



# Title IX Coordinator & Investigator Training for K-12 Administrators

October 30, 2020  
Presented by Jackie Gharapour Wernz



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# Ask Questions

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# Title IX Coordinator

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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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## Timeline



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## 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

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## Robin's Report

- Lacrosse orientation week
- Park across street from the school
- Two upperclass students lacrosse players vs. Cameron—the main Respondent is Parker

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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 upperclass 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 upperclassmen grabbed Cameron and two other rookies
  - Pulled down pants, poked anus with broomstick

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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 equal access

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**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.

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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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## 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!

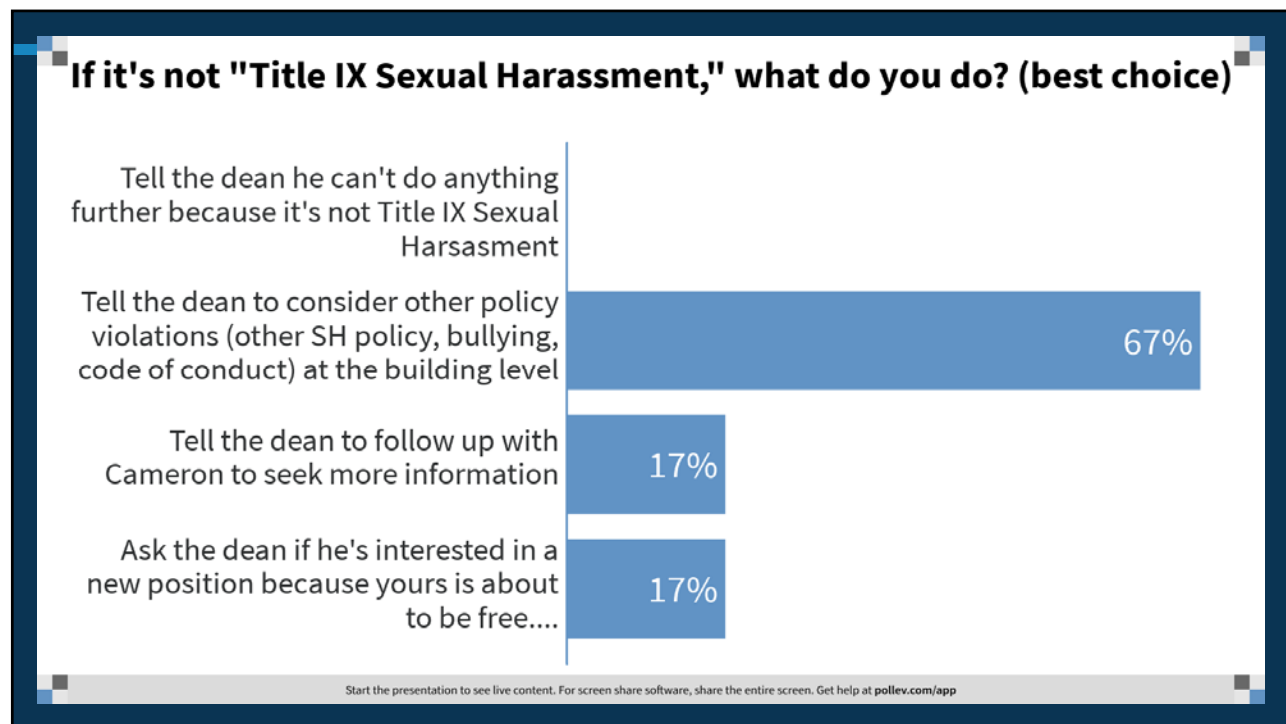
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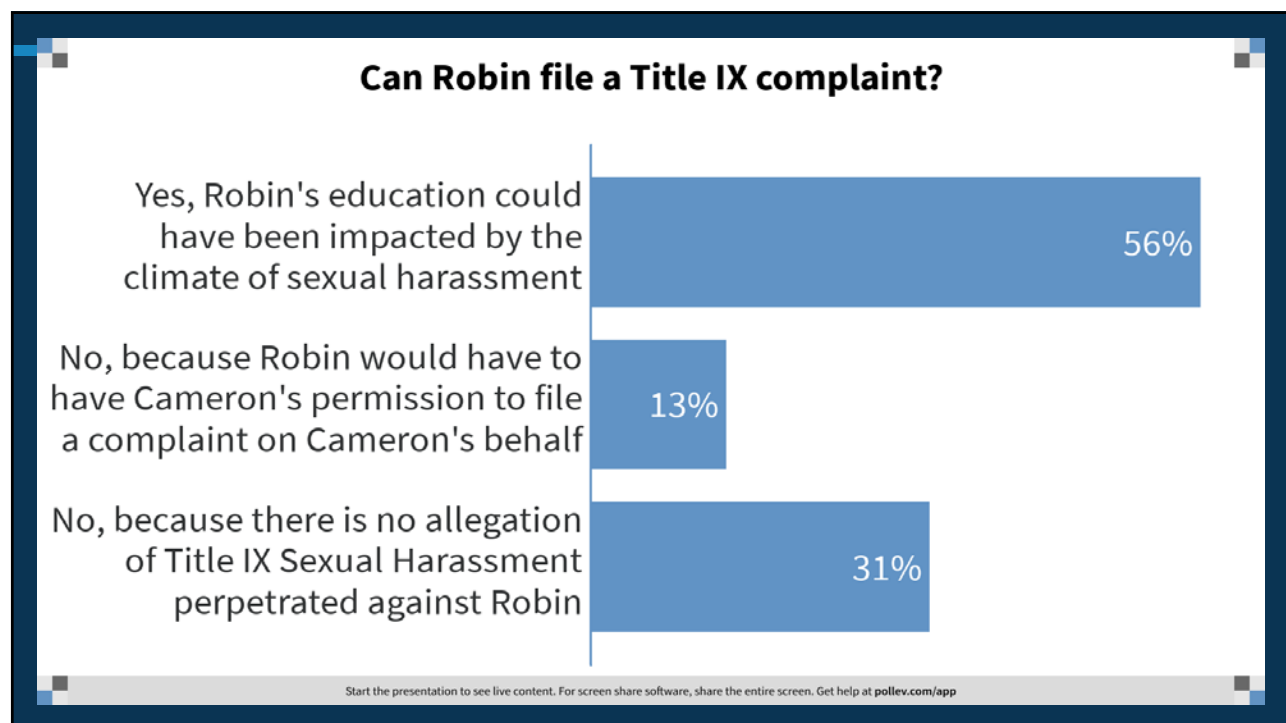


**Program or Activity:** Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred

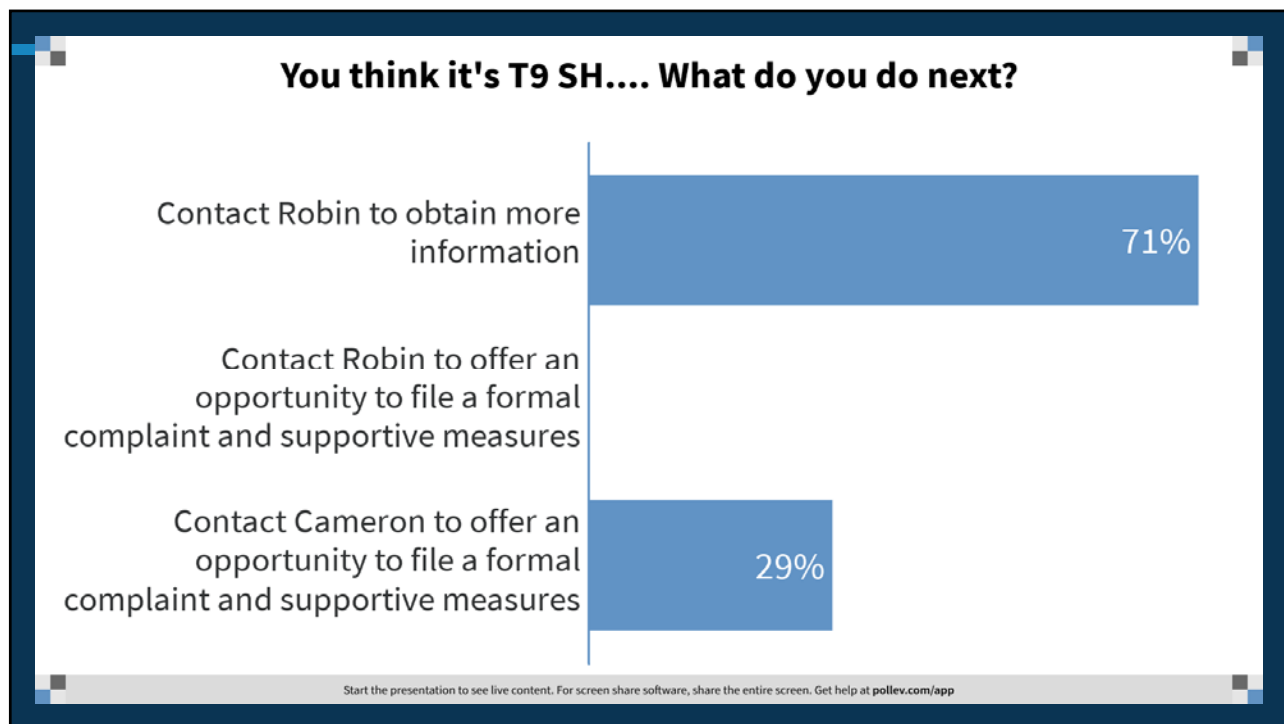
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**Title IX Coordinator must promptly, even if no Formal Complaint is filed:**

- 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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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

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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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## 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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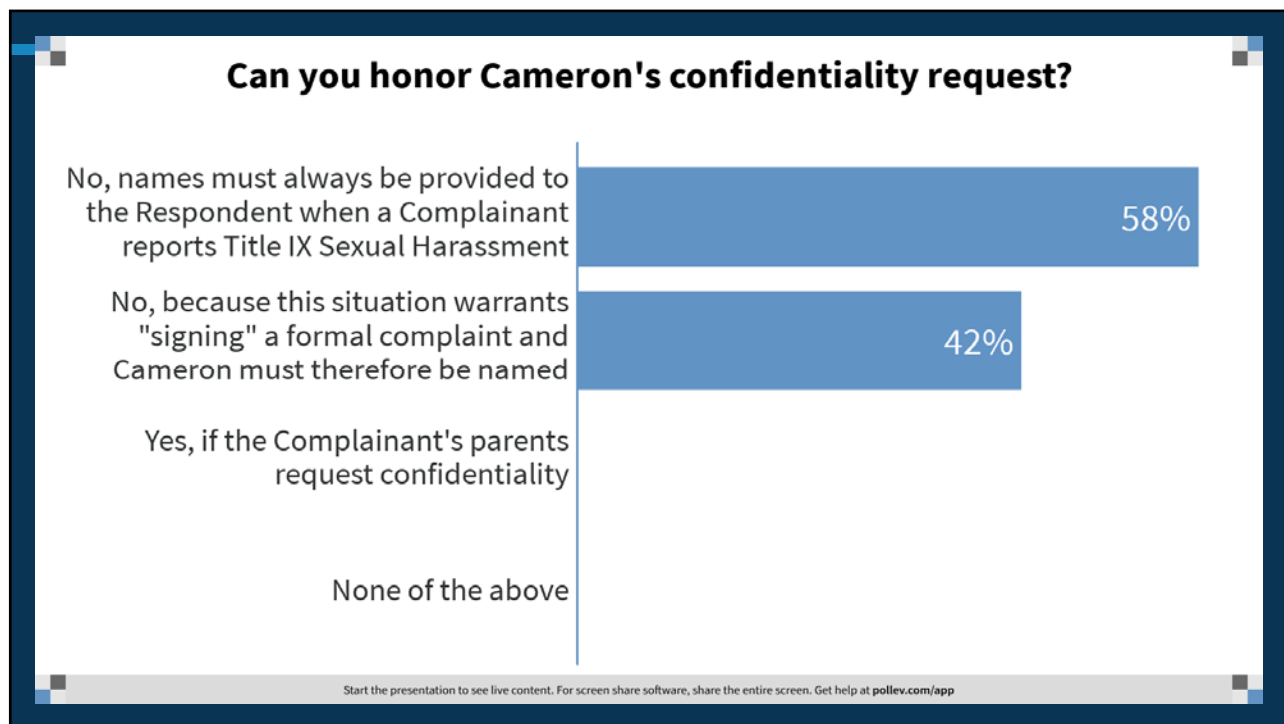
## Cameron's Report

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

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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))

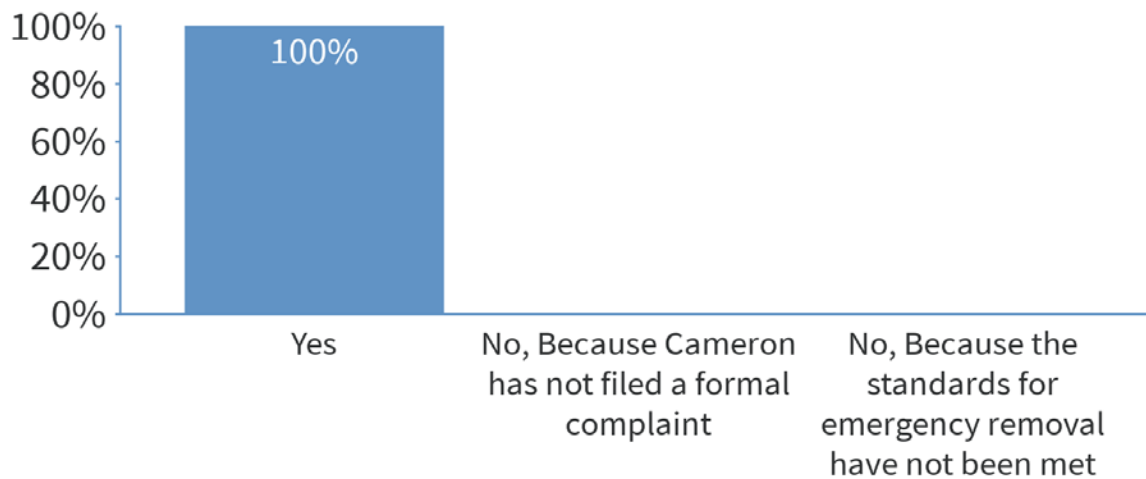
Summary of Supportive  
Measures Meeting  
with the Title IX  
Complainant  
(Franczek Notice 1(b))

Title IX Formal  
Complaint (Franczek  
Form A)

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### Can you remove Parker from school using an "Emergency Removal"?



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## 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

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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

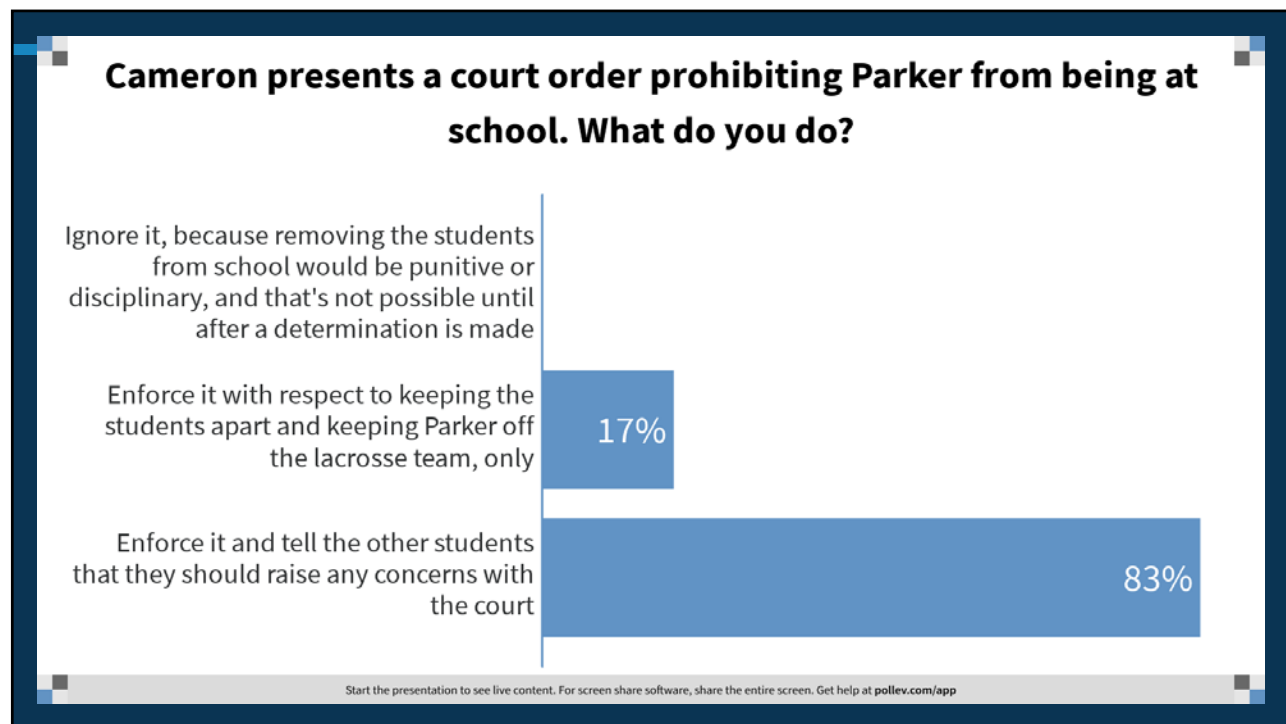
### Notice of Emergency Removal

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

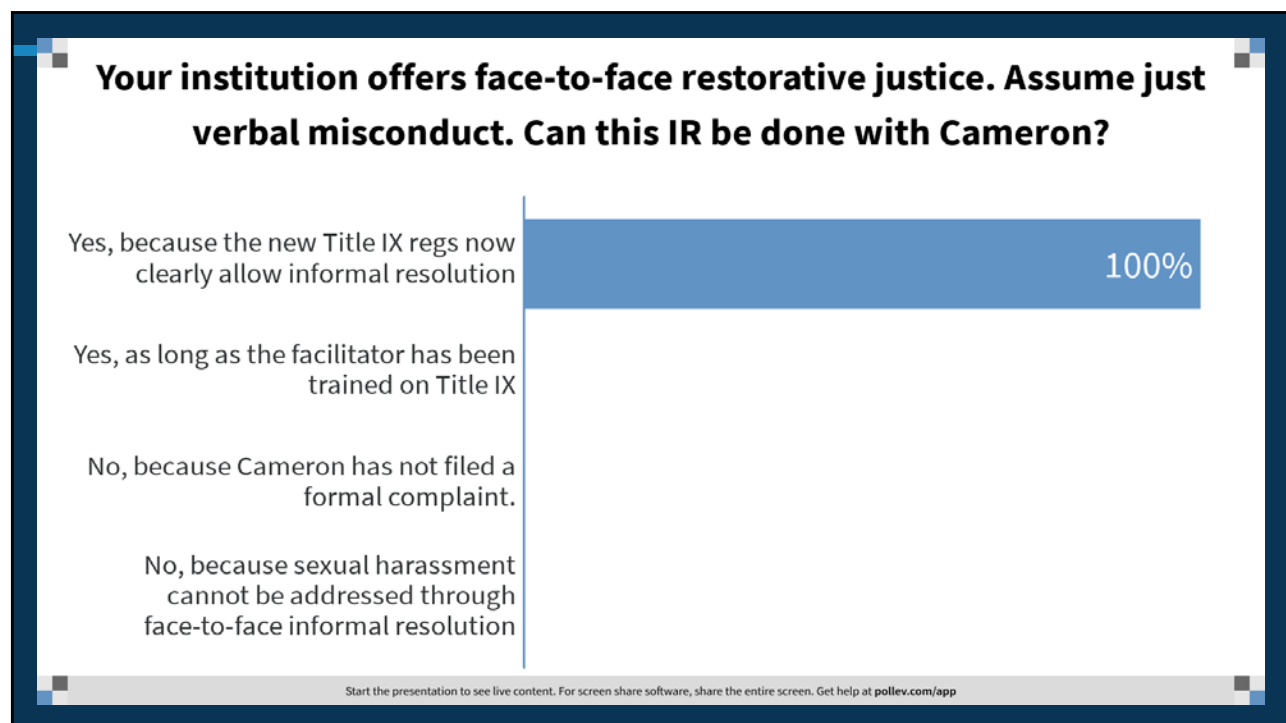
Notice of Title IX  
Admin Leave for  
Employee (Franczek  
Letter 4(b))

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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 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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## Let the investigation begin....

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

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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 lacrosse team, upperclass student

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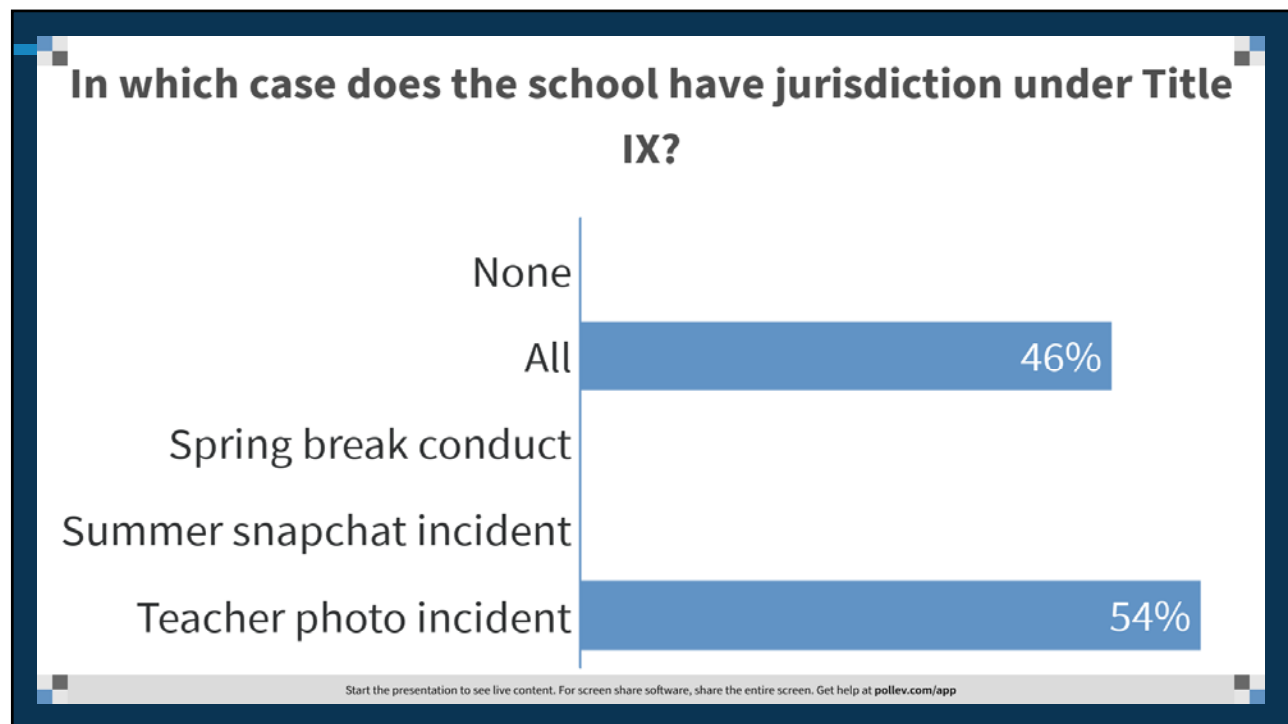
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## Witness – Devon

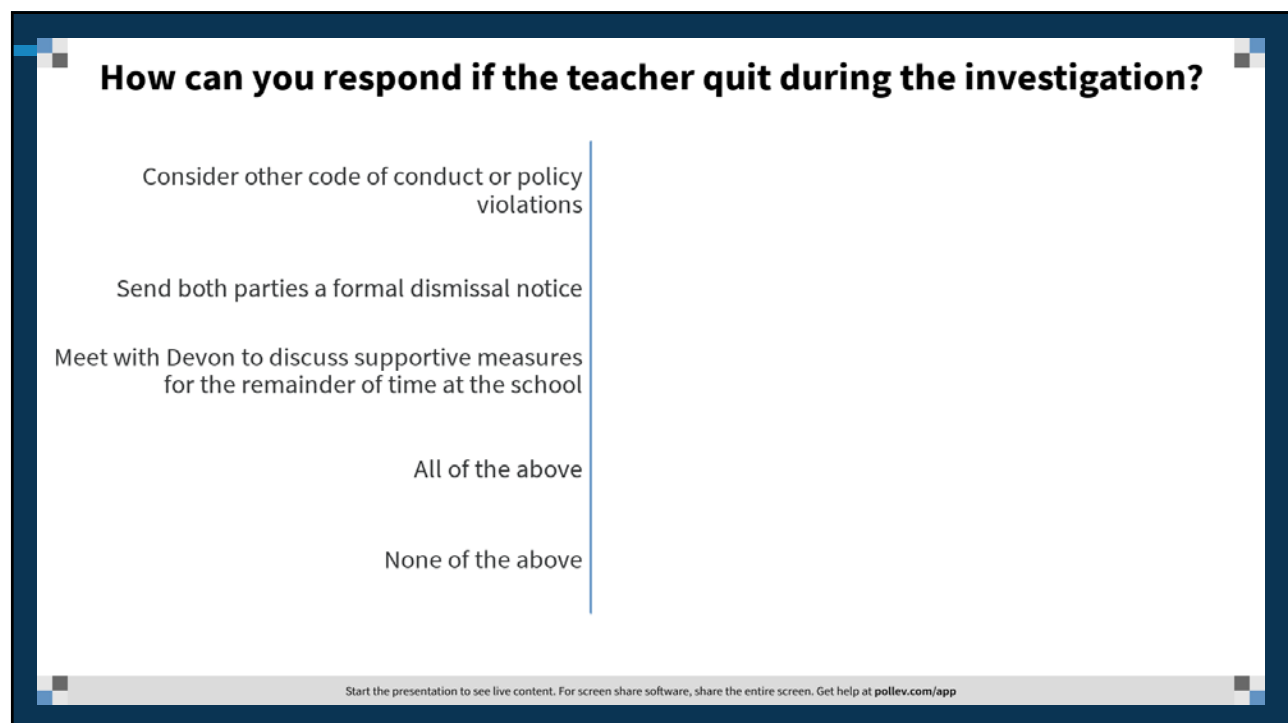
- Sexual assault by classmate on spring break trip abroad last year
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one
- Devon files a formal Title IX Complaint

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**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

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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

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

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

No Yes

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## DISMISSALS

<b>Mandatory if conduct alleged:</b> <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><b>**can still address under non-T9 SH policy</b></p>	<b>Permissive if:</b> <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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## 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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## Title IX Investigator

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## What is Sexual Harassment under Title IX?

Unwanted conduct based on sex that is so severe, pervasive, and objectively offensive that it effectively denies access to a school's programs or activities

Employee quid pro quo

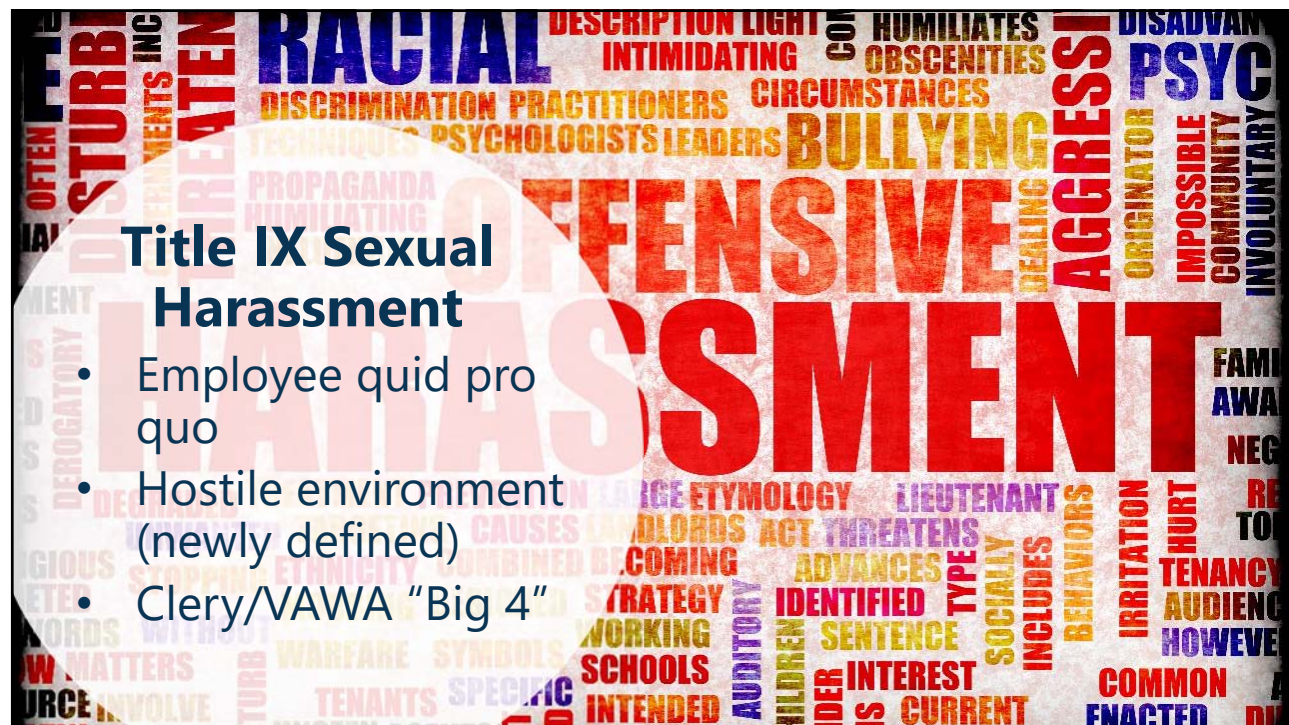
Sexual assault, domestic violence, dating violence, and stalking

All of the above

None of the above

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### Title IX Sexual Harassment

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

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## Which of these should be reported to the Title IX Coordinator to consider potential dismissal?

- All parties agree that the conduct did not occur in the United States
- All parties agree that the conduct occurred off campus, outside of school time, and without use of school resources
- The Respondent's employment or enrollment ends
- The Complainant's employment or enrollment ends
- All of the above
- None of the above

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## DISMISSALS

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# Title IX Investigator Responsibilities

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## Investigator Responsibilities

1

Identify and  
interview parties  
and witnesses

2

Gather and  
assess evidence

3

Share evidence  
with parties and  
provide for  
written response

4

Write and share  
investigative  
report

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# Investigation: Required Elements

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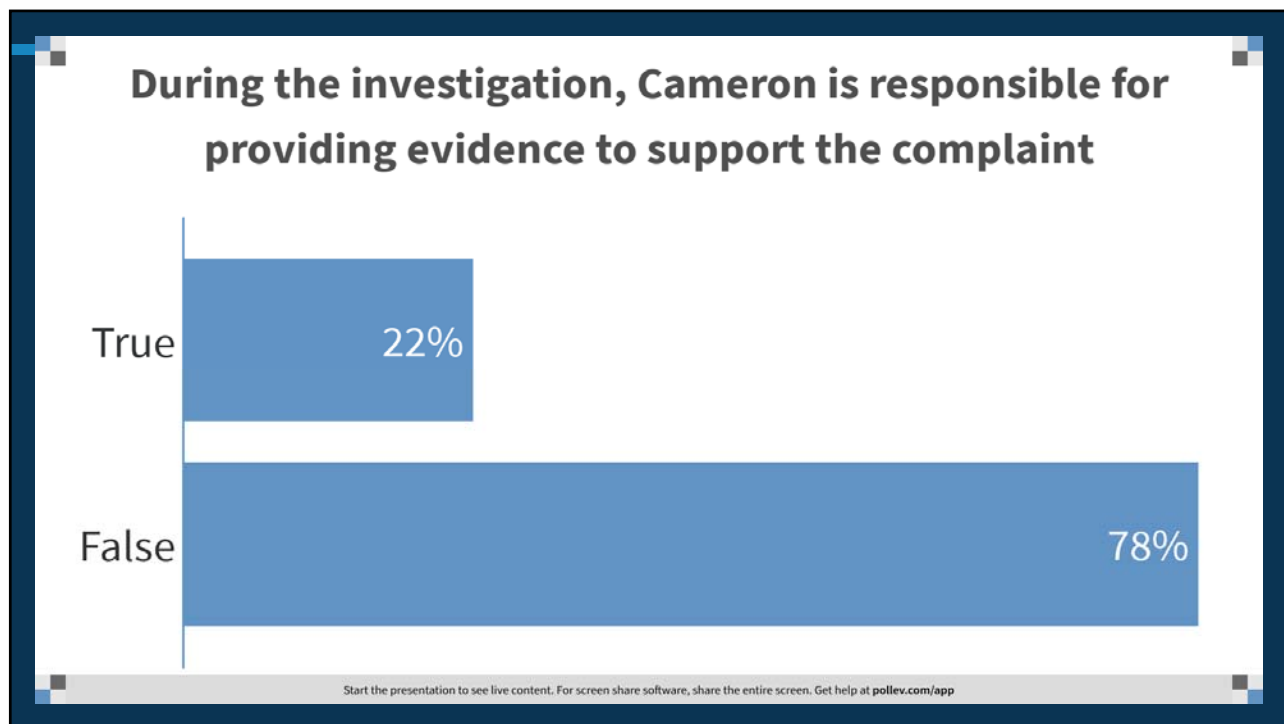
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## Investigation

- Occurs when there is a “formal complaint”
- **Must contain specific elements**
- Must treat parties equally on any additional elements

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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 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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**The Respondent claims that the Complainant was diagnosed with bipolar disorder and is lying. Can you ask the Complainant whether this is true?**

True

False

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

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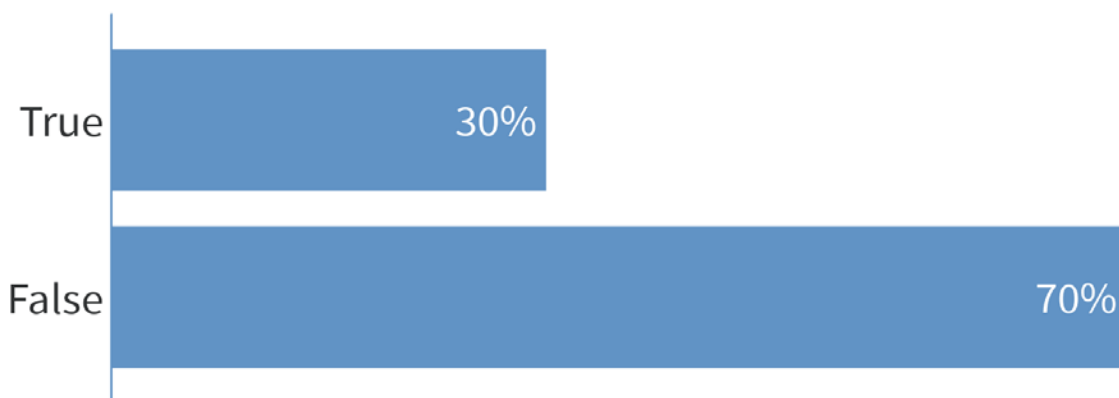
## Treatment Records

- Can't access, consider, disclose, or use records
- Made by a physician, psychologist, or other recognized professional
- Which are made and maintained in connection with the provision of treatment,
- Unless the party gives voluntary, written consent

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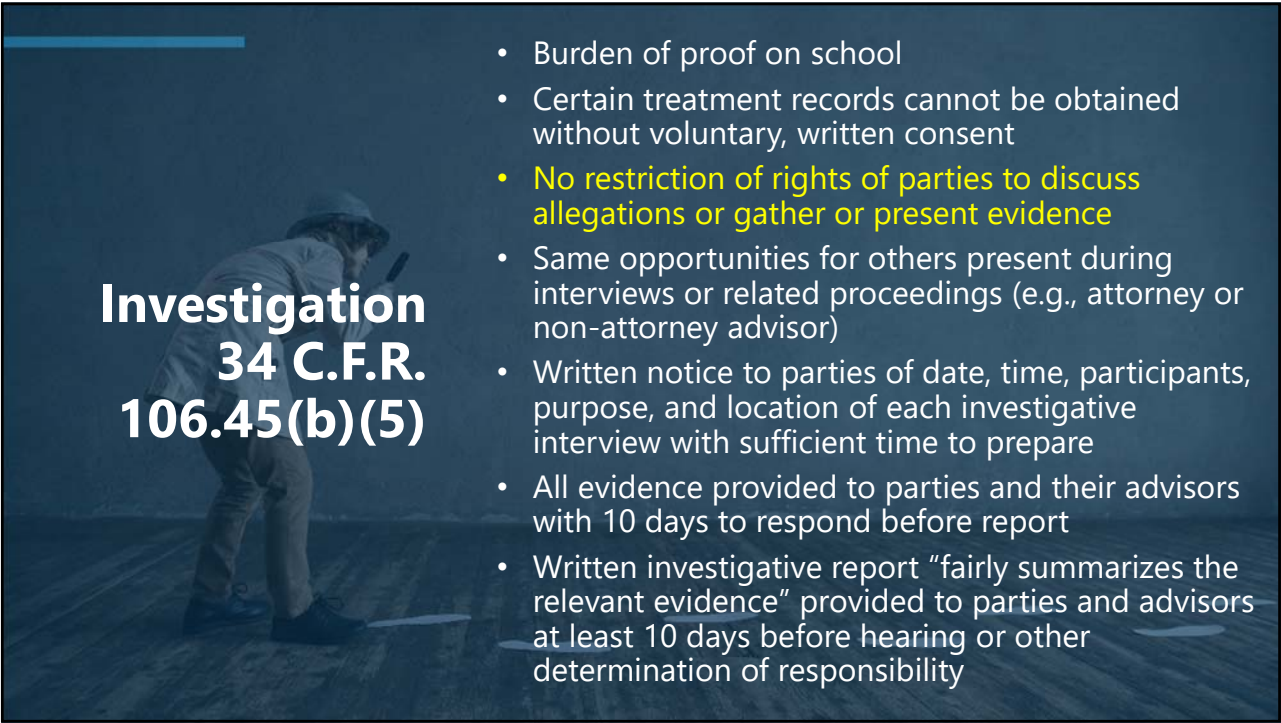
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**During the investigation, the investigator can tell Cameron and Parker (or an employee if involved in a complaint) not to talk to others about the complaint or investigation**



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

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## Retaliation and Gag Orders

- Gag order not allowed
- Warn of risks from speaking about the complaint
- Notify all parties and witnesses of retaliation rights and encourage follow up

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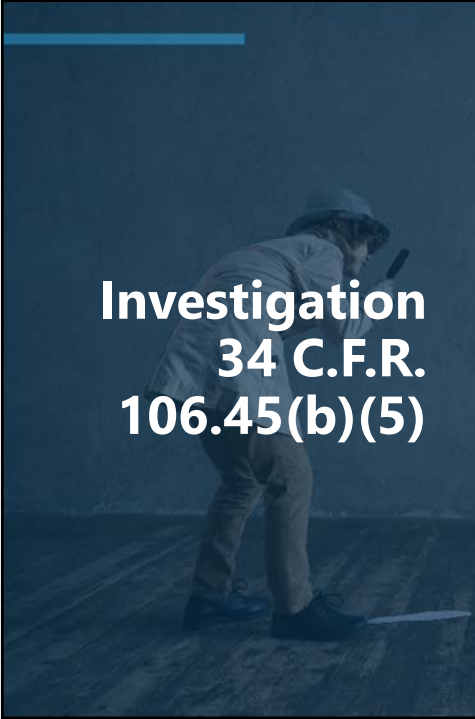
**Parker wants to bring a classmate, who is also a witness, as the "advisor" during investigation meetings. Is that allowed?**

Yes, parties can bring the advisor of choice to a meeting

No, Parker can bring a parent or attorney as an advisor, but not a witness

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

- Burden of proof on school
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**Parker brings an attorney to an 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 absolute right to an advisor of their choice at every meeting

17%

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 again

75%

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

8%

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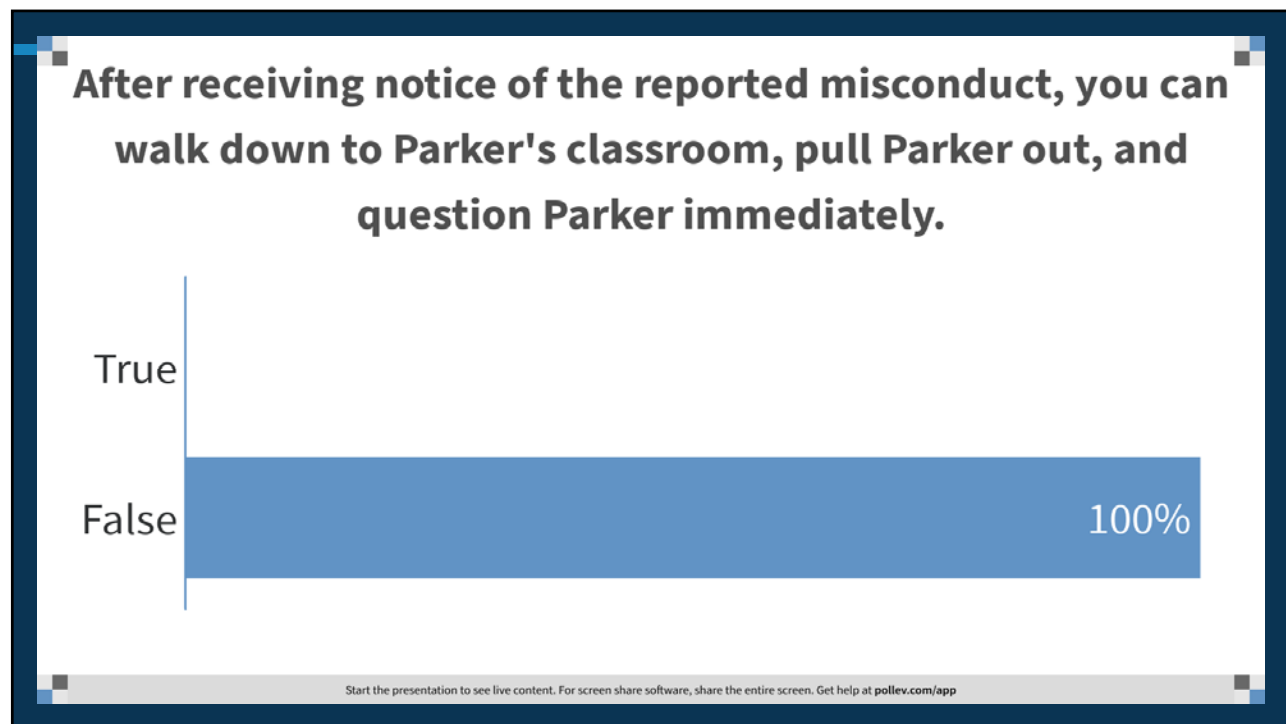
## Forms/Notices

### Notice to Advisors

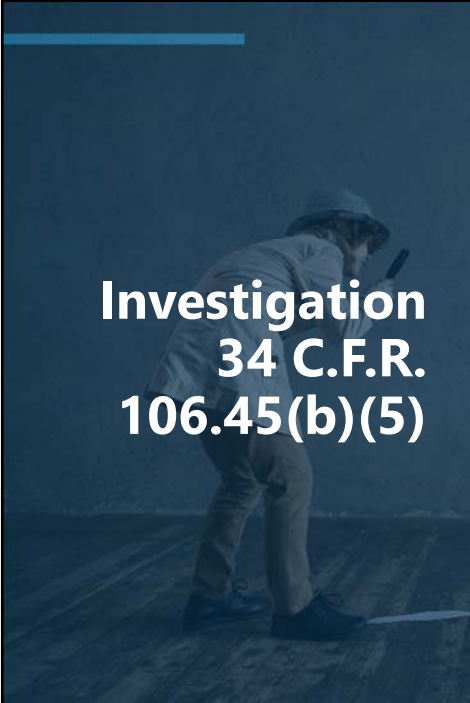
Advisor  
Conduct  
Expectations

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

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## Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
- With sufficient time to prepare

Recommend same for witnesses (not required)

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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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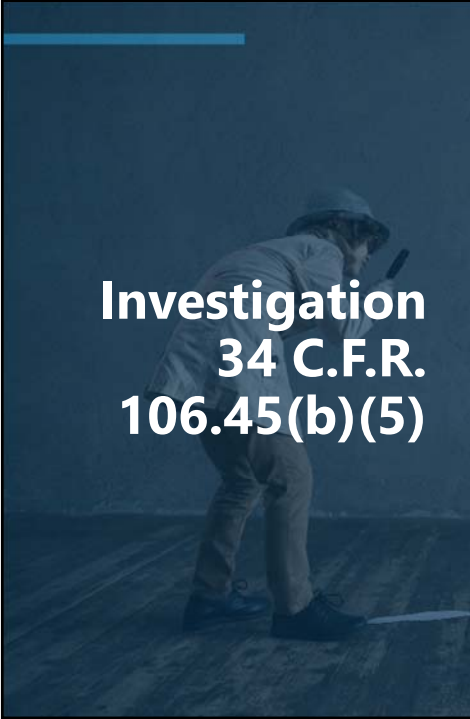
**Before finalizing the investigative report, I must give both parties and their advisors a summary of all evidence and an opportunity to respond.**

True

False

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

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- 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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## Directly Related Evidence

- Must share evidence directly related to the allegations 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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### Which of these is NOT directly related evidence in Cameron's formal complaint?

Email messages from Cameron to Parker earlier in the school year in which Cameron and Parker seem to be flirting

Draft interview notes from interviews with parties and witnesses (final version was created)

Text messages from Parker to another female student with similar conduct

Facebook messages between Cameron and another student with raunchy sexual language

Rumors from a witness of something another witness (not available to interview) said about Parker engaging in similar conduct with the unavailable witness

None of the above (they all are directly related) zoom login

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

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- 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 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 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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## 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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## Investigation Report

- Must fairly summarize all **relevant evidence**
- Relevant evidence is different from evidence “directly related to the allegations”

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## Determining Relevance

- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue
- Exceptions
  - Sexual behavior of CP (except in limited situations)
  - Legal privilege
  - Treatment records

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## Rape Shield for CP

- Exclude evidence of Complainant's sexual behavior or predisposition
- Two narrow exceptions
  - Someone other than RP committed conduct
  - Past conduct between CP & RP to show consent
- Does not apply to Respondent

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## Treatment Records

- Can't access, consider, disclose, or use records
- Made by a physician, psychologist, or other recognized professional
- Which are made and maintained in connection with the provision of treatment,
- Unless the party gives voluntary, written consent

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## Legally Privileged Information

- Cannot use questions or evidence that seek disclosure of legally privileged information, unless waived
- Consider:
  - Attorney-client communication
  - Privilege against self-incrimination
  - Confessions to a clergy member or religious figure
  - Spousal privilege

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### Which of these is NOT relevant evidence?

Email messages from Cameron to Parker earlier in the school year in which Cameron and Parker seemed to be flirting

Draft interview notes from interviews with parties and witnesses (a final version was created)

Text messages from Parker to another female student with similar conduct

Facebook messages between Cameron and another student with raunchy sexual language

Rumors from a witness of something another witness (not available to interview) said about Parker engaging in similar conduct with the unavailable witness

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# Investigation: Techniques & Best Practices

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## The Investigation Plan

- Witness List
- Order of Interviews
- Questions for Witnesses
- Physical Evidence Needed, e.g., records, documents, reports, photos, and letters



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## Cameron's Formal Complaint

- Cameron reports that the sexual assault occurred after a party. Bobbie and Ali (students) were at the party.
- After the party, Cameron told Robin, Cameron's roommate, what happened. Cameron also talked to a teacher, Mr. Smith.
- Cameron submitted to a police interview and SANE exam shortly after the incident.

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### What must you do while delaying for law enforcement reasons?

Indefinitely suspend Parker because of the violent nature of the alleged offense

Provide equal supportive measures to the parties

Comply with timelines in other laws, if applicable

Require Parker to sit for an interview

None of the above

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## Concurrent Law Enforcement

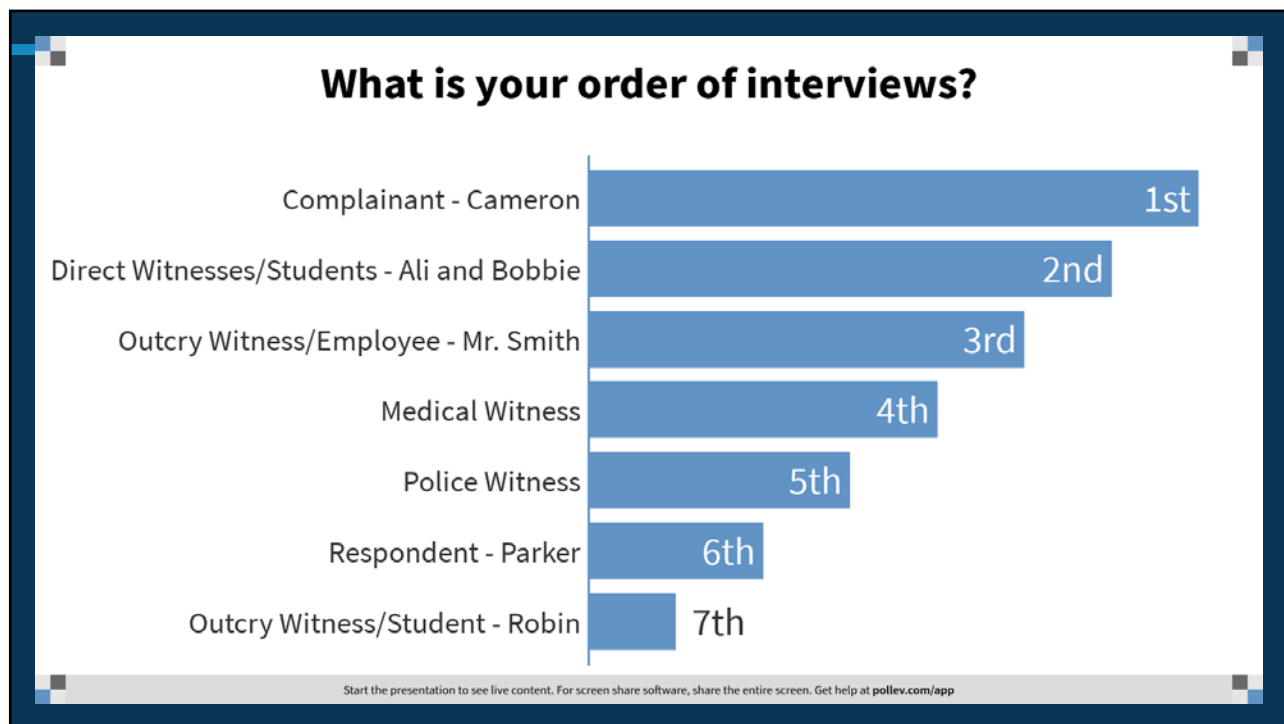
- Only “temporary” or “limited” allowed
  - Not “more than briefly” beyond timeframes
  - Not required
- Reasons – potential impact on interviews, self incrimination privilege for PR, release of evidence by police on certain timeline

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## Party Interview Tips

- Describe allegations
- Avoid discussing theories or assessment of evidence
- Obtain account of events in detail (within reason)

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## Prefaces for Witnesses

- Your Identity and Role as a Neutral
- Notes and Records
- Allegations (if necessary)
- Role of Advisor (if allowed)
- Confidentiality
- Retaliation
- Rapport Building

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## Questions

- Relationships
- Identities of Parties
- Details of Conduct Between the Parties
- Effect of Alleged Conduct on the Parties
- Outcry/Reports
- Other Responses of Parties
- Documentary and Other Evidence
- Identities of Witnesses

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## Avoid

- Discussing theories or assessment of the evidence
- Suggesting agreement or outcome
- Pressuring for more information on irrelevant incidents
- Body language or words suggesting judgement

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## Closing

- Anything else?
- Any questions?
- Advisor questions (if allowed)
- Encourage follow-up
- Process (again for parties)

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## Emotions

- Silence is ok
- Sympathy is ok (within reason/neutral) – “I can tell this is hard” “I’m sorry this is difficult”
- Allow breaks
- Remember equality not equity is goal for processes

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## Cardinal Sins of Interviewing

- Questions that are evaluative
- Long, confusing questions
- Sticking blindly to a script
- Using undefined terms (witness can define)
- Interrupting and rushing

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In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

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How did the conduct affect you?

What would you like to see as an outcome? (avoid making any promises)

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Consider whether appropriate to ask for more incidents than offered

Perhaps instead, focus on repeating “Is there anything else you’d like to tell me or for me to look into?”

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## Retaliation

IN EVERY INTERVIEW, warn about retaliation and explain that a complaint can be filed if someone retaliates.

Watch for different treatment

Actions by staff in avoiding complainant

Harassment by the Respondent or their friends



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## After Interviews

- Follow up in writing to summarize any points that might need confirmation
- Clean up notes
- Document less formal interactions
- Send links/copies to policies if relevant
- REASSESS allegations, investigation plan, and supportive measures

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## Scope of the Investigation

Must be “thorough,” but not required to review all potential sources of evidence parties or witnesses identify



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## Gathering Other Evidence



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# Serving Impartially

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## Impartiality

- Trained
- No: bias, conflict of interest, prejudgment
- Appeal: can be based on improper, biased/conflicted team member

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## Standard

- Declined to define "bias," "conflict of interest," "prejudice"
- The Department encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....

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## Cameron's Complaint

- Cameron, a freshman, claims that another student, a senior, Parker, sexually assaulted Cameron
- You are assigned the formal complaint and send the written notices of Title IX allegations to the parties

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**You (the Investigator) signed the Formal Complaint as Title IX Coordinator or designee. Is that a conflict of interest?**

Yes

No

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**You (the Investigator) attend the same church as Parker. Is that a conflict of interest?**

Yes

No

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**You have a history of working as a victim advocate. Is that a conflict of interest?**

Yes No

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**You (the Investigator) have had training on trauma informed interviewing practices. Does that create bias or the risk of prejudice?**

Yes No

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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

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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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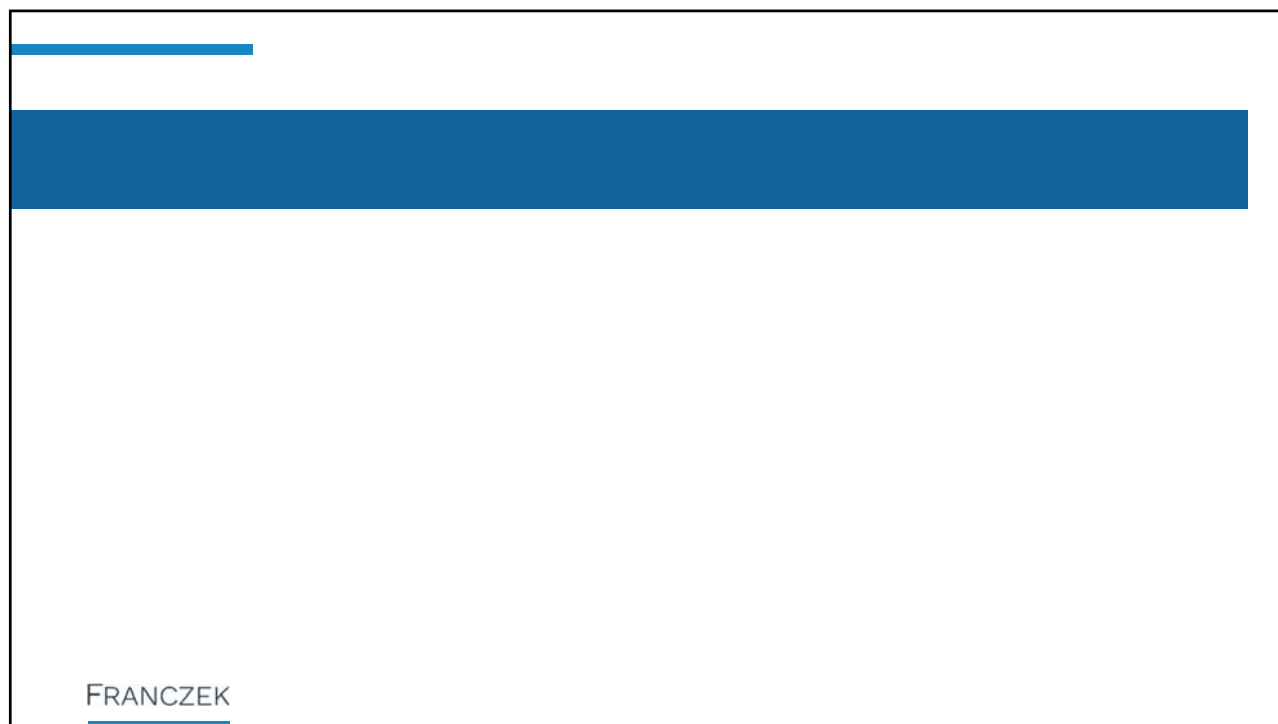
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## Interview Notes

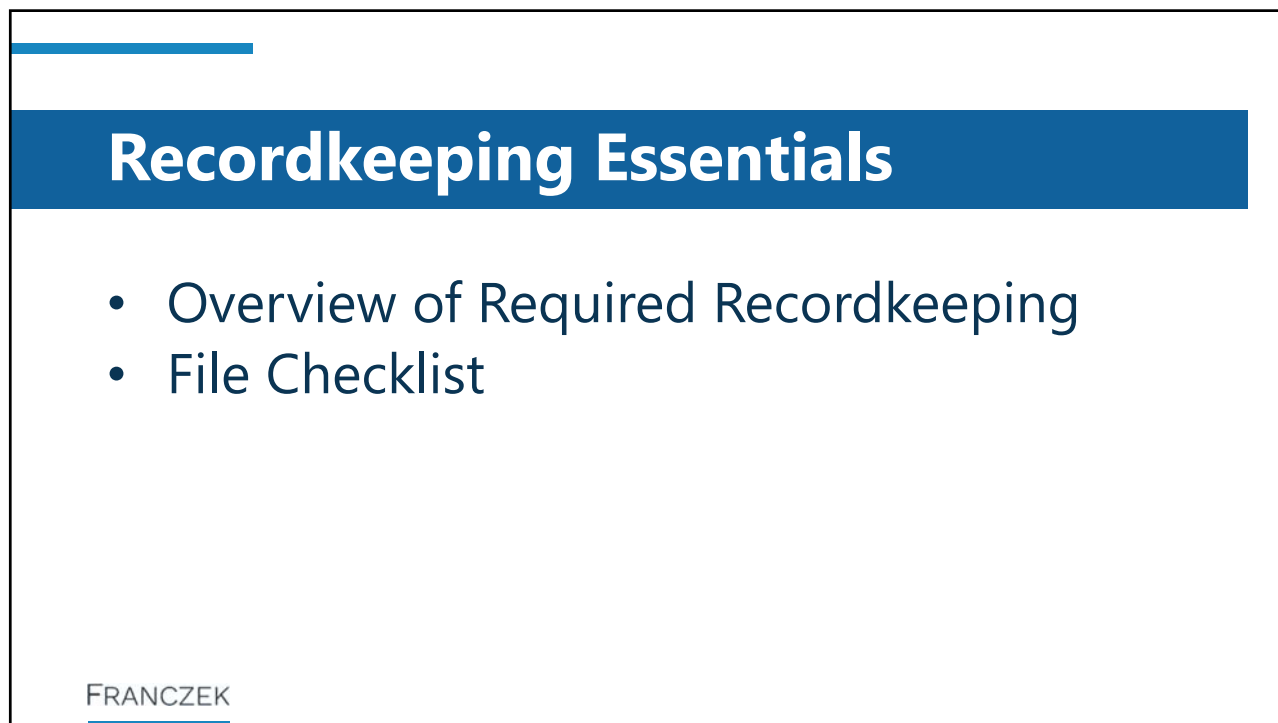
- Include: Facts + Statements (consider quotes)
- Don't Include: Conclusions + Judgements
- Label: Name of Witness, Date, Time, Interviewer, Location, Method, Those Present

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# Questions



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