



TITLE IX UPDATES 2020-2021

Title IX Policies and Procedures are Being Updated Nationally...What Does That Mean for My School?

On May 6, 2020, the Federal Department of Education (under the Federal Office of Civil Rights) released new rules for colleges and universities, requiring many changes for how schools must receive reports about (and investigate) sexual misconduct/harassment.

THIS DOCUMENT PROVIDES A BRIEF INTRODUCTION TO:

- 1) How schools used to operate under past Title IX guidance
- 2) What has changed
- 3) What Oregon law requires of your school (related to sexual misconduct)

While many of these changes will require your school to update their policy (and potentially change how investigations and hearings related to sexual misconduct are conducted on your campus), some elements of your campus policy may not change. To learn more about what has changed on your campus, check your school's website, contact a confidential resource on your campus (including campus advocates), or contact your Title IX Coordinator.

About This Guide

Portions of this guide have been adapted from the Network for Victim Recovery of DC's (NVRDC) guide "Things to Know About the 2020 Title IX Changes" : <https://www.nvrdc.org/education-resources>, and have been updated to bring in the Oregon context.

This guide is not meant to serve as legal advice, nor should it be interpreted as such.

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Helpful Links & Resources for More Information

Summary of Major Provisions of the Department of Education's Title IX Final Rule

U.S. Office of Civil Rights, Department of Education

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>

U.S. Department of Education Website

<https://www2.ed.gov/about/offices/list/ocr/newsroom.html>

Oregon Attorney General's Sexual Assault Task Force

www.oregonsatf.org

About Oregon SATF

The Oregon Attorney General's Sexual Assault Task Force is a private, non-profit, non-governmental statewide agency operating three programs and coordinating over 100 multi-disciplinary members who serve as advisors on our Task Force Advisory Committee: Campus, Criminal Justice, Legislative & Public Policy, Medical-Forensic, Men's Engagement, Offender Management, Prevention Education, and Victim Response.

Our mission is to facilitate and support a collaborative, survivor-centered approach to the prevention of and response to sexual violence. We accomplish our mission by advancing primary prevention and providing multi-disciplinary training and technical assistance to responders in Oregon and nationally.

Oregon SATF is not a direct service agency. Please visit this page if you would like to find support resources in your county: <http://oregonsatf.org/help-for-survivors/>



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Can violence that happens off-campus be reported?

Does every employee at my school have to report violence?

What types of violence must my school respond to?

When does a school have to respond?

In previous guidance, schools were required to respond to all reports of sexual harassment, including those off-campus.	Schools can (but are not required) to respond to incidents that happen outside of the "educational program or activity". Educational program or activity examples could include athletics/field work/etc.	Oregon HB 3415 requires that schools respond to all reports of sexual harassment received by the institution, regardless of whether the incident occurred on campus or elsewhere.
Previously, many schools required all paid staff and volunteers to report known instances of violence to the Title IX coordinator (as "responsible employees").	Schools may choose if all employees will be required to report to the Title IX coordinator, or just some employees (now called "Officials with Authority").	Oregon HB 3415 requires that schools act when they know (or should have known) about violence. School employees are mandatory reporters of child abuse (must report abuse of those 17 and under).
Sexual assault, stalking, dating violence, and sexual harassment were all required to be addressed by schools.	Schools must address instances of sexual assault, stalking, and intimate partner violence that are severe, pervasive and objectively offensive, & quid-pro-quo sexual harassment.	Oregon HB 3415 also requires that schools respond to all reports of sexual assault, dating violence, stalking, sexual harassment and domestic violence.
Previously, schools were required to address any "actual notice" (reports, anonymous or otherwise) or act when they reasonably should have known that an act or acts of violence were occurring.	In the new rule, schools are required to act when they have "actual" notice only, which includes a report to the Title IX coordinator or to an "official with authority" at the school.	Oregon HB 3415 requires schools to respond whenever a designated "responsible employee" has actual knowledge, or in the exercise of reasonable care should know, that possible violence has occurred.

KEY TAKE-AWAYS: Under Oregon law, Federal Title IX rule (or a combination of the two) your school is required to respond to any report of sexual harassment, sexual assault, dating violence, domestic violence or stalking, regardless of where the violence occurred (on or off-campus). Schools can choose which employees have to report violence. Schools must respond when they 1) know (by a report) or 2) should have known that possible violence is occurring or has occurred.



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How will the sexual misconduct process change?

How will a school decide how to investigate a report?

What if I don't want to go through a formal investigation?

What if I change my mind about participating in an informal process?

<p>Previous guidance allowed schools to create their own process, as long as it was prompt & impartial. Schools could have investigators or hearing panels make a decision, or a combination of the two.</p>	<p>School processes must now include 1) a live hearing (in-person or online) and 2) cross-examination as part of the live hearing. Decisions made by a single investigator are not allowed.</p>	<p>Oregon HB 3415 requires that schools adopt written policies stating how they will respond to reports of violence. <i>A school can choose to use a different procedure than those required by Title IX.</i></p>
<p>Previously, schools had to respond to all reports under one sexual misconduct policy. Now, many schools may have multiple policies to address sexual harassment.</p>	<p>Schools must determine if the reported sexual harassment is 1) quid-pro-quo, 2) so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity, or 3) assault, dating /domestic violence or stalking.</p>	<p>Oregon HB 3415 requires that schools adopt a specific sexual harassment policy stating that sexual harassment is "unwelcome conduct of a sexual nature". <i>See link on resource page for more</i></p>
<p>Previously, mediation or informal resolutions were discouraged by the Federal Department of Education, but schools could choose to allow such methods of resolving sexual harassment complaints..</p>	<p>Schools can choose to offer informal resolution processes, but both parties must agree (in writing) that they wish to engage in the informal process instead of the school's formal grievance process.</p>	<p>Oregon law does not require or prohibit informal processes or mediations.</p>
<p>In past guidance provided by the Federal Department of Education, mediation was discouraged for sexual misconduct cases.</p>	<p>Schools must allow either party, if they wish, to withdraw from the informal process and resume the formal grievance process.</p>	<p>Oregon law does not require or prohibit informal processes or mediations.</p>

KEY TAKE-AWAYS: Your school may have two different sexual misconduct policies (one that follows Federal Title IX rule, the other that follows Oregon's HB 3415 law). Your school may also decide to create an "Informal process" such as mediation or restorative justice.



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- How long does a school have to complete an investigation?
- What else can a school do to help if I experience violence?
- Who will help me navigate the reporting and/or investigation process?
- Can I work with an advocate?

Under prior guidance, schools were encouraged by the Department of Education, but not required, to finish investigations within 60 days.	Schools are required to include "reasonably prompt" timeframes (no specific number of days) in their grievance procedures.	Oregon law does not make any requirement regarding timeline for sexual harassment reports.
Previously, schools could offer "interim measures" or accommodations (including class changes, housing changes, etc.) to support those that experienced violence.	Schools are now required to provide "Supportive Measures" (previously "interim measures") to those believed to have experienced violence. These cannot unfairly burden the Respondent.	Oregon SB 759 requires that schools make students aware of what support resources (including confidential resources) are available on campus and in the community.
Your school may have offered a "process advisor/advocate" to help navigate the process, and allowed for a support person or "advisor of choice"	Parties must have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.	Oregon law does not make any requirement in relation to advisors during a Title IX process.
Title IX allowed victim advocates (a professional that specializes in working with people who have experienced violence) to support students as "advisors of choice"	Cross-examination is not the role of a victim services advocate, and many schools are instead having students use advocates as a support person outside of the Title IX process	Oregon law grants advocates legal privilege (like a doctor or lawyer), allowing people who have experienced violence to get confidential care

KEY TAKE-AWAYS: Schools no longer have a specific amount of days to complete an investigation (rather, it must be "prompt"). Your school must provide "supportive measures" (class changes, housing accommodation, etc.) if you have experienced violence, as long as it does not unfairly burden the other party. Your school will update who can serve as Advisors throughout the process, and you may work with a victim-services/confidential advocate to seek support if you have experienced violence.



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What if someone retaliates against me during the process?

Can my past sexual history be used in this process?

How much evidence does my school require?

Do schools have to offer an appeals process?

Schools in Oregon included guidance that retaliation was not acceptable (many of them under the Student Code of Conduct).	The new Rule expressly states that retaliation by any school or person is prohibited, and expands what schools must consider retaliation.	Oregon House Bill 2972 grants students the right to not participate in a Title IX process, free from retaliation, consequence or pressure from the school.
Prior to the new Rule, many schools chose to not allow questions related past sexual history into the investigation process, unless it was specifically related to the case.	The new Rule uses "rape shield" protections, meaning that past sexual history cannot be included unless it specifically shows someone other than the respondent was responsible for the violence.	Oregon's "Rape-shield" laws are not specific to higher education, colleges or universities.
In the past, schools utilized the "Preponderance of the Evidence" standard (meaning the evidence had to show it was 50.01%+ likely that a policy had been violated).	Schools may now choose to use the Preponderance of the Evidence Standard, or "Clear and Convincing" (or substantially greater than 50%).	Oregon law does not require a specific evidence standard for schools. Criminal courts utilize "Beyond a Reasonable doubt", or 99%+ likelihood a crime was committed.
Schools were encouraged to include an appeals process in their procedures for sexual misconduct.	Schools must offer all parties an appeal after a determination has been made (after a hearing) or when a report is dismissed.	Oregon law does not include instruction for schools regarding the appeals process.

KEY TAKE-AWAYS: Retaliation from the school (or any person) for reporting or being involved in a sexual misconduct process is prohibited. Schools cannot penalize a student for not being involved in the process. Your sexual history cannot be used in an investigation, unless it would expressly show that 1) someone else other than the respondent violated the sexual misconduct policy or 2) that the evidence presented is wrong. Schools can choose what evidence standard they use to make a determination. Schools must offer an appeals process when a finding is made, or when a report of sexual misconduct is dismissed.