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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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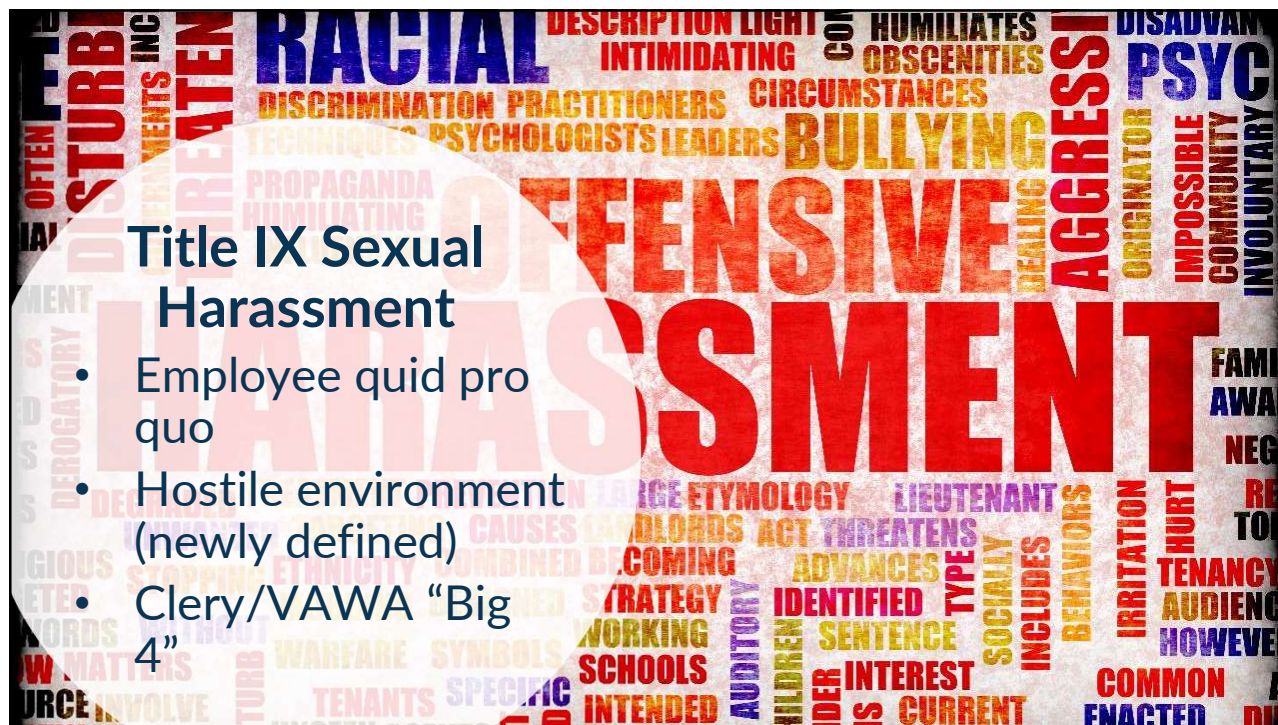
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Robin’s Report

- 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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Title IX Sexual Harassment

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

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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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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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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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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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“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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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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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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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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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-T9 SH 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 determine (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))

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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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