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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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Report to OIG (833) 835-5277

1. Conduct by a **Covered Individual** with a **student, former student, or minor** involving actual, attempted, or suspected **sexual misconduct**

Report to OSP (773) 535-4400

1. Conduct by a **Covered Individual** with a **student, former student, or minor** involving actual, attempted, or suspected **Title IX and/or sexual misconduct, retaliation, or failure to report or address** such conduct (except for allegations of gender discrimination) – OSP reports to OIG
2. Conduct concerning **only** students involving actual, attempted, or suspected **Title IX and/or sexual misconduct**
3. Conduct regarding **Title IX sex and gender discrimination** that impacts **students**

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Timeline



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- 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 9th grade soccer player, reported conduct that occurred against Robin's friend, Cameron, also a 9th grade soccer player

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Robin's Report

- Soccer orientation week
- Park across street from the school
- Two 10th grade soccer players vs. Cameron
- Parker is the leader of the 10th graders

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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

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Robin's Report

- Coaches saw the incident
 - Laughed at first
 - Noticed Cameron looked shaken
 - Sternly reprimanded 10th 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 orientation
 - Hazing ritual
 - Multiple 8th grader students grabbed Cameron and two other rookies
 - Pulled down pants, poked anus with broomstick

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Is all of this conduct together “Title IX Sexual Harassment”?

- A. Yes – quid pro quo
- B. Yes – sexual assault
- C. Yes – hostile environment
- D. Yes – B & C
- E. No
- F. Can I get that definition again?

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Title IX Sexual Harassment

- Employee quid pro quo
- Hostile environment (newly defined)
- 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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Was the conduct in the school's program or activity?

- A. Yes, because the park is close to the school
- B. Yes, because regardless of where the conduct occurred, the coaches were overseeing the practice
- C. No, because although the coaches were overseeing the practice, the conduct occurred off school grounds

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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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If not TIX SH, what do you do?

- A. Tell the Dean he can't do anything further because it is not TIX SH
- B. Tell the Dean to consider other policy violations at the building level
- C. Tell Dean to follow up with Cameron for more information
- D. None of the above

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Can Robin file a Complaint?

- A. Yes, because Robin's education could have been impacted by the sexual violence on the sports team
- B. No, because Robin would have to have Cameron's permission to file a Complaint on their behalf
- C. No, because there is no allegation of TIX SH against Robin
- D. None of the above

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You think it's TIX SH...what next?

- A. Contact Robin for more information
- B. Contact Robin to offer an opportunity to file a Formal Complaint and provide supportive measures
- C. Contact Cameron to offer an opportunity to file a Formal Complaint and provide supportive measures
- D. All of the above
- E. None of the above

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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**

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Cameron is in class. Can the Dean meet with Cameron to discuss the formal complaint and supportive measures?

- A. Yes, but only if the Dean has completed Title IX training
- B. Yes, but only if the Title IX Coordinator delegates that authority to the Dean
- C. No, because the rules say the Title IX Coordinator has to have that meeting
- D. A & B
- E. None of the above

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Cameron's Report

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

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Cameron's Report

- Cameron does not want to file a formal complaint
- Cameron begs not to be named to the 8th grade students

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Can you honor Cameron's request?

- A. No, names must always be provided to a Respondent when a Complainant reports TIX SH
- B. No, because this situation warrants "signing" a Formal Complaint and Cameron must therefore be named
- C. Yes, if Cameron's parents request that they remain confidential
- D. None of the above

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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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Can you remove Parker using an “Emergency Removal”?

- A. Yes
- B. No, because Cameron has not yet filed a Formal Complaint
- C. No, because the standards for emergency removal have not been met

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Can you place the coach who shook their head on administrative leave during the investigation?

- A. Yes, if school policy otherwise allows it
- B. No, because there is not a sufficient showing of an immediate threat to Cameron’s physical health from the coach’s actions

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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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Cameron presents a court order prohibiting the older students from being at school – what do you do?

- A. Ignore it because removing the students would be punitive and that's not possible until after the determination is made
- B. Enforce it with respect to participation on the soccer team only
- C. Enforce it and tell the other students they can challenge it in court
- D. None of the above

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UCCS offers restorative justice. Can this type of Informal Resolution occur?

- A. Yes, the Title IX regulations explicitly allow for informal resolution
- B. Yes, as long as the facilitator has been trained on Title IX
- C. No, because Cameron has not filed a Formal Complaint
- D. No, because sexual harassment cannot be addressed through informal resolution

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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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Cameron & Parker reach an agreement in informal resolution. Can the TIX process ever recommence?

- A. Yes, if Parker fails to comply with the terms agreed-to in informal resolution
- B. Yes, but only for allegations not resolved through informal resolution
- C. No, because you can only recommence an investigation before resolution is reached

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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, 8th grade student

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Witness – Devon

- Sexual assault by classmate on spring break trip abroad 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

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In which case does the school have jurisdiction?

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

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How can you respond if the teacher resigns during your investigation?

- A. Consider code of conduct or other policy violations
- B. Send both parties a formal dismissal notice
- C. Meet with Devon to discuss supportive measures for the remainder of the school year
- D. All of the above
- E. None of the above

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What if the teacher doesn't resign, but Devon asks to withdraw the Formal Complaint. What do you do?

- A. Respect Devon's wishes and withdraw the Formal Complaint
- B. Tell Devon you will not withdraw the Formal Complaint because there is an ongoing risk to other students
- C. Require that Devon submit the request in writing and then dismiss the Formal Complaint

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It turns out the incident happened 2 years ago, before Devon was a student. What can you NOT do?

- A. Dismiss the Formal Complaint because you can't get enough evidence to reach a determination
- B. Continue with the investigation because the teacher was employed at the time of the incident
- C. Dismiss the Complaint because Devon was not a student at the time the incident occurred

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You're investigating Devon's complaint when they ghost you completely. Can you dismiss?

- A. Yes
- B. No

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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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What if the teacher wants to bring a priest to meetings about the Formal Complaint?

- A. The teacher can bring any advisor to any investigation meeting
- B. The teacher can bring an advisor, but it must be a union rep. or lawyer
- C. No one other than the teacher can be present at the investigation meetings due to confidentiality concerns

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Teacher brings an attorney to the investigation interview and they jump in at every question. Can you kick the attorney out?

- A. No, parties in a Title IX matter have the right to an advisor at every meeting
- B. No, you should remind the advisor of the conduct expectations and warn them that they will be removed if the rules aren't followed
- C. Yes, because you are allowed to have conduct expectations and if an advisor will not follow them, there is no requirement to delay the investigation
- D. Yes, you are the all-powerful Title IX Coordinator!

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Forms/Notices

Notice to Advisors

Advisor
Conduct
Expectations

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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

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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

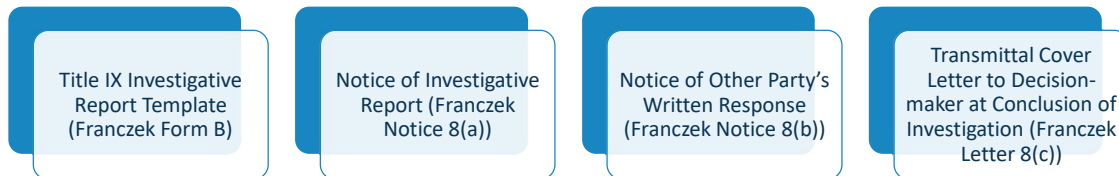
- Must fairly summarize relevant evidence
- Must be provided to both parties and their advisors simultaneously at least 10 days prior to a hearing (if applicable) or other time of determination
- Transmit report and any party written response(s) to the Decisionmaker

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Forms/Notices

Investigative Report



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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?

- Discouraging a party from submitting certain evidence
- Using terms like “victim” and “perpetrator”
- Permitting credibility inferences or conclusions based on party status

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What Might be Bias, Conflict, Prejudgment?

- Using sex stereotypes
- Placing the burden of proof on one party
- 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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