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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 Complainant (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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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

- 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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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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Title IX 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 recipient's education program or activity



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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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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

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

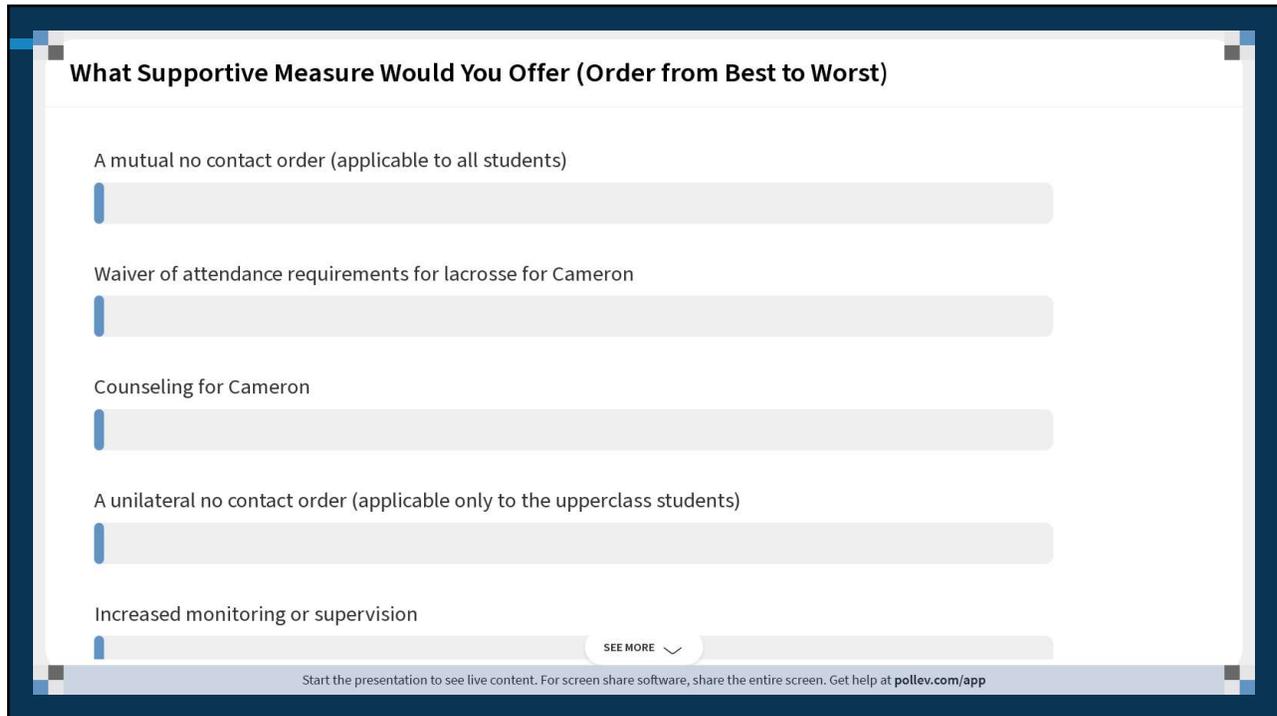
No, because this situation warrants "signing" a formal complaint and Cameron must therefore be named

Yes, because respecting the autonomy and wishes of the Complainant is paramount under the new regulations

None of the above

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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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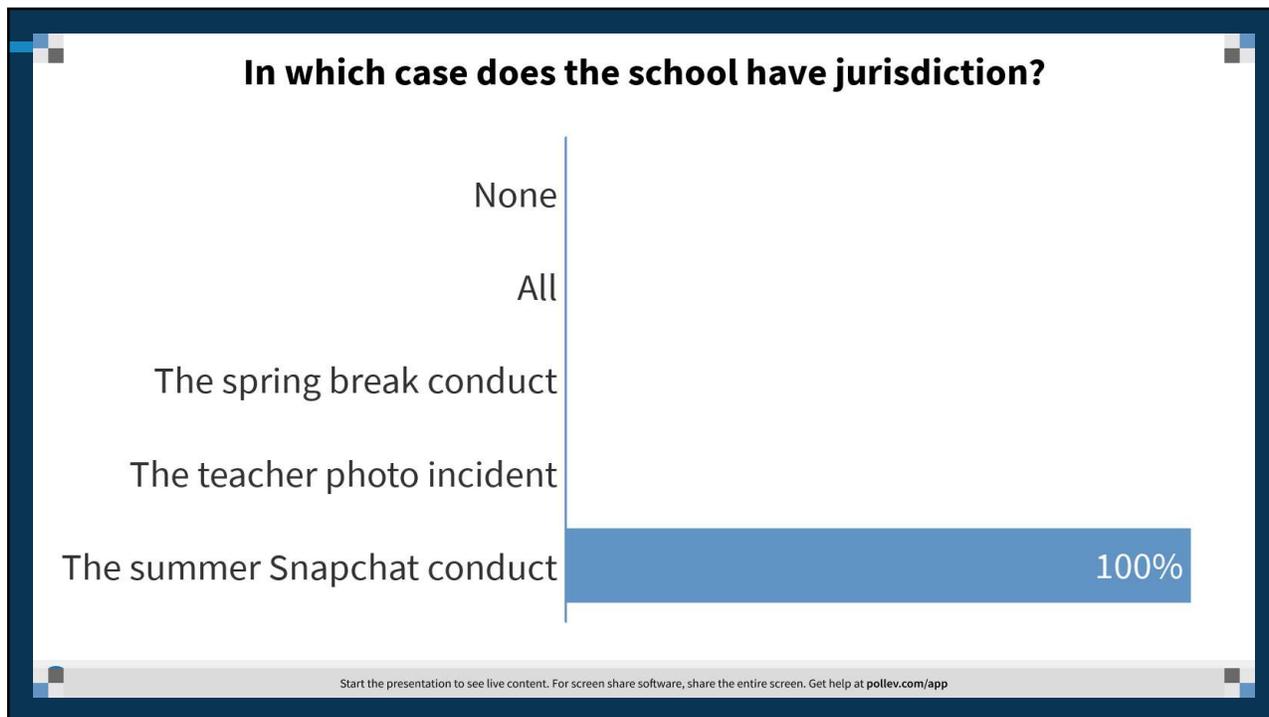
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Witness – Devon

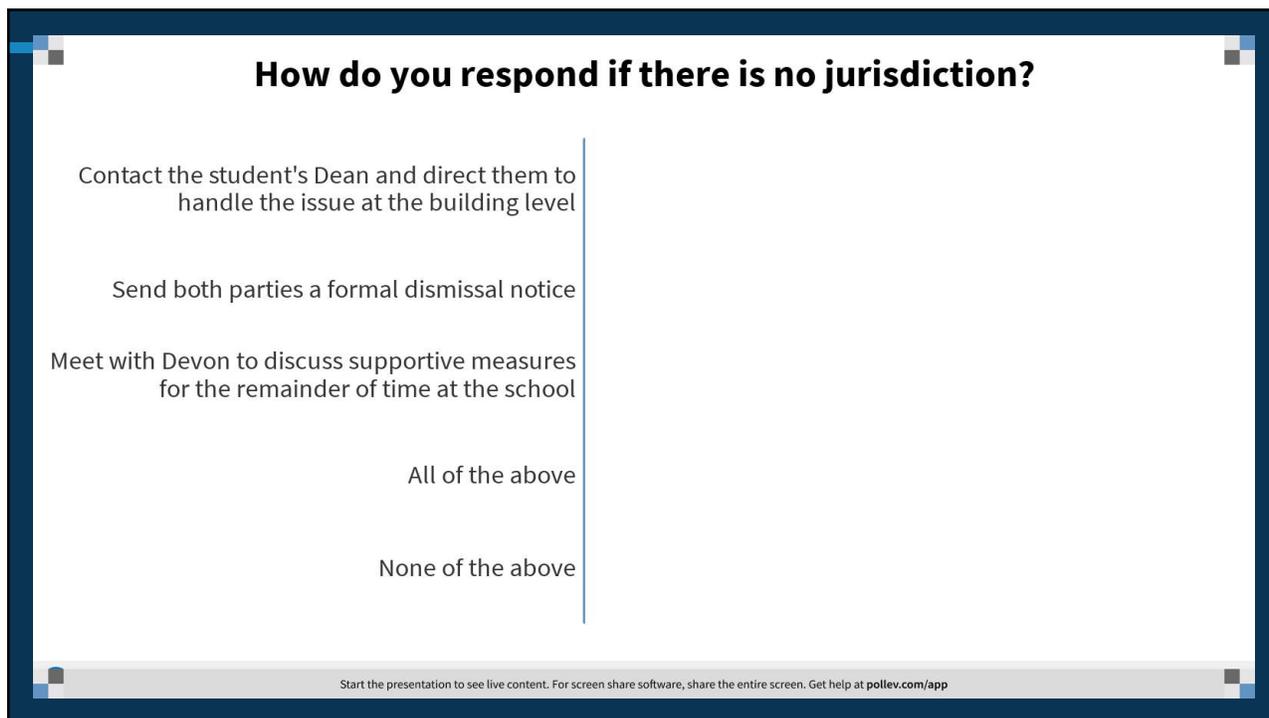
- Sexual assault by classmate on spring break trip last year (abroad)
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one; the teacher quit shortly after

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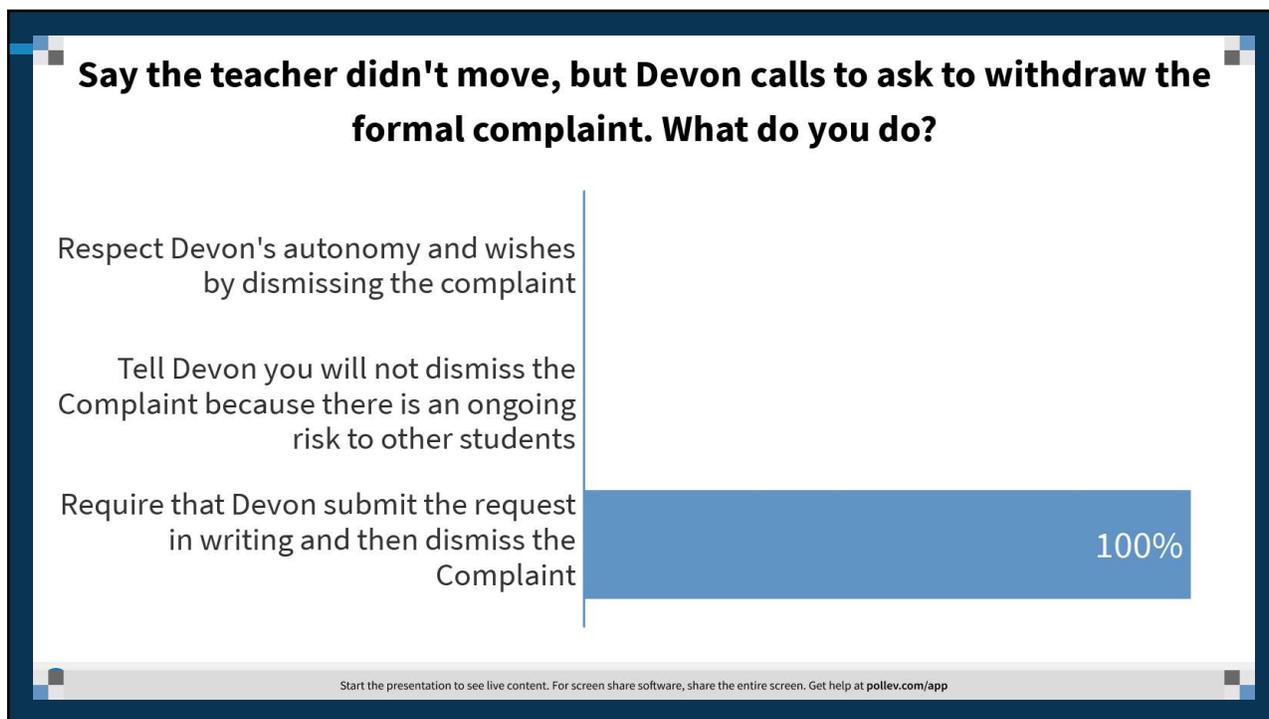
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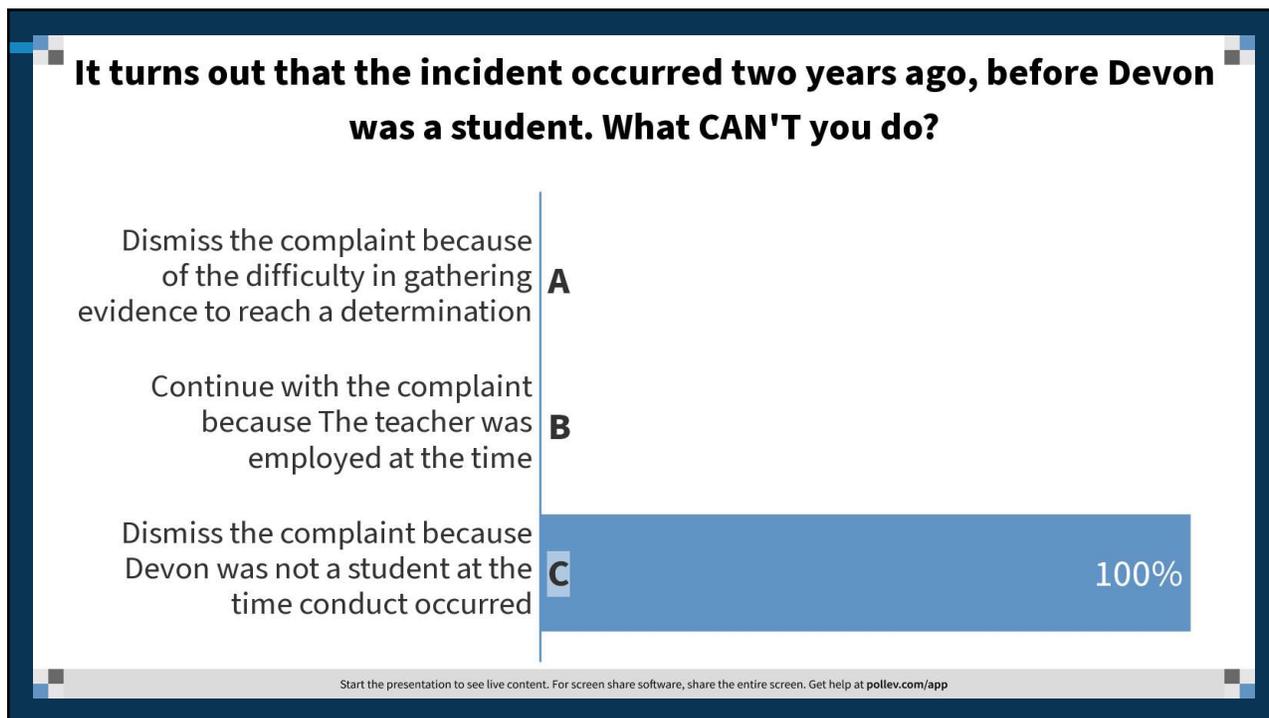
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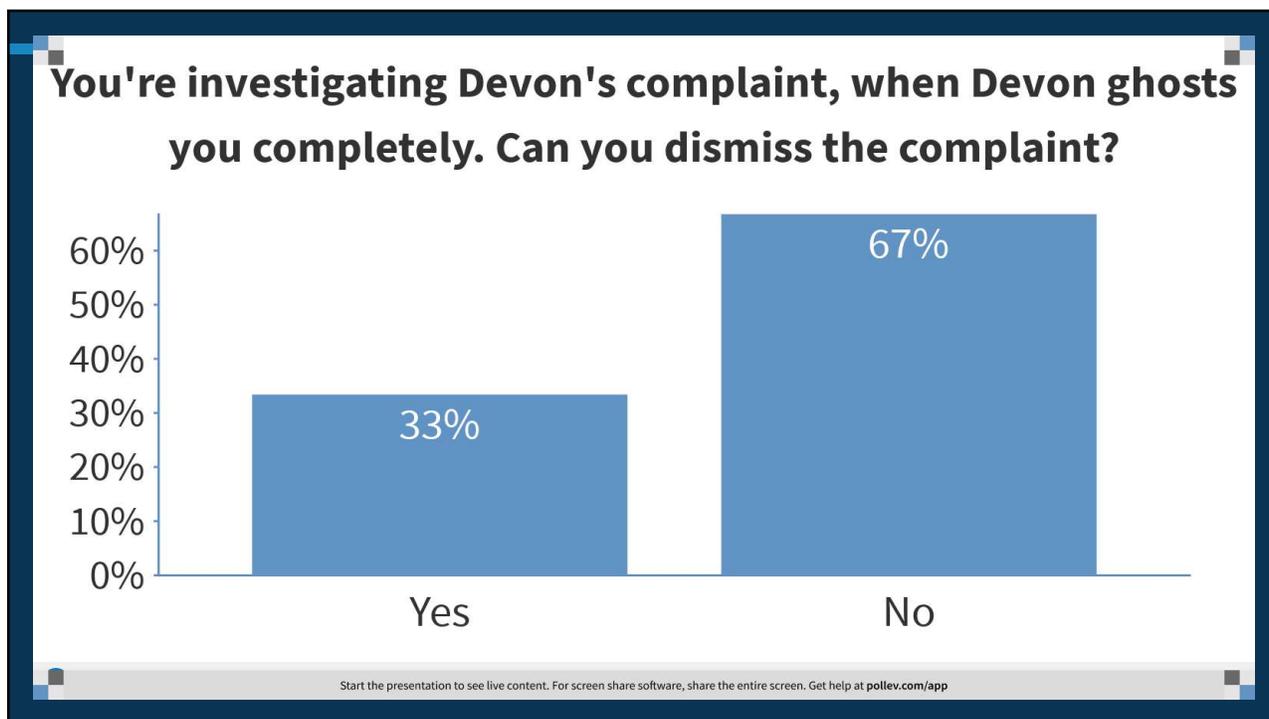
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Forms/Notices

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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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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