

# **Linn Benton Lincoln Education Service District Multi-District Training**

## **Title IX Coordinator Training**

**December 14, 2020**

**Presented by Jackie Gharapour Wernz**

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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

- 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 Requirements

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

## 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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**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?

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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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## Clery/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

\*\*Should be defined in APs

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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!

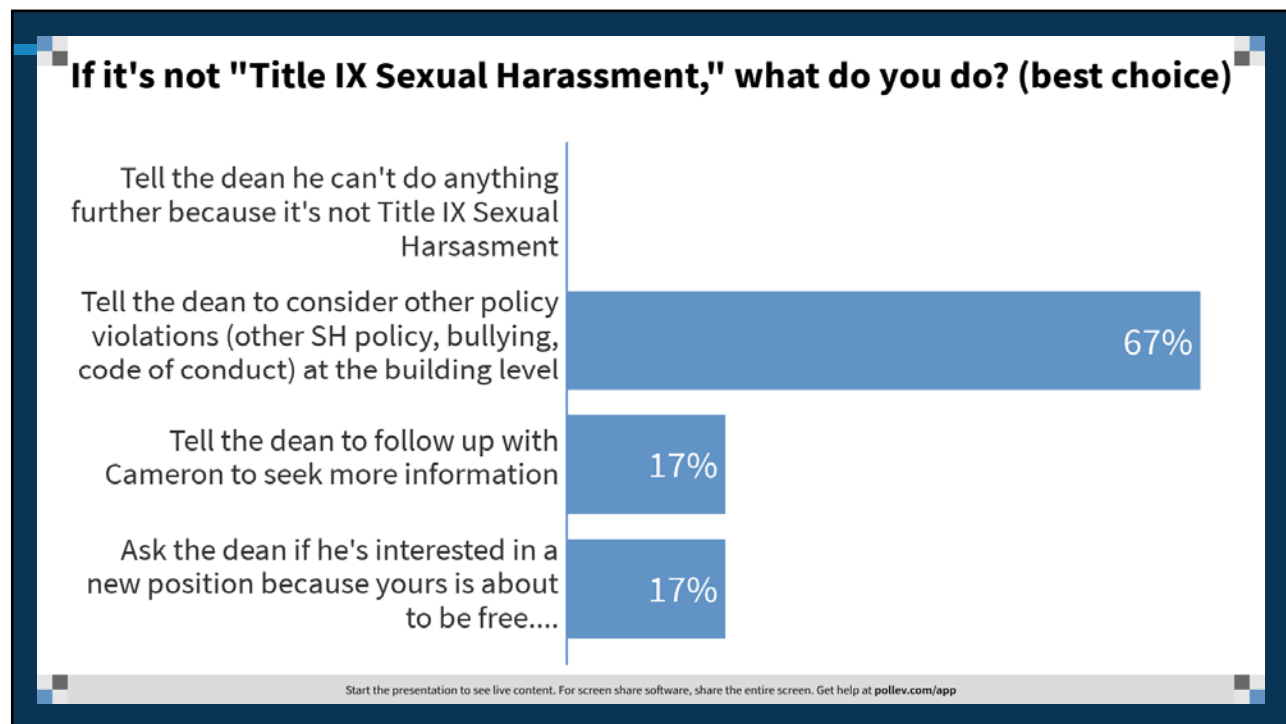
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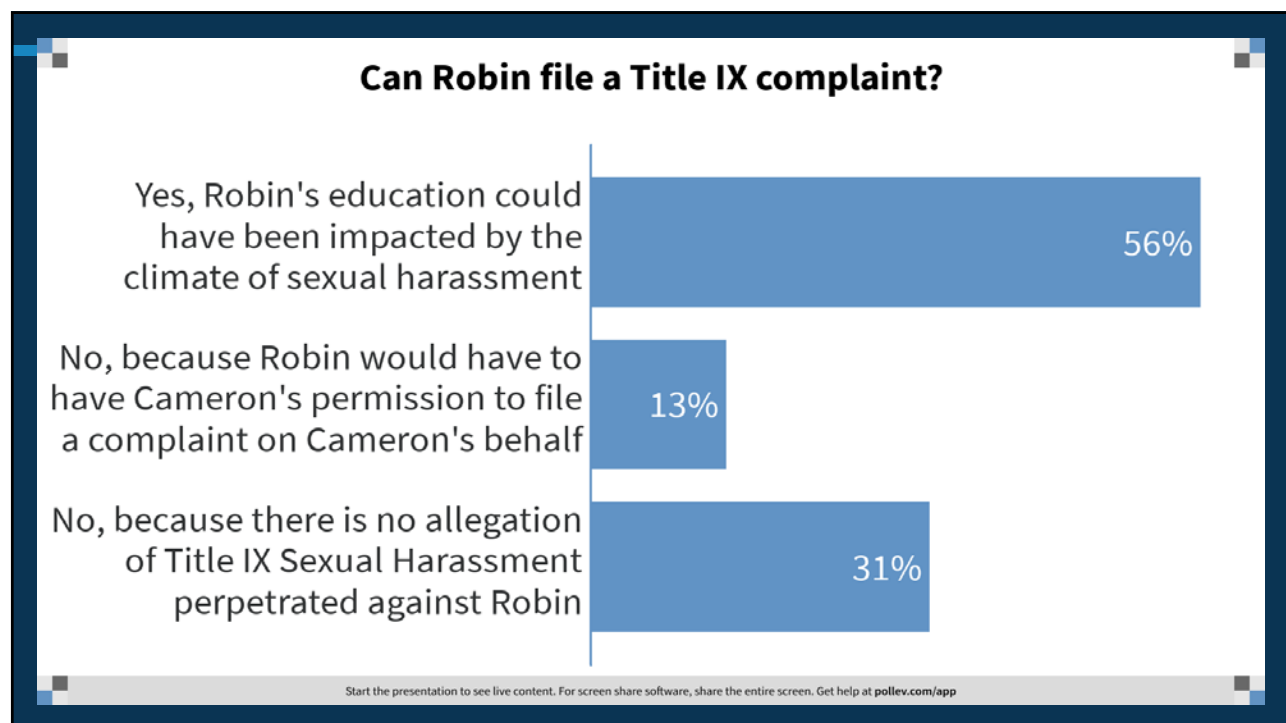


**Program or Activity:** Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred

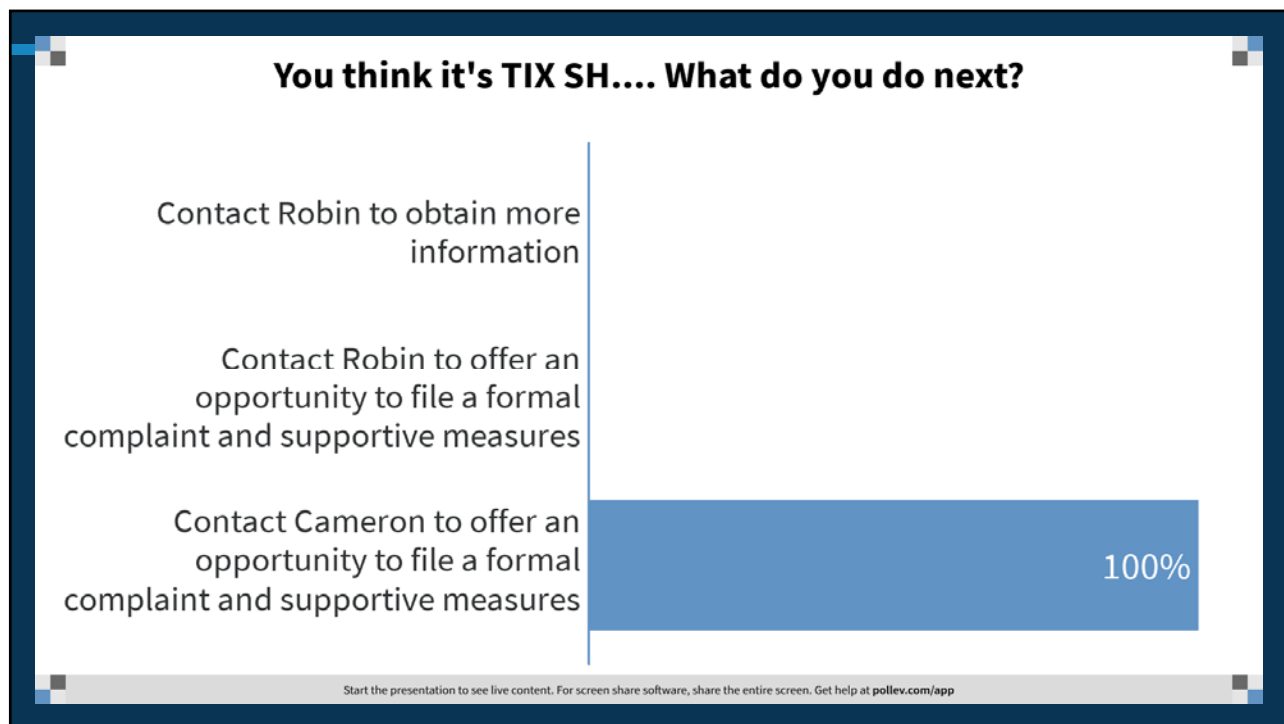
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**Title IX Coordinator must promptly, even if no Formal Complaint is filed:**

- 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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When poll is active, respond at [PollEv.com/franczek](https://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

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## Cameron's Report

- The T9C tells the Dean to meet with Cameron (**WRITE IT DOWN**)
- Cameron confirms all 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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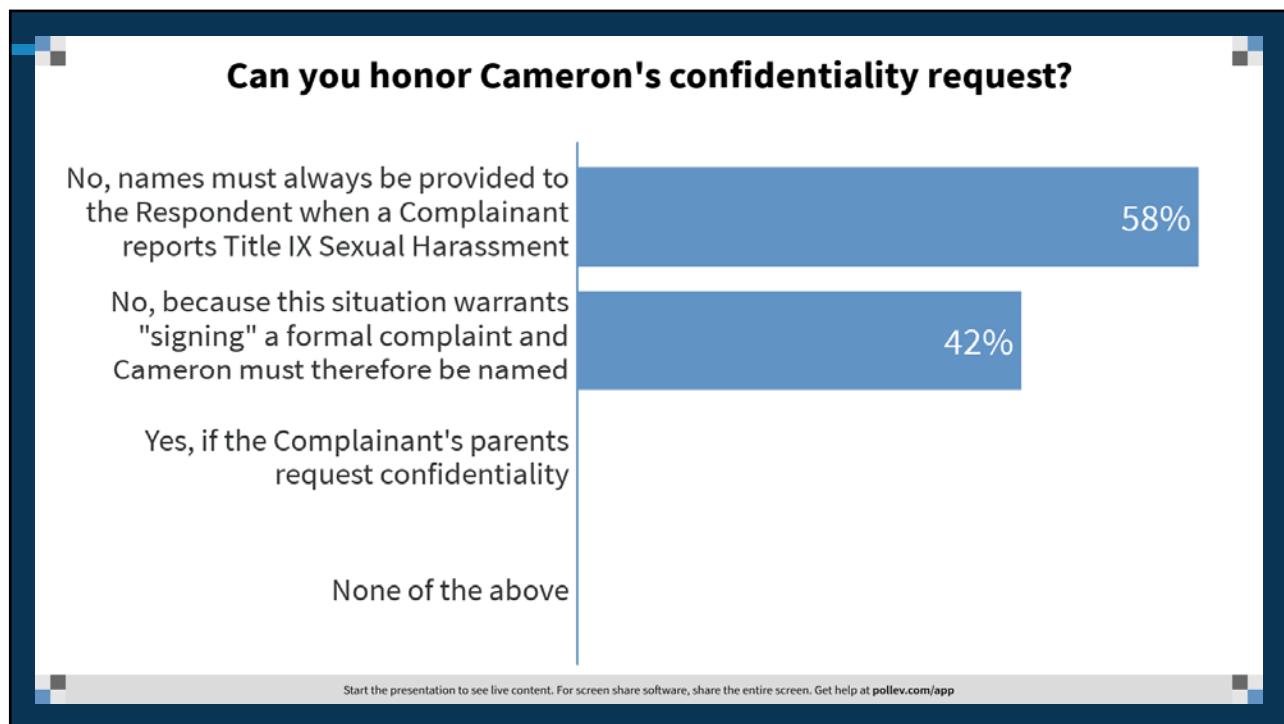
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## Cameron's Report

- 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))

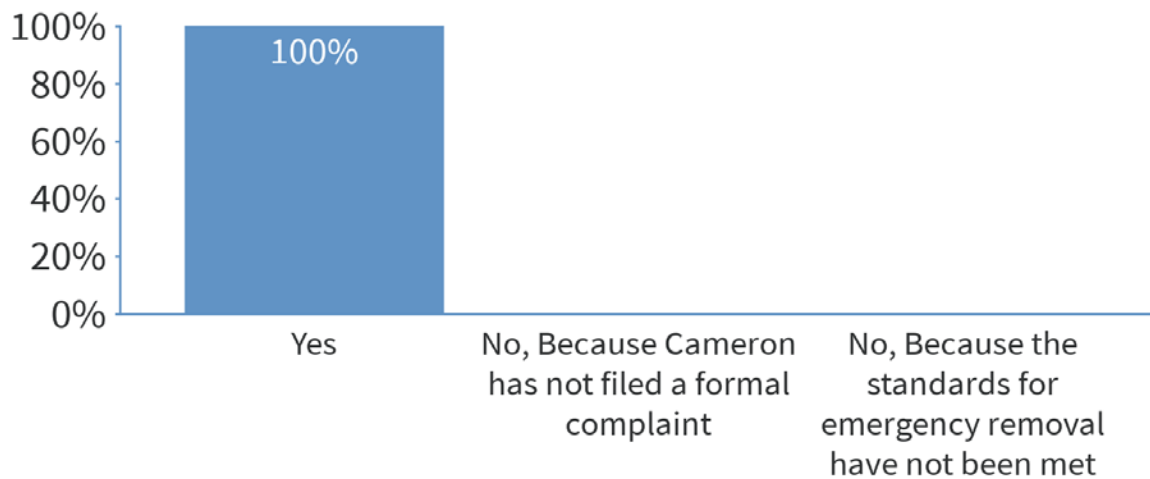
Summary of Supportive  
Measures Meeting  
with the Title IX  
Complainant  
(Franczek Notice 1(b))

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

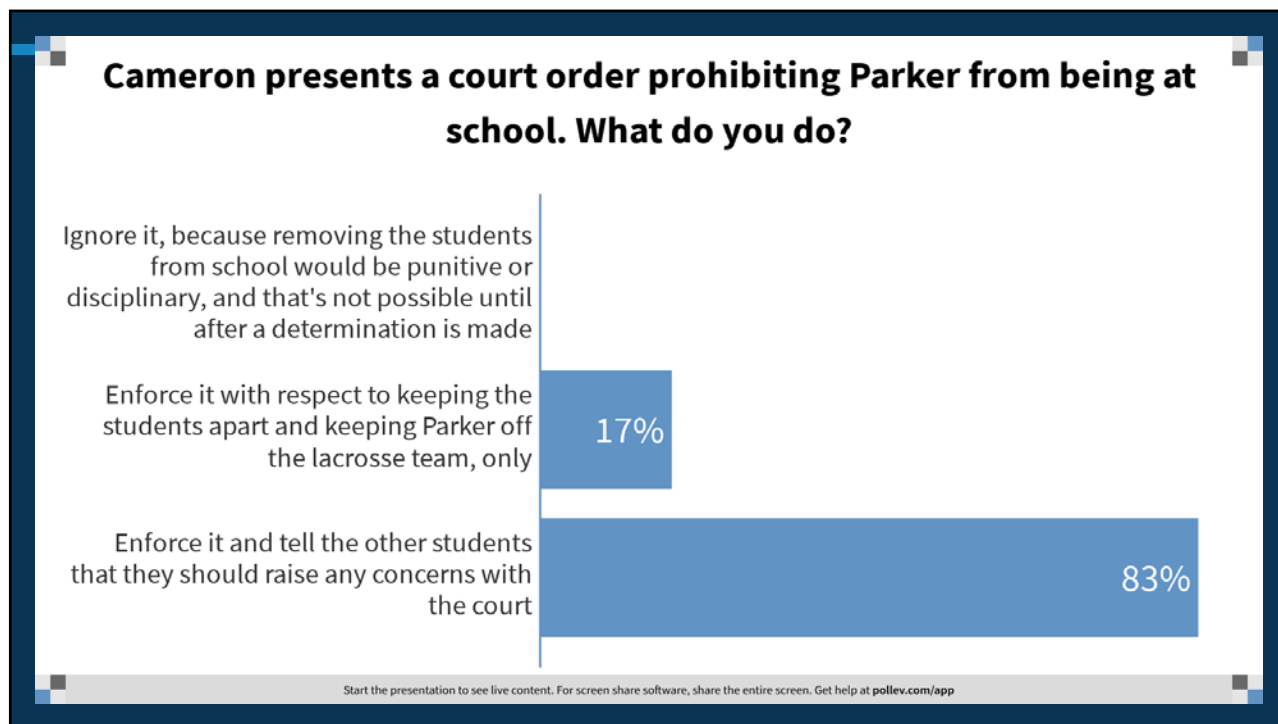
### Notice of Emergency Removal

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

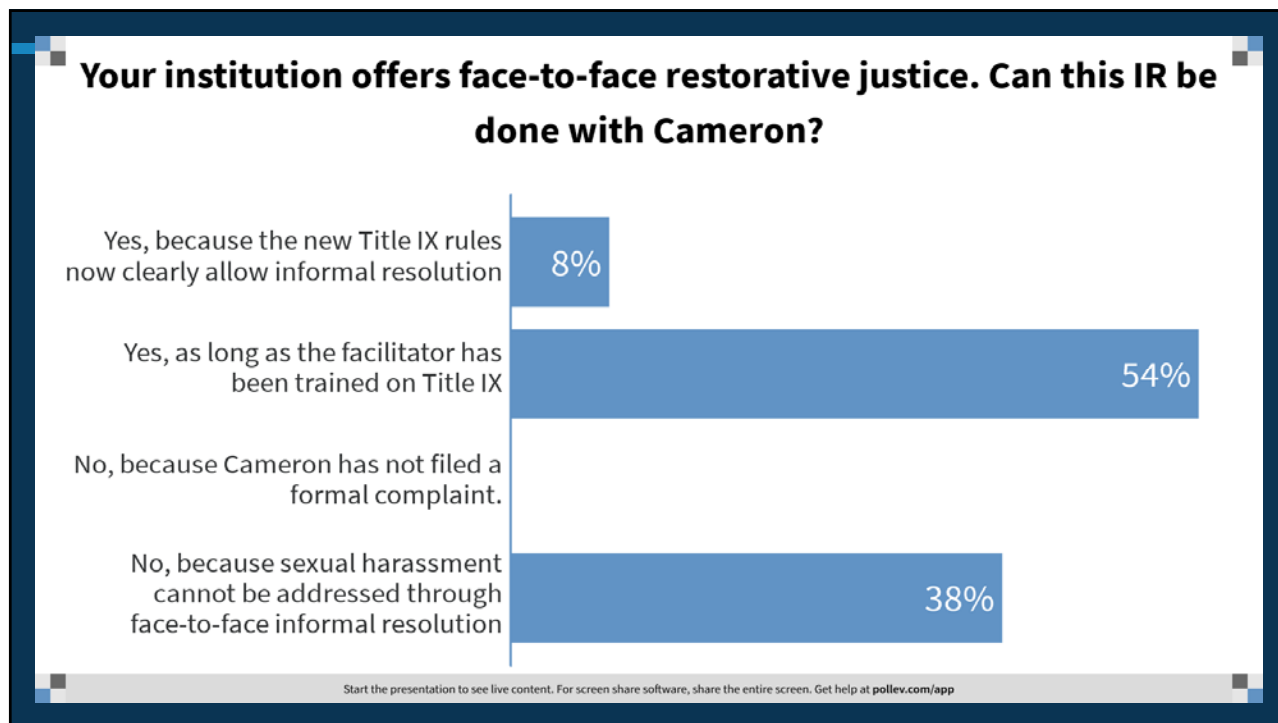
Notice of Title IX  
Admin Leave for  
Employee (Franczek  
Letter 4(b))

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## Formal Complaint – Next Steps

- Written notice to all known parties
  - Grievance process
  - Identities of parties/facts of 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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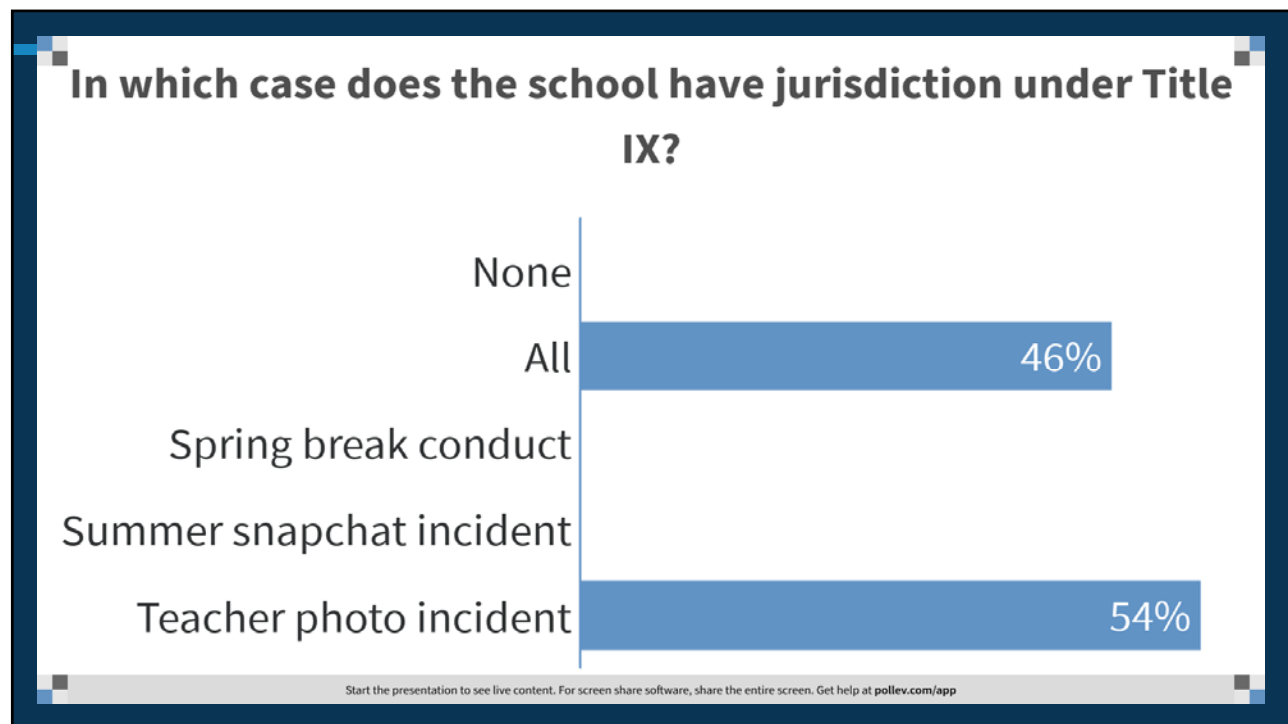
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## Witness – Devon

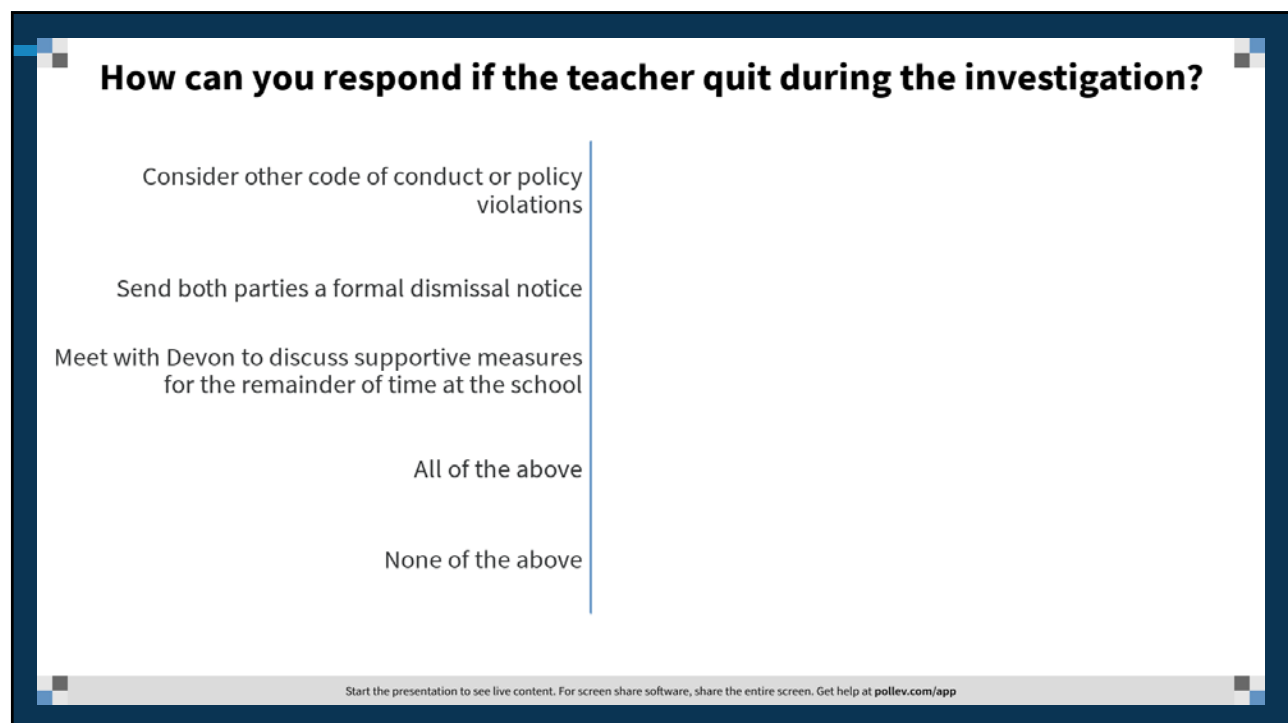
- Sexual assault by classmate on spring break trip abroad last year
- Sexual harassment by classmate via Snapchat over the summer (off-campus, not on school tech or hours)
- A teacher asked Devon for a naked photo and Devon shared one
- Devon files a formal Title IX Complaint

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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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### **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....

- Investigator 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
- The investigator or T9C must 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

- Decision-maker (“written cross”) (Franczek Notices 9(a)-(e))
- 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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# Bias, Conflicts of Interest, and Other Fairness Concerns

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## 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 prejudice any matter before them.

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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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## 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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## Bias

Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity

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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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## Recordkeeping/File Maintenance

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## Recordkeeping Required

Must maintain records for 7 years

- Investigations (including determination of responsibility; audio or audiovisual recording or transcript disciplinary sanctions imposed; and any remedies provided)
- Appeals (including results)
- Informal resolution (including results)
- Materials use to train Title IX team (posted online)
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
- Why actions were not “deliberately indifferent”

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## Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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# Questions?



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