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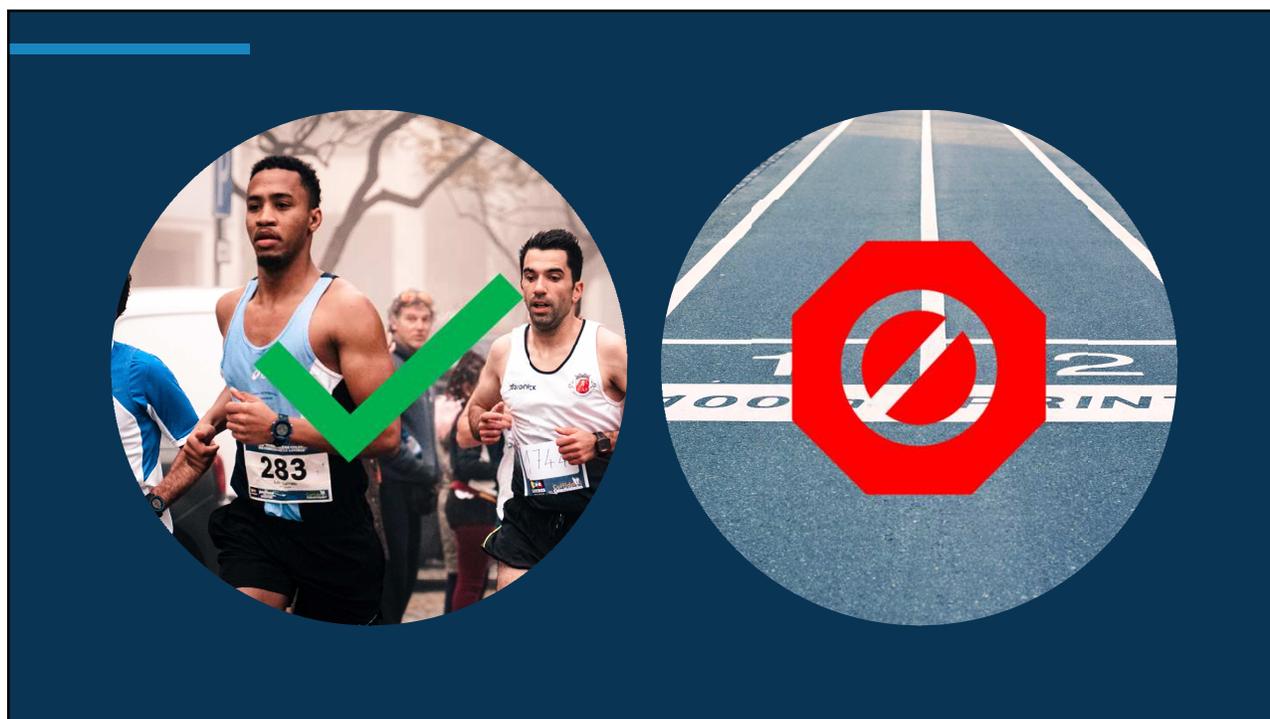
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<p>1 in 4 women experiences sexual assault before age 18</p>	<p>10% of children are targets of educator sexual misconduct before high school graduation</p>
<p>48% of U.S. students are subject to sexual harassment or assault at school before graduating high school</p>	<p>In 2010-2011, 36% of girls, 24% of boys and 30% of all students grades 7-12 experienced online sexual harassment</p>

6

## THIS DOESN'T ADD UP:

79% of public schools reported **zero incidents** of sexual harassment or bullying.



AAUW research has shown that nearly half of students in grades 7-12 reported experiencing some form of sexual harassment, yet more than three-fourths of schools reported zero incidents for the 2015-16 school year.

7



## Responding to Harassment

*Is required by the law*

8



9

## Title IX Statute

(20 U.S.C. §§ 1681–1688)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

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## What falls under Title IX?



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## Title IX Regulations

(34 C.F.R. Part 106 – Amended as of 8/14/2020)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
  - Policy + detailed grievance procedure
  - Designation of Title IX coordinator(s)
  - And many more requirements!

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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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# When Must the School Respond to Sexual Harassment?

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**It Depends  
Who [Well,  
Which Law]  
You Ask**

## Employment

- Illinois Human Rights Act
- Title VII
- Title IX

## Students

- Illinois Human Rights Act
- Illinois Sex Equity Regulations
- Title IX

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## **When must a school respond to Title IX sexual harassment**

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond

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### **Actual Knowledge**

1. Sense
2. Report

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## Official with Authority



- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures by the school district
- K-12: All employees

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## Reporting Sexual Harassment: Who, How and When?

- Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
- Or by any means that results in the Title IX Coordinator receiving the person's report
- Such a report may be made at any time, including during non business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator

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## Key Word: "Allegation"

Once a school has notice of an **allegation** that, **if true**, would constitute Title IX Sexual Harassment, it must respond

"Well, we didn't believe there was enough evidence it happened" does not get you past your responsibility to use your Title IX Sexual Harassment grievance process

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## Issue Spotting

**Order of protection:** Principal served with order of protection requiring student to have no contact with another student due to alleged sexual assault

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## **When must a school respond to Title IX sexual harassment**

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond

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## What is Sexual Harassment?

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## Quid Pro Quo

Quid = Something

Pro = For

Quo = Something

28

## Title IX Quid Pro Quo

**Definition:** An employee of the educational institution conditioning an aid, service, or benefit of the educational institution on participation in unwelcome sexual conduct

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

**Codified:** Severity and harm presumed

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## Clery Act/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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## Title IX – What is a Hostile Environment

<b>Old Definition</b> Unwelcome conduct determined by a reasonable person to be <b>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</b>	<b>New Definition (8/14)</b> Unwelcome conduct determined by a reasonable person to be <b>so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the school's education program or activity</b>
---	---

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## Unwelcome Conduct

- Not **Consent**
- Not **Participation**
- Not **Silence**
- Age Matters
- Intoxication Matters
- Culture Matters
- Ability Matters

\*\*subjective + reasonable person

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## Severe

- Something more than juvenile behavior
- Something more than antagonistic, non-consensual, and crass conduct
- Simple acts of teasing and name-calling are not enough, even when comments are based on sex
- It is not enough to show that a student has been teased or called offensive names

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## **Pervasive**

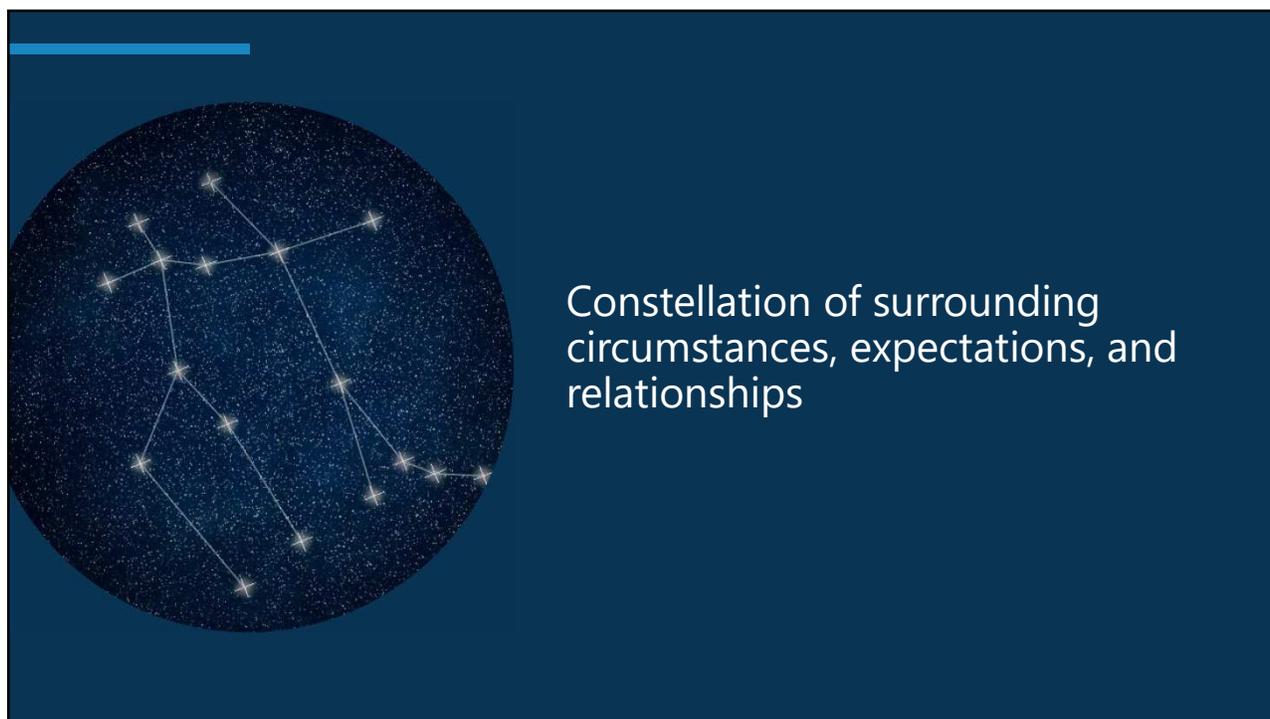
- Systemic or widespread
- Multiple incidents of harassment
- One incident is not enough, even if very severe

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## **Objectively Offensive**

- Behavior that would be offensive to a reasonable person under the circumstances
- Not just offensive to the victim, personally or subjectively
- Consider ages, numbers, relationships

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Constellation of surrounding circumstances, expectations, and relationships

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A slide titled "Hostile Environment Factors" with two bullet points in rounded rectangular boxes. The first box is grey and the second is brown. A blue horizontal bar is at the top left, and the name "FRANCZEK" is at the bottom left.

## Hostile Environment Factors

- Context, Nature, Scope, Frequency, Duration, and Location of the Incidents
- Identity, Number, Ages, and Relationships of the Persons involved

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## Yes or No?

Is this "Title IX Sexual Harassment"?

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**A student makes multiple insensitive jokes to another student?**

Yes

No

Need more information

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**A teacher makes a sexually inappropriate comment to a student in class?**

Yes

No

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**One student grabs another student's breasts during a soccer game.**

Yes

No

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**A student "uses tongue" during an acting scene without the other student's permission.**

Yes

No

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**A group of students (one sex) make a Facebook post rating students (another sex) by attractiveness and share with school community**

Yes

No

Need more information

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**A teacher (one sex) tells a student (another sex) to trade a back rub in the classroom for a good grade on a test**

Yes

No

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**Students incessantly mock a female student for not wearing makeup saying she looks "like a boy"**

Yes

No

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**A student sends a completely nude picture to the student's significant other (another student)**

Yes

No

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**The recipient student forwards the photo to 20 classmates**

Yes

No

Need more  
information

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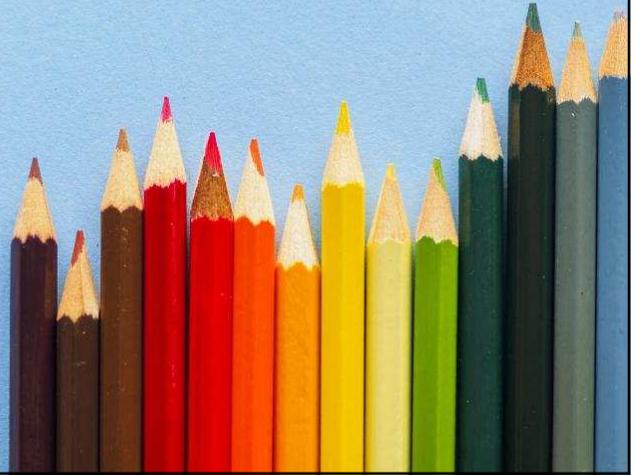
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**When must a  
school  
respond to  
Title IX  
sexual  
harassment**

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond

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## Title IX Sexual Harassment Must Be “In a 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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<b>When must a school respond to Title IX sexual harassment?</b>	A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the united States must respond
--	---

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# DISMISSALS



<p><b>Mandatory if conduct alleged:</b></p> <ul style="list-style-type: none"> <li>Not Title IX Sexual Harassment</li> <li>Did not occur in the school's program or activity</li> <li>Did not occur in the United States</li> </ul> <p>**can still address under non-Title IX policy</p>	<p><b>Permissive if:</b></p> <ul style="list-style-type: none"> <li>Complainant requests to withdraw in writing</li> <li>Respondent's enrollment or employment ends</li> <li>Specific circumstances prevent school from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant)</li> </ul>
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# How Must You Respond

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## Board Policies on Harassment

Option 1: Title IX Sexual Harassment Policy and Procedure (for Title IX Sexual Harassment)

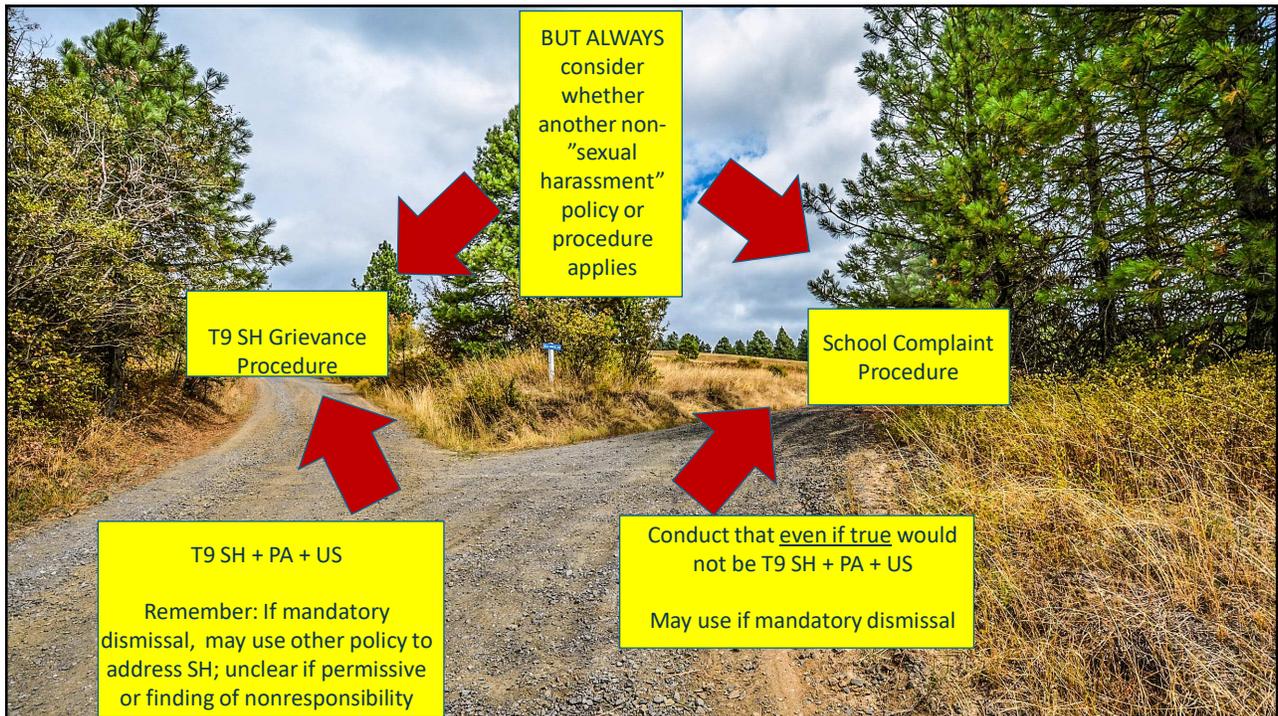
Option 2: Other Complaint Procedure (other sexual harassment, other violations of law and of School policy)

Option 3: Other rules or policies

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# Adequate Response

1 Initial Response/Supportive Measures

2 Informal Resolution (Voluntary)

3 Investigation

4 Decision

5 Appeal

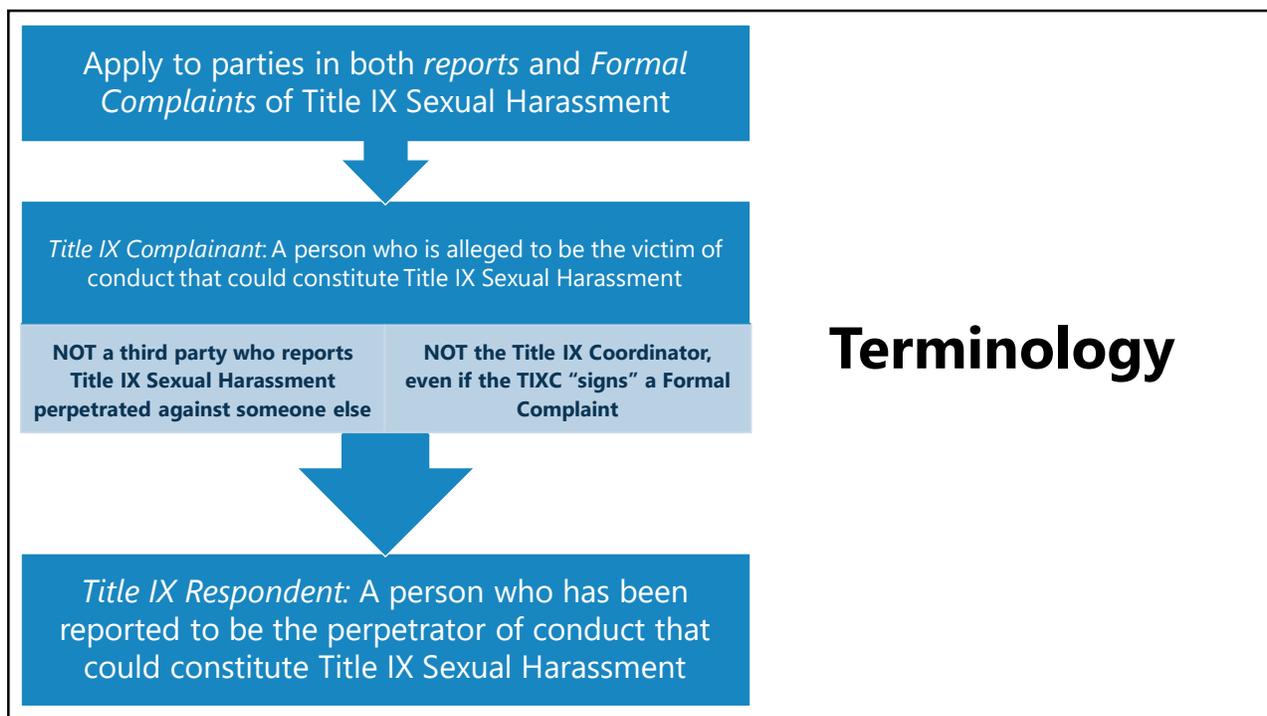
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## 1 Initial Response/Supportive Measures

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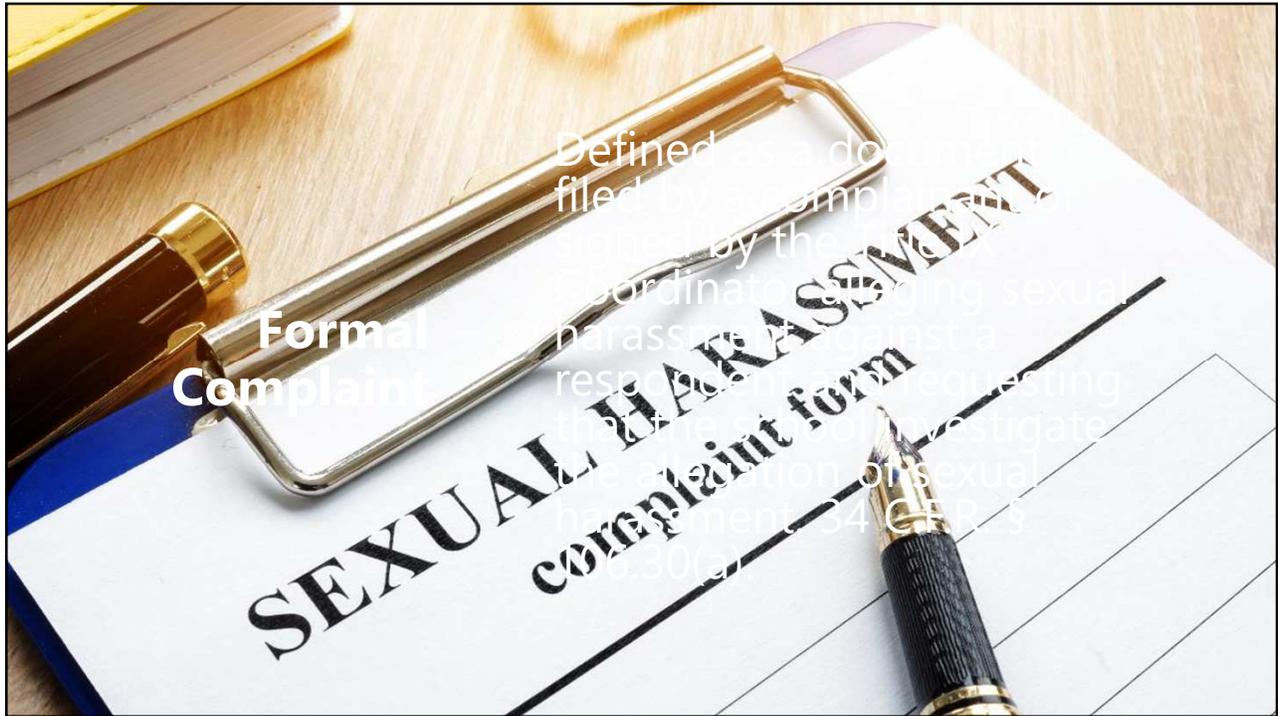
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Title IX Coordinator (or designee) must promptly, **even if no Formal Complaint is filed**:

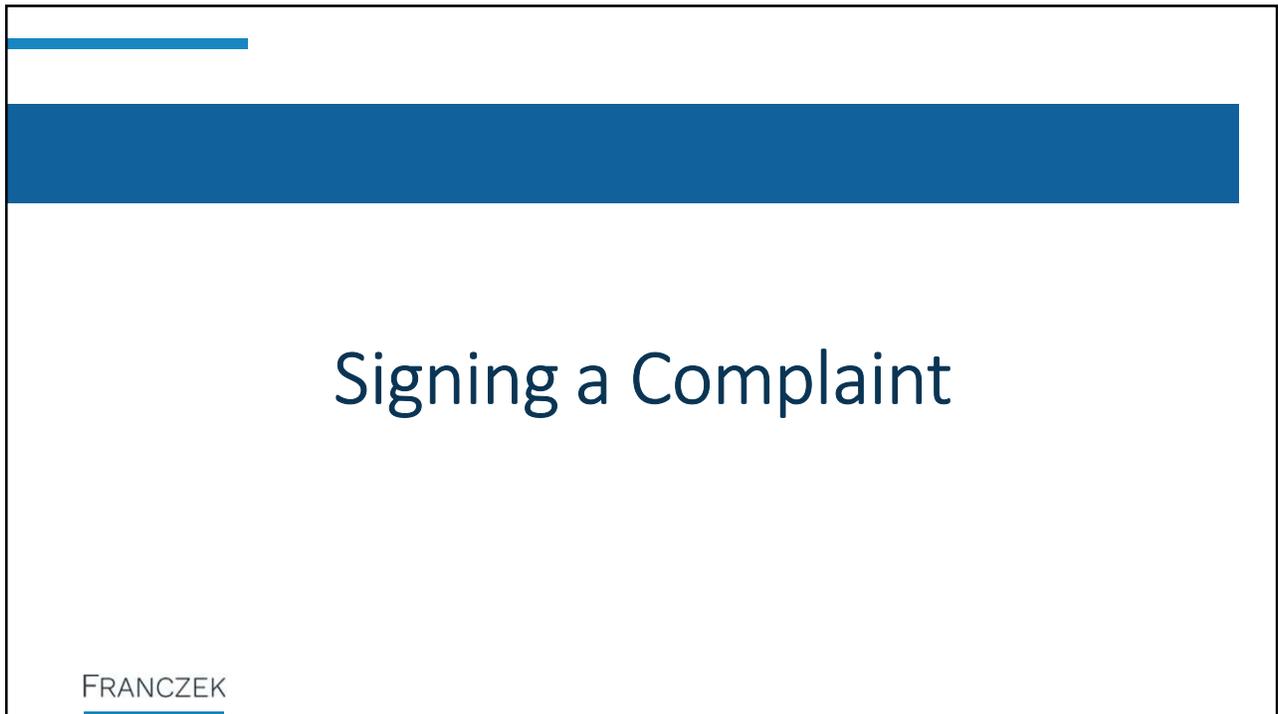
- Contact the Title IX Complainant to discuss the availability of "supportive measures"
- Consider the Title IX Complainant's wishes with respect to supportive measures
- Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain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

**New:  
Initial  
Response**

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66

## Supportive Measures

### What Changed?

#### OLD TERM (OCR Guidance)

- Used terms such as “interim measures” or “interim steps” to describe measures to help a complainant maintain equal educational access
- Implied only available during pendency of investigation, did not mandate offering them, not clear if could be punitive or disciplinary, and did not clarify if available to respondents

#### NEW TERM (Final Rule)

- **Non-punitive**, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed (34. C.F.R.106.30(a)).
- **Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party**
- **Should be confidential**

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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
- Consider other laws, e.g., expulsion laws (SB100), “change in placement” under IDEA or 504

#### 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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# 2

## Informal Resolution (Voluntary)

### Informal Resolution

INFORMAL RESOLUTION IS NOT PERMITTED UNDER THE FOLLOWING CONDITIONS:	INFORMAL RESOLUTION MAY MOVE FORWARD UNDER THE FOLLOWING CONDITIONS:
<ul style="list-style-type: none"><li>• Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure</li><li>• Cannot require use of informal resolution process</li><li>• Cannot offer informal resolution process until formal complaint is filed</li><li>• Not available to resolve allegations that employee sexually harassed a student</li></ul>	<ul style="list-style-type: none"><li>• Any time prior to reaching a determination, either party may request informal resolution</li><li>• Requires voluntary, written consent from both parties</li><li>• Any party has a right to withdraw prior to agreement</li></ul>

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## Informal Resolution Facilitators

- We do not recommend using the Title IX Coordinator or investigator(s) or decisionmakers (complaint and appeal)

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## Investigation

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# New: Formal Complaint Response

34 C.F.R. 106.45(b)

- Requires a number of specific steps for investigating
- Major shift from previous, more deferential stance toward specific policies and practices for complaint resolution

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## Who should investigate?

- Can be the Title IX Coordinator
- But should it?

74

- Written notice to known parties “upon receipt of written complaint”
- In sufficient time to allow respondent to prepare a response before any **initial** interview
- Must include:
  - Notice of grievance process, including any informal resolution process
  - Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduct, if known)

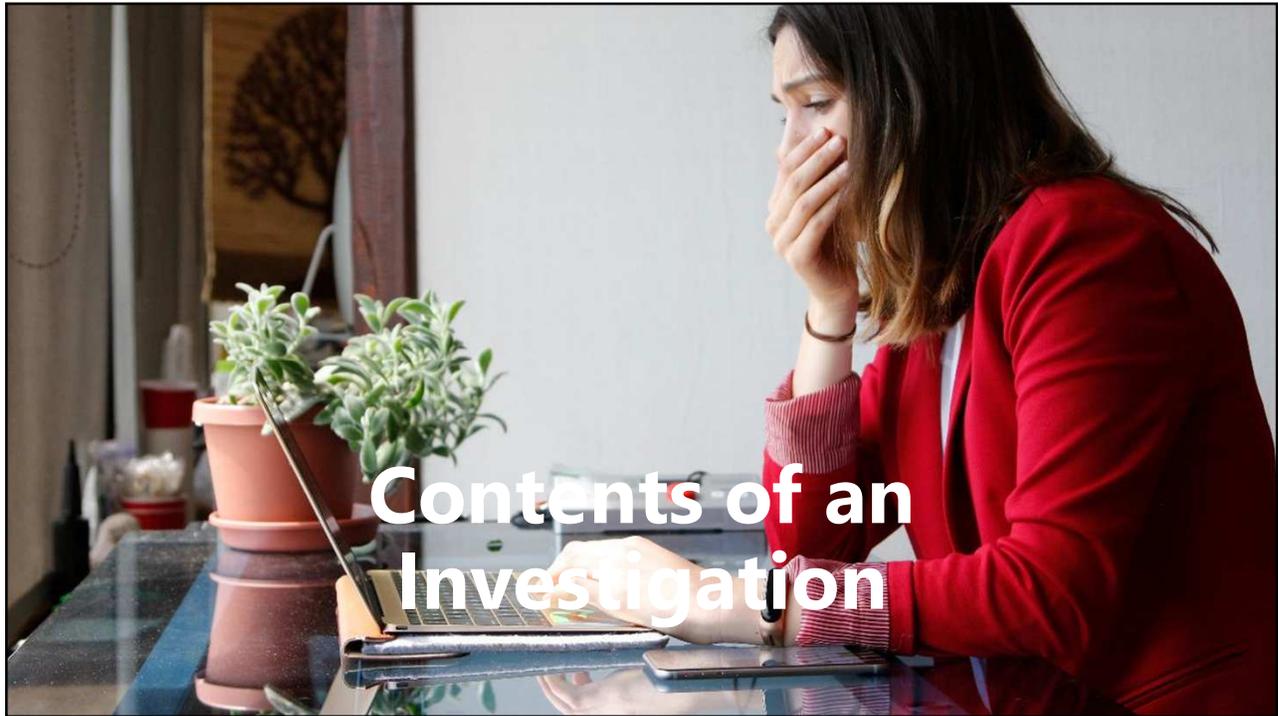
## More Steps: Written Notice

75

- Must include:
  - Statement that respondent presumed not responsible and that responsibility determined at conclusion of grievance process
  - Notice of parties’ rights to have an attorney or non-attorney advisor and to inspect and review evidence
  - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process
- Must be supplemented if new allegations opened for investigation

## More Steps: Written Notice

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**Investigation**  
**34 C.F.R.**  
**106.45(b)(5)**

- Burden of proof on school
- Certain treatment records cannot be obtained without voluntary, written consent
- No restriction of rights of parties to discuss allegations or gather or present evidence
- Same opportunities for others present during interviews or related proceedings (e.g., attorney or non-attorney advisor)
- Written notice to parties of date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare
- All directly related evidence provided to parties and their advisors with 10 days to respond before report
- Written investigative report "fairly summarizes the relevant evidence" provided to parties and advisors at least 10 days before hearing or other determination of responsibility

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## Investigation Plans Aren't Static

Reassess plan for investigation frequently



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Gathering Other Evidence

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## Warning! Hands off

- Rape shield (for CP)
  - Unless
    1. Used to prove someone other than respondent committed the conduct or
    2. Specific incidents related to the RP to show consent
- Medical records (treatment)
- Privileged information

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## Opportunity to Review Evidence

- Before the investigatory report is completed, evidence relating to the allegations must be sent to each party and advisor and should include all directly related evidence (including that which the school does not intend to rely upon and exculpatory and inculpatory evidence)
- Parties have 10 days to provide a written response

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## Investigation Report



Applicable policies and procedures

Timeline of investigation

Description of allegations

Unbiased summary of evidence gathered, including interviews

Credibility determination(s)

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## Investigation Report Writing

- Fairly summarizes all relevant evidence
- Provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility

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# 4

## Decision

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### **Decisionmaker(s) (Complaint)**

- Cannot be the Title IX Coordinator or the investigator(s)

86

## Determinations of Responsibility 34 C.F.R. 106.45(b)(6)

- Live hearing with live cross by party advisors required for higher ed, **not K-12**; Hearings permitted for K-12
- Each party allowed to submit written, **relevant** questions to be asked of another party or witness to the decisionmaker, who will provide each party with the answers and the opportunity for follow-up questions

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## Warning! Hands off

- Rape shield (for CP)
  - Unless
    1. Used to prove someone other than respondent committed the conduct or
    2. Specific incidents related to the RP to show consent
- Medical records (treatment)
- Privileged information

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## Rulings on Relevance in Written “Cross”

- Provide reasoning for irrelevance
- Admit and consider all relevant evidence
- Questions must be appropriate
- Identify exceptions

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# Written Determination

Identify	Identify the allegations
Describe	Describe procedural steps taken
Cite	Cite potential policy violations
Summarize	Fairly summarize all relevant evidence
Provide	Provide statement of result, with rationale, for each allegation
Appeal	Appeal procedures

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**Remember the Standard of Proof**

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**Preponderance of the Evidence**

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# Remedies

- Can be punitive/disciplinary
- Can be supportive measures or similar actions as well
- Can address individuals or larger community

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## 5 Appeal

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## Appeal Process

- Available to both parties
- Can appeal determination regarding responsibility or dismissal
- Three bases for appeal (must impact outcome):
  - Procedural issue;
  - New evidence not reasonably available; or
  - Conflict of interest or bias

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## Appeal Process

- Notify party of appeal in writing
- Apply procedures equally for both parties
- Opportunity to submit written statement
- Issue written decision to both parties

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**Decisionmaker(s)  
(Appeal)**

Cannot be the Title IX  
Coordinator or the  
investigator(s) or the  
decisionmaker (complaint)

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

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## Bias, Conflict, Prejudgment

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator 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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## Bias, Conflict, Prejudgment

- Consider perceptions, not just reality
  - Institution bias
  - Your friendship or other relationship with the accused or their family
  - Your personal characteristics
  - Your personal conflicts (even if just perceived)
  - Personality conflicts

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# Go Back and Think

What steps can you take to avoid:

- *Prejudgment*
- *Conflict of Interest*
- *Bias*

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# Recordkeeping

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- Informal resolution notice
- Notice at start of investigation
- Dismissal notice
- Interview notices
- Report
- Notice why proposed questions not asked on cross and why
- Written determination and notice of appeal rights

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- Document information to complainant at initial meeting, including supportive measures requested/provided
- Document that review of evidence provided to both parties
- Document opportunity to ask questions, answers, follow-up questions

## Written Notice: Recommended

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# Recordkeeping

Must maintain the following for 7 years:

- Sexual harassment investigation documents, including:
  - Determination regarding responsibility
  - Recordings or transcripts of live hearing
  - Disciplinary sanctions imposed on Respondent
  - Remedies provided to Complainant
- Appeal and result
- Informal resolution and result
- Actions taken in response to a report of sexual harassment
- Actions taken in response to a formal complaint of sexual harassment

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# Recordkeeping

Responses to formal and informal complaints and actions taken in response should include:

- The basis for the school's conclusion that its response was not deliberately indifferent
- Documentation that it has taken measures designed to restore or preserve equal access to the school's education program or activity
- Supportive measures or if no supportive measures are provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

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## Robin's Report

- Email from Dean
- Robin, a first-year soccer player, reported conduct that occurred against Robin's friend, Cameron, also a first-year soccer player

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## Robin's Report

- Soccer orientation week
- Park across street from the school
- Two upperclassmen soccer players vs. Cameron

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## Robin's Report

- Verbal harassment
  - Going to violate your mother
  - Want to "smoke" (understood to mean sexual assault)
- Grabbed Cameron by the neck and bent Cameron over; poked Cameron's anus over the clothes

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## Robin's Report

- One (same) coach observed later incident; shook 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

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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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## Don't Forget – 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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### 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....

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## Thinking back to the original hypo.... What do you do next?

Contact Robin to obtain names of upperclass students to pull them from class

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

Run and hide as fast as I can!

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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's Report

- You tell the Dean to meet with Cameron (**WRITE IT DOWN**)
- Cameron confirms all of the allegations
- Cameron wants the upperclass students removed from the team
- Cameron does not want to file a formal complaint or be named to the upperclass students

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### 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 respecting the autonomy and wishes of the Complainant is paramount under the new regulations

None of the above

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## 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

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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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**You can remove the upperclass students from school during the investigation as an "emergency removal"**

True

False

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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  
of Student (Franczek  
Letter 4(b))

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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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### **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

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**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

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**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

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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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## Back to Robin

- Let's assume Cameron doesn't want to file a complaint....

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## 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

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## “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”

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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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## Let the investigation begin....

- The Title IX Investigator is ready to investigate
- Must send 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, upperclass student

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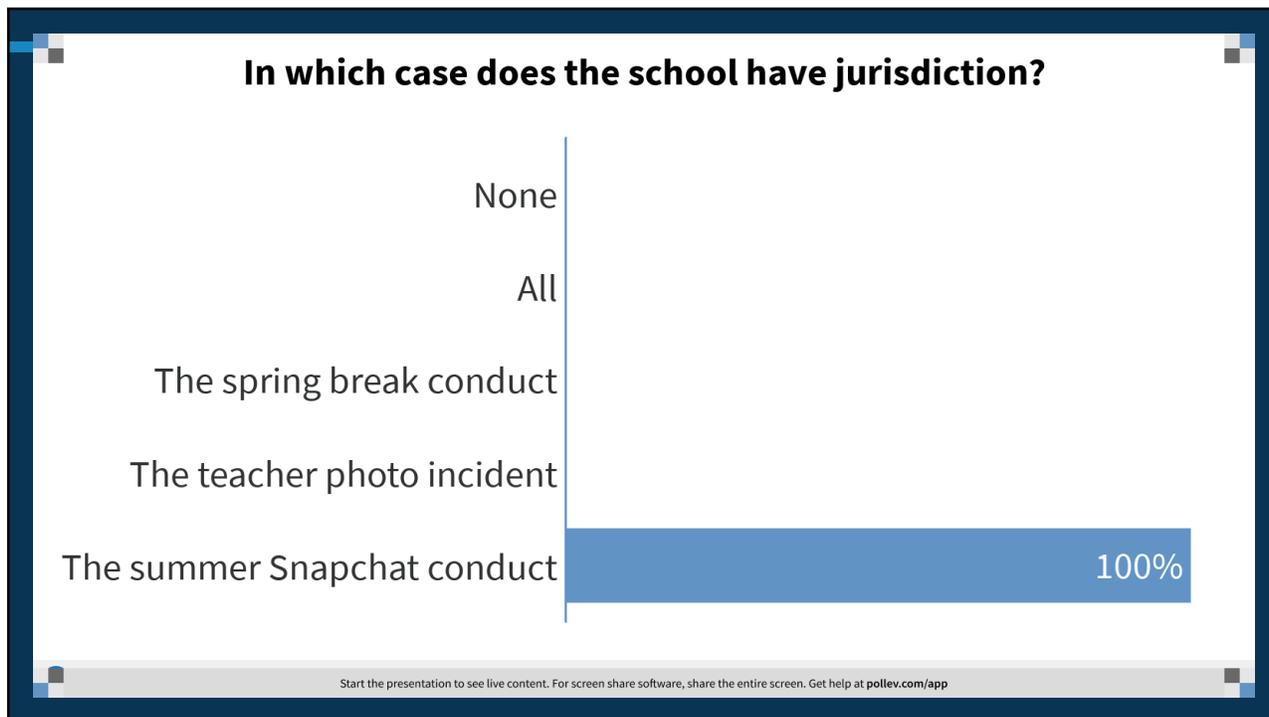
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## Witness – Devon

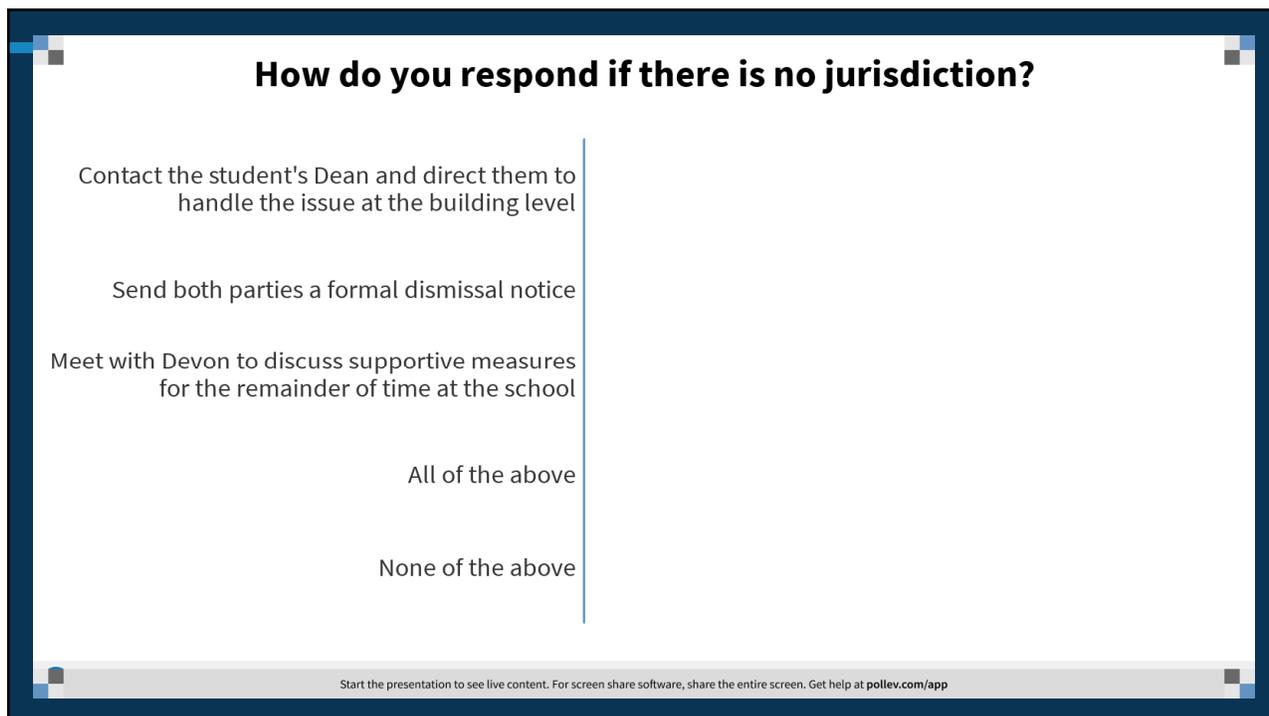
- Sexual assault by classmate on spring break trip last year (abroad)
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one; the teacher quit shortly after

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**Say the teacher didn't move, 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

100%

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**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 **A**

Continue with the complaint because The teacher was employed at the time **B**

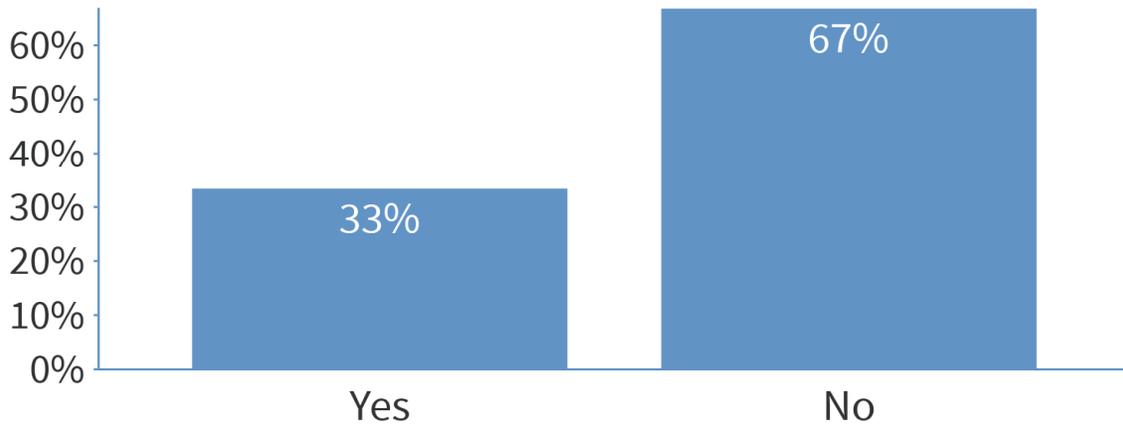
Dismiss the complaint because Devon was not a student at the time conduct occurred **C**

100%

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



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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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## Remember with Devon

- You can remove the teacher while you investigate
  - Administrative leave (can be used with or in lieu of emergency removal)
  - Check your policies/procedures, CBAs, employment contracts, laws, etc.

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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

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

The Title IX Coordinator 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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## 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, incidents kept occurring

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## 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

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## Pre-Judgment

Tips for avoiding pre-judgment of facts:

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

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## Sex Stereotypes

- 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

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# Recordkeeping/File Maintenance

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## Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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**Questions?**



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