

TIX Education Specialists

"Bridging compliance and best practice."

OREGON ANNUAL TITLE IX TRAINING 2020

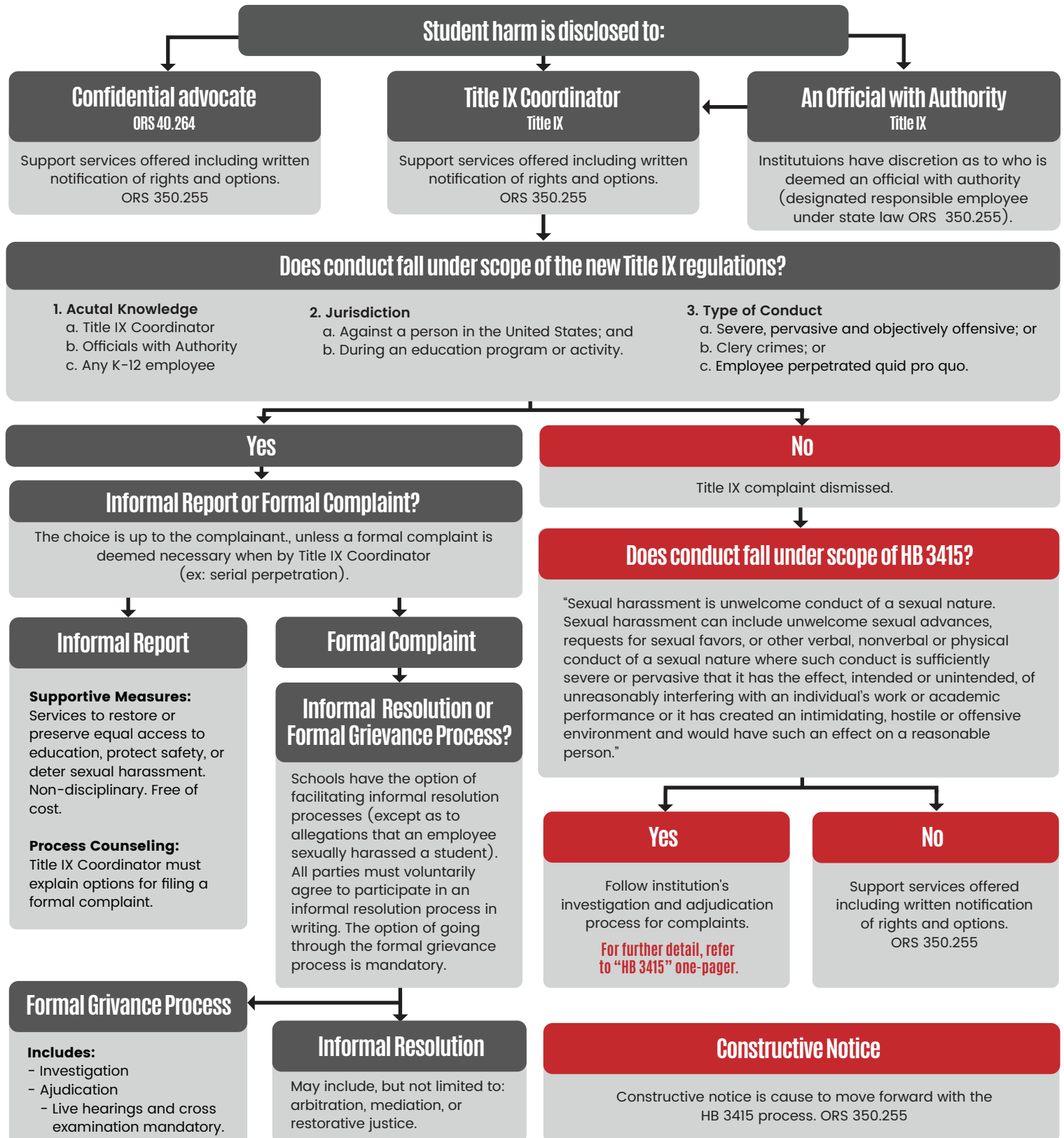


tixedu.com | 503-960-8261 | admin@tixedu.com

This information is not offered as, not intended as, and does not constitute legal advice. It is provided for informational purposes only. None of the information provided here should be considered a substitute for professional legal advice, therefore, you should not act or rely on information without first seeking the advice of an attorney. Changes to state and federal law (statutes, case law, regulations, etc.) may impact the information shared within this packet.

Copyright 2020 TIX Education Specialists, LLC

HB 3415 & TITLE IX 2020 FINAL RULES



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. Clergy 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



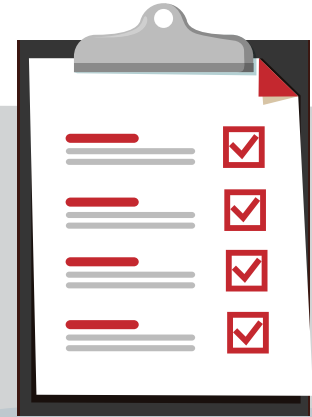
WHAT ARE THE CURRICULUM STANDARDS?

- ▶ 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

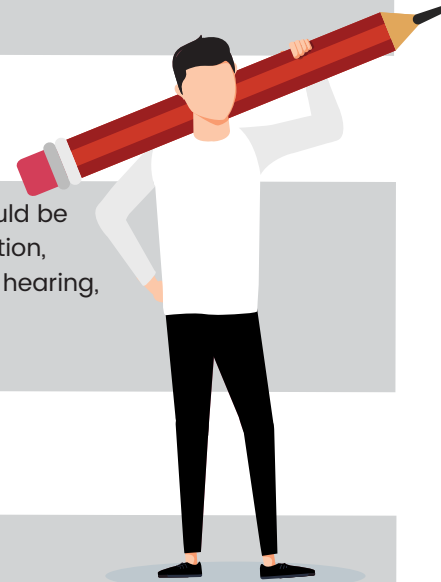
CONTENT OF WRITTEN NOTIFICATION:

- ☐ **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