

# 2020 Title IX Regulations: Coordinator Training

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# Title IX Coordinator Responsibilities

- Must be called Title IX Coordinator
- Must be identified (with name or title, address, phone, and email) in policy and on website
- Must meet with alleged victims of Title IX Sexual Harassment

# Title IX Coordinator Responsibilities

- Informs CP of availability of supportive measures and formal complaint process
- Decides whether to “sign” a complaint when the CP doesn’t want to file
- Coordinates implementation of supportive measures
- Ensures effective implementation of remedies
- Monitors ongoing compliance with Title IX

# Timeline



## Website Posting Required by 8/14

- Training materials used to train Title IX Team
- Title IX Coordinator Information
- Policy Language
  - Nondiscrimination Language
  - TIX SH Grievance Process

# Robin's Report

- This morning
- Email from Dean of Students/AP
- Robin, a first-year lacrosse player, reported conduct that occurred against Robin's friend, Cameron, also a first-year lacrosse player

# Robin's Report

- Lacrosse orientation week
- Park across street from the school
- Two upperclassmen lacrosse players vs. Cameron



# Robin's Report

- Verbal harassment
  - Going to violate your mother
  - Want to "smoke" (understood to mean sexual assault), will give starting position on team if do
- Grabbed Cameron by the neck and bent Cameron over; poked Cameron's anus over the clothes

# Robin's Report

- Coaches saw the incident
  - Laughed at first
  - Noticed Cameron looked shaken
  - Sternly reprimanded upperclassmen in front of Cameron
  - Told Cameron if it happened again to report it
- Nonetheless, physical incidents kept occurring



# Robin's Report

- One (same) coach observed later incident; shook her head and walked away
- Last day of orientation
  - Hazing ritual
  - Multiple upperclassmen grabbed Cameron and two other rookies
  - Pulled down pants, poked anus with broomstick



# Is all of the conduct together "Title IX Sexual Harassment"?

Yes - Quid Pro Quo

Yes - Sexual Assault

Yes - Hostile Environment

Yes - B & C

No

Can I get that definition again?



# Title IX Sexual Harassment

- Hostile environment (newly defined)
- Employee quid pro quo
- Clery/VAWA "Big 4"



# TIX Quid Pro Quo

**Definition:** An employee of the recipient conditioning an aid, service, or benefit of the recipient on an individual's participation in unwelcome sexual conduct

**New:** Only an employee (not a volunteer, another student, etc.)

**Codified:** Severity and harm presumed

# VAWA “Big Four”

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

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

# Sexual Assault under VAWA

- Sexual Assault:
  - Penetration without consent (rape)
  - Fondling without consent
  - Incest
  - Statutory rape



# Also, Hostile Environment

- Unwelcome conduct
- Of a sexual nature
- So severe, pervasive, **and** objectively offensive
- Effectively denies access

# What if the only activity reported was the verbal taunting (nothing physical). Is the alleged conduct "Title IX Sexual Harassment"?

Yes - severe, pervasive, and objectively offensive + effectively denies access

No - not severe

No - not pervasive

No - not objectively offensive

No - not effective denial of access

How the heck should I know? I'm calling the lawyer.

# Title IX – What is a Hostile Environment

## Old Definition

Unwelcome conduct determined by a reasonable person to be **severe, pervasive or persistent as to interfere with or limit a student's ability to participate in or benefit from school services, activities, or opportunities**

## New Definition (8/14)

Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the school's education program or activity**

# Was the conduct in a program or activity of the school?

Yes, because the park is close enough to the school

Yes, because regardless of where the conduct occurred the coaches were overseeing practice

No, because although the coaches were overseeing practice the park is off school grounds

I quit!



**Program or Activity:** Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred

# If it's not "Title IX Sexual Harassment," what do you do? (best choice)

Tell the dean he can't do anything further because it's not Title IX Sexual Harassment

Tell the dean to consider other policy violations (bullying, code of conduct) at the building level

Tell the dean to follow up with Cameron to seek more information

Ask the dean if she's interested in a new position because you're is about to be free....

# Can Robin file a complaint?

Yes, because Robin's education could have been impacted by the climate of sexual violence on Robin's sports team

No, because Robin would have to have Cameron's permission to file a complaint on Cameron's behalf

No, because there is no allegation of Title IX Sexual Harassment perpetrated against Robin



# You think it's TIX SH.... What do you do next?

Contact Robin to obtain more information

Contact Robin to offer an opportunity to file a formal complaint and supportive measures

Contact Cameron to offer an opportunity to file a formal complaint and supportive measures

100%

## Title IX Coordinator must promptly, **even if no Formal Complaint is filed:**

- Contact the Title IX Complainant to discuss the availability of “supportive measures”
- Consider the Title IX Complainant’s wishes with respect to supportive measures
- Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain the process for filing a Formal Complaint

***New:***  
**Initial**  
**Response**

When poll is active, respond at [PollEv.com/franczek](https://PollEv.com/franczek)

Text **FRANCZEK** to **22333** once to join

# Cameron is in class that day, can the Dean/AP meet with Cameron to discuss supportive measures/the right to file a formal complaint?

Yes, but only if the Dean/AP has had Title IX Coordinator training.

Yes, but only if the Title IX Coordinator delegates that authority to the Dean/AP.

No, because the rules say the Title IX Coordinator must have that meeting.

A & B

None of the above

# Cameron's Report

- You tell the Dean to meet with Cameron (**WRITE IT DOWN**)
- Cameron confirms all of the allegations

# What Supportive Measure Would You Offer (Order from Best to Worst)

A mutual no contact order (applicable to all students)

Waiver of attendance requirements for soccer for Cameron

Counseling for Cameron

A unilateral no contact order (applicable only to the upperclass students)

Increased monitoring or supervision

Removing the upperclass students from the team pending an investigation

# Cameron's Report

- Cameron does not want to file a formal complaint
- Cameron begs not to be named to the upperclass students

# Can you honor Cameron's confidentiality request?

No, names must always be provided to the Respondent when a Complainant reports Title IX Sexual Harassment

No, because this situation warrants "signing" a formal complaint and Cameron must therefore be named

Yes, because a complainant's name can be kept confidential until a formal complaint is filed

None of the above



# “Signing a Complaint”

- Consider:
  - Pattern of alleged conduct
  - Involvement of violence, weapons, etc.
  - Seriousness of alleged conduct
  - Age of student harassed
- Title IX Coordinator does not become Complainant or party
- Decision to sign a Formal Complaint (or not?) reviewed for “deliberate indifference”

# Forms/Notices

## Initial Contact and Meeting with the CP

Notice to Complainant  
of Report of Title IX  
Sexual Harassment  
(Franczek Notice 1(a))

Summary of Supportive  
Measures Meeting  
with the Title IX  
Complainant  
(Franczek Notice 1(b))

Title IX Formal  
Complaint (Franczek  
Form A)

# Can you remove Parker using an "Emergency Removal"?



Yes

No, Because  
Cameron has not  
filed a formal  
complaint

No, Because the  
standards for  
emergency removal  
have not been met

# Can you remove the "shaking head" coach on administrative leave during the investigation?

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Yes, if school policy otherwise allows it

No, because there is not a sufficient showing of an immediate threat to Cameron's physical health from the teacher's actions

# Emergency Removal/ Admin Leave

## Immediate emergency removal

(34 C.F.R. 106.44(c))

- Based on an individualized safety and risk analysis
- Necessary to protect a student or other individual from **immediate threat to physical health or safety**
- **Notice, opportunity to challenge** provided “immediately” provided the removal

## Employee administrative leave

(34 C.F.R. 106.44(d))

- Not prohibited
- Consider state law, board policy, handbooks, and bargaining agreements

# Remember State & Federal Law

- Additional process may be required for emergency removal to occur
  - Student discipline – state laws (e.g., long term suspension, expulsion)
  - Disability rights – federal and state law
  - Employee rights – law, policy, agreements

# Forms/Notices

## Notice of Emergency Removal

Notice of Title IX  
Emergency Removal of  
Student  
(Franczek Letter 4(a))

Notice of Title IX  
Emergency Removal or  
Admin Leave for  
Employee (Franczek  
Letter 4(b))

# Cameron presents a court order prohibiting the upperclass students from being at school. What do you do?

Ignore it, because removing the students from school would be punitive or disciplinary, and that's not possible until after a determination is made

Enforce it and do not get involved - this is between Cameron and the upperclass students

Enforce it and tell the upperclass students that they should raise any concerns with the court



# Cameron suggests that they do a talking circle to address the conduct.

## Can this be done?

Yes, because the new Title IX regs now clearly allow informal resolution

Yes, as long as the talking circle facilitator has been trained on Title IX

No, because Cameron has not filed a formal complaint

No, because this severe of sexual misconduct can never be addressed through informal resolution

# Formal Complaint – Next Steps

- Written notice to all known parties
  - Grievance process
  - Allegations
  - Respondent presumed not responsible
  - Right to advisor
  - Right to inspect/review evidence
  - Notice of provision on false statements

# Forms/Notices

## Notice of Allegations

Notice of Allegations of  
Title IX Sexual  
Harassment by a  
Complainant (Franczek  
Notice 2(a))

Notice of Allegations  
Upon Signing of Formal  
Complaint by the Title  
IX Coordinator  
(Franczek Notice 2(b))

# **Cameron and the upperclass students reach an agreement in informal resolution. Can the Title IX process ever recommence?**

Yes, but only if the upperclass students failed to comply with its terms

Yes, but only for allegations not resolved in informal resolution

No, because you can only recommence an investigation before a resolution is reached

# Forms/Notices

## Informal Resolution Process

Offer of Title IX  
Informal Resolution  
Process  
(Franczek Notice 5(a))

Notice of Closure of  
Title IX Informal  
Resolution Process  
(Franczek Notice 5(b))

# Let the investigation begin....

- Identify investigator
- Investigator sends notice to parties (and, we recommend, to witnesses)

# Forms/Notices

## Notice of Interview

Notice of Title IX  
Interview or Meeting  
with Title IX Party  
(Franczek Notice 6(a))

Notice of Title IX  
Interview or Meeting  
with Non-Party  
Witness (Franczek  
Notice 6(b))



# Witness – Devon

- Devon, witness
- Also on the lacrosse team, upperclass student

# Witness – Devon

- Sexual assault by classmate on spring break trip last year
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one
- Devon files a formal Title IX Complaint

# In which case does the school have jurisdiction?

None

All

Spring break conduct

Summer snapchat incident

Teacher photo incident

# How can you respond if the teacher quit during the investigation?

Consider other code of conduct or policy violations

Send both parties a formal dismissal notice

Meet with Devon to discuss supportive measures for the remainder of time at the school

All of the above

None of the above

# Say the teacher didn't quit, but Devon calls to ask to withdraw the formal complaint. What do you do?

Respect Devon's autonomy and wishes by dismissing the complaint

Tell Devon you will not dismiss the Complaint because there is an ongoing risk to other students

Require that Devon submit the request in writing and then dismiss the Complaint

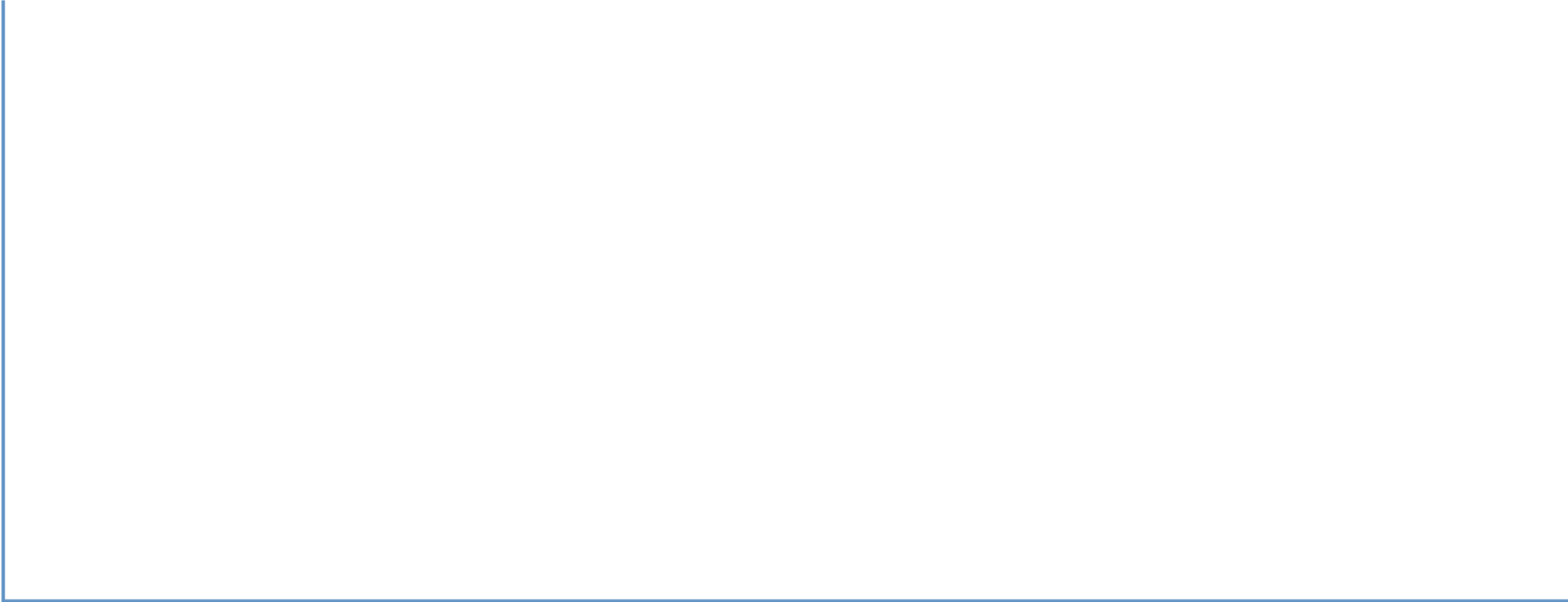
# It turns out that the incident occurred two years ago, before Devon was a student. What CAN'T you do?

Dismiss the complaint because of the difficulty in gathering evidence to reach a determination

Continue with the complaint because the teacher was employed at the time of the incident

Dismiss the complaint because Devon was not a student at the time the conduct occurred

**You're investigating Devon's complaint, when Devon ghosts you completely. Can you dismiss the complaint?**



No

Yes

# DISMISSALS



## **Mandatory if conduct alleged:**

Not Title IX Sexual Harassment  
Did not occur in the school's program or activity  
Did not occur in the United States

\*\*can still address under non-Title IX policy

## **Permissive if:**

Complainant requests to withdraw in writing  
Respondent's enrollment or employment ends  
Specific circumstances prevent school from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant)



# Forms/Notices

## Notice of Dismissal

Notice of Mandatory  
Dismissal of  
Allegations of Title IX  
Sexual Harassment  
(Franczek Letter 3(a))

Notice of Permissive  
Dismissal of  
Allegations of Title IX  
Sexual Harassment  
(Franczek Letter 3(b))

# What if the teacher wants to bring a priest to investigation meetings about Devon's complaint?

The teacher can bring any advisor to any investigatory meeting

The teacher can bring an advisor, but it must be a union rep or a lawyer

# The teacher brings an attorney to the investigative interview, and the attorney jumps in every time a question is asked. Can you kick out the advisor and continue the meeting?

No, parties in Title IX matters have the right to an advisor at every meeting

No, you should remind the advisor of the rules of decorum in place and warn that the advisor will be removed if the rules are not followed

Yes, because you are allowed to have rules of decorum and if an advisor will not follow them there is no requirement to delay the investigation

# Forms/Notices

## Notice to Advisors

Advisor  
Conduct  
Expectations

# So the investigation is done....

- Must share evidence with both parties and advisors simultaneously with 10 days to respond before writing the report
  - Review/consider responses
  - Share responses with the other side

# Forms/Notices

## Sharing of Evidence

Notice of Directly  
Related Evidence  
(Franczek Letter 7(a))

Notice of Other  
Party's Written  
Response to Evidence  
(Franczek Letter 7(b))

# The investigative report

- Must fairly summarize relevant evidence
- Must be provided to both parties and their advisors simultaneously at least 10 days prior to a hearing (if applicable) or other time of determination
- Transmit report and any party written response(s) to the Decisionmaker

# Forms/Notices

## Investigative Report

Title IX Investigative  
Report Template  
(Franczek Form B)

Notice of Investigative  
Report (Franczek  
Notice 8(a))

Notice of Other Party's  
Written Response  
(Franczek Notice 8(b))

Transmittal Cover  
Letter to Decision-  
maker at Conclusion of  
Investigation (Franczek  
Letter 8(c))



# Decision

- Decision-maker (“written cross”) (Franczek Notices 9(a)-(e))
- Written determination (Franczek Form C - Written Determination Template)

# Appeal Notice

- Upon receipt of an appeal, the Title IX Coordinator must notify the other party/parties of the appeal
- Both parties must be given an opportunity to submit a written statement for or against the appeal

(Franczek Notices 11(a) and (b))



# **Bias, Conflicts of Interest, and Other Fairness Concerns**



# Bias, Conflict, Prejudgment

The Title IX Coordinator or designee must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And that they not prejudge any matter before them.

# Bias

- Must not rely on sex stereotypes such as:
  - Women are “asking for it” based on actions or clothing
  - Men cannot be sexually assaulted
  - Women only decide they were assaulted after the fact due to regret or embarrassment
  - Men are more likely to be sexual aggressors
- Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity

# Conflict of Interest

- Flexibility to choose employees or outsource adjudication functions
- No *per se* prohibited conflicts of interest when using school employees or individuals with histories of working in field of sexual violence as decisionmaker
- Caution against using generalizations to identify conflict of interest

# Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Listen to facts presented



# Recordkeeping/File Maintenance





# Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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# Questions?



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