IX 101: Introduction to K-12 Title IX

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This training is not intended as legal advice and should not be taken as such; we advise you to consult with your legal counsel before making policy or process changes.

ODE is available to support with individual technical assistance following this training.
About Us

• The Oregon Department of Education works in partnership with school districts, education service districts and community partners to foster equity and excellence for every learner;

• Together, we serve over 560,907* K-12 students and support 75,807* school employees, including teachers, administrators and classified staff;

• We believe every student should have access to a high-quality, well-rounded learning experience; and

• We work to ensure every student in Oregon graduates with a plan for their future.

*Data from October 2021
Who We Serve

560,907 Students
More than 200 languages spoken

75,807 Educators
Staff of Color

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

197 Districts
1,257 Schools
133 Charter Schools
19 Education Service Districts

Oregon Department of Education, 2020-21 School Year
Agenda

★ The Fundamentals of Title IX
★ Role of the Title IX Coordinator
★ Athletics
★ Single-Sex Programs
★ Pregnant and Parenting Students
★ Sexual Orientation & Gender Identity Discrimination
★ Sexual Harassment
★ Records, Tracking, and Compliance
★ Resources
The Fundamentals of Title IX
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
What parts of education are covered by Title IX?

- Recruitment and admissions
- Financial assistance
- Curricular and co-curricular activities
- Athletics
- Sexual harassment and sex-based harassment
- Pregnant and parenting students
- Discipline
- Single-sex education
- Employment
- Retaliation
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:

- Court cases
- Regulations
- DCLs and Guidance Documents
- OCR case resolutions
- Law
Compliance

Schools and districts are responsible for complying with Title IX as a condition of their Federal funding.

All schools/districts must designate at least one employee to coordinate their compliance (Title IX Coordinator).
Key Areas of Title IX Compliance for K-12 Schools

- Title IX Coordinator(s)
- Your policies and procedures
  - Discrimination
  - Employment
  - Complaint processes
- Website
  - Nondiscrimination notice
  - Title IX contacts
- Recordkeeping
- Athletic equity
  - Policies
  - Funding
- Sexual harassment
  - Policies, procedures, and processes
  - Personnel
- Staff training
  - Reporting requirements
Role of the Title IX Coordinator
What does the Title IX Coordinator do?

- Ensure the district/school is fully complying with Federal Title IX law, regulations, and guidance
  - Keep track of new law, regulations, and guidance, and update as needed
- Coordinate responses to reports of sex discrimination, including:
  - student and employee reports
  - sexual harassment
  - athletic complaints
  - single-sex education
- Keep track of records and data related to Title IX compliance
- Coordinate with other roles/departments
- Monitor overlapping requirements between Title IX and other Federal/state laws
Am I “qualified” to be the Title IX Coordinator?

There are no current official qualifications in law or rule other than that this person must be “designated” and “authorized.” In practice, this translates to:

• sufficient independence and authority to carry out the necessary duties
• receives training on Title IX
• is not biased by other role, personal beliefs, or conflict of interest

Helpful historical document: Dear Colleague Letter on Title IX Coordinators
Schools/districts must designate at least one Title IX Coordinator, but may designate more than one.

Pros:
- Spreads the work around
- More minds to tackle complaints
- Building/discipline-level familiarity
- Can mitigate conflicts of interest

Cons:
- Information can get “lost”
- More work to align practices/procedures
- “Building-level” coordinators may result in more frequent conflicts of interest
Notification

Who is notified?

- applicants for admission and employment
- students
- parents or legal guardians of elementary and secondary school students
- employees
- unions or professional organizations holding collective bargaining or professional agreements with the recipient

What information must be shared?

- Title IX Coordinator’s name/title, email address, physical address, phone number
- The district/school does not discriminate
- That discrimination can be reported **verbally** (including in-person or over the phone) or by **writing** (including email, mail, or otherwise)
- About the school’s grievance procedures

34 CRF Part 106.8
Notification: Websites

• The school’s nondiscrimination policy, including Title IX policies
• Information about the Title IX Coordinator including name (or title), email address, physical address, and phone number
• The school’s grievance procedures
• All materials used to the train Title IX Coordinators and other designated personnel related to sexual harassment

If the school/district does not have a website, these must be otherwise published.

34 CRF Part 106.8 and 106.45(b)(1)(iii)
Athletics
Three Analytical Standards for Athletics

1. Schools must offer male and female students equal athletic opportunities and effectively accommodate students’ athletic interests and abilities.

2. Schools must allocate athletic financial assistance equitably.

3. Schools must provide male and female athletes with equal benefits and opportunities.

The “three-part test”

The “laundry list”
The Three-Part Test

Part 1: Athletic participation opportunities for males and females are substantially proportionate to their respective enrollments;

OR

Part 2: The school has a history and continuing practice of expanding athletic participation opportunities for the underrepresented sex;

OR

Part 3: The school has fully and effectively accommodated the interests and abilities of the underrepresented sex.
The “Laundry List”

- Equipment and supplies
- Facilities
- Assignment and compensation of coaches
- Support services
- Medical and training facilities
- Scheduling of games and practices
- Travel and Per Diem
- Housing and dining
- Publicity
- Opportunity to receive academic tutoring
- Recruitment
Booster Clubs and Donors

All athletic funding, equipment, travel, etc. counts towards your Title IX equity, even if it comes from booster clubs or donors.

• Some sports will be more popular than others with the community; this creates an unfair advantage for certain teams, even if the “opportunity” to fundraise is provided equally.
• School admin and athletic staff must understand the implications of accepting donations and support, especially if it is targeted and specific

Helpful Resource: OSAA and ODE webinar series on booster clubs
Is this a potential Title IX violation?

ABC high school enrolls 225 boys and 250 girls. 85 boys play athletics and 82 girls play athletics. The school surveys students every year about their interest in athletics; this year, the survey shows that boys are interested in adding a boys golf team, while girls are happy with the current team offerings. After reviewing the survey, the school decides they will not add any additional teams or sports next year.

West High School rents softball and baseball facilities from the city. A private donor has approached the city and wants to fund a brand new baseball stadium that includes covered seating, private locker rooms, and a private hitting facility. The city informs West that they are moving ahead with the new facility and offers to let West have first rights of use when the new stadium is finished.
Which sports “count” for Title IX?

1. **Program Structure and Administration (in a manner consistent with other varsity sports)**
   - Operating budget, staff, medical/training support, and other support
   - Participants eligible to receive athletic scholarships and awards

2. **Team Preparation and Competition**
   - Practice opportunities
   - Competitive schedule
   - Defined season determined by a governing athletics organization, conference, or consortium
   - Preseason/postseason
   - Primary purpose to provide athletic competition
     - Adopted set of rules (state)
     - Resources based on competitive needs of team
     - Selection of teams/participants is based on factors related to athletic ability
Trans, Nonbinary, and Gender-Diverse Athletes

• Oregon law and Title IX both prohibit discrimination based on gender identity.
• OSAA’s policies allow trans students to play athletics on the team that matches their gender identity.
• Nonbinary, gender-fluid, and other gender diverse students may play on either team, provided they don’t play the same sport for both teams (i.e., cannot swim for the girls and boys team during the same season).
• Recommendation: make individualized safety or transition plans with students (and families) as needed.
Key Athletics Points for Coordinators

★ Title IX compares your TOTAL PROGRAM for student athletes, not sport-to-sport

★ Facilities, equipment and supplies, and game/practice times are your most visible program components to students and families - and most likely to be what your complaints are about

★ Be mindful of what counts as a “sport” for Title IX purposes - AND don’t neglect equity for non-Title IX sports and activities.

★ For the three-part test, no part is superior - use the one that accurately reflects your district rather than trying to make a specific one work.
Single-Sex Programs
Allowable carveouts for single-sex programs

• Athletics
• Physical education during contact sports
• Sexuality education during specific lessons
• Boy scouts, girl scouts, and other voluntary youth service organizations
Limitations to Single-Sex Programming

- Some programs can never be single sex (ex: CTE programs)

- Other programs can be offered on a single-sex basis in specific, limited circumstances:
  - Designed to achieve a specific purpose/response to a specific issue
  - Equal activity offered for the other sex
  - Periodic evaluations
Can an outside organization offer a single-sex program, scholarship, or club at my school?

- If the program is a Voluntary Youth Service Organization, then yes.
- If the program otherwise meets the Title IX criteria for single-sex programming, then probably.
- If the program is advertised through the school or offered at school but not a part of the school’s educational program, and the school is not providing significant assistance to the organization, then maybe.
Is this allowable by Title IX?

A group of students from the local community college approach the school and want to offer a free after-school program for middle school girls to learn about coding and tech.

A group of high school girls approach their PE teacher and ask if the school can add a women’s weightlifting course next semester. They complain that the current weightlifting class period is dominated by football players, and that the girls in the class don’t get enough help from the teacher because he designs the class for the football team.
Key Single-Sex Points for Coordinators

★ Some school programs can never be single-sex (such as CTE)

★ Carefully screen any courses or extra-curricular activities that are single-sex for allowable exceptions
Pregnant and Parenting Students
Check your policies!

- Schools cannot exclude pregnant or parents students from activities on the basis on their pregnancy/parenting status
- May only require medical permission if medical permission is required for all physical/emotional conditions
- Students are entitled to leave, either:
  - In alignment with the districts policies relating to temporary disabilities, or
  - In alignment with the recommendation of the student’s physician
Sexual Orientation & Gender Identity Discrimination
“Consistent with the Supreme Court’s ruling and analysis in Bostock, the Department interprets Title IX’s prohibition on discrimination “on the basis of sex” to encompass discrimination on the basis of sexual orientation and gender identity.”

-OCR Notice of Interpretation, June 16, 2021
Oregon Law

Oregon law has prohibited discrimination based on sexual orientation and gender identity in education since 2007.

- OAR 581-021-0045 prohibits protected class discrimination in schools and defines sexual orientation and gender identity.
- Every Student Belongs (OAR 581-022-2312) requires schools to develop a policy for bias incidents, including those based on sexual orientation and gender identity.
- Schools must prohibit and address bullying, intimidation, harassment, and cyber-bullying (ORS 339.356), including protected-class incidents.
IN THE PAST 30 DAYS, HAVE YOU BEEN BULLIED AT SCHOOL?

- **BULLIED FOR ANY REASON**
  - Female: 35.00%
  - Male: 22.20%
  - Nonbinary/GNC: 48.00%

- **UNWANTED SEXUAL COMMENTS OR ATTENTION**
  - Female: 10.70%
  - Male: 2.40%
  - Nonbinary/GNC: 15.30%

- **PHYSICAL CHARACTERISTICS OR APPEARANCE**
  - Female: 16.40%
  - Male: 9.90%
  - Nonbinary/GNC: 25.80%

- **RACE OR ETHNIC ORIGIN**
  - Female: 5.00%
  - Male: 4.00%
  - Nonbinary/GNC: 6.20%

Oregon Healthy Teens Survey, 2019; 8th grade data, bullying

Oregon Department of Education
59.1% of LBGTQ+ students felt unsafe at school because of their sexual orientation; 42.5% felt unsafe because of their gender expression.

32.7% of LGBTQ+ students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable; 8.6% missed four or more days in the past month.

2016 Guidance on Supporting Transgender Students

- Terminology
- Student Identity
- Free and Appropriate Public Education
- Names and Pronouns
- School Documents and Records
- Name Change Options + Process
- Transcripts and Diplomas

- Student Health Records
- Instruction + Comprehensive Sexuality Education
- Gender-Based Activities, Rules, Policies
- Restroom and Locker Usage
- Sports
- Student Safety
FAQs: Student Identity, Names, and Pronouns

“The person best situated to determine a student’s gender identity is the individual student.”

When a student or the student’s parent or guardian notifies the school that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student’s gender identity.

There is no medical diagnosis or treatment requirement. Requiring students to produce such identification documents can be considered a violation of Oregon law if it limits or denies a student access to an educational program or activity.
FAQs: Restrooms, Locker Rooms, and Showers

- Students should be allowed to use the restrooms, locker rooms, and showers that align with their gender identity
- Schools may offer a single-stall restroom or alternative accommodations, but may not require the student to use them.

See also: Parents for Privacy v. Barr, Ninth Circuit Court dismissal
FAQs: Athletics

“...once a transgender student has notified the student's school of their gender identity, the student shall be consistently treated as that gender for purposes of eligibility for athletics and activities...”

See also: OSAA’s Gender Identity Participation Policy
A lesbian high school student wants to bring her girlfriend to a school social event where students can bring a date. Teachers refuse to sell her tickets, telling the student that bringing a girl as a date is “not appropriate for school.” Teachers suggest that the student attend alone or bring a boy as a date.
On her way to the girls’ restroom, a transgender high school girl is stopped by the principal who bars her entry. The principal tells the student to use the boys’ restroom or nurse’s office because her school records identify her as “male.” Later, the student joins her friends to try out for the girls’ cheerleading team and the coach turns her away from tryouts solely because she is transgender. When the student complains, the principal tells her “those are the district’s policies.”

When he starts middle school, a transgender boy introduces himself as Brayden and tells his classmates he uses he/him pronouns. Some of his former elementary school classmates “out” him to others, and every day during physical education class call him transphobic slurs, push him, and call him by his former name. When he reports it to the school’s administrators, they dismiss it, saying: “you can’t expect everyone to agree with your choices.”
What would you do?

Cal is starting 9th grade, and his parents have asked his teachers to use he/him pronouns and to use the name Cal instead of his legal name. The social studies teacher doesn’t want to use a name that is not the student’s legal name. He refuses to do so, and offers to call Cal by his last name instead.

Some parents have complained to you about the LGBTQ+ student club at the middle school. They say that the topics discussed by this club are inappropriate for middle-school-aged students, and ask the school to require parental permission forms for students who attend this club.
GSAs

- Schools must allow GSAs (or similar clubs) to form by the same rules for any other club.
- Schools cannot create separate rules.

LGBTQ+ students with GSAs in their schools…

- Felt less unsafe
- Missed less school
- Experienced less bullying and violence based on gender expression
- Perceived that staff were more supportive of LGBTQ+ student rights
Key SO/GI Points for Coordinators

★ Ensure that discrimination based on gender identity and sexual orientation is processed and tracked under Title IX.

★ Be aware of Oregon’s overlaps with legal requirements and best practices for supporting LGBTQ+ students.
Sexual Harassment
Title IX and sexual harassment

A series of supreme court cases interpret Title IX to include sexual harassment

1980s

OCR releases Sexual Harassment Guidance, advising schools on their responsibilities and expectations

1997/2001

OCR releases a DCL and Q&A addressing sexual assault and the roles of schools

2011/2014

OCR revokes 2011 and 2014 guidance; announces intent to replace with regulations.

2017

OCR releases sexual harassment regulations; compliance deadline August 14, 2020

May 2020
The 2020 Regulations: Highlights

What’s new?

• Definition of sexual harassment
• Only applies to incidents that occur within the education programs/activities
• Multiple personnel; single investigator model no longer allowed
• Informal processes allowed (in some cases)
• Required notification documents
• Specific investigation process

What’s the same?

• Students and employees entitled to an environment free of harassment
• When any K-12 employee becomes aware of sexual harassment, they must report it
• The school must respond to the harassment and, if substantiated, eliminate the hostile environment
• Supportive measures required
Title IX Sexual Harassment

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

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or


-34 CFR Part 106.30
Jurisdictional Requirements

• The conduct must occur within the educational programs or activities offered by the school/district.
  • On school grounds
  • Off school grounds, including: field trips, athletic games, transportation, school fundraising events, etc.
• The conduct must occur within the United States.
• The school/district must exercise reasonable control over the respondent.
Title IX

harassment, intimidation, bullying, and cyberbullying

sexual abuse and sexual conduct

Oregon sexual harassment law
is the conduct between an adult and a student? YES → report as sexual conduct and/or abuse, THEN: NO → screen for Title IX sexual harassment, THEN:

is the conduct otherwise child abuse? YES → report as sexual abuse, THEN: NO → did it occur within the educational program/activity? YES → NO → screen for Oregon sexual harassment

report of any sexual misconduct
Schools are required to designate, at minimum:

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

The Title IX Coordinator may also serve as the Investigator.

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

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

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<th>Decision-Maker</th>
<th>Appeals Decision-Maker</th>
<th>Informal Process Facilitator</th>
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<td>Scope of “educational program or activity”</td>
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1. Actual Notice and Supportive Measures
2. Formal Complaint
3. Investigation
4. Decision-Making
5. Appeals
6. Sanctions and Remedies
7. Wrap-up and Compliance
Whenever any school employee has knowledge of possible sexual harassment, the school is “on notice” and must respond:

• outreach to complainant
• provision of supportive measures, which are “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.”
• can engage in emergency removal

Overlap your Oregon-specific processes:

• mandatory reporting
• Oregon sexual harassment law “notification of rights and options”
• bullying and harassment parental notification
Once a formal complaint has been filed, the Title IX grievance process begins.

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

Investigating the allegations of sexual harassment under Title IX involves:

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

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

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

5 Appeals

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

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

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

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

Wrap-Up and Compliance

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

• Ensuring confidentiality
• Recordkeeping
• Debriefing and review
Key Sexual Harassment Points for Coordinators

★ Ensure your district/school’s policies are up-to-date with the new 2020 regulations.
★ Identify your personnel (investigators, decision-makers, etc) and make sure they receive required training.
★ Make sure staff understand their reporting responsibilities (under sexual harassment AND sex discrimination generally).
For further information, register for ODE’s comprehensive Title IX sexual harassment training:

- February 22 and 24, 1-3 pm (must attend both sessions)
- April 4, 1-5 pm
- May 20 and 27, 8-10 am (must attend both sessions)
Records, Tracking, and Compliance
What should be recorded/tracked for Title IX?

- All complaints of sex discrimination including: bullying/harassment, sexual harassment, athletic equity complaints, LGBTQ+ equity complaints, academic equity complaints, and employment equity complaints.
  - It is a best practice to log both “formal” and “informal” reports for tracking and response purposes
  - Sexual harassment complaints have specific regulatory tracking requirements
- Athletic equity analysis (conducted regularly)
- School data related to sex discrimination (student surveys, enrollment and attendance data, etc)
- Notifications to students and staff
- Trainings given to students, staff, and designated personnel
Sexual Harassment Regulatory Requirements

Records must be kept of:

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

Records must be maintained for a minimum of seven years.

34 CFR § 106.45(b)(10)
Office of Civil Rights (OCR) Resources

**Title IX Regulations (34 CFR Part 106)**

**Policy Guidance Portal**

- Search for “Title IX” to find guidance documents

**OCR Blog**

**Department of Education Youtube Page**

**LGBTQI+ Student Resources Page**

**OCR Hotline and Contact Information**
ODE and Oregon Resources

ODE Civil Rights Page

ODE Title IX Coordinators Resource Page

• Webinars and recordings will be added here when available

OSAA Title IX Page
Who Can I Call?

OCR Seattle Office - 206-607-1600

ODE Civil Rights Support - 503-551-5713

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

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