



TITLE IX Training

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Title IX Training Goals

- Understand your role in the Title IX Investigation
- Understand the role of the Title IX Compliance Officer/Coordinator
- Review the newly adopted District Nondiscrimination/Title IX policies
- Engage around hypothetical scenarios

Title IX: New Regulations

- On May 19, 2020, the Secretary of Education amended the regulations implementing Title IX of the Education Amendments of 1972.
- New regulations took effect on August 14, 2020.
- The updates contain many substantial and procedural changes, including new definitions, mandated training for all Title IX officials, a formal grievance process, and multi-investigator models.

Background Overview

- What is Title IX?
 - Federal Civil Rights statute that prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.
- What are the objectives of Title IX?
 - 1) To avoid the use of federal resources to support discriminatory practices;
 - 2) To provide individual citizens effective protection against those practices.
 - *Cannon v. University of Chicago, Supreme Court, 1979*

The Final Regulations

- The regulations have the full effect of law and override any past guidance.
- These regulations are legally binding and therefore provide the mechanisms that schools must use to respond to allegations of sexual harassment.

Key Terms

- **Complainant** – individual who makes complaint of Title IX Incident (formerly alleged victim)
- **Respondent** – individual who is accused of committing Title IX Incident (formerly alleged perpetrator)
- **Recipient** – Recipient of federal funds who Title IX applies to; will be used interchangeably with “school” or “entity”

Training Requirements

- All employees at K-12 schools are required to report Title IX sexual harassment.
 - Additionally, employee reporting requirements under the CPSL and Educator Discipline Act are still in effect.
- Title IX officials at a school must receive training on Title IX and its regulations.
- The training includes the definition of sexual harassment, how Title IX applies to the school's programs and activities, how to conduct a formal Title IX grievance process, and how to be an impartial decisionmaker including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias.

Discrimination on the Basis of Sex: Defined

Sexual harassment is defined as:

1. Quid Pro Quo Harassment: An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v);
4. "Dating violence" as defined in 34 U.S.C. 12291(a)(10);
5. "Domestic violence" as defined in 34 U.S.C. 12291(a)(8); or
6. "Stalking" as defined in 34 U.S.C. 12291(a)(30)

Sexual Assault: Defined

- **Sexual Assault** is defined as an offense that meets the definition of Rape, Fondling, Incest or Statutory Rape as defined in the FBI's Uniform Crime Reporting System.

Dating Violence: Defined

- **Dating violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: Defined

Domestic violence is a felony or misdemeanor crime of violence committed:

- by a current or former spouse or intimate partner of the victim.
- by a person with whom the victim shares a child in common.
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Stalking: Defined

- **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - fear for the person's safety or the safety of others; or
 - suffer substantial emotional distress

Educational Program or Activity: Defined

- Only includes incidents that occur in the United States on district-owned property or during district-sponsored activities such as educational trips organized by the district
- Includes locations, events, or circumstances over which the school exercised substantial control over both the respondent (alleged perpetrator) and the context in which the harassment occurred.

Incidents Off School Grounds

- Title IX obligations will extend to incidents that **do not occur in the school building** if:
 1. The incident occurs as part of the school's operations. 20 U.S.C. 1687; 34 CFR 106.2 (h); or
 2. The school exercised substantial control over the respondent (alleged perpetrator) and the context of the alleged sexual harassment that occurred off of school grounds; or
 3. If the incident occurred at an off-campus building owned or controlled by a student organization recognized by a postsecondary institution

Reminder

- The regulations do not limit a school from addressing conduct outside of the previous definitions
- A school can and should ensure that even when an incident does not meet the definition of sexual harassment under Title IX, there are no other laws or school policies/student handbook violations
 - Bullying
 - Other Level 1, 2, 3 etc. offense
 - Misconduct

Response to Sexual Harassment

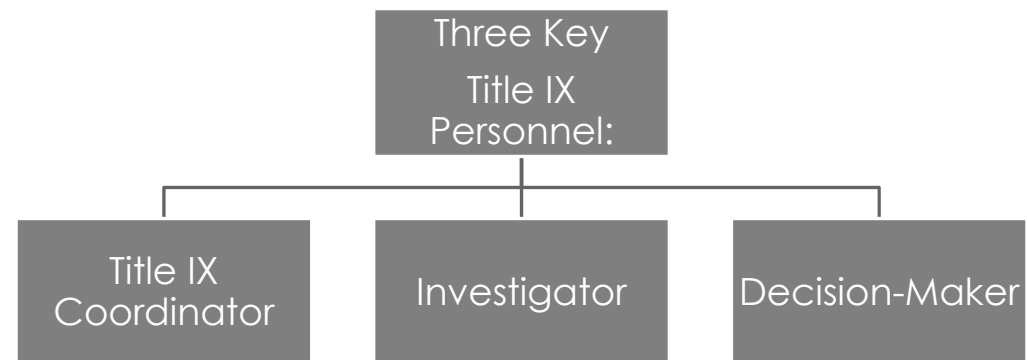
- A school with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, ***must respond promptly in a manner that is not deliberately indifferent.***
- Actual knowledge is notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the School who has authority to institute corrective measures or an **any employee of the school**

School Liability

- ▶ A school will be found liable under Title IX if the school had actual knowledge of the incident and was deliberately indifferent in its response
 - ▶ Deliberate Indifference: A school acts with deliberate indifference only when it responds to sexual harassment in a manner that is clearly unreasonable in light of the known circumstances
 - ▶ A school who acts with deliberate indifference when they have actual knowledge will be found to commit intentional discrimination

Title IX: Personnel

- These roles must be filled by different individuals
- Designated Title IX Personnel dealing with a complaint must be free of conflicts of interest regarding parties to the complaint



How to Report Sexual Harassment

- School Policy must provide guidelines for how to report incidents of Sexual Harassment
 - Note: failure to follow exact guidelines does not free school of obligations
- Public Website must contain the name and contact information for the Title IX Coordinator
- District Policy must be published on school website and within code of student conduct/code of employee conduct
- These should be provided and accessible to all who are entitled to Notice of Provisions
 - Students, Employees, Contractors, Parents, etc.

Formal Complaint

- **Formal Complaint:** document filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegations of harassment:
 - Complaint requirements:
 - At the time of filing, the complainant must be participating in or attempting to participate in the education program or activity of the school
 - May be filed in person, by mail, by email, by any additional method designated by the school
- **Remember:** Absent a written document signed by the complainant alleging sexual harassment and requesting an investigation, the investigation process may not begin.

Third Party Complaints

- A third party may still make an allegation of sexual harassment on behalf of another to the Title IX Coordinator
- In this incident, if the alleged victim (would be complainant) does not come forward to file a formal complaint, the complaint can be filed and signed by the Title IX Coordinator to initiate an investigation and adjudication of sexual harassment allegations
- However, the regulations prohibit retaliation against any person exercising rights under Title IX including the right to *not* participate in a Title IX grievance process

Response to Sexual Harassment

- Once a school has actual knowledge of sexual harassment or a report of sexual harassment, the school must immediately respond in a confidential manner.
- The response must be prompt!
- The initial complaint and response must be confidential
- The response, via the Title IX Coordinator, must provide immediate supportive measures
- Must initiate the grievance/investigation process

Supportive Measures

- **Supportive Measures:** individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.
- The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

Supportive Measures

- Counseling.
- Extensions of deadlines or other course-related adjustments.
- Modifications of work or class schedules.
- Campus escort services.
- Restrictions on contact between the parties.
- Changes in work or housing locations.
- Leaves of absence.
- Increased security.
- Monitoring of certain areas of the school building or campus.
- Assistance from domestic violence or rape crisis programs.
- Assistance from community health resources including counseling resources.

Supportive Measures

- The final regulations do prescribe that a recipient's Title IX Coordinator must remain responsible for coordinating the effective implementation of supportive measures.
- "The Title IX Coordinator must serve as the point of contact for the affected students to ensure that the supportive measures are effectively implemented so that the burden of navigating paperwork or other administrative requirements within the recipient/school's own system does not fall on the student receiving the supportive measures".
- Regulations require that the grievance process describes the range of supportive measures available.
- **May or may not continue after a finding of non-responsibility**
- Document: If a recipient/school does not provide a complainant with supportive measures, then they must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Emergency Removal as a Supportive Measure

- Schools are authorized to remove a respondent from the school's education programs or activities on an **emergency basis**, with or without a grievance process pending, as long as notice and opportunity to challenge the removal is given to the respondent following the removal.
 - Consult with Solicitor prior to emergency removal under Title IX
- The decision to initiate an emergency removal will also be evaluated under the deliberate indifference standard.

Emergency Removal

An emergency removal may be appropriate when there is **an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of sexual harassment.**

Prior to the emergency removal, a school must:

1. Conduct an individualized safety and risk analysis
 - Must be more than a “generalized, hypothetical, or speculative belief that the respondent may pose a risk to someone's physical health or safety” and
 - Must be individualized with respect to the particular respondent and must examine the circumstances “arising from the allegations of sexual harassment”
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
3. Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

Informal Resolution Process

- Informal resolution process **may** be offered so long as both parties give voluntary, informed written consent to participate in informal resolution. A party can decide at any time before final determination to no longer proceed with the informal resolution process.
 - Not an available option for claims involving sexual harassment by an employee against a student
 - Must be managed by an informal resolution facilitator who must be trained, unbiased and impartial
 - May not be offered unless a formal complaint is filed
- An informal resolution may include arbitration, mediation, or restorative justice – these options are left intentionally broad and flexible

Informal Resolution Process

- No requirement that a school establish or offer an informal resolution process
- It is available if and only if:
 - A formal complaint has been filed
 - School determines that informal resolution is appropriate
 - Both parties provide fully informed, voluntary, written consent for informal resolution

The Investigation

- Schools must now determine which standard of proof they will require for claims of sexual harassment:
 - Preponderance of the evidence: “More likely than not” to have occurred.
 - Clear and convincing evidence: Higher than Preponderance of the evidence, but less than beyond a reasonable doubt. This standard requires that the event alleged is “highly probable”
- ***Baldwin-Whitehall uses the preponderance of the evidence standard***

The Key Players – Title IX Coordinator

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The Key Players – Title IX Coordinator

- Title IX Coordinator is designated to ensure compliance with regulations and receive complaints
 - Monitor schools' compliance with Title IX
 - Ensure training is provided
 - Coordinate investigations and resolutions of reports
 - Ensure appropriate actions to eliminate sexual harassment to prevent recurrence
 - Review efforts to ensure the educational setting is free from sexual harassment

Title IX Coordinator Continued

- Contacts each complainant to discuss supportive measures
- Considers the complainants wishes regarding such measures
- Explains formal complaint process to complainant
- Treats complainants and respondents equitably
- Implement remedies where there is a founded case of sexual harassment
- May impose disciplinary sanctions

Title IX Coordinator Continued

- The Title IX Coordinator may (and should) have a trained designee/designees who have the skill and ability to execute the duties of the Title IX Coordinator in the event that the Title IX Coordinator is unable to do so
- Title IX Coordinators should not have other job duties that may create a conflict of interest
 - Example: Coach, Solicitor

Investigator

- Assigned by the Title IX Coordinator
 - Impartial, unbiased and free from conflicts
 - Oversees prompt gathering of facts based on the filing of the formal complaint
 - Communicates with all participants throughout the investigation
 - Provides notice of delay
 - Understands “relevance” and “standard of proof” in order to create a report that summarizes relevant evidence

Decision Maker

- Must understand (via training) how to accurately evaluate the relevant evidence
- Must use independent judgment
- Must be free from conflicts of interest, or bias for or against complainants or respondents and receive special training on impartiality

Initiating the Investigation

- When a school begins an investigation, it must provide both the complainant and respondent with notice
 - Schools Grievance Process
 - Include the informal resolution option in the initial notice
- Initial Notice must contain:
 - Key details of alleged sexual harassment of incident (date/location; alleged misconduct; who was involved)
 - Statement that the respondent is presumed not responsible and can only be found to be responsible following investigation process

Initial Notice

- Initial Notice must also contain:
 - Parties are entitled to an advisor of their choice
 - Can be attorney but does not have to be
 - Parties may request to inspect and review all evidence
 - Must contain information regarding prohibition against providing false statements or providing false evidence
- Initial Notice **must** be provided prior to the initiation of an investigation, and give respondent sufficient time to prepare before an investigatory interview

Mandatory Dismissals of Complaints

- A school must dismiss a complaint if:
 - Conduct described does not meet definition of sexual harassment;
 - Conduct alleged did not occur in the school's education program or activity;
 - Conduct alleged did not occur in the United States

Discretionary Dismissals

- A school **may** dismiss a complaint or some allegations if:
 - Complainant wishes to withdraw formal complaint or some allegations
 - If respondent is no longer enrolled or employed by school
 - Or if school is prevented from gathering evidence sufficient to reach a determination about allegations
- But may still proceed

Dismissal Process

- When a complaint is dismissed in its entirety or in part, the school must promptly send written notice of the dismissal and the reason for dismissal to the parties
- Both parties have a right to appeal this decision
- Must include appeal process in dismissal notice

Investigation

- Gathering Evidence:
 - Witness interviews and statements
 - Review of video footage
 - Review of screen shots that may be relevant
 - May review outside reports if they are provided, but school does not otherwise have right to access such reports (medical report, police report, etc.)
 - Any other evidence that either party provides
- Both parties must be given the opportunity to provide evidence, have access to an advisor, and participation of advisor for any meetings or hearings

Investigation Process continued

- School must provide written notice, including date, time, location, participants, and purpose of all hearings, **interviews**, or other meetings, with sufficient time for the party to prepare.
- School must also provide equal opportunity for parties and advisors to inspect and review evidence obtained by the school as part of its investigation if the information is directly related to the allegation raised in the formal complaint and a right to respond to the evidence

Investigative Report

- Must be prepared after investigation
- No requirement on length; but must summarize all steps taken during interview process
- Report cannot be issued until the evidence sharing has occurred
 - And parties given at least ten (10) days to respond to evidence in writing
 - If a written response to the evidence is provided, this must also be included in the investigation, and summary of such included in the report
- After these steps have occurred then report can be provided to the parties at least ten (10) days prior to the determination of any responsibility

Decision Making

- The decision-maker must:
 - Weigh the relevant evidence and decide whether it meets the school's standard of evidence for sexual harassment allegations
- Types of evidence:
 - Inculpatory – shows or tends to show a person's involvement in an act or evidence that can establish guilt
 - Exculpatory – evidence that shows a person's innocence

Relevance Determination

- Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the outcome
 - It will relate directly to the allegation, or a part of the allegation
 - Information protected by a privilege is not relevant (attorney-client privilege, etc.)

Credibility Determinations

- Decision-Makers must make credibility determinations:
 - Observe any inconsistencies in witnesses' statements (or consistencies)
 - Consider bias or motive to lie
 - Probability or improbability of occurrence given all of the facts/evidence

Decision

- Decision must be in writing and must include:
 - Portion of school's policy or policies that have been violated
 - Procedural steps taken to investigate and reach a decision
 - Finding of Fact
 - Conclusion section that relies on the facts and the relevant policy or policies (Title IX/Non-Discrimination Policy)
 - Statement and rationale for determination of responsibility
 - Disciplinary sanctions that school will impose on respondent and remedies available to complainant to restore or preserve complainant's access to education

Decision Continued

- Disciplinary sanctions that school will impose on respondent and remedies available to complainant to restore or preserve complainant's access to education
 - Remedies may include a one-way no-contact order that would prohibit participation in clubs and teams with the complainant
- A statement as to the rationale for any remedies for the complainant addressing how this remedies will restore or preserve equal access
- A statement of the school's procedures, a statement that there is a right to appeal, and the permissible basis for appeal

Decision

- Must be sent to both parties simultaneously with information regarding how to appeal
 - Must be in writing
 - Must include name and contact information of appeal officer (cannot be Title IX coordinator, investigator, or decision-maker)
- A decision is final if parties do not appeal or at the conclusion of the appeal process
 - School has discretion to set appeal deadlines
- Title IX coordinator is responsible for ensuring remedies stated within decision are carried out

Appeals

- Both parties have the right to appeal
- Appeals can be taken:
 - After dismissal before the grievance process whether mandatory or discretionary
 - After a final decision is made at the conclusion of the grievance process
- Appeals may be taken as the result of:
 - A procedural irregularity that affected the outcome
 - New evidence has been discovered that was not discoverable prior
 - A conflict of interest affected the outcome
 - Additional grounds determined by the school so long as they apply on an equal basis

Appeal Process

- If party files an appeal, then both parties must be notified in writing
- Both parties have opportunity to submit a written statement supporting or challenging outcome
- After reviewing written statements, the appeal officer must issue a written statement affirming or overturning the decision-makers decision
 - Written statement must be sent simultaneously to parties
- Following this written response – the decision is final

Record Keeping

- The following must be maintained for **seven (7) years**:
 - Records of investigation
 - Records of appeal and materials associated with appeal
 - Records of informal resolution process
 - Notices proceeding informal resolution
 - Records of materials used to train Title IX coordinators, investigators, decision makers, and any person who facilitates informational resolution processes
 - Records of supportive measures provided
 - Even when school offers supportive measures to complainant when the complainant declines supportive measures or declines formal complaint
 - Must also include statement as to why school was not deliberately indifferent in offering of supportive measures

Prohibition Against Retaliation

- No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX or its implementing regulations.

Retaliation

- Any person retaliated against can file a complaint with the school and the school shall have procedures in place for prompt and equitable resolution of complaints
 - Can be similar to Title IX investigation process
- Schools should keep the identities of parties and witnesses confidential, unless disclosure is required under other laws or is necessary to conduct grievance process

Retaliation Example

- If a school charges a person with code of conduct violation for purpose of discouraging the person from pursuing a sexual harassment report or formal complaint
- If a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as a sexual harassment allegation, that may be prohibited retaliation
- Deciding to enforce a rule against a complainant shortly after the Title IX complaint is filed, when the rule has not been enforced as against other students or the complainant in the past
- It is not retaliation for a school to punish someone for making a bad-faith statement during the Title IX grievance process

The Title IX Process Must be Free from Bias

- All Title IX Key Players must be trained on and act in a manner that is free from bias
 - All reports of harassment must be received and responded to under the school's relevant policies
 - Treatment of a complainant or respondent may constitute discrimination under Title IX depending on the response provided
 - Sex-Based biases, stereotypes, and generalizations should be examined and reflected upon during grievance process
 - **Examples: “Boys will be boys,” “That’s typical for middle school,” etc.**
 - Treatment of complainants and/or respondents due to gender-based stereotypes is discrimination under Title IX

Bias Continued

- Sexual harassment can occur even if complainant and respondent are of the same sex
- Sexual harassment can occur even if a prior relationship existed between the parties

Recap and To-Do List

- 1) Incident Report/Complaint received by Staff
- 2) Report reviewed by Title IX Coordinator
 - Note – all mandated reporting requirements, and reporting to law enforcement requirements still apply here
- 3) Title IX Coordinator promptly contacts complainant (if known) and parent or legal guardian (if applicable) to discuss
 - Supportive measures, and complainants wishes regarding the same
 - Process for filing a formal complaint
 - Review any other applicable policies in place

Recap and To-Do List

4) Implement immediate supportive measures

5) If a formal complain is received by the school from the complainant or complainant's parent/guardian:

- Review to determine if mandatory or discretionary immediate dismissal is appropriate
- If non-dismissal, remind complainant of grievance process and provide informal resolution process if appropriate

6) Notify respondent and respondent's parents of filing of the complaint; explain grievance process; offer any necessary supportive measures; discuss any interim-safety plans

Recap and To-Do List

7) Determine if either or both parties want to voluntarily engage in the informal resolution process. If so:

- Identify informal resolution facilitator (must be trained, neutral, and impartial)
- Provide information of informal resolution facilitator to both parties to ensure no objection
- Receive written consent that both parties are voluntarily engaging in this process; reminder that they may change their mind at any point prior to the conclusion of informal resolution process

Recap and To-Do List

8) If the parties do not wish to engage in the informal resolution process, then begin the formal investigation into the incident and issue the Notice of Investigation

- Determine who the investigator is and provide this information to parties in the Notice of Investigation

9) Title IX Coordinator to provide investigator with all relevant information including contact information for parties and any currently known witnesses

Recap and To-Do List

10) Investigator Collects all evidence, completes interviews, etc. and shares investigation report with parties simultaneously

- Parties are provided with ten (10) days to provide a written response
- Issue final investigation report after receiving any written responses and provide parties with final report at least ten (10) days prior to a hearing or exchange of written questions

11) Decision-maker to conduct hearing or render a decision after opportunity for exchange of written questions

Recap and To-Do List

- 11) Decision-Maker to draft outcome determination letter and deliver the letter to complainant and respondent at the same time
 - Outcome determination letter must include appeal rights
- 12) Implement corrective measures/remedies
- 13) Process Appeal if one is filed
- 14) Issue appeal decision and that the decision is final
- 15) Preserve all documents and reports, etc. for a period of seven (7) years

Scenario #1

Two female students have shared classes but are only informal acquaintances. Student A begins to text and email Student B after school hours to ask questions about their Geometry homework. The texts and emails are mostly ignored, but Student B does respond at times just to be polite. Student A begins to show up in the areas of the school that Student B frequents. These areas do not align with Student A's schedule, so Student B begins to feel that Student A is going out of her way to "run into her." Student B walks past Student A's Biology class one day and notes that Student A was staring at her. Student B checks her email and sees a message with no content, but the subject line reads "DTF?" It's from Student A. Student B is very uncomfortable with the thought of running into Student A and begins avoiding school altogether.

Scenario #2

An ex-girlfriend widely spreads false stories about the sex life of her and her ex-boyfriend. Stories are spread in person during unstructured times at school. The ex-boyfriend is clearly uncomfortable with this. He is anxious and embarrassed now when he's around other kids, concerned that the issue will come up. The ex-boyfriend is ostracized by other members of the boys' soccer team. These are students he used to consider some of his closest friends. He becomes distraught and reaches out to a trusted teacher. He provides screenshots of the content ex-girlfriend has posted and shares some of the stories that are circulating. He does not wish to pursue a complaint. He just wants her to stop.

Thank You

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