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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

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## 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

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## Timeline



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

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## Robin's Report

- This morning
- Email from Dean of Students/AP
- Robin, a 9<sup>th</sup> grade soccer player, reported conduct involving Robin's friend, Cameron, also a 9<sup>th</sup> grade soccer player

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## Robin's Report

- Soccer pre-season training week
- Park across street from the school
- Two 10<sup>th</sup> grade soccer players, Parker and Riley, harassed Cameron
- Parker is popular among the 10<sup>th</sup> graders

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## Robin's Report

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

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## Robin's Report

- Coaches saw the incident
  - Laughed at first
  - Noticed Cameron looked shaken
  - Sternly reprimanded 10<sup>th</sup> grade students in front of Cameron
  - Told Cameron if it happened again to report it
- Nonetheless, physical incidents kept occurring

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## Robin's Report

- One (same) coach observed later incident; shook her head and walked away
- Last day of pre-season
  - Hazing ritual
  - Multiple 10<sup>th</sup> grader students grabbed Cameron and two other rookies
  - Pulled down pants, poked genitals and anus with broomstick

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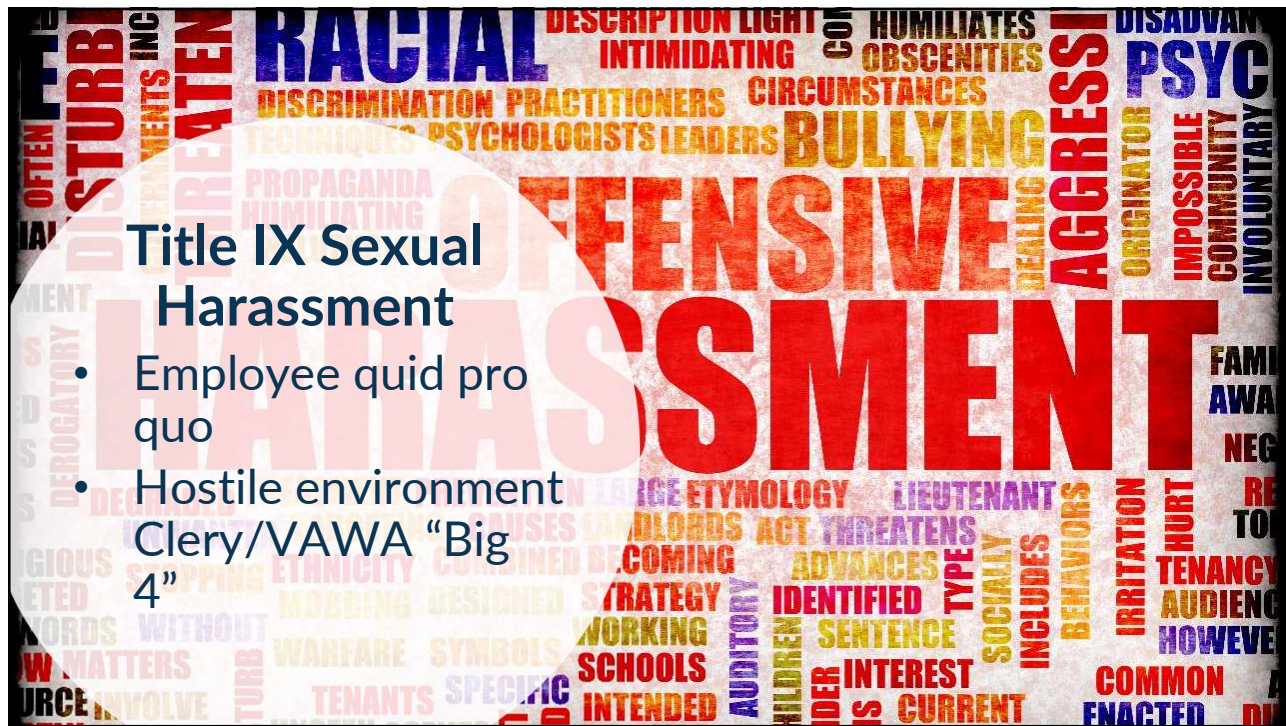
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## Question

Is all of the conduct, when viewed together,  
Title IX Sexual Harassment?

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## Title IX Sexual Harassment

- Employee quid pro quo
- Hostile environment Clery/VAWA “Big 4”

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## 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

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## 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)

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## Sexual Assault under VAWA

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

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## Also, Hostile Environment

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

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## Title IX – What is a Hostile Environment

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**

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## Question

Did the conduct involving Cameron occur in the school's program or activity?

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**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

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## Question

If the conduct does not qualify as Title IX Sexual Harassment, what do you do?

- A. Tell the Dean you can't do anything else because it isn't Title IX SH
- B. Tell the Dean to consider other policy violations
- C. Tell the Dean to follow up with Cameron to get more information

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## Question

You decide that the allegations do constitute Title IX Sexual Harassment, what do you do next?

- A. Contact Robin for more information
- B. Contact Robin to explain supportive measures and how to file a Formal Complaint
- C. Contact Cameron to explain supportive measures and how to file a Formal Complaint
- D. All of the above

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

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

**Initial  
Response**

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**Question**

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

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## Cameron's Report

- You tell the Dean to meet with Cameron
- Cameron confirms all of the allegations

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## Question

What supportive measures would you offer Cameron?

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## Cameron's Report

- Cameron does not want to file a Formal Complaint
- Cameron begs not to be named to the 10<sup>th</sup> grade students (Parker and Riley)

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## Question

Can you honor Cameron's request for confidentiality?

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## “Signing a Complaint”

- Consider:
  - Position of authority
  - 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”

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## 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)

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## Question

Can you remove Parker and/or Riley through an emergency removal?

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## Question

Can you place the coach who witnessed conduct against Cameron, but simply shook her head in response, on administrative leave during your investigation?

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## 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

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## 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

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## 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))

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## Question

Cameron presents you with a court order that prohibits Parker and Riley from being at school. What do you do?

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## Question

Your school offers face-to-face restorative justice. Assume just verbal misconduct. Can this type of informal resolution be done with Cameron?

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## 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

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## 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))

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## Question

Cameron and Parker agree to enter into informal resolution and reach an agreement. Can the Title IX process ever recommence?

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## 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))

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## Let the investigation begin...

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

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## 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))

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## Witness – Devon

- Devon, witness
- Also on the soccer team, 10<sup>th</sup> grade student

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## Witness – Devon

- Parker sexually assaulted Devon on spring break trip abroad last year
- Sexual harassment by Riley 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 with the teacher
- Devon files a Formal Complaint

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## Question

Which allegations does the school have jurisdiction over under Title IX?

- A. None
- B. All
- C. Spring break conduct
- D. Summer Snapchat incident
- E. Teacher photo incident

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## Question

How can you respond if the teacher (who allegedly requested a naked photo of Devon) quit during the investigation?

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## Question

Say the teacher didn't quit, but Devon calls to ask to withdraw the Formal Complaint. What do you do?

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## Question

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

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## Question

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

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# 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)

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## 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))

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## Question

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

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## Question

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?

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## Forms/Notices

### Notice to Advisors

Advisor  
Conduct  
Expectations

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## 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

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## 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))

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## The investigative report

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Must fairly summarize relevant evidence

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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

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Transmit report and any party written response(s) to the Decisionmaker

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# 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))

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# Decision

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

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## 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))

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

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## 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.

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## What Might be Bias, Conflict, Prejudgment?

01

Discouraging a party from submitting certain evidence

02

Using terms like “victim” and “perpetrator”

03

Permitting credibility inferences or conclusions based on party status

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## What Might be Bias, Conflict, Prejudgment?

- 01  
Using sex stereotypes
- 02  
Placing the burden of proof on one party
- 03  
Unauthorized interim suspensions or other penalties before conclusion of grievance process

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## What Likely Is Not...

-   
Deciding an allegation warrants an investigation
-   
Being an employee (and even attorney)
-   
Finding in favor of one party over another

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# Recordkeeping/File Maintenance

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## Investigation File

- What should be in the investigation file?
  - Complaint
  - Applicable Policies
  - Investigation Plan (can be a living document)
  - Records of Communications
  - Interview Notes
  - Evidence Collected
  - Report

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## Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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Questions?



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