OVERVIEW OF NEW REGULATIONS: JURISDICTION, Notice & Dismissals
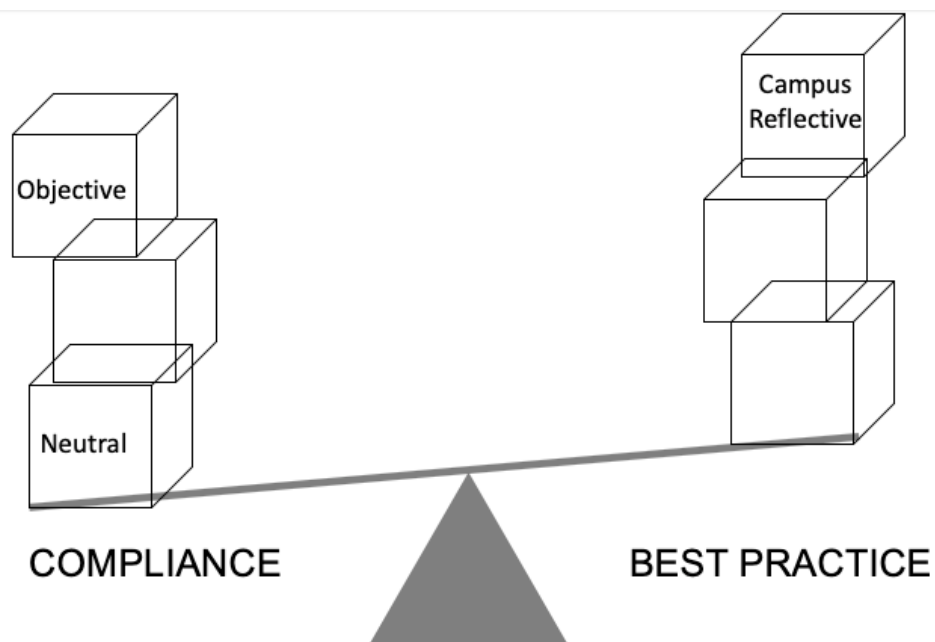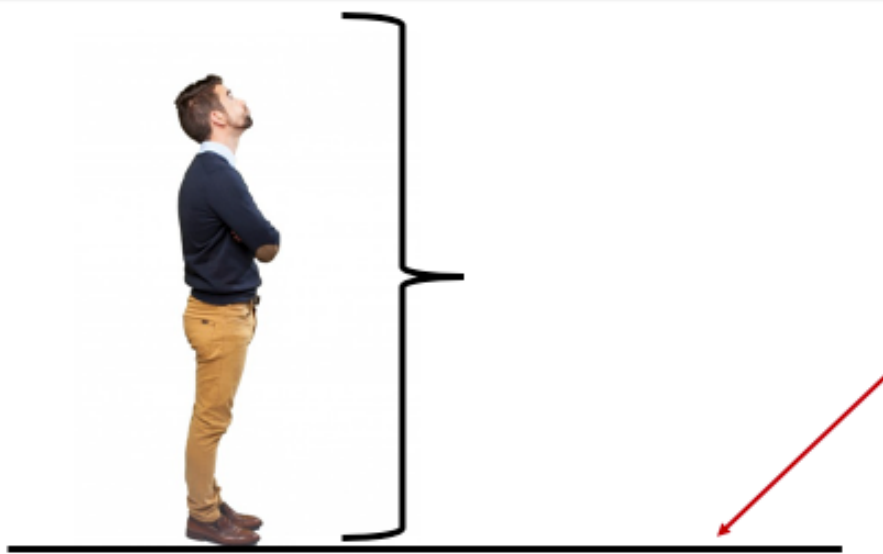
An overview of the regulatory requirements of the Title IX regulations including the new scope of Federal Title IX, jurisdictional determinations and dismissals of complaints. Integration of relevant state law.
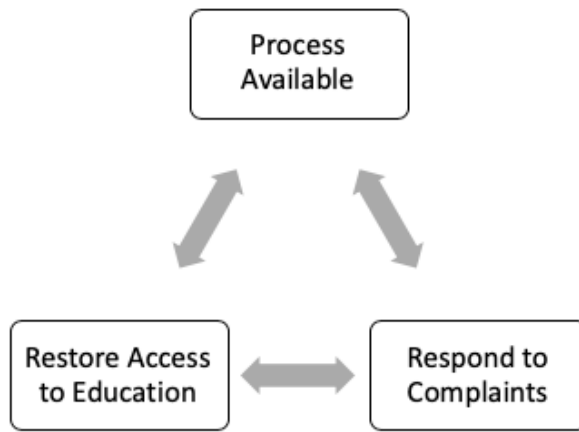
Learning Objectives:

- clear understanding of requirements of Title IX
- understand the scope and limitations of Title IX and how that intersects with Oregon law.
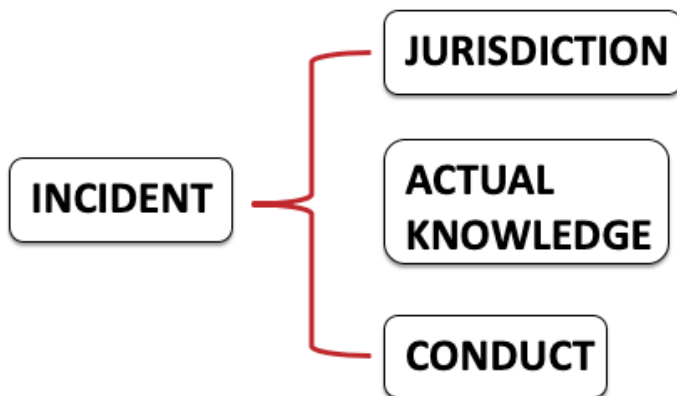
New Regs:

- p.1-104 – The Department's interpretation of Due Process, institutional liability and defining sexual harassment.
- p. 96-99 – Institutional response
- 2008-2033 – Regulatory language

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            ┌─────────────┐
            │   Process   │
            │  Available  │
            └─────────────┘
              ↗         ↖
   ┌──────────────┐   ┌──────────────┐
   │Restore Access│ ↔ │  Respond to  │
   │ to Education │   │  Complaints  │
   └──────────────┘   └──────────────┘
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SEXUAL HARASSMENT:

"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that if effectively denies person's equal access to education.
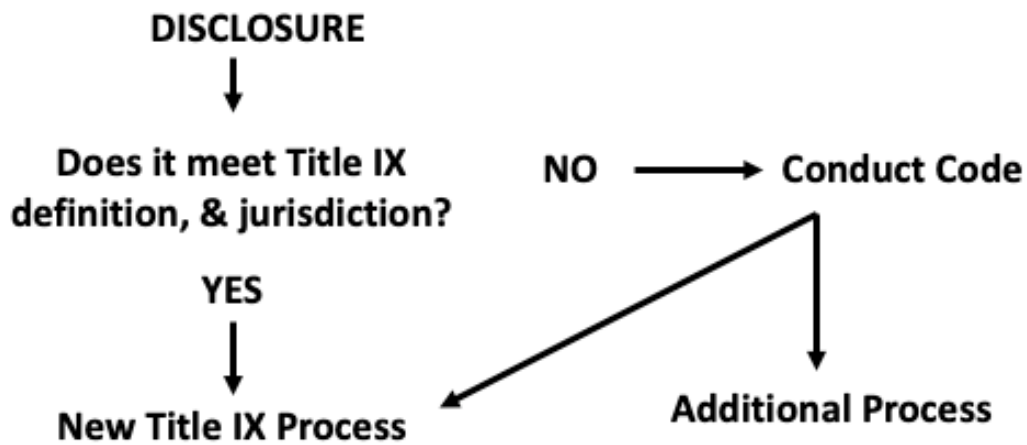
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                    ┌──────────────┐
                 ┌──│ JURISDICTION │
                 │  └──────────────┘
┌──────────┐     │  ┌──────────────┐
│ INCIDENT │─────┤  │    ACTUAL    │
└──────────┘     │  │  KNOWLEDGE   │
                 │  └──────────────┘
                 │  ┌──────────────┐
                 └──│   CONDUCT    │
                    └──────────────┘
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QUESTION 1:

Does your institution want to create a policy to respond to the "other" types of sexual harassment and sex discrimination?

QUESTION 2:

If you capture "other" types of conduct, do you use one process provided by the federal regulations or do you use two?

DISCLOSURE

↓

Does it meet Title IX definition, & jurisdiction? — NO → **Conduct Code**

YES

↓

New Title IX Process   **Additional Process**

SCOTUS FRAMEWORK:

1. actionable definition of sexaul harassment
2. actual knowledge
3. deliberate indifference -

DELIBERATE INDIFFERENCE + RESPONSE:

- support measures offered
- contact complainant and process counsel
- follow grievance procedures
- investigate formal complaints
- respect complainant wishes (with exception)
- dismiss complaints that don't fall under Title IX

TITLE IX COORDINATOR:
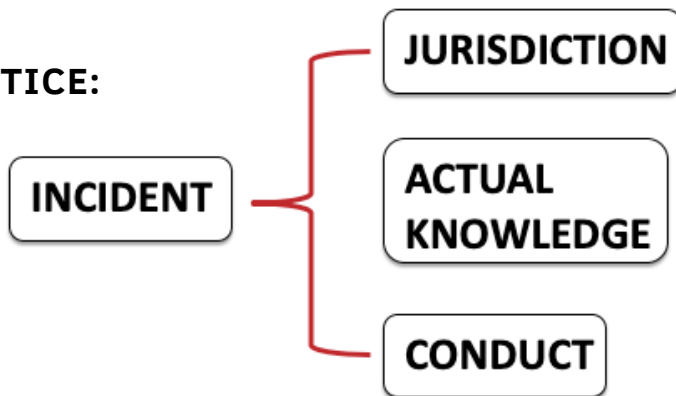
TRAINING:

NOTICE OF NON-DISCRIMINATION:

"[Institution] does not discriminate on the basis of sex in education programs or activities it operates including admissions and employment. Inquiries about the application of title IX and this part to such recipient may be referred to the recipient's Title IX Coordinator, to the Assistant Secretary, or both."

DISSEMINATION:

GRIEVANCE PROCEDURE:

Title IX Coordinator

Non-Discrimination Policy

Grievance Procedure

Is it a Title IX issue?

NOTICE:

NOTICE: → INCIDENT → JURISDICTION / ACTUAL KNOWLEDGE / CONDUCT
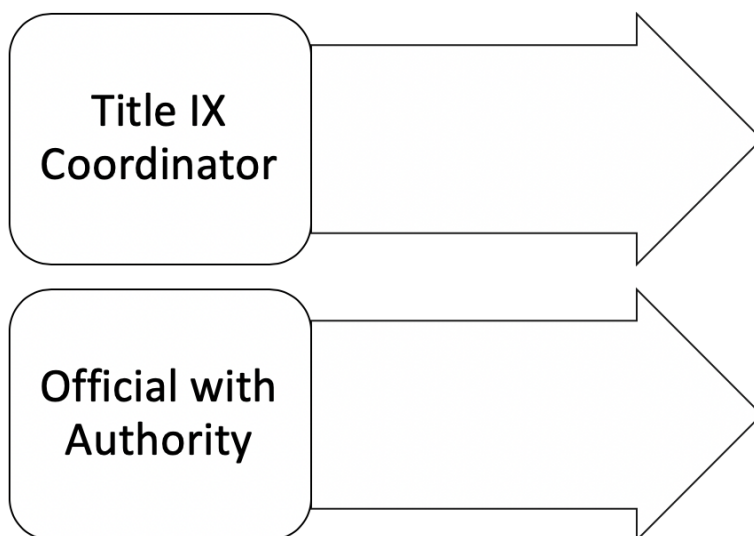
ACTUAL NOTICE:

"[A]ctual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient"
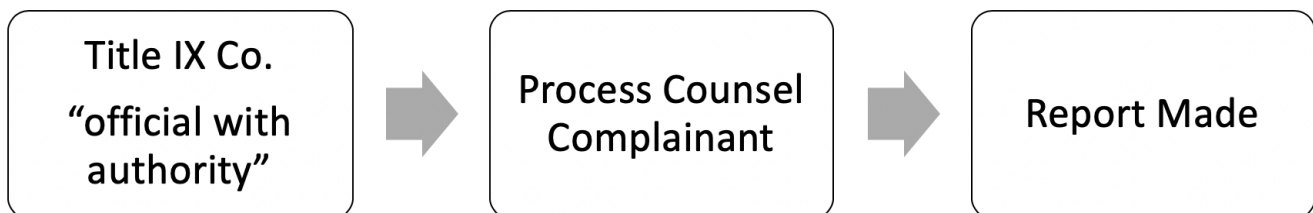

Title IX Coordinator →

Official with Authority →
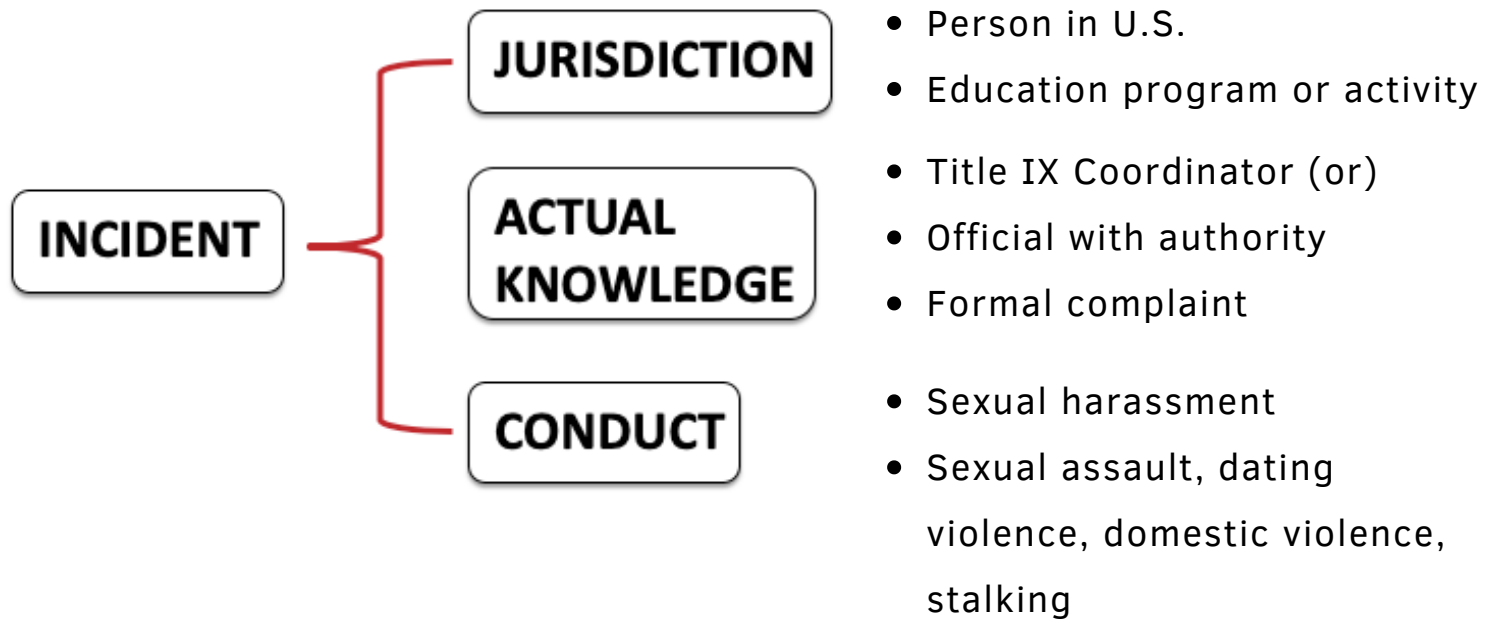
PROCESS COUNSELING:

SUPPORT MEASURES:

"individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment."

SUPPORT MEASURES:

Title IX Co. "official with authority"	→	Process Counsel Complainant	→	Report Made

PERSON IN THE UNITED STATES:

INCIDENT
- JURISDICTION
- ACTUAL KNOWLEDGE
- CONDUCT

- Person in U.S.
- Education program or activity

- Title IX Coordinator (or)
- Official with authority
- Formal complaint

- Sexual harassment
- Sexual assault, dating violence, domestic violence, stalking

INFORMAL V FORMAL COMPLAINT:

JURISDICTION:

- type of conduct
- educational program or activity
- person in the United States

Sex based discrimination → Sexual Harassment

1.
2.
3.
4.
5.

"Clery Act/VAWA offenses are NOT evaluated for severity, pervasiveness, offensiveness or denial of equal educational access ... because such conduct is sufficiently severe..."

SEXUAL HARASSMENT:

"Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies person's equal access to education."

EDUCATION PROGRAM OR ACTIVITY:

DISMISSAL OF COMPLAINT:

- If conduct definition or jurisdiction not met
- If complainant no longer accessing educational program or activity

MAY DISMISS WHEN:

- If complainant desires to withdraw complaint
- If respondent no longer enrolled or employed
- If school can't gather sufficient evidence to reach determination

CONSOLIDATE COMPLAINTS: