

DISCUSSION SCENARIO

Tom and William are friends and were both on the varsity football team as freshmen last year. Tom now attends high school in a different school district after his family moved to a neighboring city over the summer. He no longer plays football because of his experience as a freshman. William is on the team again and has been the subject of intense hazing by junior and senior players over the past several weeks. He experienced similar behavior that was directed at him and Tom last year.

This year, William experienced the following conduct:

- A junior named Travis asked him about his “boyfriend” Tom and called him derogatory names referring to his sexual orientation on a daily basis. This occurred at practice and in the hallways at school.
- Jack, a senior, often slapped his buttocks and tried to grab and twist his nipples when he was changing. On several occasions, Jack grabbed him from behind and made thrusting gestures mimicking a sex act in front of other players. On another occasion, Jack told William he and other players would stick a plunger handle in his butt if he ever told the coaches about Jack’s behavior. This occurred only in the locker room before and after practices and games.
- One senior player, Jeff, has never called William any names or touched him outside of normal contact during drills at practice, but once sent William a text message with pornographic images showing male genitalia while he was hanging out with Travis.
- Another junior named Paul is usually nice to William, but once pinned him down while Jack pretended to “hump” him from behind.

William started skipping practices and tries to avoid Travis in school. William and Travis have one class together. William skipped it twice to avoid Travis.

An assistant coach in the school district has observed some of this behavior and told the head coach. Both coaches are also teachers in the school district. Two weeks ago, the head coach addressed the conduct by conducting a team meeting and generally stressed the importance of culture and lifting up teammates. He did not speak individually with Travis, Jack, Jeff, or Paul about their behavior. Jeff and Paul have not done anything more to William. Travis and Jack have continued with their behavior.

Last season, Tom and William experienced similar treatment from Jack and Travis. Over the weekend, they went to a movie together and William told Tom the behavior was ongoing. Tom told William he should file a written complaint with the AD. William went home and wrote an email to the AD explaining everything that he and Tom experienced over the past two seasons. He told the AD he wanted to remain anonymous and did not want the AD to give his name to anyone

else because he was afraid of experiencing more mistreatment. William told Tom about his email. Tom immediately wrote his own email to the AD explaining his experience from the previous season. Tom does not care about remaining anonymous because he now attends a different school.

1. Did any of the players engage in sexual harassment as defined under the Title IX regulations? If yes, which ones and how is their behavior sexual harassment?

2. Would your answer in Question 1 change if any of the alleged behavior took place off school grounds or during away football games?

3. Did the assistant coach handle this situation appropriately? If not, what should have been done differently?

4. Did the head coach handle this situation appropriately? If not, what should have been done differently?

5. When did the school district have “actual knowledge” of alleged sexual harassment?

6. What should the AD do with the emails from William and Tom?

7. Assume you are the school district’s Title IX Coordinator. The AD forwards you the two emails. What do you do next and why?

After being notified of the email reports from the AD, the Title IX Coordinator set up a time to talk to William. During the meeting, the Title IX Coordinator explained the District’s Title IX grievance procedures and assured William the school district was taking the matter seriously. William again expressed concerns about confidentiality. The Title IX Coordinator told him confidentiality would not be a problem. He then went on to generally state that William had the option of filing a “formal complaint” and that, if he did, the Title IX grievance procedures would involve an investigation that would “take some time” so he should be patient and try to be resilient if he was the subject of additional inappropriate comments or touching. He ended the meeting by asking William if he wanted to file a formal complaint. William said he would think about it. The Title IX Coordinator did not set up a meeting with Tom or respond to Tom at all because Tom was a former student.

William went home and told Tom about his meeting with the Title IX Coordinator. They decided they would both file “formal complaints.” The next day, they each write a letter to the Title IX Coordinator outlining the conduct they experienced and specifically requested an investigation. They physically signed their respective letters. William could not find any contact information for the Title IX Coordinator on the school district’s website, so he hand-delivered the letters to the Title IX Coordinator at school.

1. Did the Title IX Coordinator handle the initial meeting with William appropriately? Why or why not?

2. Was the Title IX Coordinator’s decision not to reach out to Tom appropriate?

3. What, if any, supportive measures may be appropriate in this situation?

4. Did William submit everything necessary to file a formal complaint? Why or why not? Are there other ways he could have submitted the complaint?

5. What should the Title IX Coordinator do upon receipt of the two formal complaints?

6. Assume the conduct alleged in the formal complaints is the same as what is described at the beginning of this fact pattern. Who should be considered a “respondent” for purposes of the Title IX grievance procedures? What notice is required?

7. Should any aspect of the two formal complaints be subject to dismissal without an investigation?

8. Can the allegations against multiple respondents be consolidated into one grievance process?

After reviewing the formal complaints, the school district begins an investigation. The school district hired a third party to conduct the investigation. The third-party investigator is an attorney who is familiar with Title IX standards and has received the required training. The school district's plan is for the superintendent to act as the decision-maker and for the school board to act as the appellate decision-maker.

In the course of the investigation, Travis feels guilty about his behavior and tells the investigator that Jack was pushing him to mistreat William this school year. He also discloses that Jack has been harassing Beth, a cheerleader, by grabbing her buttocks and breasts over her clothes and sending her pictures of his genitals. Travis mentions that Beth is creeped out by Jack's conduct, but told him she fears doing anything to tell Jack to stop because she is a sophomore and Jack is very close with some of the senior cheerleaders.

Jack's dad is the principal in a neighboring school district. He is known to be hyper-protective of his children and often complained about the football coaching staff. Jack's dad is extremely aggressive and demands to have access to all witness statements and evidence before Jack is interviewed. He also insists on being present when Jack is interviewed.

1. Are there any issues with the way the school district has decided to assign roles to the individuals involved in the Title IX grievance procedures? What should the school district do if it does not have enough administrative personnel to handle the roles of Title IX Coordinator, investigator, decision-maker, and appellate decision-maker?

2. What type of notice is each witness entitled to receive prior to being interviewed?

3. Assume you are the investigator, who would you interview, in what order would you interview them, and what types of questions would you want to ask them?

4. Does the school district have to comply with any of the demands from Jack's dad? Which ones?

5. When, if ever, would Jack be entitled to review all of the witness statements and documents collected as part of the investigation? Can the school district withhold any information under the MGDPA or FERPA?

6. If Jack's dad sits in on his interview, does he have the right to object to the investigator's questions or answer questions on behalf of Jack? What should the investigator do if Jack's dad constantly objects to questions and instructs Jack not to answer?

7. What should the school district do about the new information Travis disclosed with respect to Jack's alleged treatment of Beth? Can those new allegations be wrapped into the ongoing investigation?

8. Can the school district consider suspending or expelling Jack under the Pupil Fair Dismissal Act before the Title IX grievance procedures are completed? What about imposing a consequence under the MSHSL bylaws?

The results of the investigation substantiate William’s allegations. At the decision-making stage, Jack’s dad prepared a list of over 300 questions on behalf of Jack and asked the decision-maker to direct them to William. The questions appeared to be drafted by AI. The questions included inquiries about the specific allegations against Jack. The questions also included inquiries related to William’s friendship with Tom, his dating history, his overall attendance, and his life at home. Jack’s dad claimed these questions were relevant to determine whether factors other than Jack’s conduct had interfered with William’s education.

The decision-maker did not submit any of the questions to William because they were “too broad and burdensome.” The decision-maker ultimately made a determination that Jack is responsible for engaging in sexual harassment. Jack’s dad immediately submitted an appeal on behalf of Jack. The basis for the appeal was that Jack and his dad believe the determination of responsibility was “wrong.”

Going into the next football season, the head football coach needed to make cuts due to the number of players who tried out for the team. William was never a very good player and had little to no chance of getting varsity playing time. Since William was going to be a junior, the head coach decided to cut William from the team over younger, more promising players. William was crushed by the decision and went to the AD to claim he was cut because the head coach wanted to handle Jack’s conduct “in-house” and was upset when William filed a formal Title IX complaint.

1. Did the decision-maker appropriately handle the written questions submitted by Jack’s dad? Why or why not?

2. What are the parameters that can be placed on a party’s written questions? What must the decision-maker do if a question is excluded?

3. Is the basis for Jack’s appeal legitimate? If not, is there a different basis for appeal that would be appropriate?

4. If the school board can act as the appellate decision-maker, what is the appropriate way for the school district to have the school board review the decision?

5. What should the AD do about William's retaliation allegation?
