Title IX Coordinator & Investigator Training for K-12 Administrators

October 30, 2020
Presented by Jackie Gharapour Wernz

FRANCZEK

Ask Questions
Title IX Coordinator

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
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

Timeline

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
• 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

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

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
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
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?

Title IX Sexual Harassment

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

- 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)
Sexual Assault under VAWA

• Sexual Assault:
  ➢ Penetration without consent (rape)
  ➢ Fondling without consent
  ➢ Incest
  ➢ Statutory rape

Also, Hostile Environment

• Unwelcome conduct
• Of a sexual nature
• So severe, pervasive, and objectively offensive
• Effectively denies equal access
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.

Title IX – What is a Hostile Environment

Old Definition
Unwelcome conduct determined by a reasonable person to be **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**

New Definition (8/14)
Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive that it effectively denies a person’s equal access to the school’s education program or activity**
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!

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
**If it's not "Title IX Sexual Harassment," what do you do? (best choice)**

- Tell the dean he can’t do anything further because it’s not Title IX Sexual Harassment: 67%
- Tell the dean to consider other policy violations (other SH policy, bullying, code of conduct) at the building level: 17%
- Tell the dean to follow up with Cameron to seek more information: 17%
- Ask the dean if he’s interested in a new position because yours is about to be free...: 17%

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**Can Robin file a Title IX complaint?**

- Yes, Robin's education could have been impacted by the climate of sexual harassment: 56%
- No, because Robin would have to have Cameron's permission to file a complaint on Cameron's behalf: 31%
- No, because there is no allegation of Title IX Sexual Harassment perpetrated against Robin: 13%
New: Initial Response

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
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

Cameron’s Report

- You tell the Dean to meet with Cameron (WRITE IT DOWN)
- Cameron confirms all of the allegations
### What Supportive Measure Would You Offer (Order from Best to Worst)

<table>
<thead>
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<th>Measure</th>
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<tbody>
<tr>
<td>A mutual no contact order (applicable to all students)</td>
</tr>
<tr>
<td>Waiver of attendance requirements for soccer for Cameron</td>
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<tr>
<td>Counseling for Cameron</td>
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<tr>
<td>A unilateral no contact order (applicable only to the upperclass students)</td>
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<tr>
<td>Increased monitoring or supervision</td>
</tr>
<tr>
<td>Removing the upperclass students from the team pending an investigation</td>
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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
“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”
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"?**

<table>
<thead>
<tr>
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<th>Yes</th>
<th>No, Because Cameron has not filed a formal complaint</th>
<th>No, Because the standards for emergency removal have not been met</th>
</tr>
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<tbody>
<tr>
<td>Percent</td>
<td>100%</td>
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Start the presentation to see live content. For screen sharing software, share the entire screen. Get help at pollino.com/app
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 |

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
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

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))
Cameron presents a court order prohibiting Parker from being at school. What do you do?

Ignore it, because removing the students from school would be punitive or disciplinary, and that’s not possible until after a determination is made.

- Enforce it with respect to keeping the students apart and keeping Parker off the lacrosse team, only: 17%
- Enforce it and tell the other students that they should raise any concerns with the court: 83%

Your institution offers face-to-face restorative justice. Assume just verbal misconduct. Can this IR be done with Cameron?

- Yes, because the new Title IX regs now clearly allow informal resolution: 100%
- 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 face-to-face informal resolution
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

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))
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))
Let the investigation begin....

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

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))
Witness – Devon

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

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
In which case does the school have jurisdiction under Title IX?

- None
- All (46%)
- Spring break conduct
- Summer snapchat incident
- Teacher photo incident (54%)

How can you respond if the teacher quit during the investigation?

- Consider other code of conduct or policy violations
- Send both parties a formal dismissal notice
- Meet with Devon to discuss supportive measures for the remainder of time at the school
- All of the above
- None of the above
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

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

| No | Yes |

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

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)

**can still address under non-T9 SH policy**
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))

Title IX Investigator
### 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”
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 | Permissive if: |
| All parties agree that the conduct occurred off campus, outside of school time, and without use of school resources | Complainant requests to withdraw in writing |
| The Respondent's employment or enrollment ends | Respondent's enrollment or employment ends |
| The Complainant's employment or enrollment ends | Specific circumstances prevent school from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant) |
| All of the above | **can still address under non-Title IX policy** |
| None of the above | |

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

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Title IX 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
Investigation: Required Elements

- Occurs when there is a “formal complaint”
- Must contain specific elements
- Must treat parties equally on any additional elements
During the investigation, Cameron is responsible for providing evidence to support the complaint

- **True** 22%
- **False** 78%

**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
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

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

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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
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%

Forms/Notices

Notice to Advisors

Advisor Conduct Expectations
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
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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 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
Before Party Interviews

Communicate in Writing:
• Date, time, location, participants, purpose
• With sufficient time to prepare
Recommend same for witnesses (not required)

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))
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

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 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
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

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)
**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))

**Investigation**

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

- Burden of proof on school
- Certain treatment records cannot be obtained without voluntary, written consent
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- 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
Investigation Report

- Applicable policies and procedures
- Timeline of investigation
- Description of allegations
- Unbiased summary of evidence gathered, including interviews
- Credibility determination(s)

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))
Investigation Report

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

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
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

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
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

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
Investigation: Techniques & Best Practices

The Investigation Plan

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

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
**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
Party Interview Tips

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

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
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

Closing

• Anything else?
• Any questions?
• Advisor questions (if allowed)
• Encourage follow-up
• Process (again for parties)
Potential Trauma for CP and RP

Practical Tips – Trauma

Acknowledge pain/difficult situation

"It's ok if you can't remember every detail. We will just focus on what you can recall. "I can tell this is difficult for you, I can give you a little time"

Do not demand starting at the beginning & providing every detail

Ask open ended questions
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
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

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?
How did the conduct affect you?

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

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?”
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

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
Scope of the Investigation

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

Gathering Other Evidence
Serving Impartially

Impartiality

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

- Declined to define “bias,” “conflict of interest,” “prejudge”
- 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.

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

Yes
No

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

Yes
No
You have a history of working as a victim advocate. Is that a conflict of interest?

Yes  No

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

Yes  No
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

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
What Likely Is Not...

- Deciding an allegation warrants an investigation
- Being an employee (and even attorney)
- Finding in favor of one party over another

Recordkeeping
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

Interview Notes

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

- Overview of Required Recordkeeping
- File Checklist
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