing grievance procedures that lack transparency,
- difficult-to-reach Title IX Coordinators,
- staff who discourage individuals from making reports,
- poorly managed report and complaint processes, or
- grievance procedures in which individuals have little confidence due to delays or perceptions of bias

-Final Rule, pg. 329; unofficial copy

# Steps to Address Barriers: Examples

---

The preamble gives various examples of steps to address barriers:

- trainings targeted at a particular academic department or other subdivision of the recipient where the barriers were identified
- in-depth training for specific program staff
- widespread training for staff and students
- more frequent and prominent publication of the Title IX Coordinator's contact information
- relocation of the Title IX Coordinator's office to a more visible, central, and accessible location
- provision of adequate staff for the Title IX Coordinator's office
- enhanced training for employees with Title IX responsibilities, including training to ensure that they are free of conflicts of interest and do not discourage reporting
- development and circulation of user-friendly Title IX materials

-Final Rule, pg. 329-330; unofficial copy

# Activity:

## Monitoring Barriers

### Fillable PDF:



### Google doc:



Oregon Department of Education

## In Your Title IX Action Plan...

Take 2 minutes to plan how you will monitor for barriers to reporting, in the **RED** section.

### Monitoring for Barriers

*Schools are required to monitor for barriers to reporting sex discrimination ([34 CFR 106.44\(b\)](#)). For each possible reporting mechanism in your school/district, identify possible monitoring actions you could take. Possible reporting mechanisms include (but are not limited to):*

- Submitting a complaint through an online portal
- Reporting to a staff member
- Staff member witnesses sex discrimination

| Reporting Mechanism | Monitoring Action | Monitoring Frequency<br>(e.g. ongoing, monthly, at the end of each complaint, etc.) |
|---------------------|-------------------|-------------------------------------------------------------------------------------|
|                     |                   |                                                                                     |

# 02:00



# Recordkeeping

# Recordkeeping Requirements

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(f) Recordkeeping. A recipient must maintain for a period of at least seven years:

(1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.

(2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.

(3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public.

§ 106.8(f)

# Recordkeeping Requirements

The logo consists of a purple silhouette of the state of Oregon. Inside the silhouette, the words "OREGON" and "OVERLAP" are written in white, stacked vertically.

OREGON  
OVERLAP

OCR has required recordkeeping of civil rights issues since the 1980s:

*Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part.*

34 CFR 100.6(b)

Oregon record retention rules state that records of educational grievance procedures may include, but are not limited to:

*...notices of grievance; written description of the complaint; informal discussion notes; formal hearing notes (including audio tapes); summary of interviews with witnesses; final summary statements; resolution of grievance; appeals documentation; and related documentation and correspondence.*

OAR 166-400-0060(15)

# Complaint Records

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- Informal resolution process, and/or
- Grievance process

Should include at minimum:

- Outcome
- Notices provided
- If dismissal occurred, documentation of reasons
- Other records needed to show compliance



Photo by Sam Balye on [Unsplash](#)

# Notification Response Records

---

Conduct that may reasonably constitute sex discrimination: including notifications that were later dismissed; document dismissal

To comply with § 106.44, should document:

- Any prompt and effective steps taken to address sex discrimination
- Supportive measures offered and provided
- Any analysis conducted regarding whether to initiate a TIXC-initiated complaint
- Emergency removal or administrative leave actions
- Informal resolutions utilized

# Training Records

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- 2020 regulations required posting of training materials
- 2024 requires records of training materials, and that they are made available upon request

...the final regulations require a recipient to make all materials used to provide training under § 106.8(d) available to the public upon request. This includes any slides with training content that were used to provide training. It is not sufficient for a recipient only to provide a certificate of completion with the topics covered and the person(s) who attended the training.

-Final Rule, pg. 300; unofficial copy

# Records Storage

---

Records related to civil rights investigations contain very sensitive information, and must be stored appropriately. Physical and electronic information should be stored securely.

- Consider: how will you store records of notices, investigation notes, camera footage, physical evidence, etc?

Case records vs. student records?

- Some (but not all!) components of a case record will be linked with one or more individual students, but it is not considered a best practice to store complete case files within an individual student's record.

# Civil Rights Data Collection (CRDC)

---

Approximately every two years, OCR collects data on civil rights concerns. All local education agencies (LEAs) that receive federal funding must participate in the CRDC.

## Required civil rights data elements for 2021-2022 CRDC:

- Number of **reported allegations** of harassment or bullying of K-12 students on the basis of: sex; race, color, or national origin; disability; sexual orientation; religion; gender identity; perceived religion
- Discipline data related to the above allegations, including number of students disciplined for the above allegations
- Named Coordinators and school policies relating to civil rights

# Activity:

## Monitoring Barriers

Fillable PDF:



Google doc:



Oregon Department of Education

## In Your Title IX Action Plan...

Take 2 minutes to plan how you will monitor for barriers to reporting, in the **PINK** section.

### Recordkeeping

| Required Item                                                                                                                                            | Recordkeeping Plan and Location | Individuals Responsible for Records |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-------------------------------------|
| Each <b>notification</b> of possible sex discrimination, and actions taken to comply with <a href="#">§ 106.44</a><br><a href="#">34 CFR 106.8(f)(2)</a> |                                 |                                     |
| For each <b>complaint</b> , records of the informal resolution or grievance process<br><a href="#">34 CFR 106.8(f)(1)</a>                                |                                 |                                     |

02:00

# Completing Your Training

To complete required training under the new regulations, you will also need to complete ODE's ***Title IX Investigations and Responses*** training (or similar from another organization). Upcoming virtual dates:

- [Friday, August 30, 9 am-noon](#)
- [Thursday, September 12, 9 am-noon](#)
- [Wednesday, October 2, 1-4 pm](#)

If you are new to Title IX, or just want to dive more in-depth on the content discussed in the Title IX 101 section, consider taking the ***Title IX 101*** training. Upcoming virtual dates:

- [Friday, August 23, 9-11 am](#)
- [Monday, September 16, 1-3 pm](#)
- [Monday, September 30, 9-11 am](#)



# CONTACT US

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