

**Illinois Institute of Technology**

**Title IX Regulations:  
Coordinator Training**

August 19, 2021  
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**Agenda - Coordinators**

- Coordinator Responsibilities
- Key Terms
- Example Report

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# Title IX Coordinator Responsibilities

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## Title IX Coordinator Responsibilities

- Must be called Title IX Coordinator and “authorized”
- Must be identified (with name or title, address, phone, and email) in policy and on website

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## Title IX Coordinator Responsibilities

- Must meet with alleged victims of Title IX Sexual Harassment – Supportive Measures + Formal Complaint process
- Can “sign” a complaint when the Complainant doesn’t want to file

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## Title IX Coordinator Responsibilities

- Coordinates implementation of Supportive Measures
- Ensures effective implementation of remedies
- Monitors ongoing compliance with Title IX

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## Delegation

- Can delegate responsibilities
- Delegate should be trained (can be by you)
- Examples:
  - Evaluating reports
  - Coordinate responses to reports
  - Sign a formal complaint

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## Delegation

BUT the recipient itself is responsible for ensuring that the recipient's obligations are met, including the responsibilities specifically imposed on the recipient's Title IX Coordinator under these final regulations, and the Department will hold the recipient responsible for meeting all obligations under these final regulations

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# Serving Impartially

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## Who should be on the team?

- Trained, unbiased
  - No actual or perceived conflict of interest
  - Check "institutional interests"
  - No presumption for or against any party
- Appeal: bias and conflict of interest that affected the outcome of the matter

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## Bias

The Title IX Team Member 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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## Key Terms

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## Actual Knowledge

Definition (106.30(a)):

- To the TIXC or OWA (including through a “report” to the TIXC)
- Vicarious liability/constructive notice insufficient
- Not met when only OWA is the Respondent
- Mere ability to report sexual harassment or inform a student about how to respond (or be trained to do so) not = OWA

“Notice” is defined broadly

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## Official with Authority

- Official with authority to institute corrective measures on behalf of the recipient
- Identified by the institution
- Actual knowledge of an OWA triggers response

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## “Deliberate Indifference”

Response must

- Be prompt
- Offer supportive measures
- Include contact from TIXC to Complainant for supportive measure + formal complaint discussion
- Investigate a Formal Complaint
- Contain specific requirements

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## “Deliberate Indifference”

- Mandatory, proactive, and interactive process
- Must treat parties equitably
  - Offering supportive measures to Complainant
  - No disciplinary sanctions until completion of compliant grievance process
  - Remedies if Respondent found responsible for Title IX Sexual Harassment, including discipline

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## “Deliberate Indifference”

- No “second guessing” of institutional decisions by OCR
- Read: SHOW YOUR WORK

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## Example Report

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## Robin's Report

- 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 campus
- Two upperclass 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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## 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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## 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!

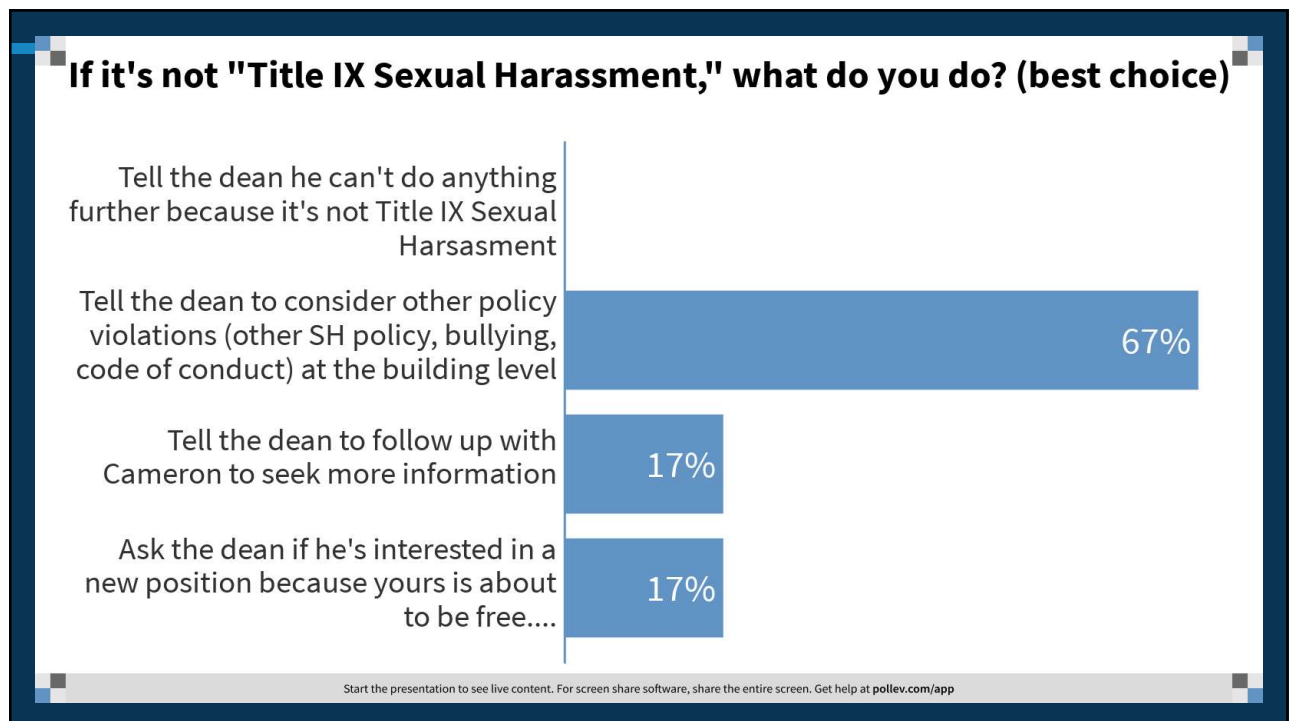
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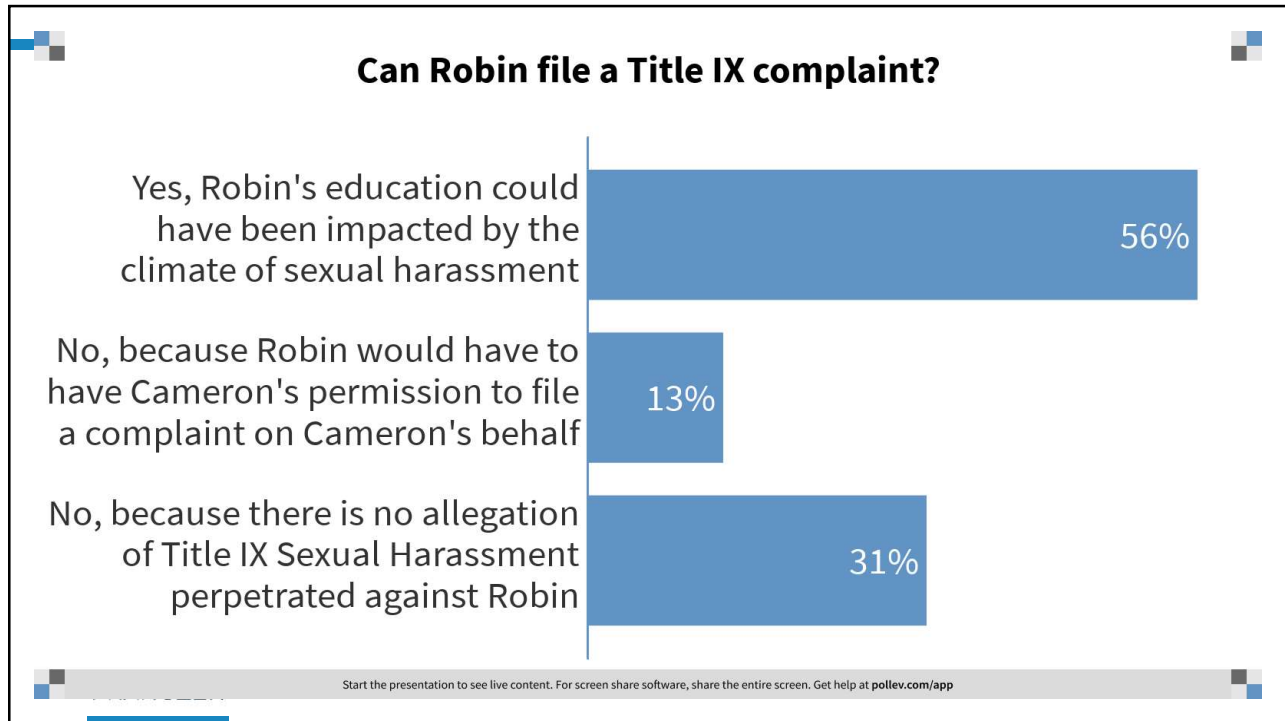


**Program or Activity:** Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred

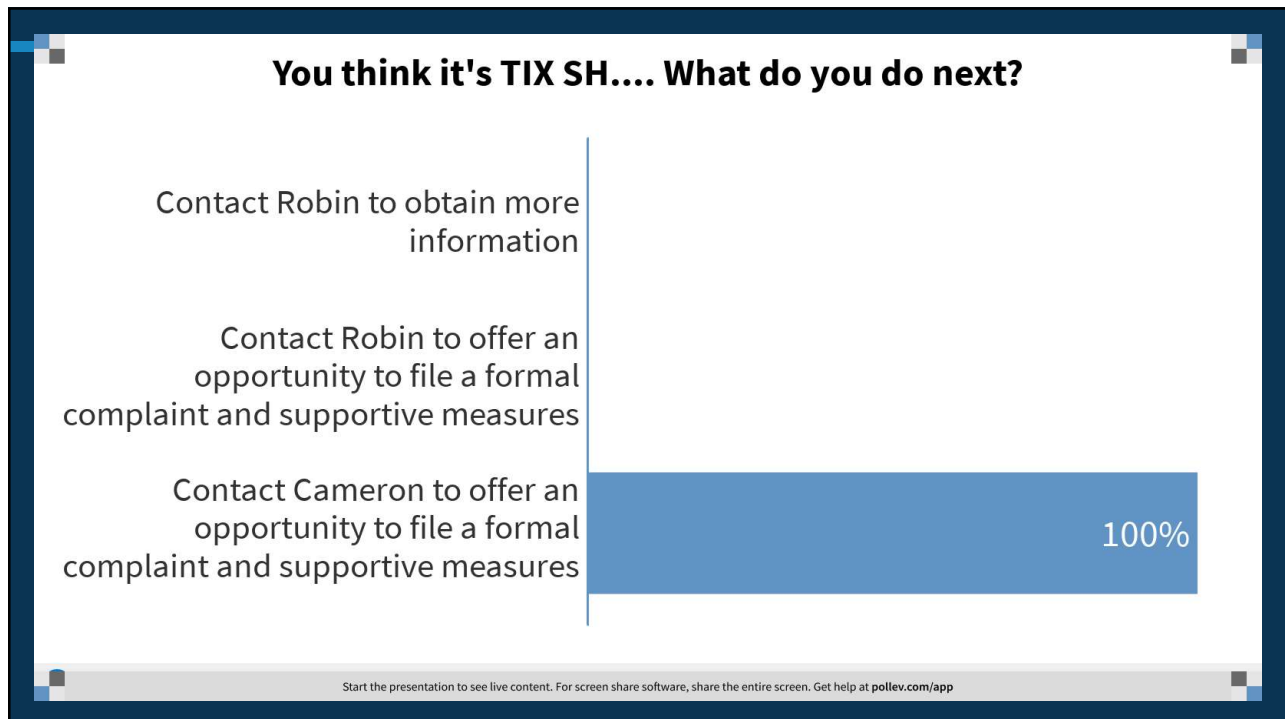
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**Title IX Coordinator must promptly, even if no Formal Complaint is filed:**

- 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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## Initial Meeting

- The Title IX Coordinator tells the Dean to meet with Cameron
  - **WRITE IT DOWN**

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## Forms/Notices

### Initial Meeting with the Complainant

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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## 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 lacrosse 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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## Meeting with Cameron

- Cameron confirms all the allegations
- Cameron wants a No Contact Order against Parker
- Cameron does not want to be named to Parker

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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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### Can you honor the request for a No Contact Order

Yes, even if it's unilateral

Yes, but only if it's mutual

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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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**As the Title IX Coordinator, do you sign a formal complaint if Cameron does not want to file one?**

Yes No

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### 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
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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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## Forms/Notices

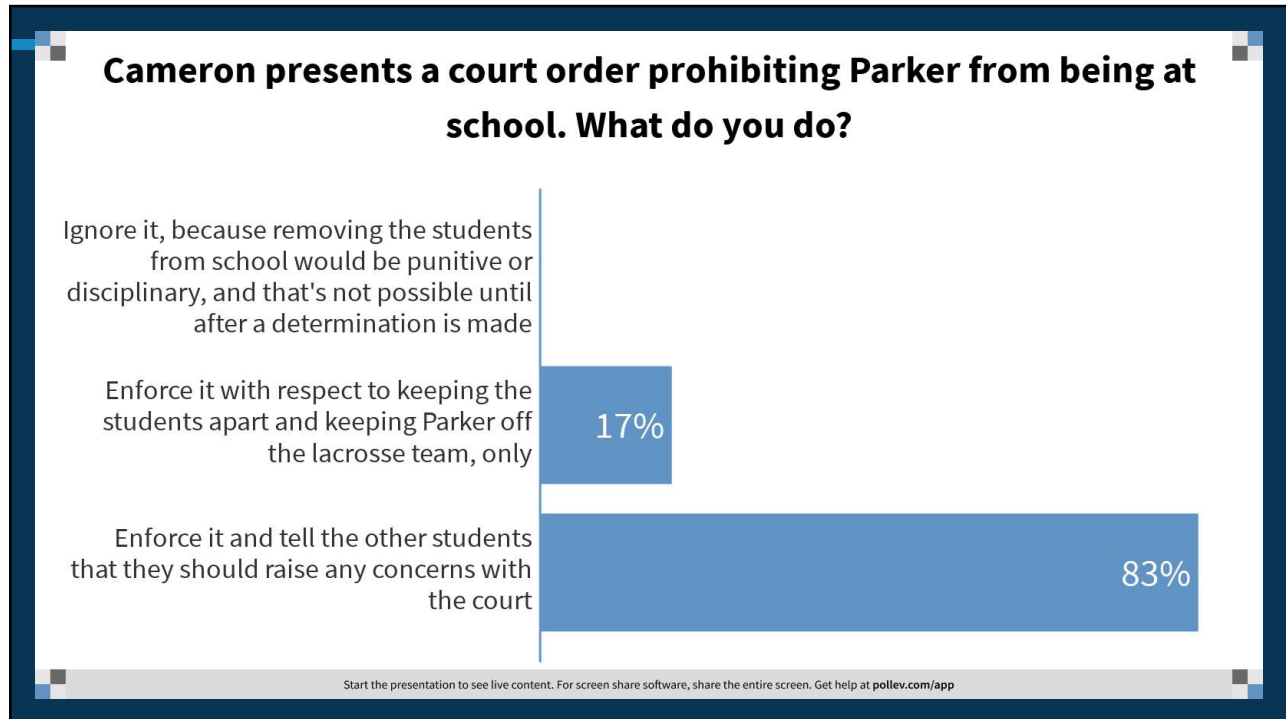
### Notice of Emergency Removal

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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## 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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### Your institution offers face-to-face restorative justice. Can this be done with Cameron?

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

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

No, because Cameron has not filed a formal complaint

No, because sexual harassment cannot be addressed through informal resolution

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## Cameron and Parker reach an agreement in informal resolution. Can the Title IX process ever recommenced?

Yes, if Parker fails to comply with the 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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## Witness – Devon

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

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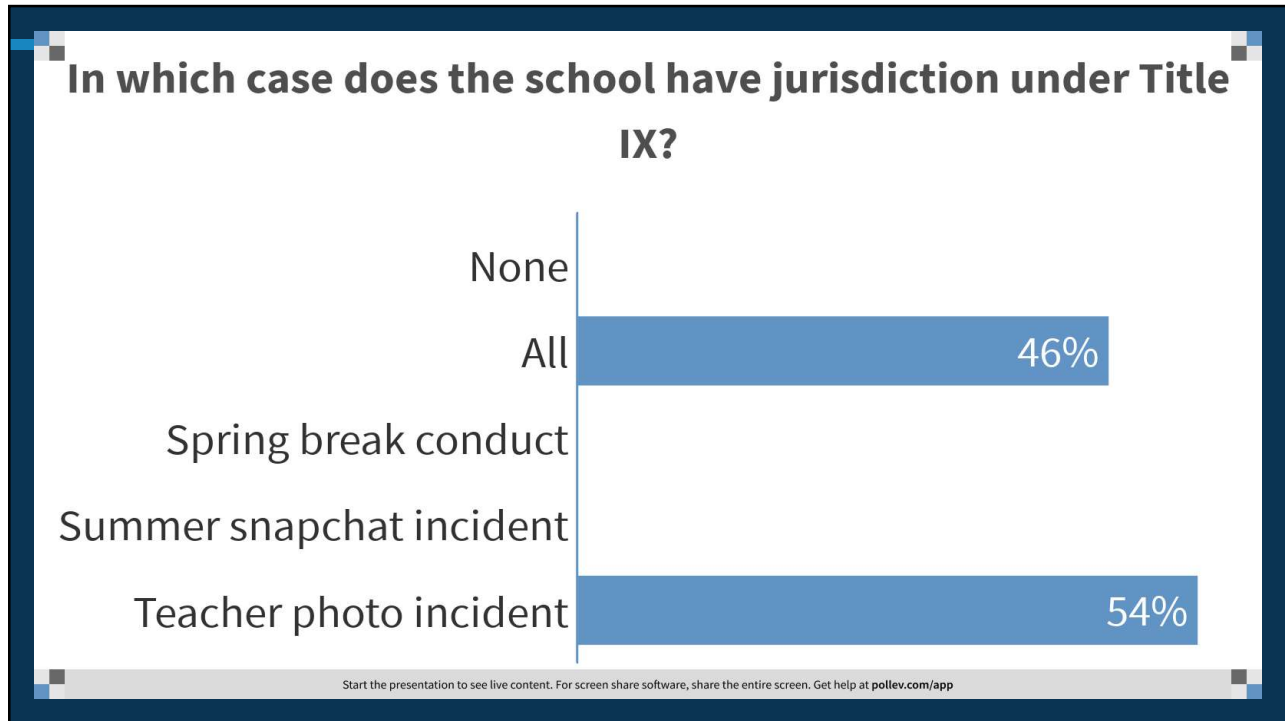
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## Witness – Devon

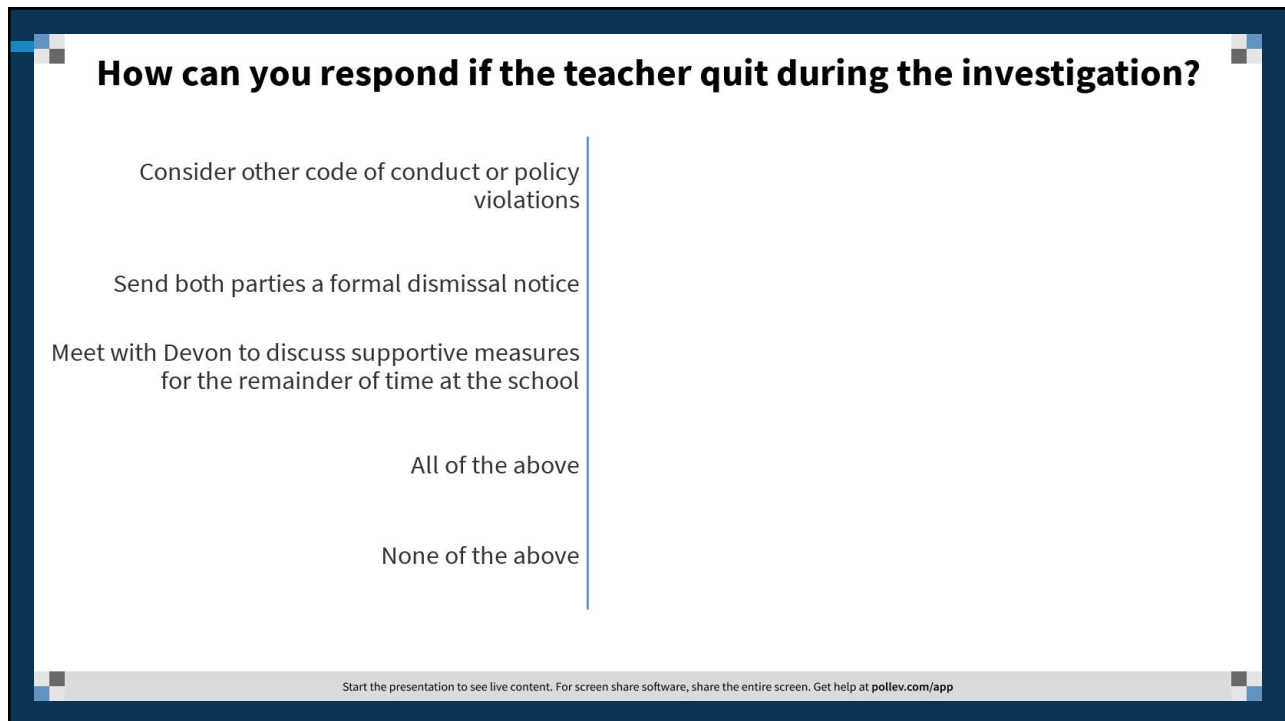
- Sexual assault by classmate on spring break trip abroad last year
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one
- Devon files a formal Title IX Complaint

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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

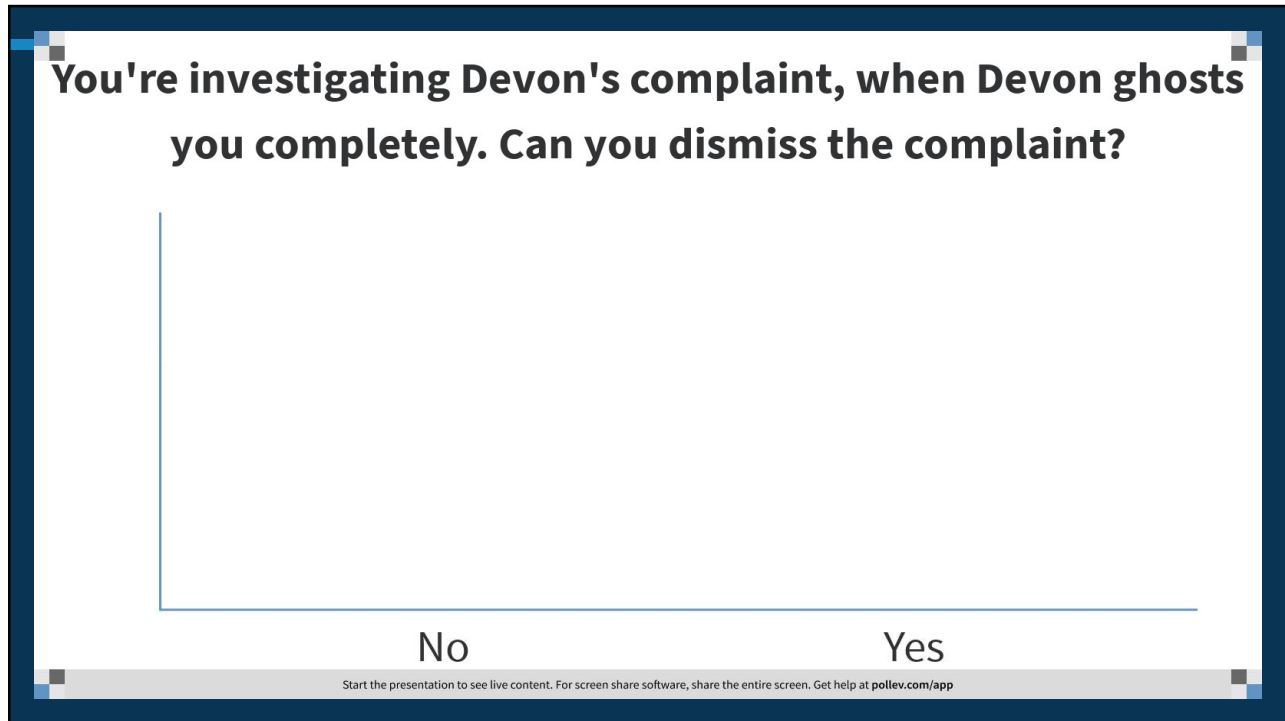
Dismiss the complaint because  
Devon was not a student at the time  
the conduct occurred

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



A poll question is displayed on a white background with a dark blue border. The question is "You're investigating Devon's complaint, when Devon ghosts you completely. Can you dismiss the complaint?". Below the question is a horizontal line with two points: "No" on the left and "Yes" on the right. A vertical line extends upwards from the "No" point. At the bottom of the slide, there is a small text link: "Start the presentation to see live content. For screen share software, share the entire screen. Get help at [polllev.com/app](https://polllev.com/app)".

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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-T9 SH 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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## 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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### **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

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**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

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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

- Decisionmaker runs live hearing
- 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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# Recordkeeping/File Maintenance

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## Recordkeeping Essentials

- Must maintain for 7 years
  - Investigation (including determination of responsibility, disciplinary sanctions imposed, remedies provided)
  - Appeals
  - Informal resolution
  - Materials to train Title IX team (posted online)
  - Supportive measures and other actions taken in response to a report or formal complaint of sexual harassment
  - Why actions were not “deliberately indifferent”

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