



# The 2024 Title IX Regulations: What Athletics Staff Need to Know

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**Kate Hildebrandt** (she/her)

Civil Rights and Title IX Specialist

Oregon Department of Education

**Lauren Brownrigg** (she/her)

Assistant Executive Director

Oregon School Activities Association

**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 and OSAA are available to support with individual technical assistance following this training.**

## OSAA/ODE Trainings/Questions/Support

Jan. 14<sup>th</sup> – 11:00am-12:30pm

- Title IX Hot Topics (Fundraising and Booster Clubs)



# Agenda for Today

- Background on the Regulations
- Sex Discrimination
- Pregnant/Parenting Students
- Response to Sex Discrimination



# Background

# Title IX: Sex, Sexual Orientation, Gender Identity

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

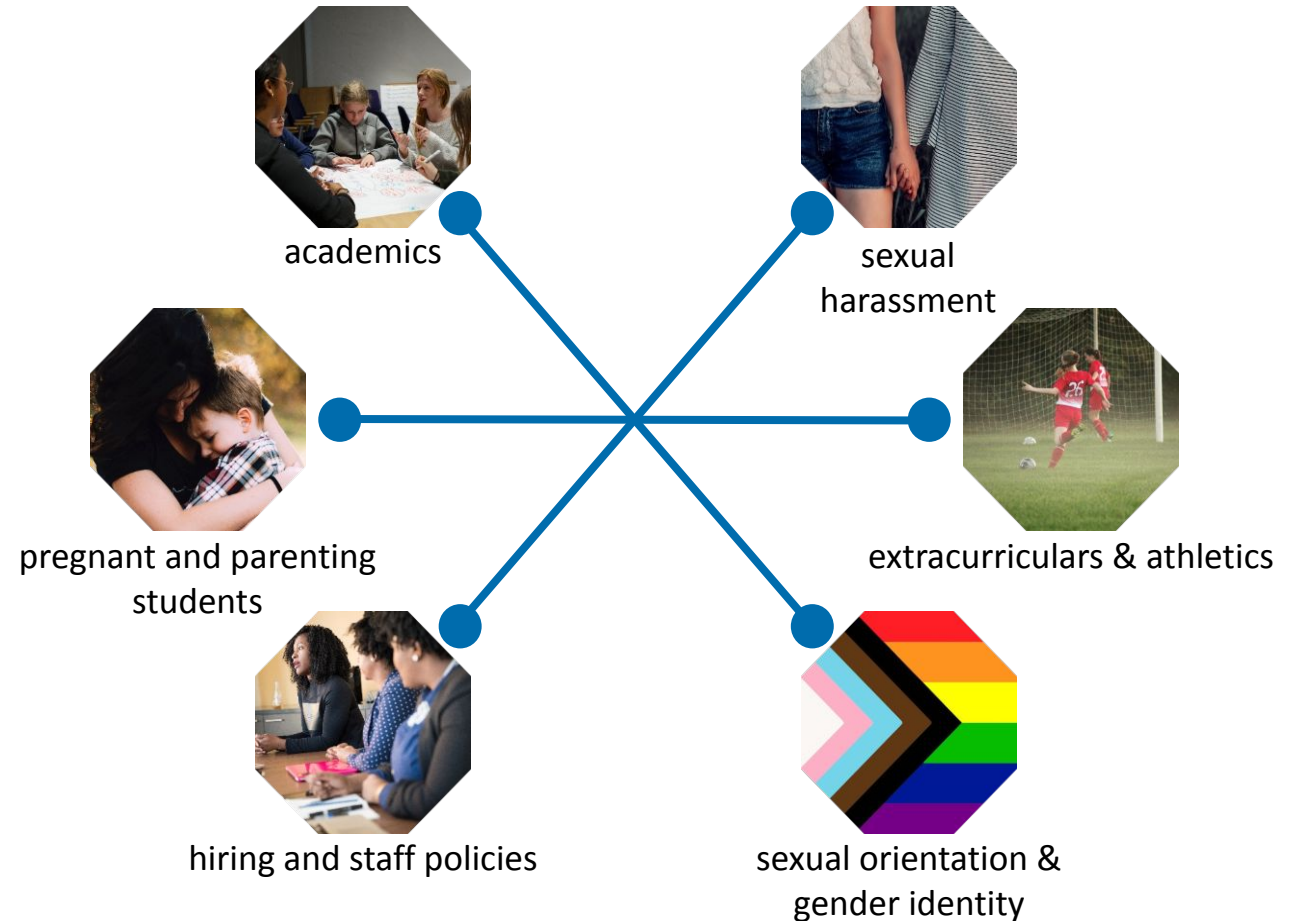
This includes discrimination based on **sex, sexual orientation,** and **gender identity.**

*“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”*

# What is covered by Title IX?

**All federally funded educational programs** are covered by Title IX, including public schools, charter schools, colleges and universities, state agencies, and education service districts.

All parts of a recipient organization's educational programs are covered by Title IX, including academics, extracurricular clubs and activities, athletics, field trips, etc.

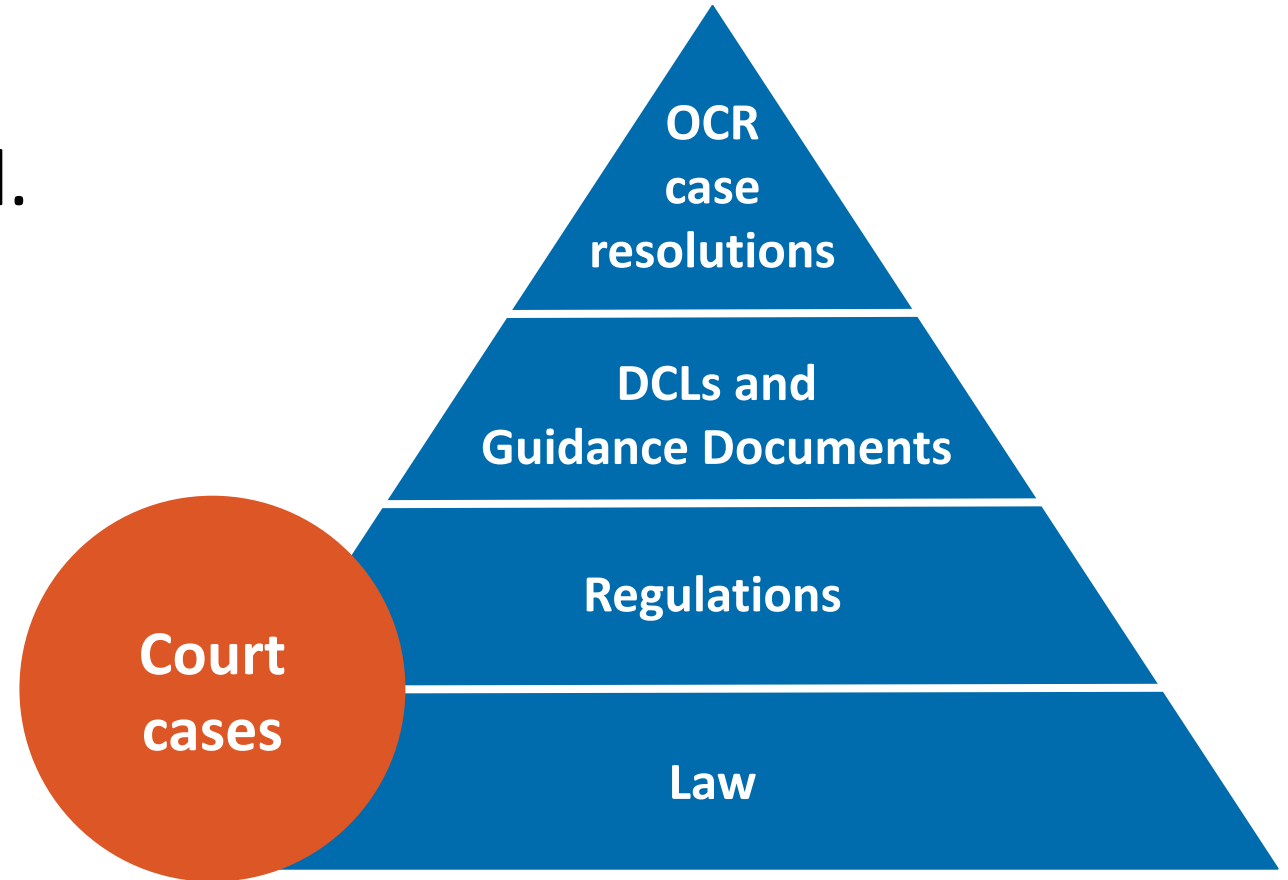


# Title IX is an evolving and living law!

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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:





# Timeline

Prior to 2017, OCR usually issued updates through guidance documents and Dear Colleague Letters

**2017:** OCR proposed new regulations focused on sexual harassment procedures

**2020:** New sexual harassment regulations went into effect

**2022:** OCR proposes new regulations to replace the 2020 regulations

**April 2024:** New regulations released

**August 2024:** New regulations effective

# What do the new regulations cover?

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- Updated definition of sex discrimination and sex-based harassment (formerly sexual harassment)
- Requirements for support provided to pregnant/parenting students
- New required steps to take when a school is informed about possible sex discrimination
- New complaint process requirements applying to all sex discrimination
- Training requirements for staff
- Recordkeeping systems

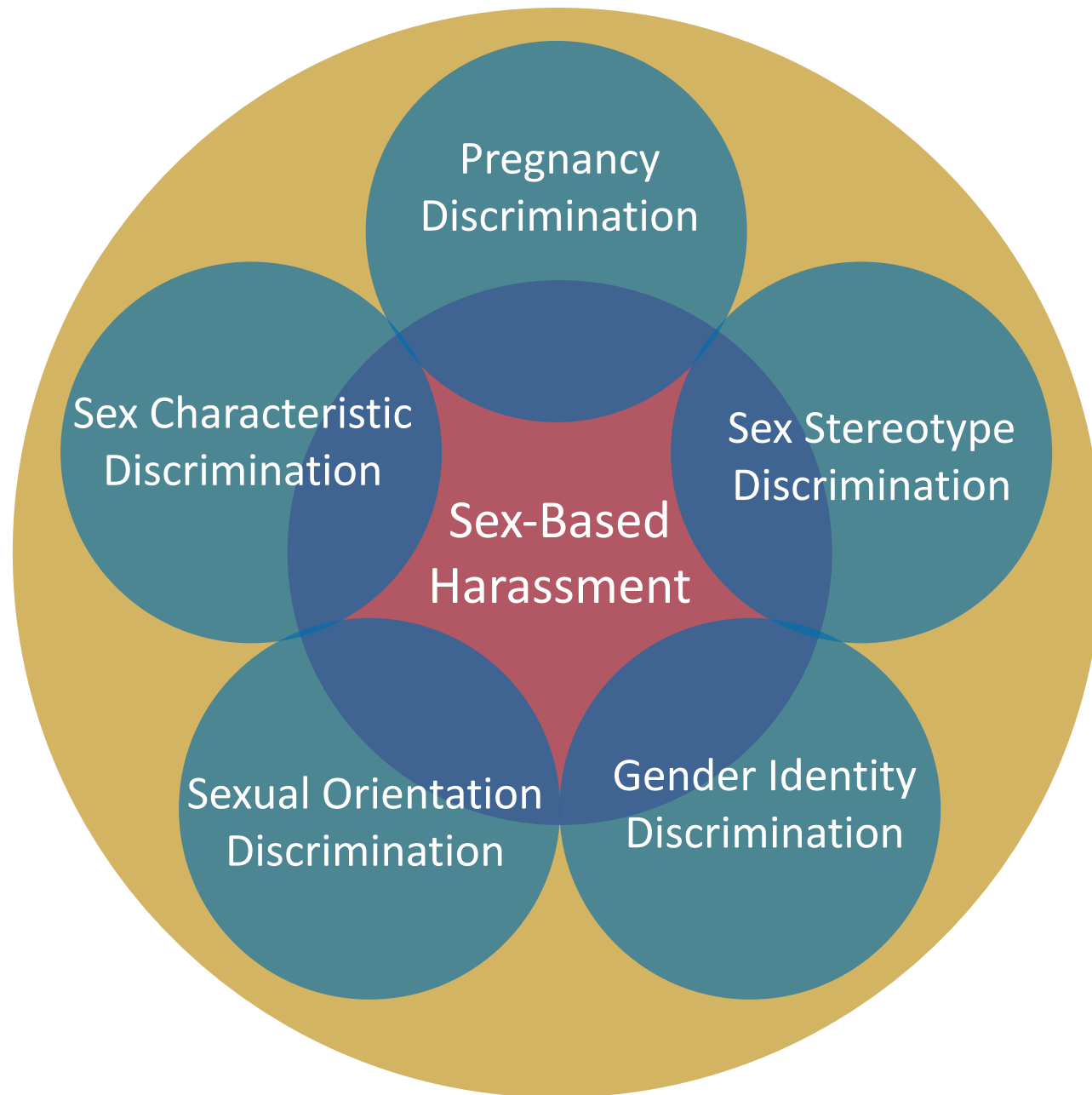


# Sex Discrimination

# Sex Discrimination

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

-Final Rule (unofficial copy), pg. 34



# Specific Focus Areas of Title IX

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## **Athletics**

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

## **Pregnant and Parenting Students**

Access to all programs, supportive accommodations, and medical leave

## **Sex-Based Harassment**

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

## **Sexual Orientation and Gender Identity Discrimination**

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

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

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

# Sex-Based Harassment

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Sex-based harassment prohibited by this part is a form of sex discrimination and **means sexual harassment and other harassment on the basis of sex**, including on the bases described in § 106.10, that is:

(1) **Quid pro quo harassment.** An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) **Hostile environment harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment).

(3) **Specific offenses.**

- (i) Sexual assault
- (ii) Dating violence
- (iii) Domestic violence
- (iv) Stalking

34 CFR § 106.2

# Quid Pro Quo SBH

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OREGON  
OVERLAP

An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

34 CFR § 106.2

*If any SBH involves a student complainant and employee respondent:*

In addition to **mandatory reporting**, whenever an employee, agent, contractor or volunteer engages in **sexual conduct** involving a student, it must be reported to DHS, law enforcement, TSPC, or ODE (depending on conduct and licensure).

# Hostile Environment SBH

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- Must be based on sex, including: sexual harassment, gender identity, sexual orientation, based on pregnancy, etc.
- Limitation/denial of educational access could include:
  - Skipping school, practice, or other activities in order to avoid the harassment/emotional distress
  - Drop in grades, inability to pay attention/learn
  - Avoiding specific areas of school or specific activities
- Severe (one impactful incident) or pervasive (several incidents that together create a larger impact)



# Specific Offenses

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**Sexual assault** is broadly defined as sexual contact without consent, including

- rape
- fondling
- statutory rape

**Stalking** is a pattern of behavior directed at a specific person designed to make them experience fear of harm or emotional distress.

**Domestic Violence and Dating Violence** both include:

- physical violence
- sexual violence/abuse
- threats of harm/violence/abuse

**Domestic Violence** is committed by someone the victim was married to, living with, shares a child with, or in a similar situation with.

**Dating Violence** includes romantic, sexual, and intimate relationships more broadly

# Location of Discrimination

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Schools are responsible for all discrimination that occurs within their educational programs and activities, including:

- In the classroom
- At athletic practices and events, including away games
- On the bus and at bus stops

Schools must also respond to all sex-based harassment that creates a hostile environment at school, even if some of the events occurred outside of school:

- Ex: incident occurred at a party, but students on a bus traveling to an away game are sharing photos and teasing the victim about the incident



# Pregnant/Parenting Students

# Pregnancy or Related Conditions

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Pregnancy or related conditions means:

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

34 CFR § 106.2



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# Staff Notification Responsibilities

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

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

34 CFR § 106.40(b)(2)

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

# School Responsibilities

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Once a student has officially reported pregnancy/related conditions to the school, they are obligated to provide specific rights and support:

- Give a notice of rights and options
- Provide modifications for continued school access
- Voluntary access to comparable educational programs (online school, alternative programs, etc)
- May only require certification to participate in specific cases
- Voluntary leave of absence to recover, as deemed medically appropriate by licensed provider
- Lactation space available at school

# Reasonable Modifications

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

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

Modifications may include:

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

34 CFR § 106.40(b)(3)(ii)

# Certification to Participate

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

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

34 CFR § 106.40(b)(5)



# What Should We Do?

Sarah, a junior volleyball player, discloses to you at the end of the first practice of the season that she is pregnant and will be giving birth in January. She really doesn't want to let this impact her chances to play on the team, and her parents have agreed that she can still play as long as the coaches and the school say it's ok. Sarah wasn't even planning on telling the team about her pregnancy, but she wants you to know she might be late to practices on Tuesdays because she has a regular doctor's appointment an hour away on those afternoons, and she wants to make sure this won't impact her ability to play.



# Response to Sex Discrimination

# Staff Reporting Requirements

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Any employee of an elementary or secondary school who is not confidential must notify the Title IX Coordinator when they have conduct that reasonably may constitute sex discrimination.

- Not applicable if the employee has been personally subject to the discriminatory conduct

§ 106.44(c)(1)

- Does not need to have proof of the discrimination
- Applies to all employees - how will you ensure they are aware of this?

# Should I Report This?

Willow's parents tell you that they found messages on Willow's phone between her and a 20-year-old volunteer coach that works with the team. The messages seem flirty and very personal; the coach says in the messages he could help Willow get more playing time with some private lessons.

Should this be reported to:

- School Administrators
- Mandatory Report (Law Enforcement/DHS)
- Title IX Coordinator
- This doesn't need to be reported

# Should I Report This?

Damien has missed practice several times since he broke up with his girlfriend a few weeks ago. When you check-in with him, he confides that he's been struggling to shake off the breakup and has trouble getting out of bed many days.

Should this be reported to:

- School Administrators
- Mandatory Report (Law Enforcement/DHS)
- Title IX Coordinator
- This doesn't need to be reported

# Should I Report This?

Oliver, a transgender boy, has just joined the football team. A group of older students on the team tell Oliver he's "not really a boy" and refuse to run drills with him at practice. On buses to away games, they force Oliver to sit in the front by himself and exclude him from off-campus team traditions.

Should this be reported to:

- School Administrators
- Mandatory Report (Law Enforcement/DHS)
- Title IX Coordinator
- This doesn't need to be reported

# Notice of Sex Discrimination: Obligations

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Once a school knows about sex discrimination, they are obligated to respond by:

- Providing supportive measures
- Protecting the privacy of involved parties
- Providing information about the complaint process, and:
  - if a formal complaint is filed, initiating the grievance process
  - in the absence of a formal complaint, the Title IX Coordinator will determine whether to initiate one
- Offering informal resolution options, if available and appropriate
- Considering whether the respondent needs to be put on an emergency removal or administrative leave
- Taking other reasonable steps to remedy the sex discrimination and prevent further discrimination

# Complaints and Investigations

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The 2024 Title IX regulations require a specific procedure for investigating complaints of sex discrimination, including:

- athletic equity complaints
- pregnancy discrimination
- all sex-based harassment (quid pro quo, hostile environment, specific offenses)

School staff must receive specific training (required by the regulations) in order to conduct complaints.

***Report any complaints or concerns to your Title IX Coordinator ASAP.***



# Staff Training Requirements

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## ALL Employees

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

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

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

# *Takeaways*

- Title IX prohibits sex discrimination in all federally funded K-12 schools, including in athletics
- The updated Title IX regulations, which went into effect August 1, 2024, mean that new processes and procedures are required for this school year
- Sex discrimination includes any different treatment based on sex, gender identity, sexual orientation, and pregnancy
- Pregnant students can still access athletics and need to be offered support and modifications if needed
- Report any possible sex discrimination to the Title IX Coordinator ASAP

# OCR and OSAA Regulations and Guidance



[Policy Interpretation: Intercollegiate Athletics \(1979\)](#)

[Guidance on Determining which Athletic Activities can be Counted for Purposes of Title IX Compliance \(2008\)](#)

[Title IX Three-Part Test \(and application to high schools\) \(2008\)](#)

[Standards for Part Three of the “Three Part Test” \(2010\)](#)

[Title IX and Athletic Opportunities in K-12 Schools \(2022\)](#)

[OSAA Guidance and Resources](#)

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# CONTACT US

## **Kate Hildebrandt**

Civil Rights and Title IX Specialist  
Oregon Department of Education  
kate.hildebrandt@ode.oregon.gov  
503-551-5713

## **Lauren Brownrigg**

Assistant Executive Director  
Oregon School Activities Association  
laurenb@osaa.org  
503.682.6722 x229