

2020 Title IX Regulations: Coordinator Training

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Title IX Coordinator Responsibilities

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

Title IX Coordinator Responsibilities

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

Timeline



Website Posting Required by 8/14

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

Robin's Report

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

Robin's Report

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

Robin's Report

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

Robin's Report

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

Robin's Report

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

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

Yes - Quid Pro Quo

Yes - Sexual Assault

Yes - Hostile Environment

Yes - B & C

No

Can I get that definition again?

Title IX Sexual Harassment

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

TIX Quid Pro Quo

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

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

Codified: Severity and harm presumed

VAWA “Big Four”

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

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

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

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

Sexual Assault under VAWA

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

Also, Hostile Environment

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

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

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

No - not severe

No - not pervasive

No - not objectively offensive

No - not effective denial of access

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

Title IX – What is a Hostile Environment

Old Definition

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

New Definition (8/14)

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

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

Yes, because the park is close enough to the school

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

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

I quit!



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

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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....

Can Robin file a complaint?

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

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

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

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

Contact Robin to obtain more information

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

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

100%

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

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

New:
Initial
Response

🖥️ When poll is active, respond at **PollEv.com/franczek**

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

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

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

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

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

A & B

None of the above

Cameron's Report

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

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

A mutual no contact order (applicable to all students)

Waiver of attendance requirements for soccer for Cameron

Counseling for Cameron

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

Increased monitoring or supervision

Removing the upperclass students from the team pending an investigation

Cameron's Report

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

Can you honor Cameron's confidentiality request?

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

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

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

None of the above

“Signing a Complaint”

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

Forms/Notices

Initial Contact and Meeting with the CP

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

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

Title IX Formal
Complaint (Franczek
Form A)

Can you remove Parker using an "Emergency Removal"?

Yes

No, Because
Cameron has not
filed a formal
complaint

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

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

Yes, if school policy otherwise allows it

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

Emergency Removal/ Admin Leave

Immediate emergency removal

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

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

Employee administrative leave

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

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

Remember State & Federal Law

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

Forms/Notices

Notice of Emergency Removal

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

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

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

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

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

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

Cameron suggests that they do a talking circle to address the conduct. Can this be done?

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

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

No, because Cameron has not filed a formal complaint

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

Formal Complaint – Next Steps

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

Forms/Notices

Notice of Allegations

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

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

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

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

Yes, but only for allegations not resolved in informal resolution

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

Forms/Notices

Informal Resolution Process

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

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

Let the investigation begin....

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

Forms/Notices

Notice of Interview

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

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

Witness – Devon

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

Witness – Devon

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

In which case does the school have jurisdiction?

None

All

Spring break conduct

Summer snapchat incident

Teacher photo incident

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

Consider other code of conduct or policy violations

Send both parties a formal dismissal notice

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

All of the above

None of the above

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

Respect Devon's autonomy and wishes
by dismissing the complaint

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

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

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

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

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

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

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

No

Yes



DISMISSALS

Mandatory if conduct alleged:

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

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

Permissive if:

- Complainant requests to withdraw in writing
- Respondent's enrollment or employment ends
- Specific circumstances prevent school from gathering evidence sufficient to reach a determination (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))

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

The teacher can bring any advisor to any investigatory meeting

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

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

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

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

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

Forms/Notices

Notice to Advisors



Advisor
Conduct
Expectations

So the investigation is done....

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

Forms/Notices

Sharing of Evidence

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

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

The investigative report

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

Forms/Notices

Investigative Report

Title IX Investigative
Report Template
(Franczek Form B)

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

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

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

Decision

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

Appeal Notice

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

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

Bias, Conflicts of Interest, and Other Fairness Concerns

Bias, Conflict, Prejudgment

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

Bias

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

Conflict of Interest

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

Pre-Judgment

Tips for avoiding pre-judgment of facts:

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

Recordkeeping/File Maintenance

Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

Questions?



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