

# CAMPUS INVESTIGATOR TRAINING MATERIALS

# 2020

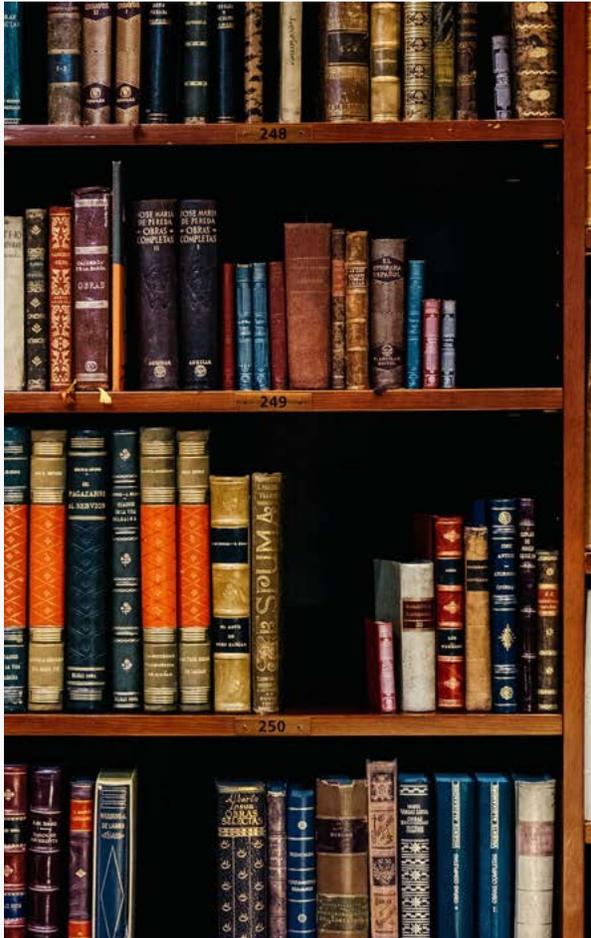
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# ABOUT THIS DOCUMENT



34 CFR Part 106.45(b)(10) requires all Title IX-related training materials to be posted publicly to a school's website. These materials are specific to Oregon SATF's 2020 Campus Investigator Training.

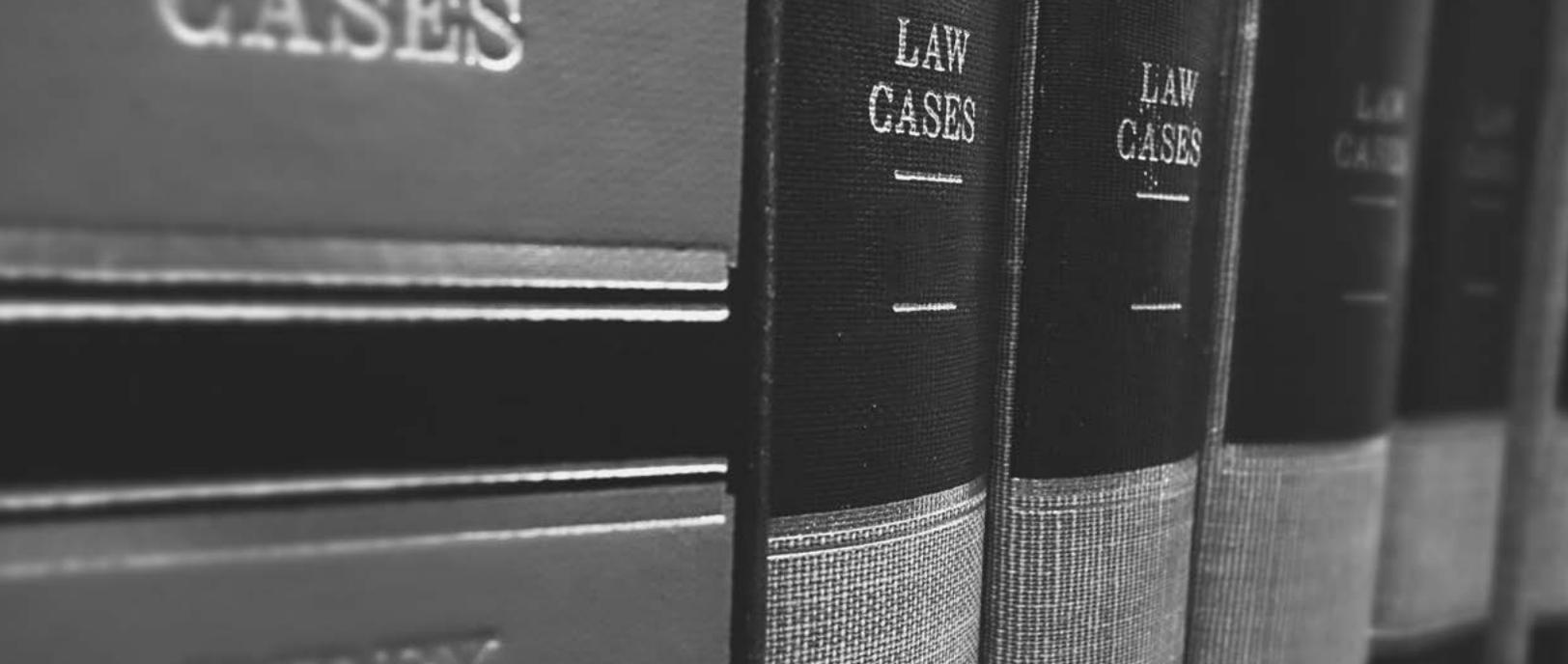
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# OVERVIEW OF NEW REGULATIONS: JURISDICTION, Notice & Dismissals

These materials were created by TIX Education Specialists, LLC for the Oregon Attorney General's Sexual Assault Task Force to be used during the 2020 Campus Investigator training. For more information about this training please contact the SATF Campus Program at [oregonsatf.org](http://oregonsatf.org).

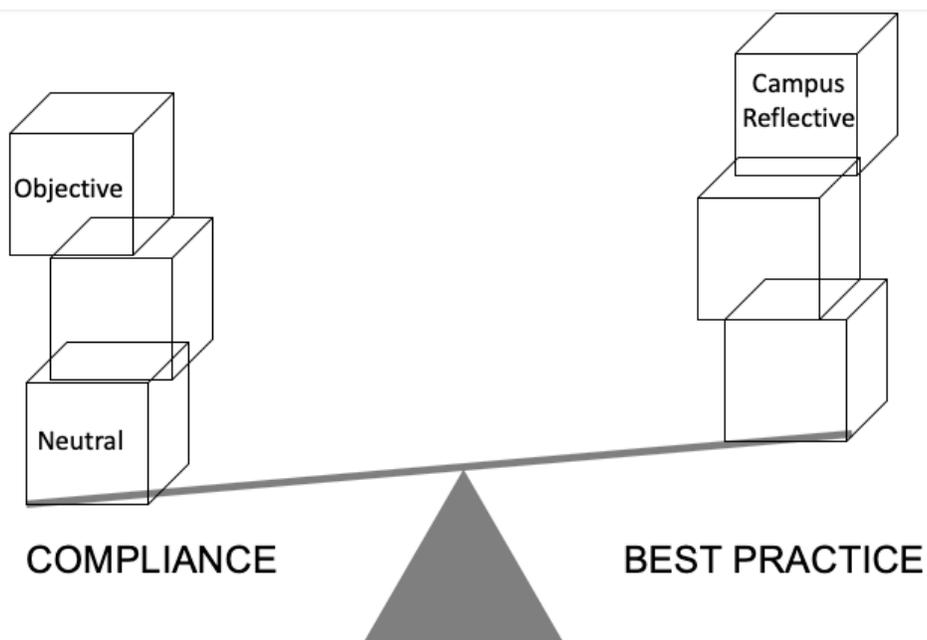
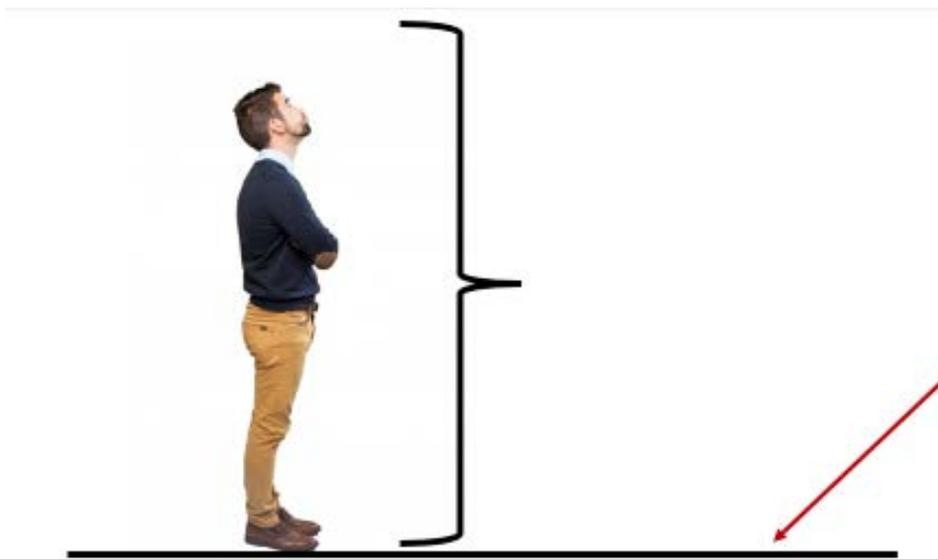
An overview of the regulatory requirements of the Title IX regulations including the new scope of Federal Title IX, jurisdictional determinations and dismissals of complaints. Integration of relevant state law.

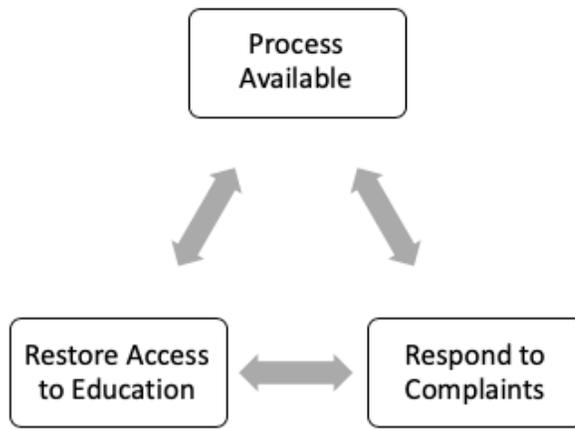
## Learning Objectives:

- clear understanding of requirements of Title IX
- understand the scope and limitations of Title IX and how that intersects with Oregon law.

## New Regs:

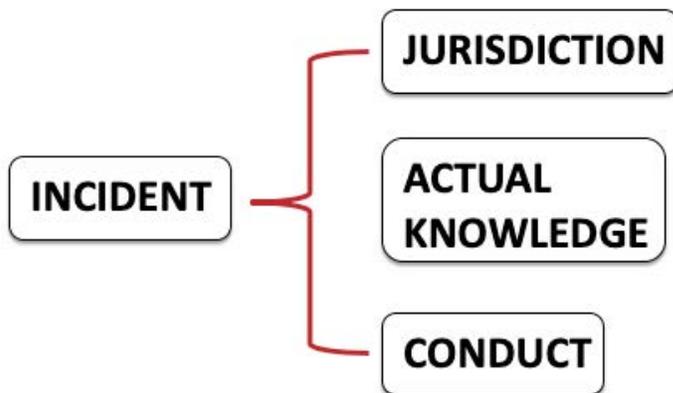
- p.1-104 – The Department’s interpretation of Due Process, institutional liability and defining sexual harassment.
- p. 96-99 – Institutional response
- 2008-2033 – Regulatory language





### SEXUAL HARASSMENT:

"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person's equal access to education.

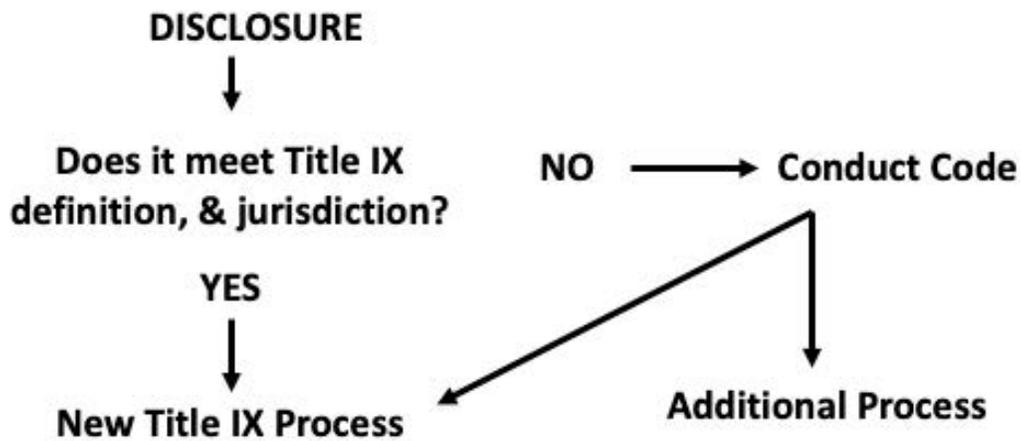


### QUESTION 1:

Does your institution want to create a policy to respond to the "other" types of sexual harassment and sex discrimination?

### QUESTION 2:

If you capture "other" types of conduct, do you use one process provided by the federal regulations or do you use two?



### SCOTUS FRAMEWORK:

1. actionable definition of sexual harassment
2. actual knowledge
3. deliberate indifference -

### DELIBERATE INDIFFERENCE + RESPONSE:

- support measures offered
- contact complainant and process counsel
- follow grievance procedures
- investigate formal complaints
- respect complainant wishes (with exception)
- dismiss complaints that don't fall under Title IX

**TITLE IX COORDINATOR:**

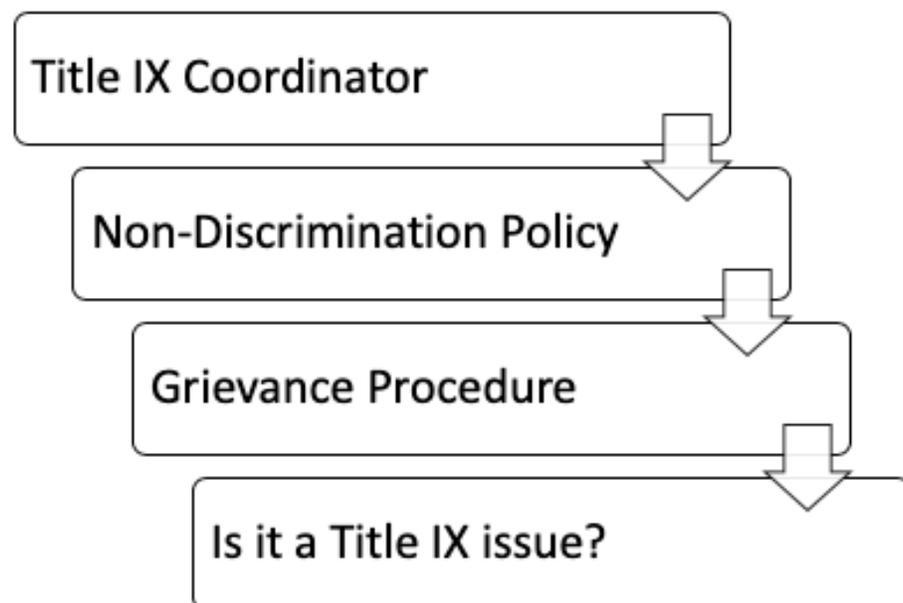
**TRAINING:**

**NOTICE OF NON-DISCRIMINATION:**

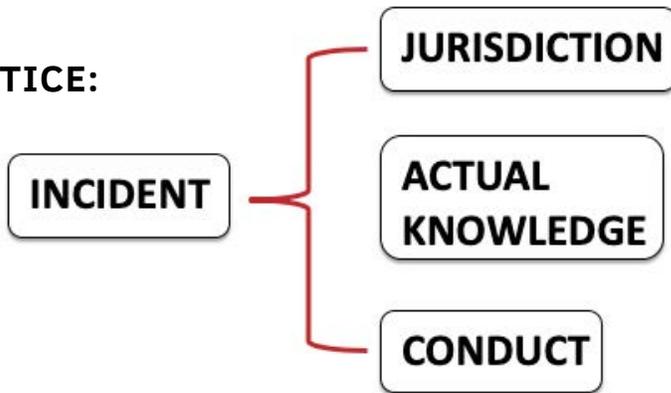
“[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment. Inquiries about the application of title IX and this part to such recipient may be referred to the recipient’s Title IX Coordinator, to the Assistant Secretary, or both.”

**DISSEMINATION:**

## GRIEVANCE PROCEDURE:

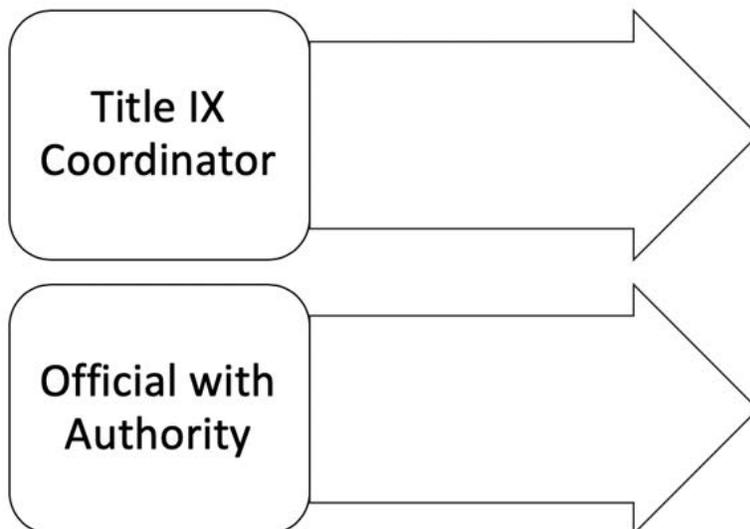


**NOTICE:**



**ACTUAL NOTICE:**

“[A]ctual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient”



## PROCESS COUNSELING:

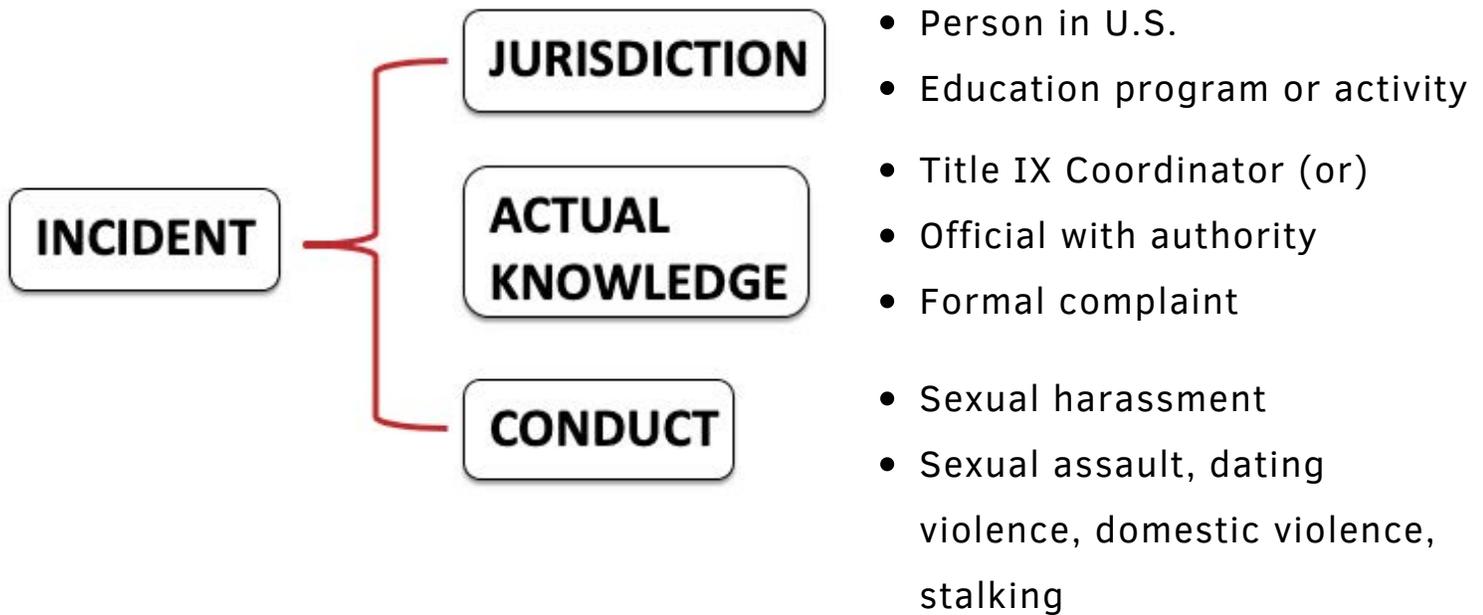
### SUPPORT MEASURES:

“individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”

### SUPPORT MEASURES:



**PERSON IN THE UNITED STATES:**



**INFORMAL V FORMAL COMPLAINT:**

**JURISDICTION:**

- type of conduct
- educational program or activity
- person in the United States



“Clery Act/VAWA offenses are NOT evaluated for severity, pervasiveness, offensiveness or denial of equal educational access ... because such conduct is sufficiently severe...”

**SEXUAL HARASSMENT:**

“Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person’s equal access to education.”

**EDUCATION PROGRAM OR ACTIVITY:**

### **DISMISSAL OF COMPLAINT:**

- If conduct definition or jurisdiction not met
- If complainant no longer accessing educational program or activity

### **MAY DISMISS WHEN:**

- If complainant desires to withdraw complaint
- If respondent no longer enrolled or employed
- If school can't gather sufficient evidence to reach determination

### **CONSOLIDATE COMPLAINTS:**

## SB 759 CONSIDERATIONS CHECKLIST

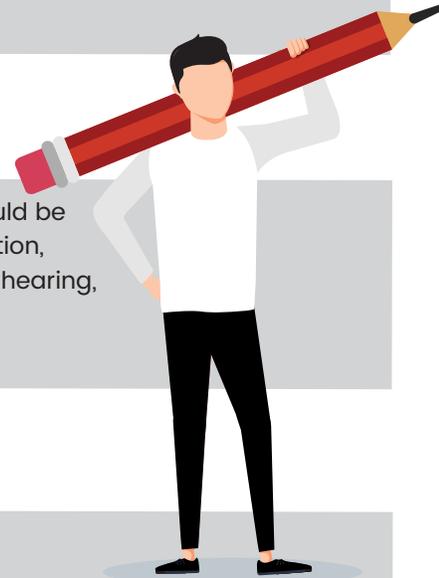
### CONTENT OF WRITTEN NOTIFICATION:

- Victims' rights:** Schools should include victims' rights under state law, Title IX, Clery Act, and VAWA Amendments to Clery as well as any limiting factors of these rights for victims who are not students.
- Civil legal options:** Schools should include civil options such as Office of Civil Rights (OCR) complaints, protective orders, employment protections, housing protections, name and other identity change options, address confidentiality, and legal assistance.
- Criminal legal options:** This should include victims' options in reporting to local law enforcement.
- Campus-based disciplinary processes the victim may pursue:** If an institution has different disciplinary processes for sexual assault if the perpetrator is a student versus staff or faculty, then both processes should be included in the written notification.
- Campus-based services available to victims of sexual assault**
- Victims' privacy rights including limitations of privacy pertaining to campus health and counseling services.**
- State and community services and resources and contact information:** Statewide and National hotline #'s, Address Confidentiality Program, Crime Victims' Compensation, Community-based Domestic Violence & Sexual Assault Programs, District Attorney Victim Assistance Program, Culturally-specific programs including Tribal resources and options for people with disabilities.



### FORMAT OF WRITTEN NOTIFICATION:

- Written in plain language that is easy to understand:** The written notification should be made available in languages representative of the student population of each institution, including considerations for those who are English language learners, deaf or hard of hearing, and visual impairments.
- Print, color, size and font that can be easily read**



### DISSEMINATION OF WRITTEN NOTIFICATION:

- Made available to students**
- During student orientation**
- Provided when a sexual assault is reported by a student:** Victims of sexual assault that qualify under SB 759 are outlined in Sec. 1 (a-b) of the bill. Although the bill limits the qualifying student victims to sexual assaults that occurred on the grounds or at the facilities of the university or college, schools should provide this written notification to student victims regardless of geography of assault. This aligns with Title IX best practice.
- Provided to a non-student victim of sexual assault whose perpetrator is affiliated with the school:** This includes victims of staff and faculty as well as students, with no limitations on geography of the assault.
- Posted on the website of the college or university:** Schools should take into consideration the "two click rule" when deciding where to make this written notification available online.

ORS 350.255

## OREGON TITLE IX LEGISLATION

### HB 3415 LEGISLATIVE OVERVIEW

#### WHAT DOES THE BILL DO?

Creates requirements for institutional policies related to sexual assault, sexual harassment, stalking, dating violence and domestic violence as well as establish training standards and establish a definition for sexual harassment.

#### GOES INTO EFFECT:

2020/2021 Academic School Year



### DEFINING SEXUAL HARASSMENT

#### SEXUAL HARASSMENT:

"Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person."

### RESPONDING TO REPORTS

#### JURISDICTIONAL STATEMENT

- ▶ Regardless of whether incident occurred on or off campus
- ▶ Sexual harassment, sexual assault, domestic violence, dating violence and stalking

#### NOTICE

- ▶ Actual notice and constructive notice
- ▶ Required to conduct initial inquiry or make contact with named parties
- ▶ Provide written notification of rights and services (ORS 350.255)

### ANNUAL TRAINING REQUIREMENTS



#### WHO MUST BE TRAINED?

- ▶ Title IX Coordinators
- ▶ Hearing Officers
- ▶ Process Advisors
- ▶ Investigators
- ▶ Third-party contract investigators
- ▶ Campus Security Officers
- ▶ Others who assist with investigation

#### WHAT ARE THE CURRICULUM STANDARDS?

- ▶ Definitions of types of conduct
- ▶ Prevalence of conduct
- ▶ Trauma-informed best practices
- ▶ Addressing bias and anti-oppression
- ▶ Interviewing survivors of sexual assault
- ▶ Culturally-responsive procedures
- ▶ Gender responsive
- ▶ Needs of LGBTQ parties

Campus Investigator Training

# CONSENT DYNAMICS

© Oregon Attorney General's Sexual Assault Task Force  
Campus Program 2020

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What words and phrases do you use to explain consent?



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### CONSENT MESSAGES

- Think back to the messages you received about consent from school or family or community. What were you told? How was it explained?
- How did those messages about consent impact your social interactions/relationships?
- What do you wish the messaging was instead?



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## CONSENT MESSAGES (CONT.)

Social norms, practices, and traditions can influence how we think about consent. How might these examples influence how we think about consent?

- "Go give grandpa a kiss!"
- Dress codes
- "Reverse prom"
- Hazing or other group initiation rituals
- "They're just teasing you because they like you"
- Insta accounts and social media screengrab/sharing

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## SUBTLE MESSAGES ABOUT CONSENT MATTER

**Do we assume consent until proven otherwise, or assume a lack of consent until proven otherwise? Does context matter for our answer?**

- "No means no" versus "yes means yes"

**Whose responsibility is consent?**

- Active or passive? Given or sought?
- "Michaela let Yvonne take off her shirt" versus "Yvonne asked Michaela if she could remove Michaela's shirt"

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## CONSENT IN A DIGITAL WORLD



- How do young people navigate consent in digital spaces?
- What pressures and expectations exist?
- How does media help reinforce or breakdown these norms?

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# HOW WE DEFINE CONSENT MATTERS



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## OREGON LAW(ORS 163.315)

Who can't consent:

- a) Under the age of 18
- b) Mentally defective
- c) Mentally incapacitated
- d) Physically helpless

A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.



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## CALIFORNIA 67386(a)(1)

"Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.



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## CAMPUS EXAMPLES

"[V]oluntary, non-coerced and clear communication indicating a willingness to engage in a particular act. Explicit consent includes an affirmative verbal response or voluntary acts unmistakable in their meaning."

"Consent is an ongoing physical and emotional process between people who are willing, equally free of coercion, communicating unambiguously, and sincere in their desires."

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## OREGON K-12 (ORS 342.704/OAR 581-012-0038)

Consent is not present for sexual activity when a person is:

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

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## TIPS OR SUGGESTIONS FROM US

- Definitions are a great place to start... also examples!
- Students to audit language - for students from students.
  - Reviewed by the audience you are writing for
- Ideal world: annual review, but certainly on a schedule...
- Bring in professional allies: advocates, preventionists, identity center staff, to get their take.

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### SCENARIO - Covid and Consent

Sam and Michelle are sharing an apartment off-campus this year; they signed their lease prior to covid, but have agreed they still want to live together even with everything going on. Sam works at a local coffee shop a couple days a week, a job they need to keep to pay their rent. Michelle's mom is immunocompromised, and Michelle goes to visit her and take her to doctor's appointments about once a month. Michelle and Sam agreed that they wouldn't have anyone over to their apartment, and that (aside from Sam going to work) they wouldn't engage in any other social activities unless they were outdoors and everyone wore a mask. Last week, Sam's coworker Javi stopped by the apartment unexpectedly to drop off a sweater Sam left at work. Javi asked to use the bathroom, and Sam said yes, knowing that Javi had just done Sam a favor. Michelle arrived home to find Sam and Javi chatting in the entry hallway of their apartment, and immediately left.



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### SCENARIO - Cheating and Competing

Sarah tells you that she knows someone in her class (James) cheated on their final paper by having another student (Luis) write it. Sarah says that she saw James and Luis in the computer lab many times, late into the night, where she witnessed Luis typing up James's paper while James watched.

James admits that Luis wrote most of his paper. He tells you he was worried about failing, and knew that Luis was a strong writer. James says that Luis agreed to write the paper because they are both on the lacrosse team and the coach has set a GPA requirement for them to play.

Luis tells you that he didn't initially plan to write the whole paper for James. James came to him asking for help, and that Luis agreed to tutor James and proofread his materials for him. As Luis started to help James with his paper, Luis tells you that James started pressuring Luis to just write it for him, coming up with excuses why he can't do it, and telling Luis that if he doesn't help him that he'll be the reason the lacrosse team doesn't make it to the playoffs.

Luis says that as the semester went on, that James convinced him to write more and more of the paper as opposed to just proofreading. Luis tells you that he feels guilty for writing the paper and that he felt like once he started, that there was no way out without James and the whole team being mad at him.



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Consent is NOT solely about what the victim **did or did not do** during the time they/she/he were assaulted.

Consent is NOT solely about what the victim **did or did not say** during the time they/she/he were assaulted.



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## FINAL THOUGHTS...

- Consent is the cornerstone of our understanding of sexual harassment and assault.
- Consent is influenced.
- Tomorrow, we'll talk about investigating consent. Bring (or have available online) your school's definition of consent. If you don't have a definition, bring any "implied" definitions or previously-used standards.

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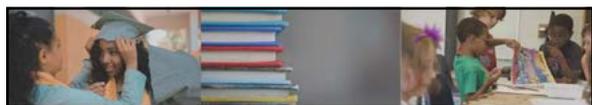
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## Bias and Conflict of Interest



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**In this section...**

- What is bias?
- Bias and sexual harassment/assault
- Addressing and preventing bias
- Identifying conflict of interest



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**Content Note:**

**Discussion of identity-based bias and harassment, including racism.**

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What were your big takeaways from the bias, power, and privilege online modules?

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**Bias**

"A tendency, inclination, or prejudice toward or against something or someone."

-Psychology Today



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**Implicit Bias**

"The attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner."

-The Kirwin Institute for the Study of Race and Ethnicity



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## Confirmation Bias

“The tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence.”

-O'Brien & Ellsworth, 2006, Confirmation Bias in Criminal Investigations




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## Biases can build!



We bring **implicit bias** into the room with us, which impacts how we view individuals or who we believe...

...and then we're vulnerable to **confirmation bias** in order to prove our “hunch” was correct.

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## The Impact of Bias: An Example

Teachers view Black students as “less innocent,” “more sexual,” and “older for their age” than their White peers.<sup>1</sup>



Black girls make up 8% of enrollment in K-12 schools, but 13% of students suspended.<sup>2</sup>

Black girls are 2-3x as likely as their White peers to be disciplined for subjective infractions like class disruption and dress code violations; compared to White boys, Black boys are 1.5x as likely.<sup>1</sup>





Black girls are 2.7x as likely to be referred to the juvenile justice system than their White peers.<sup>1</sup>

1. Epstein, R., Blake, J.J., & Gonzalez, T. (2017). Girlhood interrupted: The erasure of Black girls' childhood. Center on Poverty and Inequality, Georgetown Law. <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/06/girlhood-interrupted.pdf>

2. Office for Civil Rights, US Dept of Ed, Civil Rights Data Collection. (2016). First look: Key data highlights on equity & opportunity gaps in our nation's public schools.

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What biases does society hold about victims and perpetrators of sexual harassment and assault?

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**A study found that we are more likely to believe someone experienced sexual assault if...**

- They are female
- They are emotionally distressed
- They display more stereotypically gendered behaviors in terms of clothing, mannerisms, way of speaking, and social interactions

Schuller, McKimmie, Masser, & Klipperstine, 2010. Judgements of Sexual Assault. *New Criminal Law Review*, 13(4)

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**Conversely, what phrases, personality traits, or dispositions are commonly associated with perpetrators of sexual assault?**

- evil
- angry
- hostile
- unwilling to submit to authority
- unapologetic
- pattern of previously documented bad behavior
- outbursts
- uncontrolled

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When complainants and respondents conform to OR defy our expectations, it can bias us.



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How might the social identities (race, gender identity, of survivors/perpetrators intersect with this?

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### Intersections



- Historical weaponization of rape accusations by white people against men of color
- Media/cultural minimization of violence/homicide against Native, Indigenous, and trans women
- Stereotyping against LGBTQ+ communities related to sexual partners/app usage

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How do I avoid bias in my Title IX work?

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**Bias affects us most when...**

- We have ambiguous or incomplete information
- We have compromised cognitive loads (stress, too much multi-tasking)
- Time constraints
- Overconfidence in our objectivity
- We're tired/hungry/not our best selves



The Kirwin Institute, The Ohio State University; The New York Times Implicit Bias Series

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**Type in the chat box:**

What strategies might help mitigate bias and implicit bias in Title IX processes?

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### Strategies to Address Bias



- 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
- **What else?**

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**Type in the chat box:**

What does a conflict of interest look like in the world of Title IX investigations?

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### Conflict of Interest

"A situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties."  
-The People's Law Dictionary

"A conflict of interest arises when what is in a person's best interest is not in the best interest of another person or organization to which that individual owes loyalty... A conflict of interest can also exist when a person must answer to two different individuals or groups whose needs are at odds with each other."  
-McCombs School of Business at University of Texas

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### Does this present a conflict of interest?

Two years ago, Mei was accused of stalking and was found responsible. This year Mei reported that she has been sexually assaulted; your investigator did not work on Mei's case two years ago, but is familiar with it.



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### Does this present a conflict of interest?

A faculty member at your school is accused of sexual harassment. The Title IX Coordinator and both of the school's in-house investigators are familiar with the faculty member because they serve on the Title IX review committee and have worked on policy reviews for the past three years.



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Final Questions?



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## TITLE IX APPEALS

### MINIMUM BASES FOR APPEALS

- ▶ Procedural irregularity that affected the outcome;
- ▶ New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome; or
- ▶ The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias that affected the outcome.

Where a recipient offers an appeal, such appeal should be equally available to both parties.

### ACCESSIBILITY:

Information on appeals must include:

- ▶ Recipient's procedures
- ▶ Permissible bases for the complainant and respondent to appeal
- ▶ Reasonably prompt timeframes for filing and resolving appeals
- ▶ Provide that timeframes may be extended for good cause with written notice to the parties and an explanation for the delay

Information on appeals must be included in:

- ▶ Grievance procedures
- ▶ Written determination of responsibility

### DOUBLE JEOPARDY

The Department emphasizes that the constitutional prohibition on double jeopardy does not apply to Title IX proceedings and the Department does not believe that such a prohibition is needed to ensure fair and accurate resolution of sexual harassment allegations under Title IX.

### DETERMINATION OF RESPONSIBILITY

The determination regarding responsibility becomes final at either the conclusion of the appeal process, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### ADMINISTRATIVE REQUIREMENTS:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- Ensure that the appeal decision-maker is not the same person as any investigator(s) or decision-maker(s) that reached the determination of responsibility.
- Ensure that the appeal decision-maker complies with the standards set forth in section 106.45(b)(1)(iii).
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome,
- Issue a written decision describing the result of the appeal and the rationale for the result.
- Provide the written decision simultaneously to both parties.
- A recipient must create, make available to the complainant and respondent, and maintain for a period of three years records of any appeal and the result therefrom.

**106.45(B)(1)(VIII)**

Campus Investigator Training

# ROLE OF AN ADVOCATE + SUPPORTIVE MEASURES

© Oregon Attorney General's Sexual Assault Task Force  
Campus Program 2020

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## IN THIS SESSION:

- We will review the role of an advocate, including Advocate Privilege in Oregon, types of advocates and advocacy programs, and how advocates can be helpful to students during an investigation process.
- We will look at Supportive Measures under the new Title IX regulations and discuss how schools can work to support students through the process while maintaining compliance with the new regulations.

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# CAMPUS-BASED ADVOCACY

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## OREGON ADVOCATE PRIVILEGE

- Signed into law 2015
  - Included campus-based advocates!
- Client (survivor, student) is the privilege holder
- Advocates cannot release information about the client, their services or other details without a written release that is:
  - Informed
  - Specific
  - Time-limited

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## THE ROLE OF AN ADVOCATE

- Listen (judgement free)
- Affirm
- Survivor driven
- Explain options
- “Systems navigator”
- Support survivor choices

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## Advocates DO NOT

- Offer advice or opinions
- Steer the survivor's choices
- Make choices regarding reporting or resources for the survivor
- Investigate
- Discuss survivor's experience - professionally or socially
- Provide counseling or long-term therapeutic services
- Cross-examine during hearings (against professional ethics)

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## TYPES OF ADVOCATES (quick review)

- Tribal
- Culturally-specific/Identity-specific Advocates
- District Attorney Victim Assistance Programs
  - Note: Information shared with DA/Prosecutor
- Community Based Advocates through DV/SA Organizations
  - Sometimes DV/SA Orgs have "co-located advocates" on campus or other sites
- Campus-based

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## CAMPUS PROGRAMS MAY INCLUDE...

- Professional advocates (staff)
  - Full-time
  - Part-time
- Student advocates (paid or volunteer)
- Co-located advocates
- Or a combination!

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## SYSTEMS NAVIGATION WITH STUDENTS

- Campuses are little cities within cities
  - Their own rules
  - Their own services
- Different constraints to operate under:
  - Title IX
  - Clery
  - VAWA
- State of Oregon

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# SUPPORTIVE MEASURES



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## WHERE WE'RE COMING FROM

### SUPPORTIVE MEASURES

Measures and services offered in order to preserve or restore educational access and safety for a reporting party, offered with or without an investigation.

- Typically do not impact respondent's educational access
- Ex: academic remedies (class switches), no contact orders, advocacy or counseling services

### INTERIM MEASURES

Temporary measures or sanctions put in place during an investigation designed to ensure safety and access for the reporting party.

- May impact respondent's educational access
- Ex: respondent temporarily barred from attending a class/club, temporary suspension



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## The New Regulations: Supportive Measures

*Supportive measures means nondisciplinary, 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)



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## The New Regulations: Supportive Measures

### Examples of supportive measures:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- mutual restrictions on contact between the parties
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

34 CFR § 106.30(a)



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## The New Regulations: “Unreasonable Burden”

*The unreasonableness of a burden on a party must take into account the nature of the educational programs, activities, opportunities, and benefits in which the party is participating, not solely those educational programs that are “academic” in nature. On the other hand, the Department appreciates the opportunity to clarify that, contrary to some commenters’ concerns, **schedule and housing adjustments do not necessarily constitute an “unreasonable” burden on a respondent**...Changing a class schedule, for example, may more often be deemed an acceptable, reasonable burden than restricting a respondent from participating on a sports team, holding a student government position, participating in an extracurricular activity, and so forth.*

p. 30183 in the Federal Register copy of the Final Regulations



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## The New Regulations: Emergency Removal and Administrative Leave

Emergency removal of a student is allowed, whether a grievance process is pending or not:

- following a risk analysis that determines there is risk to the physical\* health or safety of the school community
- respondent is provided notice and opportunity to challenge
- must comply with 504 and IDEA

**Administrative leave of employees, paid or unpaid, is allowed while grievance process is pending**

34 CFR § 106.44(c) and (d)



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## ASSESSING FOR EMERGENCY REMOVAL

### Who should be involved in assessing emergency removal?

- CARE/SART team (keeping confidentiality/privacy in mind)

### What can be used to assess emergency removal?

- Develop consistent standards/metrics; consider utilizing research-based lethality and danger assessment screenings
- Train intake personnel on identifying danger/lethality risk factors

34 CFR § 106.44(c) and (d)

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*What happened to interim measures?*

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## The New Regulations: Implementing Supportive Measures

### (a) General response to sexual harassment

*The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in § 106.30, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.*

For further discussion of the role of the Title IX Coordinator, see pages 30182-30183 of final regulations in the Federal Register.

34 CFR § 106.44(a)

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## The New Regulations: Records

(ii) For each response required under § 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, **including any supportive measures**, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. **If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.**

34 CFR § 106.44(b)(10)(ii)



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## SUPPORTIVE MEASURES: Integrating The New Regulations and Best Practice



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## INTEGRATING ADVOCACY + COMPLIANCE

Advocates are the experts in safety planning and supportive measures

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Title IX Coordinators are responsible for discussing, coordinating, and overseeing supportive measures under the new regulations

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## INTEGRATING ADVOCACY + COMPLIANCE

Follow the forensic medical blueprint for advocacy and support: collaborate and make space for in-person advocacy!

- Call in an advocate to be part of supportive measure discussions ahead of time or immediately upon receiving walk-ins.
- Begin the meeting by explaining the purpose of the meeting, role of the Title IX Coordinator, and role of the advocate.
- Leave the room to allow a confidential discussion between the reporting party and the advocate.
- Return to discuss next steps, implementation procedures, and initiate formal complaint (if requested).
- Use a limited ROI to ensure records compliance.

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## WHAT WOULD YOU DO?

You are the Title IX Coordinator. You receive an email from Alicia, who requests a meeting to discuss a situation involving dating violence he is experiencing.

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## Who facilitates supportive measures when?

Key questions:

- Is this Title IX sexual harassment, or school-code-of-conduct sexual harassment?
- Is it within the educational program or activity?

Title IX sexual harassment: follow the above model when possible

School-based sexual harassment: advocate can fully facilitate

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## WHAT WOULD YOU DO?

Oliver walks into the advocacy office and asks to speak to a confidential advocate. Oliver tells the advocate that he was sexually assaulted by a girl in his Social Psychology class. He isn't sure if he wants to go through the Title IX process, but he is concerned about continuing to share a class with her. Oliver knows there is only one section of Social Psych this term and doesn't want to drop it, but he's afraid he'll get placed in a group with the girl during one of the three upcoming group projects.

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ABC

Campus Investigator Training

# INVESTIGATING CONSENT

© Oregon Attorney General's Sexual Assault Task Force  
Campus Program 2020

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### IN THIS SECTION:

- Identifying and understanding your school's investigatory standards of consent.
- Interviewing and questioning around consent.

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### Why is consent central to our investigations?

The new Title IX definitions hinge on consent, but *they do not provide us a definition of consent.*

Your school's definition of consent forms a key basis of your entire investigation. The definition includes the elements you look for to establish whether or not sexual assault (and sexual harassment more generally) occurred.

ABC

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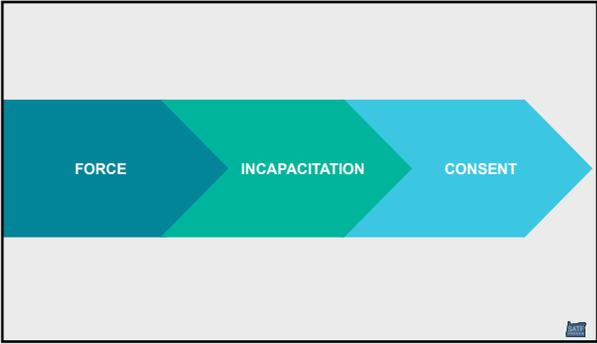
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### SAMPLE POLICY DEFINITION

Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. To be effective, consent must be informed and reciprocal, freely and actively given, and mutually understandable.

ABC [calculator icon] [lightbulb icon] [plus icon] [graduation cap icon] SAT

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## SAMPLE POLICY DEFINITION

**Informed and reciprocal:** All parties must demonstrate a **clear and mutual understanding of the nature and scope** of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way. Consent cannot be informed when one is unaware that the act is being committed.

**Freely and actively given:** An individual **cannot consent who is incapacitated by any drug or intoxicant**; or who has been **compelled by force, threat of force, or deception**; or whose ability to consent is **compromised because of a mental or physical condition**; or who is **coerced by supervisory or disciplinary authority**.

**Mutually understandable:** Communication regarding consent consists of **mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity**. In the absence of clear communication or outward demonstration, there is no consent. **Consent may not be inferred from silence, passivity, lack of resistance or lack of active response**. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

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## Sample Policy Definition → Investigation Checklist

- clear and mutual understanding of the nature and scope of the act
- is not incapacitated by any drug or intoxicant
- has not been compelled by force or threat of force
- Has not been deceived to obtain agreement or compliance
- Is not compromised because of a mental or physical condition
- Is not coerced by supervisory or disciplinary authority.
- mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity, which may not be met or inferred by silence, passivity, lack of resistance, or lack of active response

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### FORCE, THREATS, COERCION

- has not been compelled by force or threat of force
- Is not coerced by supervisory or disciplinary authority

### MENTAL CAPACITY

- Is not incapacitated by any drug or intoxicant
- Is not compromised because of a mental or physical condition

### CLEAR UNDERSTANDING, WORDS, AND ACTIONS

- Clear and mutual understanding of the nature and scope of the act
- Mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity
- Has not been deceived to obtain agreement or compliance

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## YOUR HOMEWORK

Using your school's definition of consent, create a checklist and/or flowchart to assist you with investigating consent.

- Identify specific terms that may need elaboration (e.g., incapacitation or intoxication)
- Identify any gaps in your policy language

Work with your team on this - advocates, preventionists, students, etc.



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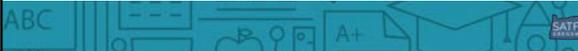
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## ALCOHOL & OTHER DRUGS: RECAP

Alcohol, recreational drugs, and prescription drugs can be used as tools of perpetration by:

- Providing another person alcohol or drugs, either with or without that person's consent, as a means to perpetrate
- Taking advantage of another person's incapacity due to drugs or alcohol
- Exploiting or coercing around a person's use or sobriety status



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## In the chat box, let us know:

What are some examples of words, behaviors, or other indicators that incapacitation is a factor in your investigation?

What have you heard/seen in your investigations (remember, no personally identifiable information)



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## AOD : INCAPACITATION

What descriptions or evidence point to potential incapacitation?

- Gaps in memory
- Altered sensory perceptions
- Quantity consumed (especially quantity consumed at this instance versus other instances)
- Observations of witnesses
- Text messages, voicemails, surveillance videos

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## RYAN'S REPORT

Ryan (they/them) and Maya (she/her) have been hooking up for a couple months. Ryan reports to you:

"Last Friday we had plans to go to this party off campus after the student activities fair; she plays intramural soccer and I volunteer at the multicultural center, so we were both staffing booths for a couple hours. At the end of the fair Maya came up to me and hugged me from behind and told me she wanted to get going. I don't have classes on Fridays so I'd just come from a happy hour with some of my work friends before the fair, and I wasn't feeling that great. I told her I wanted to go home and take a nap before the party. She said she'd help me clean up the booth, and when we finished taking stuff back to the multicultural center she started kissing me and telling me she'd fantasized about hooking up with me somewhere on campus without anyone knowing. I started feeling like maybe she'd get mad if I didn't hook up with her. I didn't want to, and it felt weird doing it where I work, but I didn't want her to think I'm not fun. I told her I'd down down on her real quick so we could get out of there. I felt terrible during it, and all night. I feel sick when I see her around campus now."

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Last Friday we had plans to go to this party off campus after the student activities fair; she plays intramural soccer and I volunteer at the multicultural center, so we were both staffing booths for a couple hours. At the end of the fair Maya came up to me and hugged me from behind and told me she wanted to get going. I don't have classes on Fridays so I'd just come from a happy hour with some of my work friends before the fair, and I wasn't feeling that great. I told her I wanted to go home and take a nap before the party. She said she'd help me clean up the booth, and when we finished taking stuff back to the multicultural center she started kissing me and telling me she'd fantasized about hooking up with me somewhere on campus without anyone knowing. I started feeling like maybe she'd get mad if I didn't hook up with her. I didn't want to, and it felt weird doing it where I work, but I didn't want her to think I'm not fun. I told her I'd down down on her real quick so we could get out of there. I felt terrible during it, and all night. I feel sick when I see her around campus now.

1. What dynamics do you see around consent/lack of consent in this report?
2. What information do you need to obtain or clarify to meet your consent checklist/flowchart guidelines?

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## ELEMENTS OF ESTABLISHING CONSENT

- What words or phrases were said?
  - Euphemisms or colloquialisms? Can you establish they were commonly understood?
- What body language was conveyed?
- Where did the interaction take place?
  - Is any power dynamic created by the environment?
- What was the context of the relationship?
  - Power dynamics, either formal or informal? Was there previous abuse, harassment, or violence?
  - Is there a "baseline" for consent in the relationship? Is consent of this type "usual, or does it differ in any way?
- Did both parties have the mental capacity to make decisions?

Consider: what kinds of questions will you ask to elicit this information?

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## QUESTIONING AROUND CONSENT

Use your trauma-informed and student-centered skills!

- **Ask yourself:** do I need to know this to establish consent? What assumptions am I making? Are these questions arising from bias?
- **Ask open-ended questions**
- Avoid "why" and instead **pivot to open-ended or clarifying**
- **Stop once you've met your checklist/flowchart requirements** - there's no need to go further out of curiosity.

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## COMMON BIASES AROUND CONSENT

### The Assumption

Women like to play hard to get; sometimes they say no when they mean yes.



- Probing around words and actions
- "Have you ever changed your mind and originally said no but then consented in the past?"

If they really didn't want to, they would have said no or just left.



- Probing around location
- Probing around resources or finances
- "Why didn't you..." "Was there a reason you didn't..."



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## COMMON BIASES AROUND CONSENT

### The Assumption

Men are always up for sex. If a man is aroused, he clearly wanted it.



- Over-focusing on behavior and ignoring feelings, body language, and words
- Failing to establish all of your policy's elements of consent before coming to a conclusion

We need to teach women to assert boundaries better and communicate more clearly. Men aren't mind-readers!



- Over-focusing on words and phrases
- Shifting the responsibility of consent from one party to another



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## Examples of Helpful Questions to Establish Consent

Use your trauma-informed and student-centered skills!  
Tone, body language, and framing matter!

- "Tell me more about..." "Can you say more about..." "How did you feel when..."
- "Talk to me about your relationship with X prior to this incident. What were your interactions like?"
- "It sounds like you've hooked up before this time and felt good about it, is that correct? Tell me what you and X usually do to gain each other's consent."
- "Can you describe what was going through your mind when they did X? What about what was happening in your body?"
- "You mentioned you were in her dorm room. How did you feel about being there?"



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## QUESTIONING FOR AOD/INCAPACITATION

Use your trauma-informed and student-centered skills!

- Know your school's amnesty policy. Describe it, and reiterate it if necessary when asking questions around AOD use.
- Establish a baseline - how do they normally feel, how do they normally feel when intoxicated, was there anything different about this time?
- Do not assume that the person understands clinical interpretations of amounts or potency.
- Use the language of the person you're talking to, but clarify terms. "When you say you had half a gummy, do you mean a marijuana edible?"
- Stop once you have established incapacitation; don't probe further for "curiosity."



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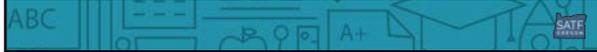
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## FINAL THOUGHTS

Your school's definition should guide your investigations - what you look for, what questions you ask. Get specific!

Check your biases! Craft your questions carefully, and challenge your biases around consent as you discover them.

In our next case study scenario, we'll revisit Ryan's report and further explore how we'd investigate consent.



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### Draft a series of potential questions for Ryan around consent

Maya and I have been hooking up for a couple months. Last Friday we had plans to go to this party off campus after the student activities fair; she plays intramural soccer and I volunteer at the multicultural center, so we were both staffing booths for a couple hours. At the end of the fair Maya came up to me and hugged me from behind and told me she wanted to get going. I don't have classes on Fridays so I'd just come from a happy hour with some of my work friends before the fair, and I wasn't feeling that great. I told her I wanted to go home and take a nap before the party. She said she'd help me clean up the booth, and when we finished taking stuff back to the multicultural center she started kissing me and telling me she'd fantasized about hooking up with me somewhere on campus without anyone knowing. I started feeling like maybe she'd get mad if I didn't hook up with her. I didn't want to, and it felt weird doing it where I work, but I didn't want her to think I'm not fun. I told her I'd down down on her real quick so we could get out of there. I felt terrible during it, and all night. I feel sick when I see her around campus now

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### Draft a series of potential questions for Maya around consent

After the fair, I was helping Ryan clean up their booth - none of the other staff stuck around, so of course I helped. I had been planning to ask them to officially be my partner at the party that night, but when we were unloading the final box of stuff in the MC I just realized I wanted to do it then. I went over to them and we started kissing. They smiled at me as I was leaning in, and seemed really happy. I was telling Ryan how much they mean to me, and how much I was into them, and then we started making out. We sat down on the couch that's in there, and then I got up and pulled the shades closed around the door because I didn't want anyone to see us. I told them how much I wanted to do it right there - not that I thought we were going to, I just wanted them to know how much I liked them. Then Ryan offered to give me oral sex, out of nowhere. Of course I wasn't gonna say no, so I unzipped my pants, but I didn't force them at all. Afterwards I kissed them and told them I'd take them home so they could nap before the party. I thought everything was fine.

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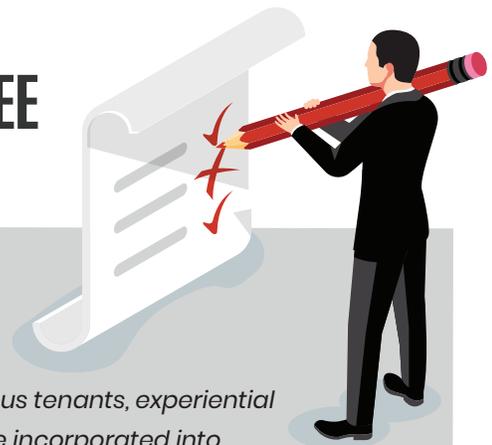
## INSTITUTIONAL ASSESSMENT: BRIDGING COMPLIANCE AND BEST PRACTICE

### WHAT IS YOUR INSTITUTION’S MISSION WHEN IT COMES TO TITLE IX?

*Students and staff often assume the purpose admission of Title IX on campus based on how the news frames Title IX, what friends and colleagues have said, as well as past experiences with institutional systems. Below write down what your institution’s goal is for Title IX response and programs on campus. For example, is prevention an element of your mission? Creating better campus culture? Responding to incidences on campus? Intervening in behavior before it escalates or perpetuates into a pattern of behavior? Creating safe space for students to earn degrees?*

### WHAT INSTITUTIONAL VALUES DO YOU WANT TO SEE INCORPORATED INTO YOUR TITLE IX PROCESS?

*Every institution has a unique mission and set of values that guide the work that it does. These specific values are what draw students and staff to your campus, and can be reflected to those who visit campus or partake in your programs. For example, some campuses focus on small community, diversity and inclusion, religious tenants, experiential based learning, etc. What values does your campus focus on, and how can those be incorporated into your Title IX process? How are they already reflected in your Title IX process? Title IX may be federally mandated, but how we go about meeting those mandates should reflect the campus.*



### WHAT IS YOUR DESIRED OUTCOME FOR EVERY TITLE IX CASE/REPORT?

*How would we describe a case in which we would say that all the Title IX requirements were met AND we served our purpose on campus. What does an ideal outcome in a Title IX case look like? We often seen Title IX issues as a lose-lose situation, and disregard the question of what desired outcomes look like. Regardless of the incident that triggered the process, we have a wealth of control over how next steps and the path forward look for someone. What are ideal outcomes for a Title IX case for all parties involved, for the campus as a whole? What is an ideal experience through the Title IX process?*



**TIX** Education Specialists

*"Bridging compliance and best practice."*

# OREGON HIGHER EDUCATION TITLE IX AND STATE LAW GUIDANCE 2020

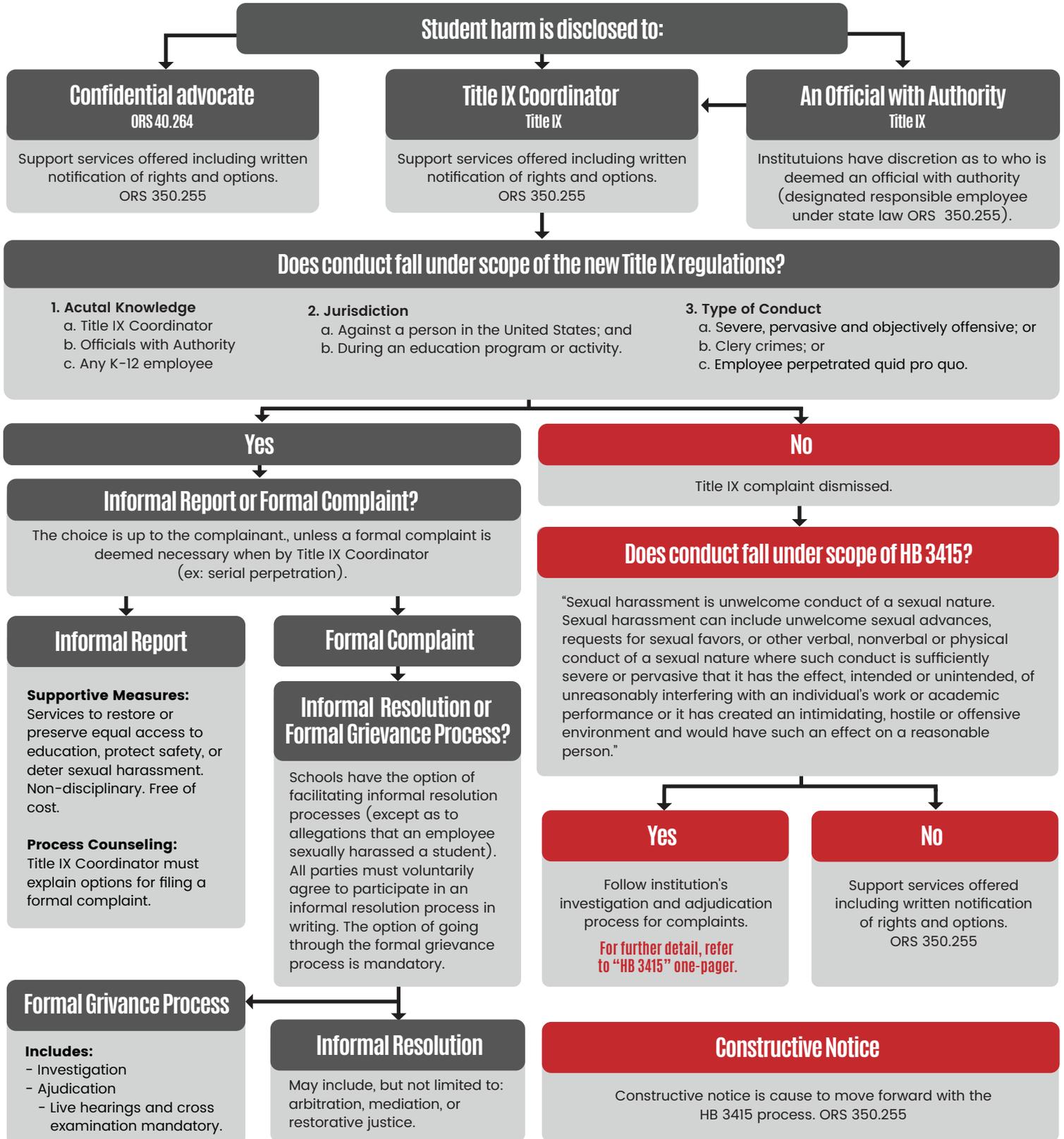


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## HB 3415 & TITLE IX 2020 FINAL RULES



# TIX Education Specialists

“Bridging compliance and best practice.”

## TITLE IX 2020 FINAL RULES

### Does conduct fall under scope of the new Title IX regulations?

#### 1. Actual Knowledge

- a. Title IX Coordinator
- b. Officials with Authority
- c. Any K-12 employee

#### 2. Jurisdiction

- a. Against a person in the United States; and
- b. During an education program or activity.

#### 3. Type of Conduct

- a. Severe, pervasive and objectively offensive; or
- b. Clery crimes; or
- c. Employee perpetrated quid pro quo.

Yes

### Informal Report or Formal Complaint?

The choice is up to the complainant, unless a formal complaint is deemed necessary when by Title IX Coordinator (ex: serial perpetration). Support measures provided for either.

### Informal Report

**Supportive Measures:** Services to restore or preserve equal access to education, protect safety, or deter sexual harassment. Non-disciplinary. Free of cost.

**Process Counseling:** Title IX Coordinator must explain options for filing a formal complaint.

### Administrative Requirements

- Designate Title IX Coordinator.
- Establish and disseminate non-discrimination policy and grievance procedures.
- Provide notice to parties.
- Training for Title IX personnel.
- Documentation and record-keeping.

No

Title IX complaint may be dismissed.

Dismissal may be appealed.

Conduct may still fall within a school's code

### Formal Complaint

### Informal Resolution or Formal Grievance Process?

Schools have the option of facilitating informal resolution processes (except as to allegations that an employee sexually harassed a student). All parties must voluntarily agree to participate in an informal resolution process in writing. The option of going through the formal grievance process is mandatory.

### Informal Resolution

May include, but not limited to: arbitration, mediation, or restorative justice.

### Appeals

**On bases that outcome was affected by:** procedural deficiencies  
newly discovered evidence  
bias or conflict of interest

Must be offered for both parties.

### Formal Grievance Process

### Written Notices

#### Initial Notice of Allegations:

- Sent to both parties.
- Include sufficient details including names, date, time, location of incident(s).
- Inform the parties of the grievance procedures.
- Inform of any provisions in code of conduct prohibiting making false statements and potential disciplinary action for doing so.

#### Ongoing Notices:

- In advance of any meeting, interview, or hearing conducted as part of the investigation or adjudication.
- If there is any dismissal.
- Any additional allegations.

### Investigation & Report

Provide time between notice and interviews, may not restrict ability to discuss investigation, evidence provided for review and response 10 days before report is completed, final report provided 10 days before hearing and/or decision is made.

### Hearing

Mandated live hearing with cross examination conducted by parties' advisors (optional for K-12 with opportunity for written questions of other parties and witnesses), burden of proof on school, rape shield protections, if party does not submit to cross examination their statements are excluded.

Decision-maker must be separate from the investigator and Title IX Coordinator.

### Sanctions & Remedies

Detailed written determination of responsibility (including sanctions) by decision-maker must be provided to both parties simultaneously.

With a finding of responsibility, school must provide complainant with remedies to restore or preserve educational access.

## OREGON TITLE IX LEGISLATION

### HB 3415 LEGISLATIVE OVERVIEW

#### WHAT DOES THE BILL DO?

Creates requirements for institutional policies related to sexual assault, sexual harassment, stalking, dating violence and domestic violence as well as establish training standards and establish a definition for sexual harassment.

#### GOES INTO EFFECT:

2020/2021 Academic School Year



### DEFINING SEXUAL HARASSMENT

#### SEXUAL HARASSMENT:

"Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person."

### RESPONDING TO REPORTS

#### JURISDICTIONAL STATEMENT

- ▶ Regardless of whether incident occurred on or off campus
- ▶ Sexual harassment, sexual assault, domestic violence, dating violence and stalking

#### NOTICE

- ▶ Actual notice and constructive notice
- ▶ Required to conduct initial inquiry or make contact with named parties
- ▶ Provide written notification of rights and services (ORS 350.255)

### ANNUAL TRAINING REQUIREMENTS



#### WHO MUST BE TRAINED?

- ▶ Title IX Coordinators
- ▶ Hearing Officers
- ▶ Process Advisors
- ▶ Investigators
- ▶ Third-party contract investigators
- ▶ Campus Security Officers
- ▶ Others who assist with investigation

#### WHAT ARE THE CURRICULUM STANDARDS?

- ▶ Definitions of types of conduct
- ▶ Prevalence of conduct
- ▶ Trauma-informed best practices
- ▶ Addressing bias and anti-oppression
- ▶ Interviewing survivors of sexual assault
- ▶ Culturally-responsive procedures
- ▶ Gender responsive
- ▶ Needs of LGBTQ parties

# SB 759 CONSIDERATIONS CHECKLIST

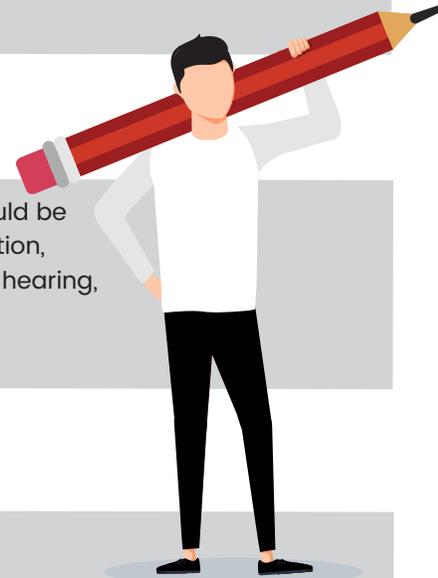
## CONTENT OF WRITTEN NOTIFICATION:

- Victims' rights:** Schools should include victims' rights under state law, Title IX, Clery Act, and VAWA Amendments to Clery as well as any limiting factors of these rights for victims who are not students.
- Civil legal options:** Schools should include civil options such as Office of Civil Rights (OCR) complaints, protective orders, employment protections, housing protections, name and other identity change options, address confidentiality, and legal assistance.
- Criminal legal options:** This should include victims' options in reporting to local law enforcement.
- Campus-based disciplinary processes the victim may pursue:** If an institution has different disciplinary processes for sexual assault if the perpetrator is a student versus staff or faculty, then both processes should be included in the written notification.
- Campus-based services available to victims of sexual assault**
- Victims' privacy rights including limitations of privacy pertaining to campus health and counseling services.**
- State and community services and resources and contact information:** Statewide and National hotline #'s, Address Confidentiality Program, Crime Victims' Compensation, Community-based Domestic Violence & Sexual Assault Programs, District Attorney Victim Assistance Program, Culturally-specific programs including Tribal resources and options for people with disabilities.



## FORMAT OF WRITTEN NOTIFICATION:

- Written in plain language that is easy to understand:** The written notification should be made available in languages representative of the student population of each institution, including considerations for those who are English language learners, deaf or hard of hearing, and visual impairments.
- Print, color, size and font that can be easily read**



## DISSEMINATION OF WRITTEN NOTIFICATION:

- Made available to students**
- During student orientation**
- Provided when a sexual assault is reported by a student:** Victims of sexual assault that qualify under SB 759 are outlined in Sec. 1 (a-b) of the bill. Although the bill limits the qualifying student victims to sexual assaults that occurred on the grounds or at the facilities of the university or college, schools should provide this written notification to student victims regardless of geography of assault. This aligns with Title IX best practice.
- Provided to a non-student victim of sexual assault whose perpetrator is affiliated with the school:** This includes victims of staff and faculty as well as students, with no limitations on geography of the assault.
- Posted on the website of the college or university:** Schools should take into consideration the "two click rule" when deciding where to make this written notification available online.

**ORS 350.255**