



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

2020 Title IX Training

September 17, 2020, 2-4pm



Kate Hildebrandt

she/her

Civil Rights and Title IX Specialist

Oregon Department of Education

katherine.hildebrandt@ode.state.or.us

503-551-5713





Equity and Excellence for Every Learner

- The Oregon Department of Education works in partnership with school districts, education service districts and community partners;
- Together, we serve over 580,000 K-12 students;
- We believe every student should have access to a high-quality, well-rounded learning experience;
- We work to achieve the Governor's vision that every student in Oregon graduates with a plan for their future.



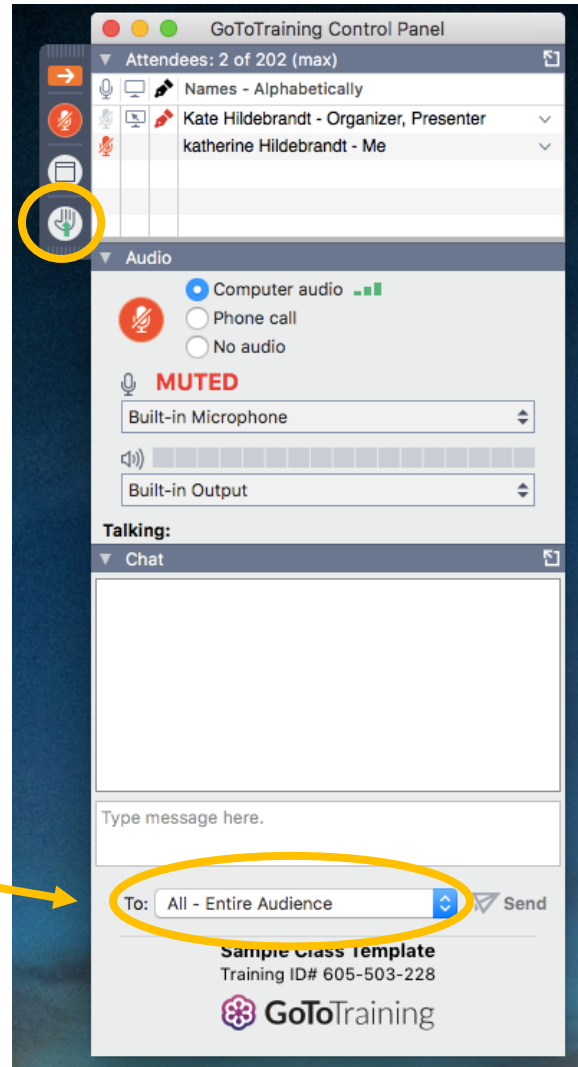
Before we get started...

This training is not intended as legal advice; 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.

Using GoToTraining

“raise your hand” to ask a question verbally – you will be unmuted



you can access the audio through either your computer or a phone

type a question to either the entire audience or to an individual



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

TODAY'S AGENDA



Background: Title IX and Oregon Law



Facets of Title IX



Sexual Harassment: Definitions & Dynamics



Overview of Regulatory Changes



THE GROUNDWORK: TITLE IX & OREGON LAW

In this section...

- Introduction to Title IX
- Related Oregon laws, including
 - Discrimination and protected classes
 - Oregon's sexual harassment law
 - Mandatory reporting and SB155

"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."



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Type in the chat box:

What is covered by Title IX?

What is 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

Milestones of Title IX

Title IX is passed as part of the Education Amendments

1972

Sexual Harassment Guidance directs schools to address harassment of students and employees

1997/2001

Draft regulations relating to sexual harassment are released, previewing major changes to sexual harassment processes

Nov 2018

1975

The first Title IX regulations relating to athletics are enacted

2011

Dear Colleague Letter reiterates and expands protections for sexual assault; additional guidance and DCLs follow over the next several years

May 2020

Regulations Released

Aug 14, 2020

Implementation Deadline



Intersecting Oregon Laws

Oregon's Civil Right's Bill

1953: Oregon's Civil Rights Bill made Oregon the 21st state to outlaw discrimination in public places

Current definition of discrimination

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



Oregon's Protected Classes

Race

Color

National
Origin

Religion

Disability

Sex

Sexual
Orientation
(and Gender
Identity)

Age

Marital/
Familial
Status



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Discrimination Prohibited

School districts cannot discriminate by:

- Treating one person differently from another in determining whether a person satisfies any requirement or condition for aid, benefits, or services
- Providing different aid, benefits, or services
- Denying any person aid, benefits, or services
- Subjecting a person to separate or different rules of behavior or treatment
- Aiding or perpetuating discrimination by joining or remaining a member of any agency or organization which discriminates in providing any aid, benefit, or service to students or employees
- Otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.



Sexual Harassment Policies

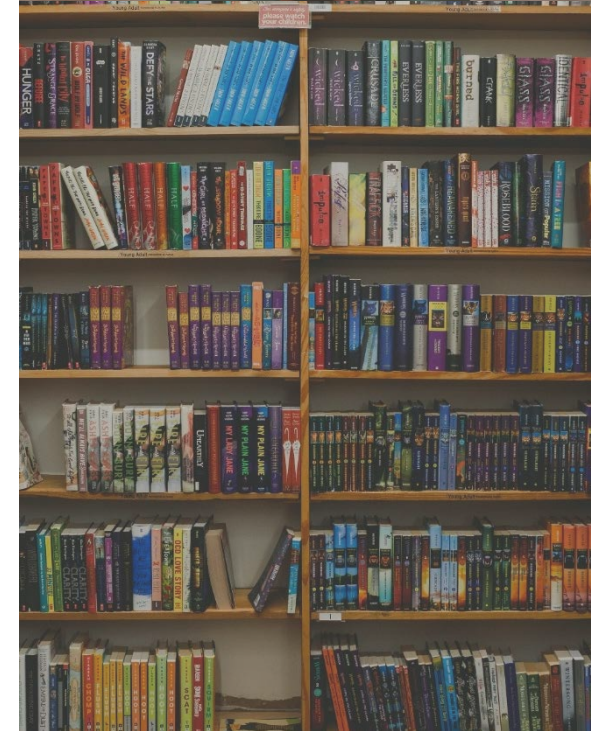
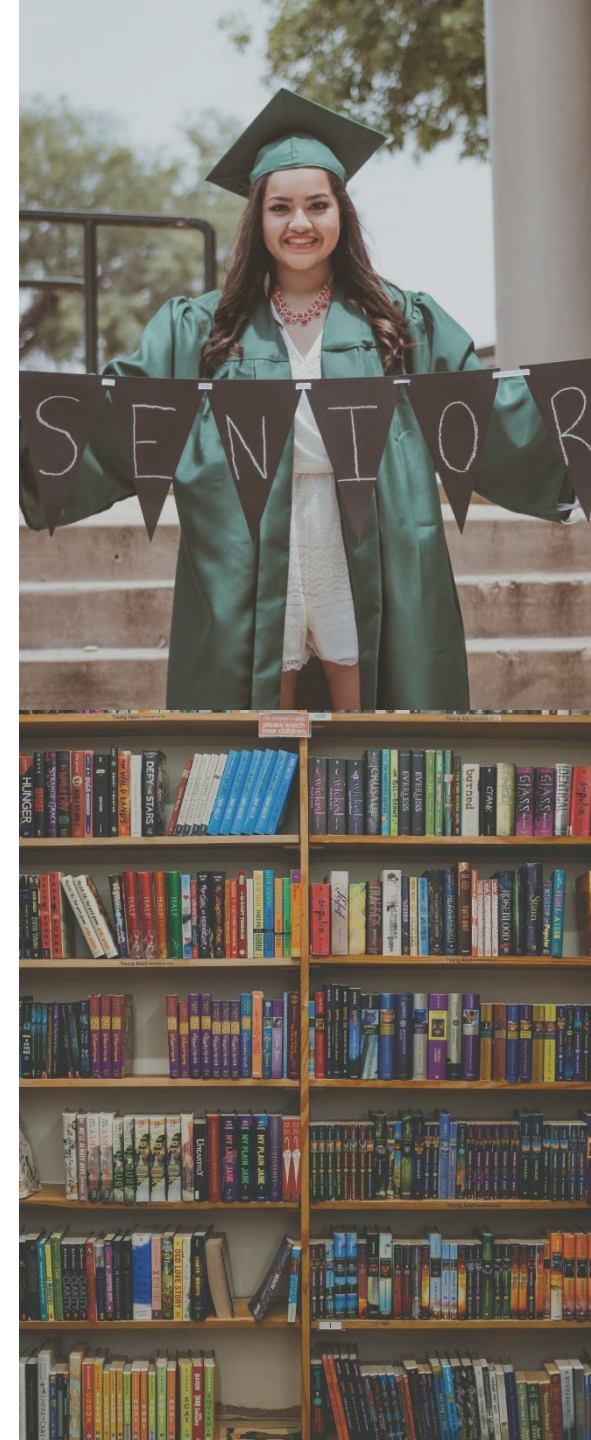
Oregon school districts are required to adopt policies that prohibit sexual harassment, and that:

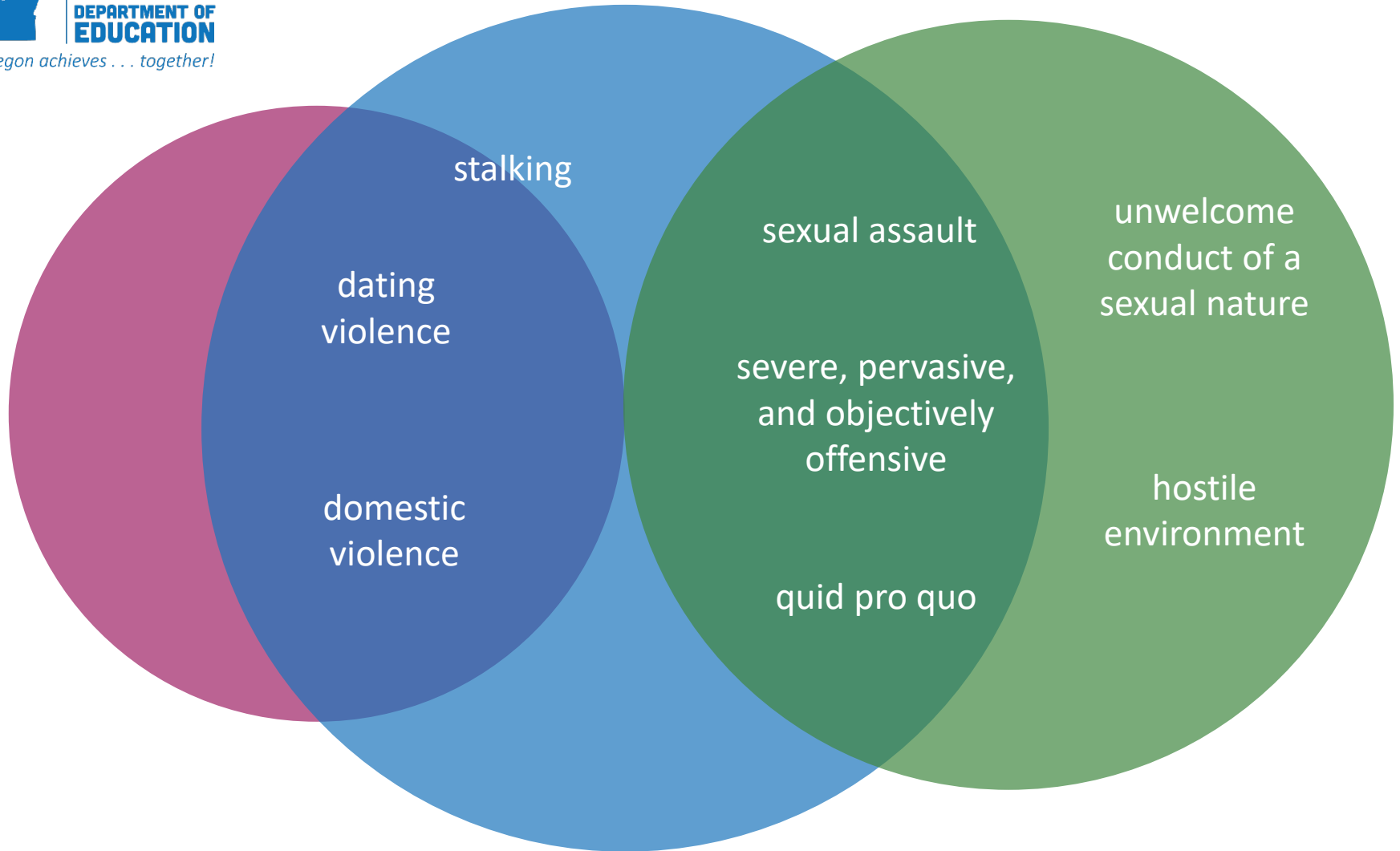
- Require employees to report harassment
- Require schools to implement supportive measures to reporting or impacted parties
- Require investigation of reported harassment
- Require specific types of notification to students who report or are reported to commit harassment

Dating and Domestic Violence Policies

Requires that schools adopt policies that prohibit teen dating violence and domestic violence, including

- Identifying a staff member to take and respond to reports
- Adopting policies for how staff members should respond to reports
- Conducting educational programming in grades 7-12





Oregon's teen dating violence
and domestic violence policies
(ORS 339.366)

Title IX sexual
harassment
policies

Oregon's K-12 sexual
harassment policies
(OAR 581-021-0038)

SB155: Sexual Conduct

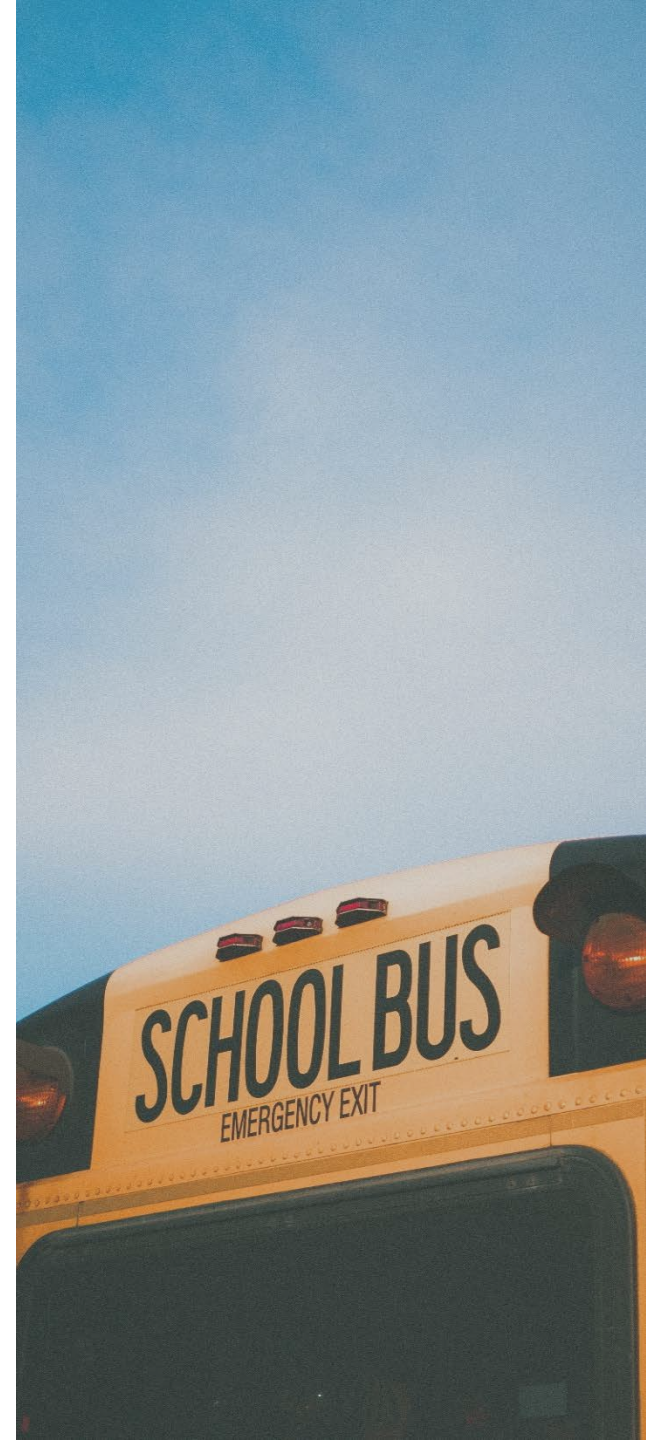
“Sexual Conduct” means:

(A) Conduct by a school employee, a contractor, an agent, or a volunteer that is verbal or physical in nature, that involves a student, and that is:

- (i) A sexual advancement or request for sexual favors directed toward a student; or
- (ii) Of a sexual nature that is directed toward a student or that has the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile, or offensive educational environment.

(B) Communications by a school employee, a contractor, an agent, or a volunteer that are verbal, written, or electronic in nature, that involve a student, and that are:

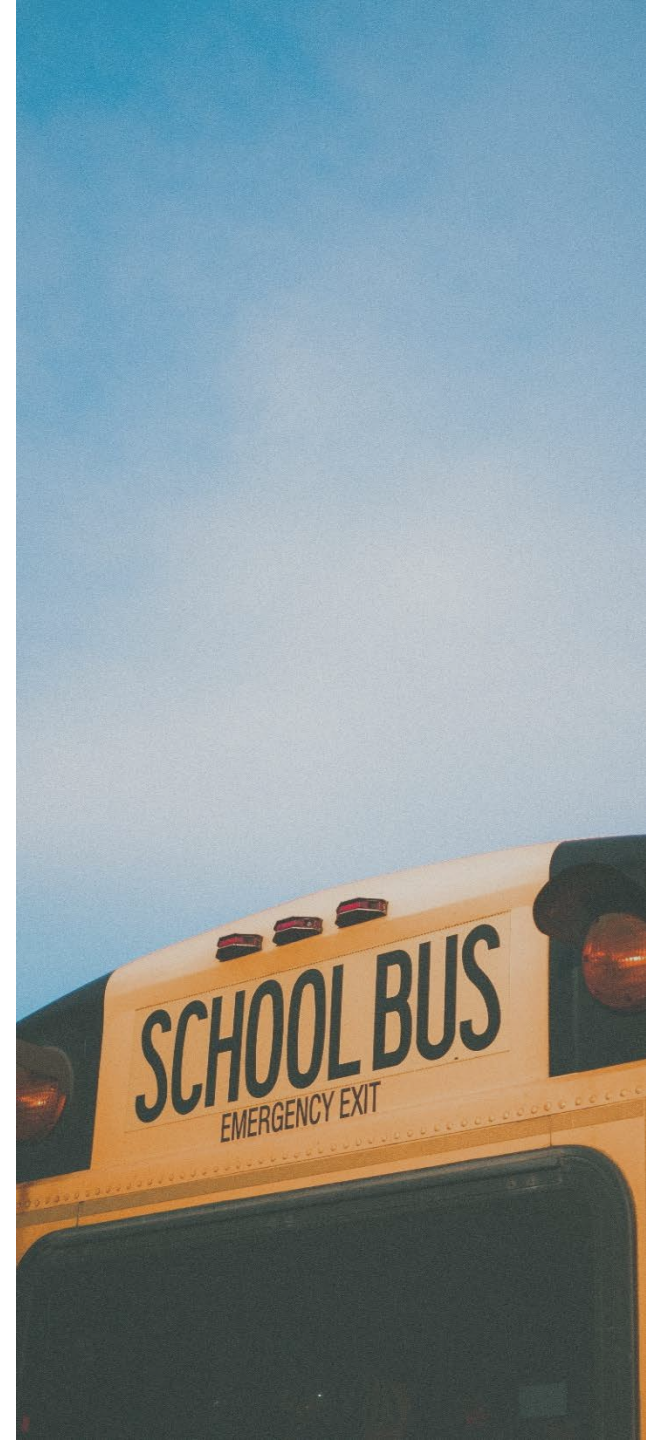
- (i) Sexual advances or requests for sexual favors directed toward a student; or
- (ii) Of a sexual nature that are directed toward a student or that have the effect of unreasonably interfering with a student’s educational performance, or of creating an intimidating, hostile, or offensive educational environment.

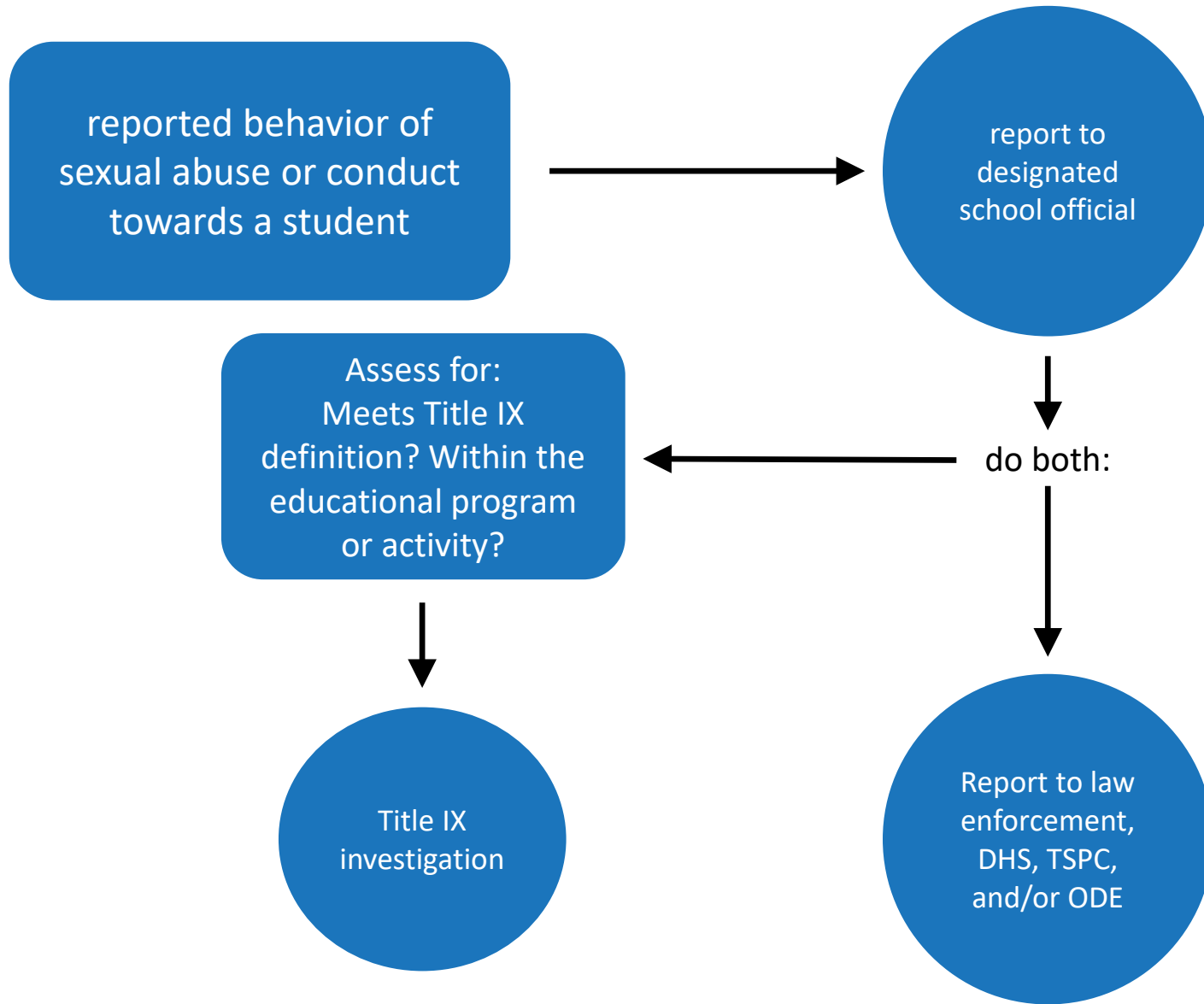


Mandatory Reporting & SB155

When sexual abuse or sexual conduct is identified, employees must:

- Report to a designated school official
- Report to law enforcement, DHS, TSPC, and/or ODE as required





Break for Questions



FACETS OF TITLE IX COORDINATION

In this section...

A closer look at how Title IX relates to...

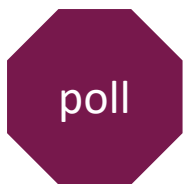
- Single-sex education
- Athletics
- Career and technical education
- Sexual orientation/gender identity
- Sexual harassment

What is 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

What CAN be separated by sex/gender?

- Athletics
- Sexuality education courses
- Physical education during contact sports
- Boy scouts, girl scouts, YMCA/YWCA
- Voluntary Youth Service Organizations



See also: 34 CFR Part 106

Single-Sex Classes and Cocurriculars

Nonvocational classes or cocurricular activities may be offered on a single-sex basis under ***very specific, limited*** circumstances, provided all of the following are met:

- the course or program is to achieve a specific educational-related goal or outcome or in response to a specifically identified educational issue;
- a substantially equal activity for the excluded sex is offered; and
- the school conducts periodic evaluations

See also: 34 CFR Part 106, and OCR's 2014 DCL *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*



Emerging Trend: Girls-Only STEM Programs

Re: OCR Docket No. 15-19-2052

Dear Ms. Smith:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 22, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Grand Valley State University (the University) alleging that the University discriminated against boys based on sex. Specifically, the complaint alleged that the University annually operates the Science Technology & Engineering Preview Summer (STEPS) Camp for Girls, a girls-only summer program that excludes boys from participation.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance from the Department. As a recipient of federal financial assistance from the Department the University is subject to Title IX.

Based on the complaint allegation, OCR initiated an investigation of whether the University, on the basis of sex, excluded individuals from participation in, denied them the benefits of, or subjected them to discrimination with respect to any University program or activity, in violation of the Title IX implementation regulation at 34 C.F.R. § 106.31, and/or provided or otherwise carried out any of its educational programs or activities separately on the basis of sex, in violation of 34 C.F.R. § 106.34(a).

Athletics

The “three-part test” for meeting Title IX athletic compliance:

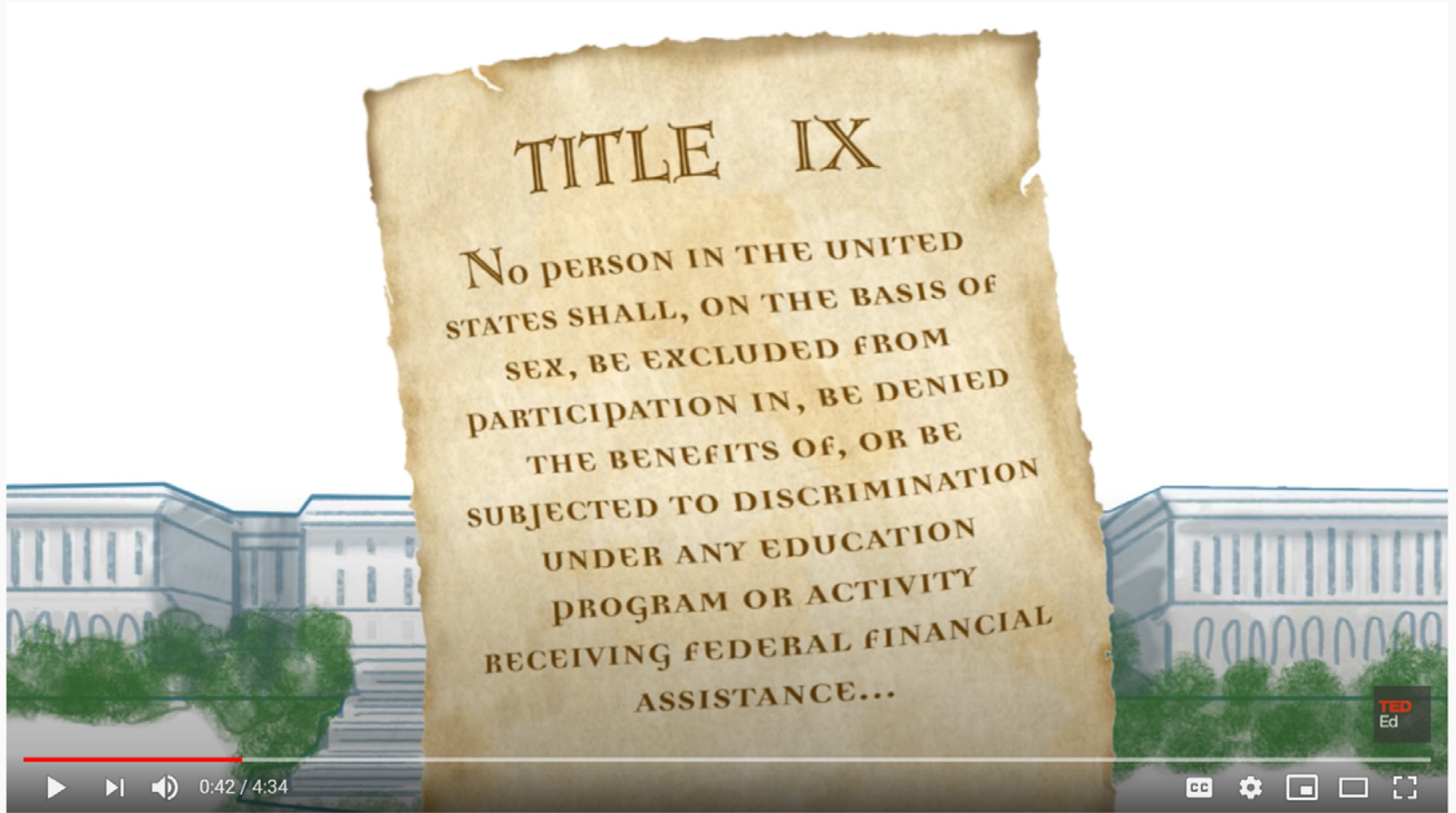
- (1) The number of male and female athletes is substantially proportionate to their respective enrollments; or
- (2) The institution has a history and continuing practice of expanding participation opportunities responsive to the developing interests and abilities of the underrepresented sex; or
- (3) The institution is fully and effectively accommodating the interests and abilities of the underrepresented sex.





The “Laundry List”

- (1) Provision and maintenance of equipment and supplies;
- (2) Scheduling of games and practice times;
- (3) Travel and per diem expenses;
- (4) Opportunity to receive tutoring and assignment and compensation of tutors;
- (5) Opportunity to receive coaching, and assignment and compensation of coaches;
- (6) Provision of locker rooms, practice and competitive facilities
- (7) Provision of medical and training services and facilities;
- (8) Provision of housing and dining services and facilities;
- (9) Publicity;
- (10) Support services; and
- (11) Recruiting.



Equality, sports, and Title IX - Erin Buzuvis and Kristine Newhall

178,393 views • Jun 19, 2013

👍 955 🗨️ 485 ➦ SHARE ≡ SAVE ...

Athletics Resources

OCR Athletics Resources

<https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html>

OSAA Title IX Resources

<http://www.osaa.org/equity>



Break for Questions

Career and Technical Education (CTE)

CTE programs cannot discriminate by gender

- Recruitment and promotional materials
- Admissions and pre-reqs
- Counseling
- etc

CTE programs may never be offered on a single-sex basis.

The Methods of Administration Program (MOA) provides additional guidelines for schools that offer CTE programs.

See also: 34 CFR Part 106, and OCR's 2016 DCL *Guidance on Gender Equity in Career and Technical Education*

Could there be sex discrimination?



ABC School has decided to add a cosmetology course co-taught with a local community college. The college sends this photo that ABC uses to advertise the class, and ABC asks the school counselor to bring up the opportunity to enroll with any students she thinks might be interested.

Title IX and LGBTQ+ students

Does Title IX cover LGBTQ+ discrimination?



ONE TO WATCH: TITLE IX & LGBTQ+ DISCRIMINATION?

US Dept of Education releases guidance stating discrimination based on gender identity violates Title IX

May 2016

US Dept of Ed revokes May 2016 transgender student guidance

Feb 2017

Bostock v. Clayton County: The Supreme Court determines that Title VII protects employees based on sexual orientation and gender identity

Jun 2020

US Dept of Ed releases two modified Title IX case resolutions citing the Bostock opinion

Aug 2020

May 2016

Oregon Dept of Education releases Transgender Student Guidance

Aug 2020

Citing Bostock, the 11th Circuit hold that a Florida school has violated Title IX by discriminating against a transgender student based on his gender identity



ODE's Transgender Student Guidelines

- Terminology
- Student Identity
- Pronouns, Name/gender changes
 - Gender and first name change process for transgender students in ODE system 6/26/2014
 - Graduation and transcripts
- Restroom/locker room usage
- Athletics, sports, and PE
- Over night field trips and other gender based activities
- Safety Plan/ Trusted Go to Adult

Sexual Harassment

§ 106.44 Recipient's response to sexual harassment.

(a) *General response to sexual harassment.* A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent

§ 106.45 Grievance process for formal complaints of sexual harassment.

(a) *Discrimination on the basis of sex.* A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves... together!

Break for Questions



NEW REGULATIONS OVERVIEW

2001 Sexual Harassment Guidance

- Definition of sexual harassment
 - Quid pro quo
 - Hostile environment
- Schools must respond when they “know or reasonably should know”
- Response includes an investigation and, if substantiated, must repair the harm caused and prevent future harassment

“Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.”



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

The 2020 Regulations: Major Changes for K-12 Schools

- New definition of sexual harassment
- Defining the scope of jurisdiction
- Supportive measures and notification of options required
- New and specific grievance process (and policy requirements!)
- More specific notification requirements
- Specific training and personnel requirements
- Informal processes allowed

WHAT'S THE SAME?

- Students are entitled to an education free from sexual harassment
- All K-12 school employees must still report sexual harassment
- Schools must have a designated Title IX Coordinator, and make information easily accessible
- Advisors of choice
- **Oregon laws still apply!**
 - Sexual harassment policy requirements
 - SB155 – sexual abuse and sexual conduct
 - Mandatory reporting



Title IX Coordinator

Investigator

Decision-Maker

Appeals Decision-Maker

Informal Resolution Facilitator

only required
if offered

may be the
same person

Training Requirements

Schools are responsible for ensuring all designated personnel receive appropriate training.

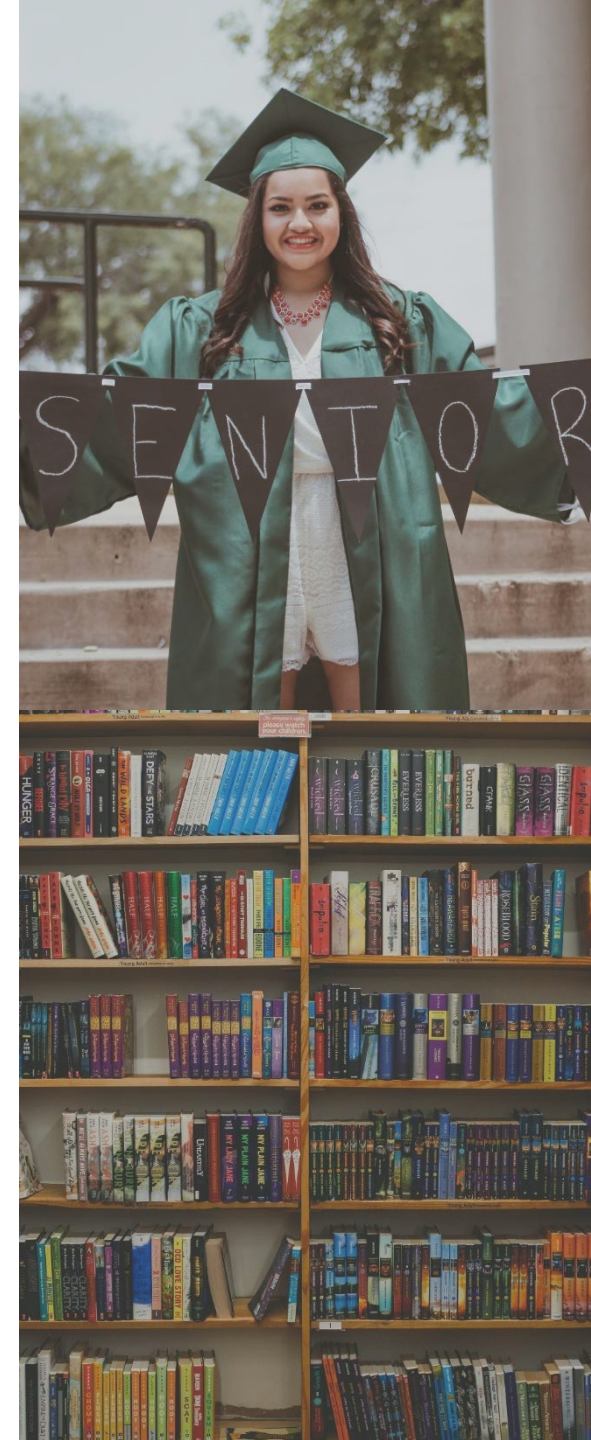
Personnel must:

“...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent”

34 CFR § 106.45(b)(1)(iii)

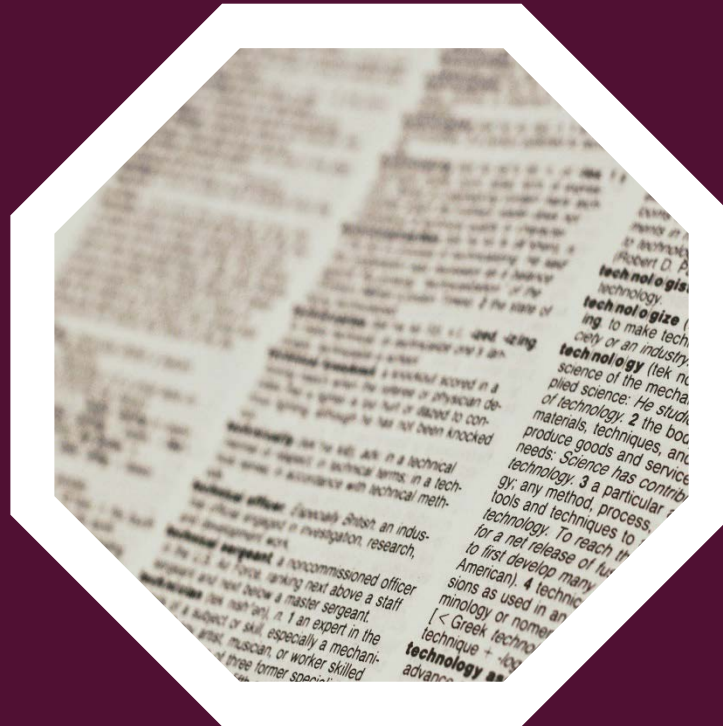
Training materials must:

- Be free of bias and sex stereotypes
- Be posted to the school’s website



| | Title IX Coordinator | Investigator | Decision- Maker | Appeals Decision- Maker | Informal Process Facilitator |
|--|---------------------------------|---------------------|----------------------------|--|---|
|--|---------------------------------|---------------------|----------------------------|--|---|

| | | | | | |
|---|---|---|---|---|---|
| Definition of sexual harassment | X | X | X | X | X |
| Scope of “educational program or activity” | X | X | X | X | X |
| How to conduct the applicable portions of the grievance process | X | X | X | X | X |
| Avoiding prejudice of facts, conflicts of interest, and bias | X | X | X | X | X |
| How to create a fair investigative report | | X | | | |
| Any technology used at hearings | | | X | X | |
| Issues of relevance for questions and evidence | | | X | X | |



SEXUAL HARASSMENT: DEFINITIONS & DYNAMICS

In this section...

- Definition of sexual harassment
- Comparison with Oregon's sexual harassment definition
- Consent
- Dynamics of dating violence, domestic violence, and stalking

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

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

-34 CFR Part 106.30



Does this meet prong 2 (severe, pervasive, objectively offensive, denies equal access)?

Oliver is in the school's coding club that meets at lunch; everyone has been practicing making websites, and a group of students in the club use their website to rank everyone in the class by how "slutty" or "virginal" they are.

The website proclaims Oliver as the "top virgin," and includes a photoshopped picture of him made to look like he's naked, looking scared of a several nearby naked girls. Someone anonymously emailed it to everyone in the club during the last meeting, and now an anonymous number keeps texting the picture to Oliver multiple times a day.

poll

Sexual Assault

Rape

“Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

Fondling

“The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.”

Incest

Statutory Rape

-20 U.S.C. 1092(f)(6)(A)(v) and the FBI Uniform Crime Reporting System



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Sexual Harassment: Title IX compared to Oregon law

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
 - (i) A demand or a request for sexual favors in exchange for benefits.
 - (ii) Unwelcome conduct of a sexual nature that is physical, verbal, or nonverbal and that:
 - (I) Interferes with a student's educational activity or program;
 - (II) Interferes with a school or district staff member's ability to perform their job; or
 - (III) Creates an intimidating, offensive, or hostile environment.
 - (iii) Assault, when sexual contact occurs without a person's consent because the person is:
 - (I) Under the influence of drugs or alcohol;
 - (II) Unconscious; or
 - (III) Pressured through physical force, coercion or explicit or implied threats.

Type in the chat box:

How do you define
consent?

How will your school define consent?

“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.”

-Oregon State University

“Consent is an agreement between people to engage in a sexual activity. Consent means freely choosing to say ‘yes’ to a sexual activity. It’s needed for any kind of sexual activity, from touching or kissing to intercourse. It’s always clearly communicated - there should be no mystery or doubt.”

-KidsHelpLine Australia

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.

Is there consent?

poll

Lacey and her girlfriend Mira are at a party. Close to midnight, Mira says that she needs to get home before her curfew. They head out to the car, when Lacey asks if they can make out for bit before they go home. “I don’t really feel like it, I’m tired,” Mira says. Lacey pouts and says “come on, we never get to be alone together!” Mira responds that they won’t ever get to be alone together again if she gets grounded for missing her curfew. Lacey tells Mira, “this party was such a bust, I feel like nothing fun happened tonight! I’m so bored. If we’re not even gonna make out, I’m going back inside to have SOME fun before we leave. Who even cares if you’re grounded if you’re not gonna act like my girlfriend when we see each other anyways.” Lacey starts to open her car door. Mira looks at the clock and says “ok fine, as long as you promise we can leave in five minutes.”

Break for Questions

Domestic Violence

“[I]ncludes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

-34 U.S.C. 12291(a)(8)

Dating Violence

“The term “dating violence” means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”

-34 U.S.C. 12291(a)(10)



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Type in the chat box:

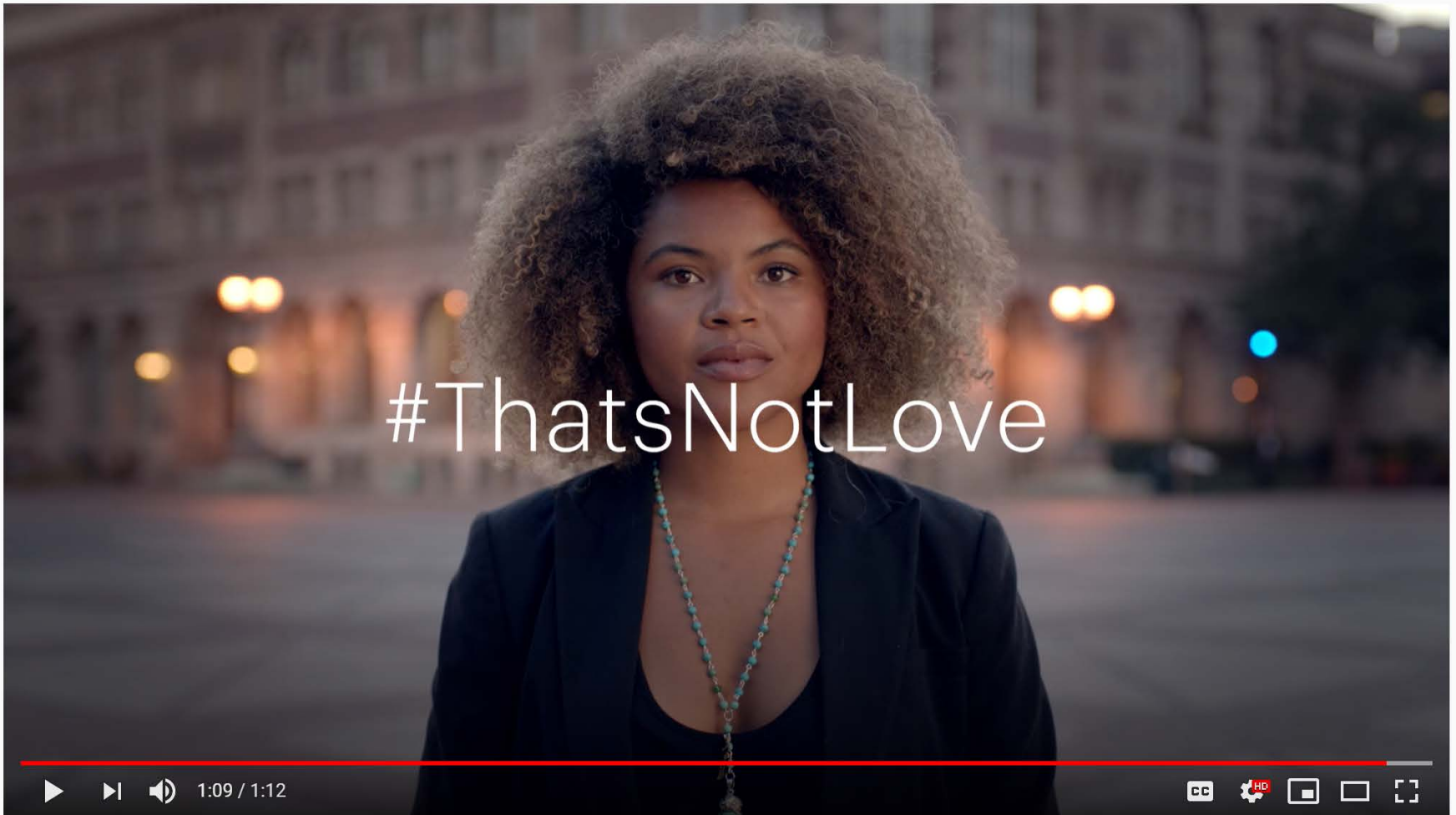
What behaviors might occur in a relationship of teen dating violence?



VIOLENCE



VIOLENCE



[#ThatsNotLove](#) campaign | Because I Love You - Delete | One Love Foundation

2,399,739 views • Oct 13, 2015

 6.8K  194  SHARE  SAVE 

Common dynamics of partner violence you might run into during investigations

A survivor might...

- Have missed a lot of school/work
- Have been coerced into breaking school/employment rules
- Defend the person they initially reported against
- Recant their report



Stalking

Stalking is “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”

-34 U.S.C. 12291(a)(30)

Type in the chat box:

What does stalking look
like?

Stalking Dynamics

- Show up at your home, school or place of work unannounced or uninvited.
- Send you unwanted text messages, letters, emails and voicemails.
- Leave unwanted items, gifts or flowers.
- Constantly call you and hang up.
- Use social networking sites and technology to track you.
- Spread rumors about you.
- Wait at places you hang out.
- Use other people as resources to investigate your life. For example, looking at your facebook page through someone else's page or befriending your friends in order to get more information about you.
- Damage your home, car or other property.



Final Questions



Part 2: Sept 24, 2-4 pm

- In-depth dive into the new investigations and response process
- Avoiding conflict of interest, bias, and prejudgement of facts
- Q&A



OREGON
DEPARTMENT OF
EDUCATION

Oregon achieves . . . together!

Kate Hildebrandt

Civil Rights and Title IX Specialist

katherine.hildebrandt@state.or.us

503-551-5713

www.oregon.gov/ode

