

Illinois Institute of Technology

**Title IX Regulations:
Informal Resolution Facilitator,
Investigator, and Anti-Bias Training**

August 17, 2021
Presented by Kendra Yoch

FRANCZEK

Copyright © 2021, Franczek P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This presentation is a publication of Franczek P.C. This presentation is intended for general informational purposes only and should not be construed as legal advice.

1

Anti-Bias

2

Title IX Requirements

01

Training on bias,
conflict of interest,
prejudgment
required

02

Bias, conflict of
interest,
prejudgment
prohibited

03

Appeal can be
based on improper,
biased/conflicted
investigator

FRANCZEK

3

What is Bias?

(noun) prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair

(verb) cause to feel or show inclination or prejudice for or against someone or something

FRANCZEK

4

Bias as a Shortcut



FRANCZEK

5

What is Implicit/Unconscious Bias?

(noun) bias that affects our understanding, actions, and decision in an unconscious, involuntary manner, often without awareness or control

FRANCZEK

6

Bias Myths Busted

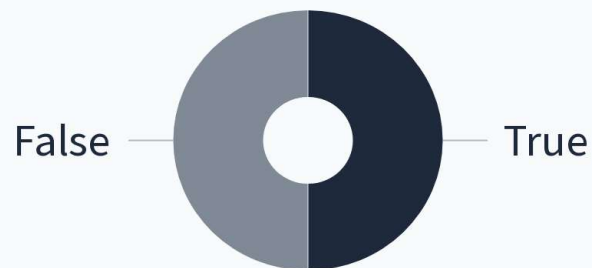


FRANCZEK

7

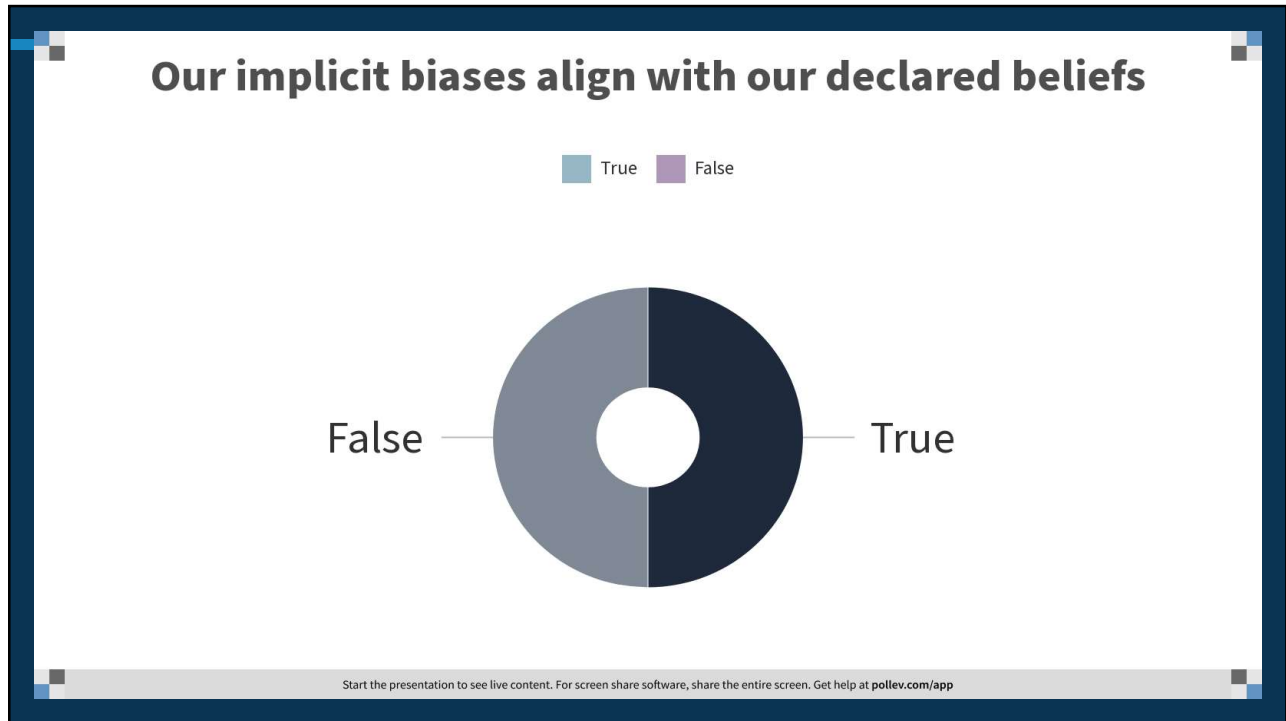
It is possible to get rid of all implicit and explicit bias in oneself

True A False B

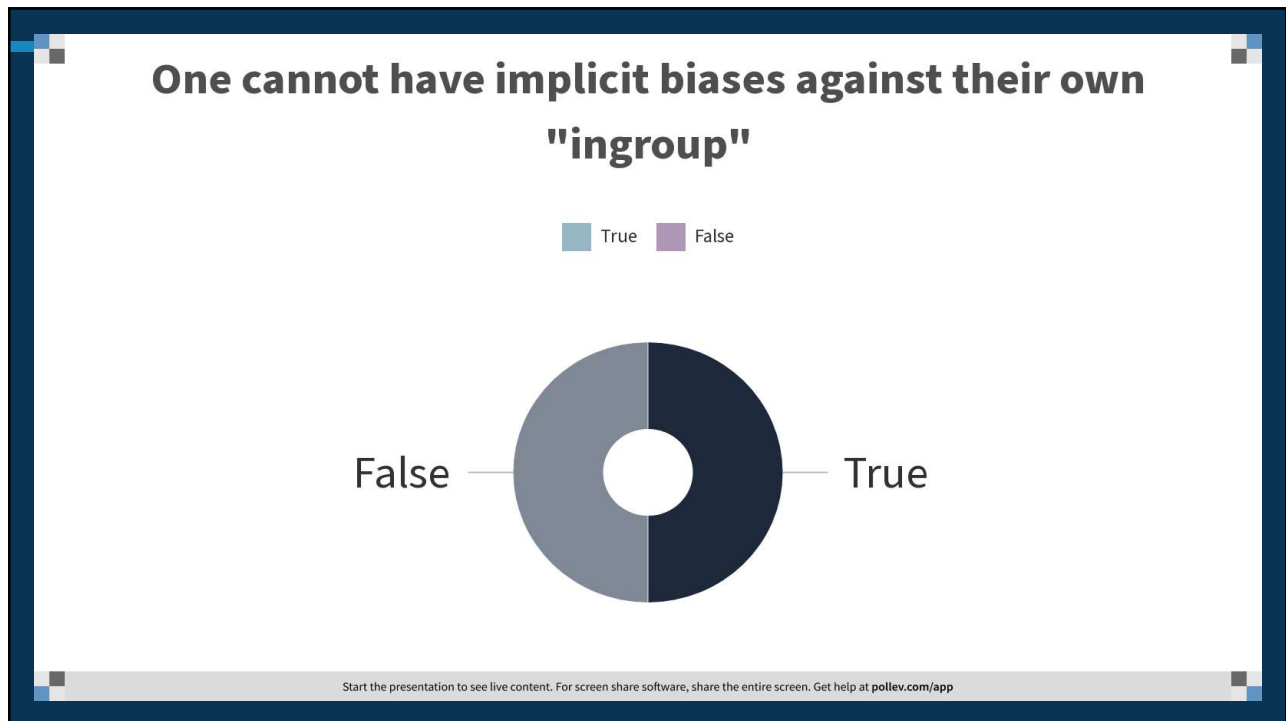


Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

8



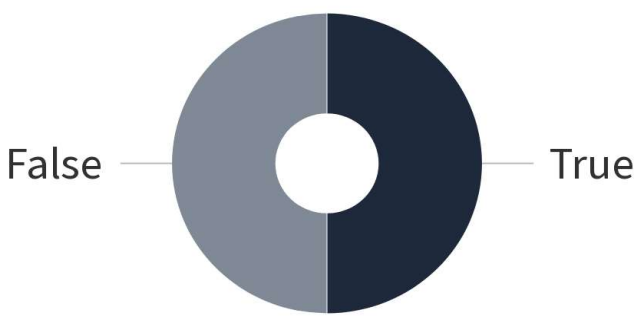
9



10

Implicit biases are malleable


■ True ■ False



Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

11

Bias Exercise



12

Circle of Six (<https://bit.ly/CircleofSix>)

	Race/Color/National Origin	Native Language/Accent	Gender/Gender Identity	Religion	Education Level
Best Friend					
Religious/Spiritual Leader or Mentor					
Physician					
Dentist					
Professional Mentor					
Educational Teacher or Mentor					

FRANCZEK

13

Bias in Title IX



FRANCZEK

14

Scenario – Charlie and Alex



FRANCZEK

15

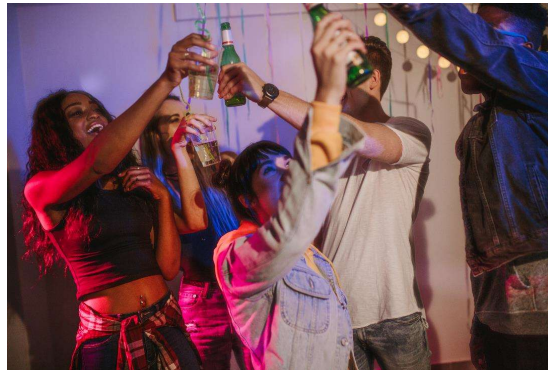
Scenario – Blair and Taylor



FRANCZEK

16

Scenario – Reese and Alex



FRANCZEK

17

Title IX Bias Risks

- Selective enforcement
- Ignoring impacts for members of special populations (race, culture, disability, LGBTQ+, etc.)
- Rush to judgment

FRANCZEK

18

Bias Reduction and Mitigation

- SPACE2
 - S**low down
 - P**erspective shift
 - A**sk yourself questions
 - C**ultural intelligence
 - E**xemplar identification
 - E**xpand your circle

FRANCZEK

19

Who Should Serve as an IRF?

- Trained Facilitator
- Neutral Party/Impartial/Unbiased
- No prejudgment of case
- Per Illinois Tech policy:
 - IRF cannot be involved in the investigation
 - IRF can be employee or third party contractor

FRANCZEK

20

Who Should Serve as an Investigator?

- 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

FRANCZEK

21

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....

FRANCZEK

22

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.

FRANCZEK

23

Conflict of Interest

- Flexibility to choose informal resolution facilitator
- Can use a school employee
- Can use an individual with a history of working in certain fields
- Caution against using generalizations to identify conflict of interest

FRANCZEK

24

Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Listen to facts presented
- You are not an advocate for either party

FRANCZEK

25

Sex Stereotypes

- Must not rely on sex stereotypes such as:
 - Women are "asking for it" based on actions or clothing
 - Men cannot be sexually assaulted
 - Women only decide they were assaulted after the fact due to regret or embarrassment
 - Men are more likely to be sexual aggressors
- Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity

FRANCZEK

26

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

Yes No

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

27

You and Respondent's mother went to college together. Is that a conflict of interest?

Yes No

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

28

You have a history of working as a defense attorney. Is that a conflict of interest?

Yes No

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

This slide features a dark blue border and a white background. The question is centered at the top in a bold, black font. Below the question is a large, empty rectangular area for responses, with a thin blue line forming the top and left sides of a box. At the bottom of this area, the words 'Yes' and 'No' are centered. A light blue footer bar at the very bottom contains small text and a URL.

29

You are the ADA compliance officer. Is that a conflict of interest?

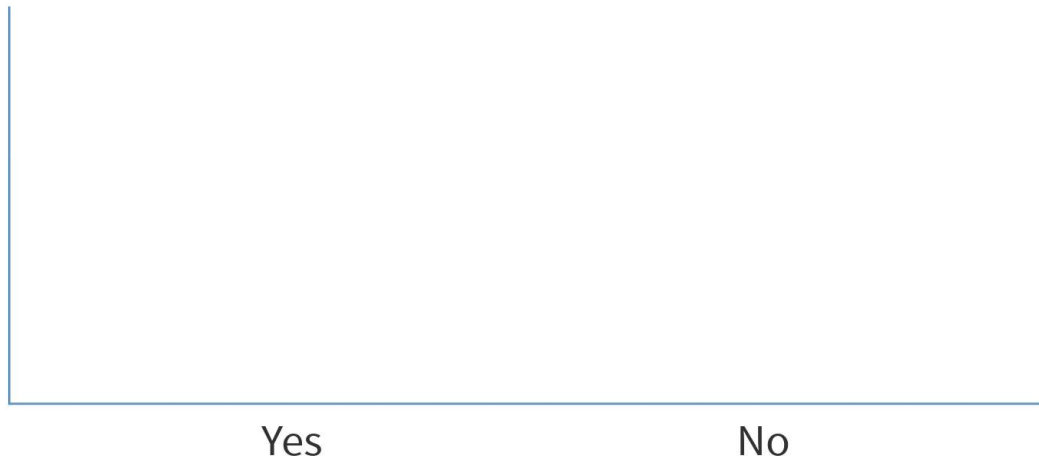
Yes No

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

This slide is identical in layout to the one above, with a dark blue border and white background. The question is centered at the top in a bold, black font. Below the question is a large, empty rectangular area for responses, with a thin blue line forming the top and left sides of a box. At the bottom of this area, the words 'Yes' and 'No' are centered. A light blue footer bar at the very bottom contains small text and a URL.

30

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



31

What Might be Bias, Conflict, Prejudgment?

- Discouraging a party from submitting certain evidence
- Using terms like "victim" (even if used in Clery)
- Permitting credibility inferences or conclusions based on party status

FRANCZEK

32

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

FRANCZEK

33

What Likely Is Not...

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

FRANCZEK

34



35

Informal Resolution

36

What is Informal Resolution?

- Informal method to settle formal complaints of Title IX Sexual Harassment
- Can be offered
- Must be offered consistently

FRANCZEK

37

When Can IR be Offered?


- Can only be used when formal complaint has been filed
- Cannot be used in cases of employee-on-student harassment
- Can only be used if each party has given informed, written consent (cannot ever be required, indirectly or directly)

FRANCZEK

38

WHY ALLOW IR?

39



When is IR most useful? | No Competing Factual Narratives

40

Robin's Report

- Report from an RA
- Robin, a freshman, rooms with Cameron, another freshman. Cameron told Robin that another student, a senior, Parker, had been sending inappropriate email messages to Cameron.

FRANCZEK

41

Robin's Report

- Robin encouraged Cameron to report, but Cameron refused
- Robin was talking to another student, Peyton, at a party last weekend. Peyton reported also receiving inappropriate messages from Parker.

FRANCZEK

42

Robin's Report

- Because this seemed like a pattern, Robin felt the need to report.
- The emails began with requests for dates but evolved into name calling (slut, skank), rambling comments about the recipient's "obvious" desire for Parker, and incessant requests for connection.
- Cameron and Peyton are not interested in filing a formal complaint.

FRANCZEK

43

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

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

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

No, because Cameron has not filed a formal complaint

No, because sexual harassment cannot be addressed through face-to-face informal resolution

Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

44

Types of Informal Resolution

- Restorative Justice
- Mediation
- Consider: Face to Face?

FRANCZEK

45



Required & Recommended Notices

- **Notice of allegations + existence of IR process (by Investigator w/in 7 calendar days per policy)**
- **Offer of informal resolution (with impacts of participation)**
- **Notice of end of informal resolution without agreement**
- **Notice of successful informal resolution**

46

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))

FRANCZEK

47

Notice of Impacts of Participation in IR Process

- Can withdraw and return to investigation process before resolution
- Neither party can ask for investigation to resume after resolution
- Records will be maintained for 7 years
- Other impacts of participation

48

Other Impacts of IR Process

- Can IR Facilitator testify against the parties at a later hearing?
- Can facts be used against the parties at a later hearing?

49

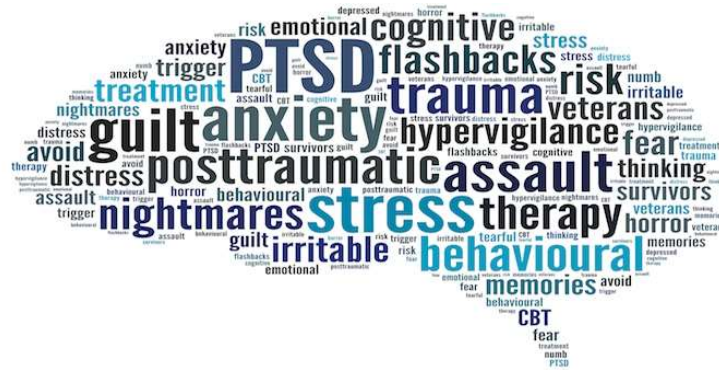
The Mediation Process

- Introductions
- Information Collection
- Problem Identification
- Brainstorming Solutions
- Brokering the Deal
- Agreement

FRANCZEK

50

Potential Trauma for CP and RP



FRANCZEK

51

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 the importance of an even-handed process

FRANCZEK

52

Introductions

53

Illinois Tech IR Process

- Meet with each party separately
- Describe process
- Gain understanding of feelings, positions, wishes
- Gather necessary information
- Then, separate or join meetings

FRANCZEK

54

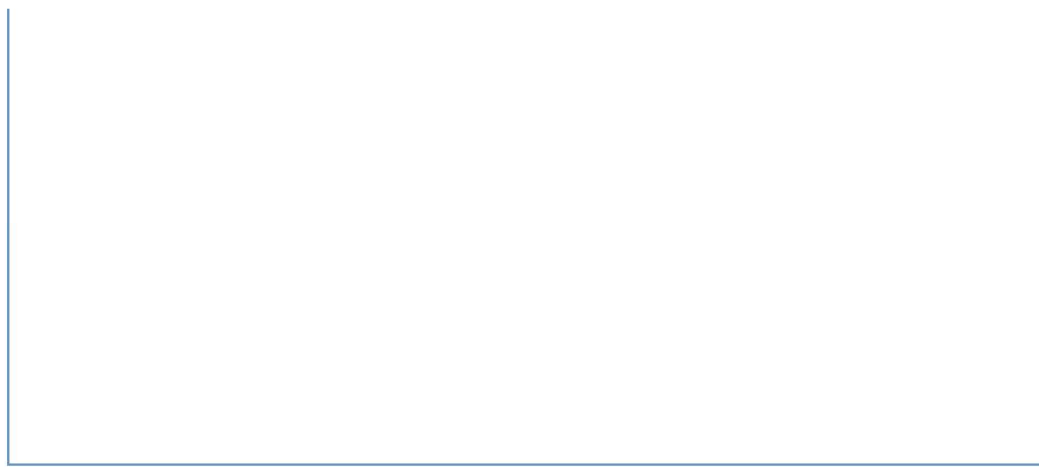
Critique an Introduction



FRANCZEK

55

Critique a Mediation: Introduction Content



Good

Not Good

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

56

Critique a Mediation: Delivery of Introduction

Good Not Good

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

57

Brainstorming Solutions

58

Brainstorming Ideas

- Don't shut down ideas
- Write down all ideas
- Suggest, but don't advocate
- Discuss pros/cons and possibility of solution working

FRANCZEK

59

Brainstorming Ideas

- "What solution would allow you to feel comfortable settling the complaint?"
- "If the other party were to offer x , would you be willing to offer anything in return?"
- If a party refuses to make further offers, ask questions to understand why

FRANCZEK

60

What types of solutions might you brainstorm for Cameron and Parker?

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

61

What types of solutions might you brainstorm for Cameron and Parker?

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

62

Illinois Tech Policy Examples

- Participation in educational programming;
- Changes in academic, work, and living arrangements;
- Assistance with requesting academic allowances and extensions;
- Writing an impact statement;
- Writing a statement acknowledging harm caused; and
- Restrictions of contact between the parties.

FRANCZEK

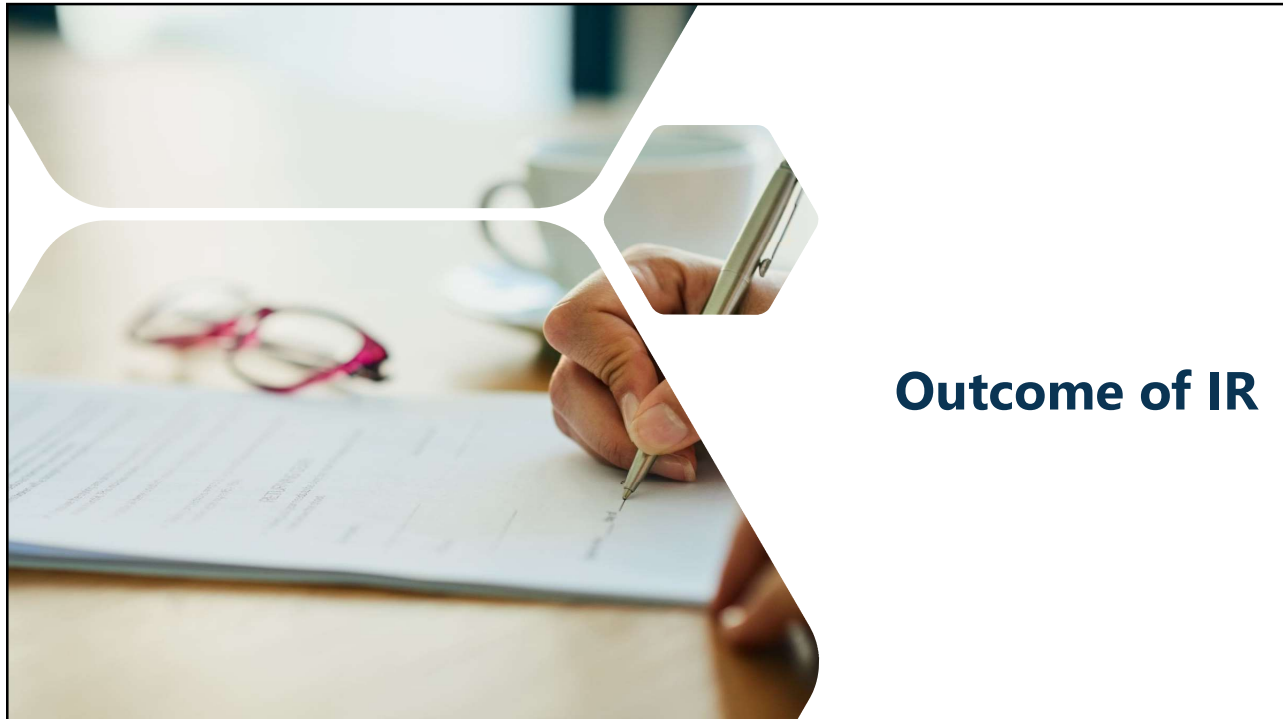
63

Length of Informal Resolution

- Will vary depending on complexity
- Per Illinois Tech Policy:
 - 30 calendar days, but extensions will be warranted in many cases
 - Obtain written agreement to extensions from all parties
- Keep the Title IX Coordinator apprised of progress

FRANCZEK

64



65

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

Yes, if Parker fails to comply with the terms

Yes, but only for allegations not resolved in informal resolution

No, because you can only recommence an investigation before a resolution is reached

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

66

Role of Institution If Agreement Reached

- Agreement is between the parties; institution is not a party
- IR Facilitator can:
 - Act as intermediary
 - Make suggestions, evaluations
 - Help with drafting document

FRANCZEK

67



68



69



70

Investigations

71

Agenda

- Investigator Responsibilities
- Investigation Requirements & Best Practices
- Sharing Evidence and the Investigative Report
- Understanding “Relevant Evidence”
- Recordkeeping

FRANCZEK

72

Investigator Responsibilities

- Identify and interview parties and witnesses
- Gather and assess evidence
- Share evidence with parties and provide for written response
- Draft and transmit investigative report

FRANCZEK

73

Example Report

FRANCZEK

74

Robin's Report

- Report from an RA
- Robin, a freshman, rooms with Cameron, another freshman. Cameron told Robin that another student, a senior, Parker, had been sending inappropriate email messages to Cameron.

FRANCZEK

75

Robin's Report

- Robin encouraged Cameron to report, but Cameron refused
- Robin was talking to another student, Peyton, at a party last weekend. Peyton reported also receiving inappropriate messages from Parker.

FRANCZEK

76

Robin's Report

- Because this seemed like a pattern, Robin felt the need to report.
- When asked for details about the types of messages, they began with requests for dates but evolved into name calling (slut, skank), rambling comments about the recipient's "obvious" desire for Parker, and incessant requests for connection.

FRANCZEK

77

Is the conduct alleged Title IX Sexual Harassment?

- Yes
- No - not severe
- No - not pervasive
- No - not objectively offensive

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

78

Don't Forget – 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.)

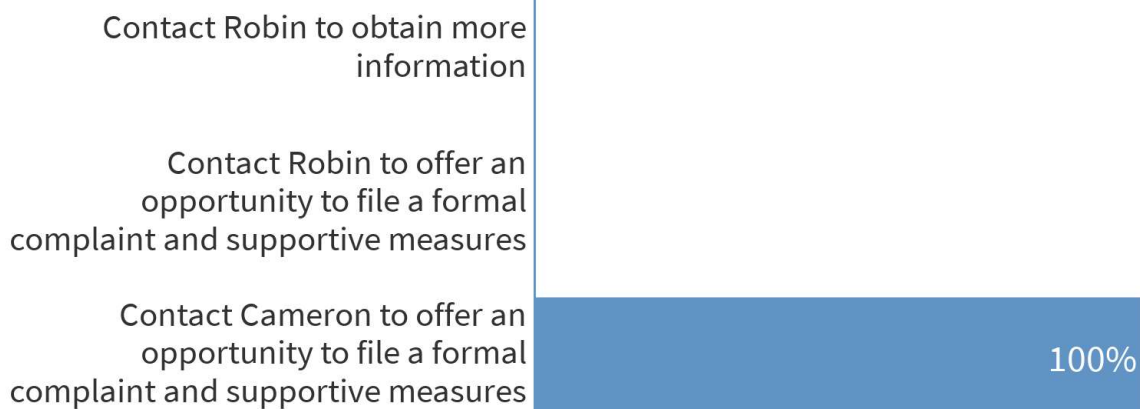
Codified: Severity and harm presumed

FRANCZEK

franczek.com

81

You think it's TIX SH.... What do you do next?



Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

82

Meeting with Cameron

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

FRANCZEK

83

Can you honor Cameron's confidentiality request ?

No, names must always be provided to the Respondent when a Complainant reports Title IX Sexual Harassment

No, because this situation warrants "signing" a formal complaint and Cameron must therefore be named

Yes, because respecting the autonomy and wishes of the Complainant is paramount under the new regulations

None of the above

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

84

Can you honor the request for a No Contact Order

Yes, even if it's unilateral

Yes, but only if it's mutual

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

85

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)

FRANCZEK

86

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))

FRANCZEK

87

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

FRANCZEK

88

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))

FRANCZEK

89

NEW: Cameron's Formal Complaint

- Cameron, a freshman, claims that another student, a senior, Parker, sexually assaulted Cameron in on-campus housing two weeks ago
- You receive the formal complaint and the written notices of Title IX allegations to the parties

FRANCZEK

90

Investigation Requirements & Best Practices

FRANCZEK

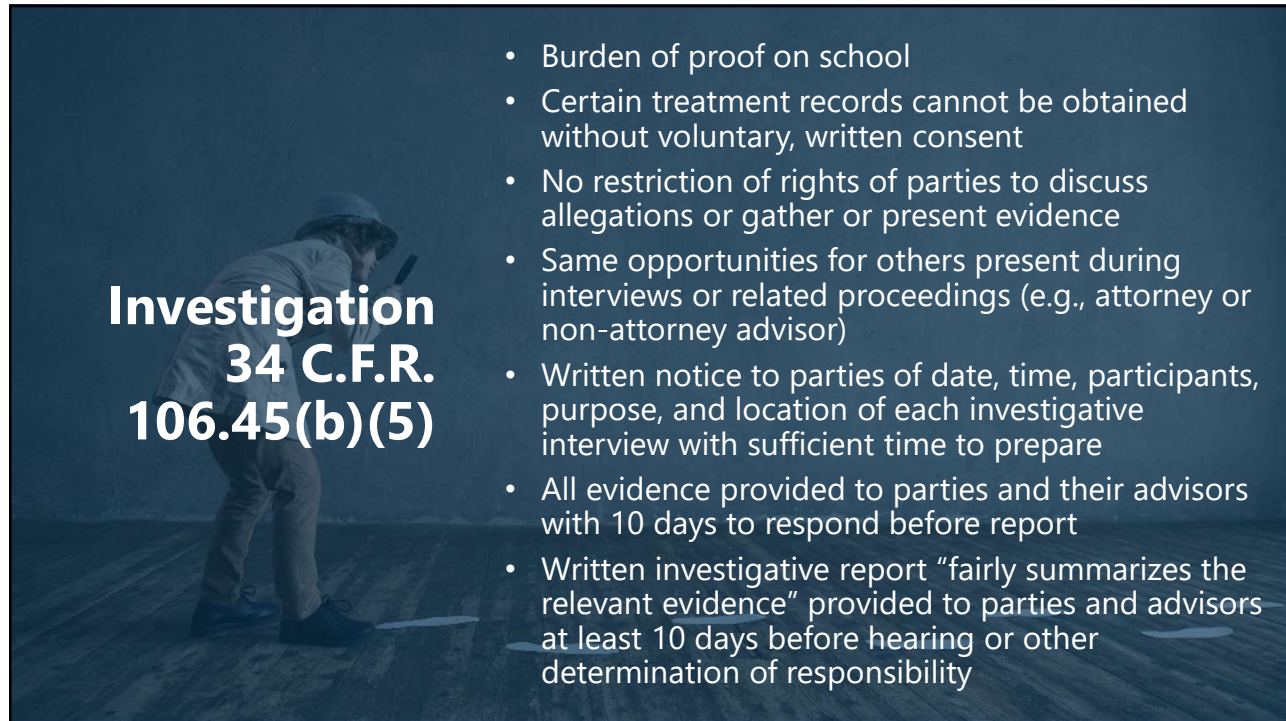
91

Investigation

- Must contain specific elements
- Must treat parties equally
- Must end in a report, followed by a hearing with live cross, a written decision from the decisionmaker, and the opportunity to appeal

FRANCZEK

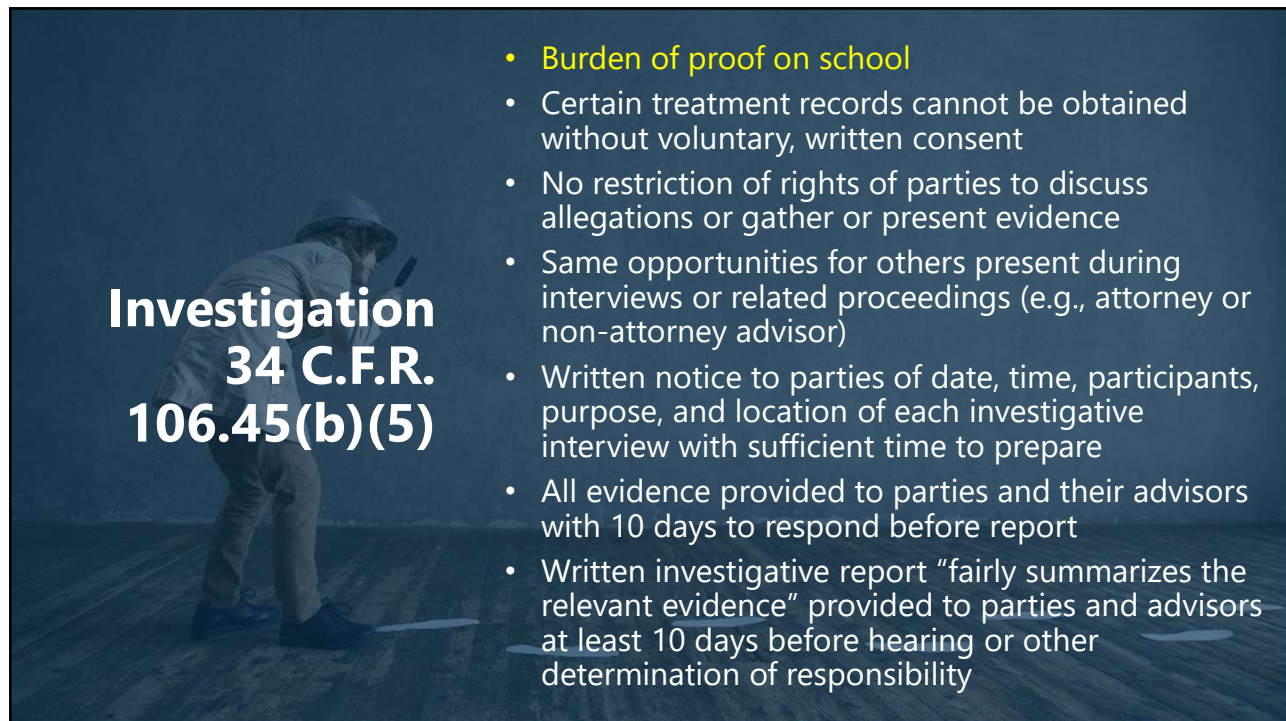
92



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

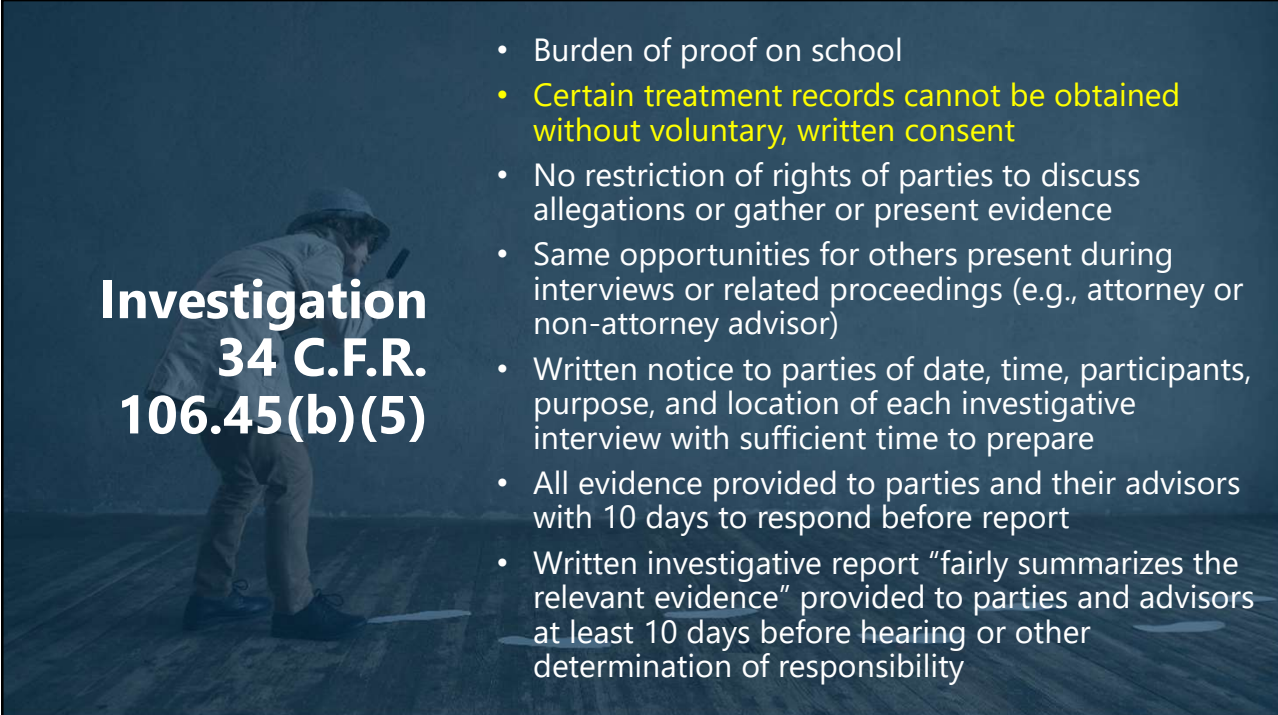
93



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

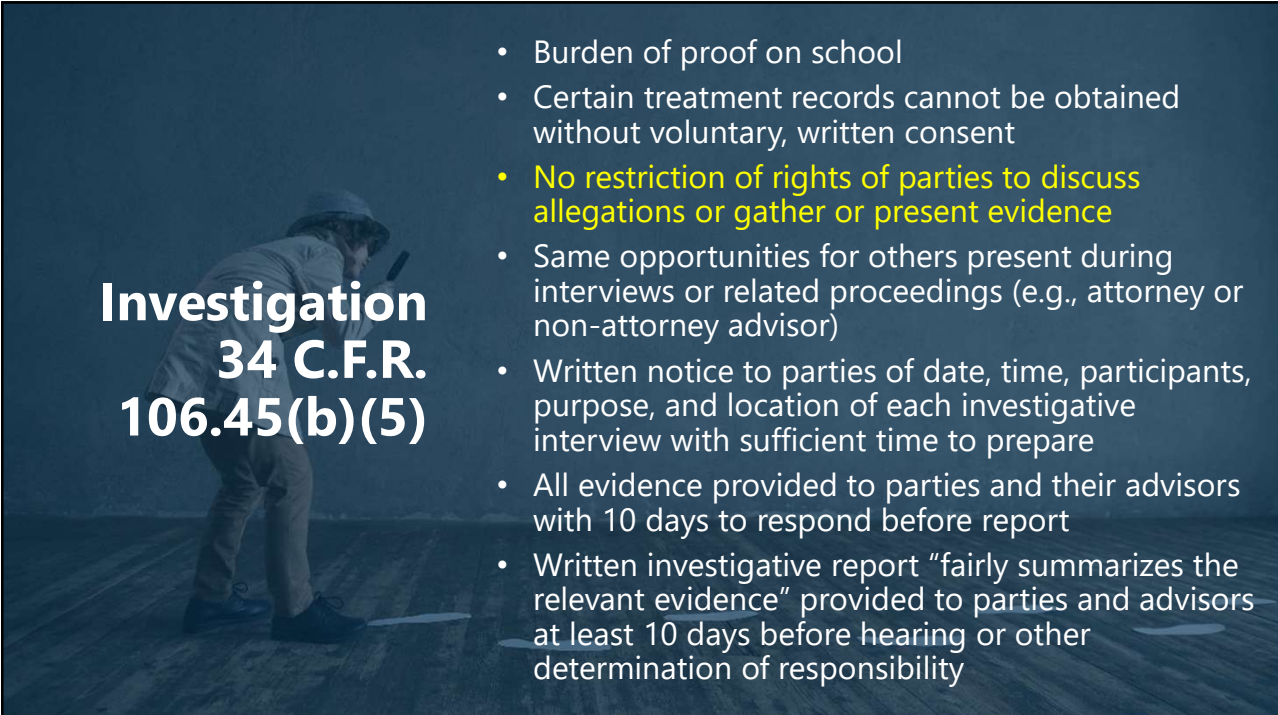
94



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

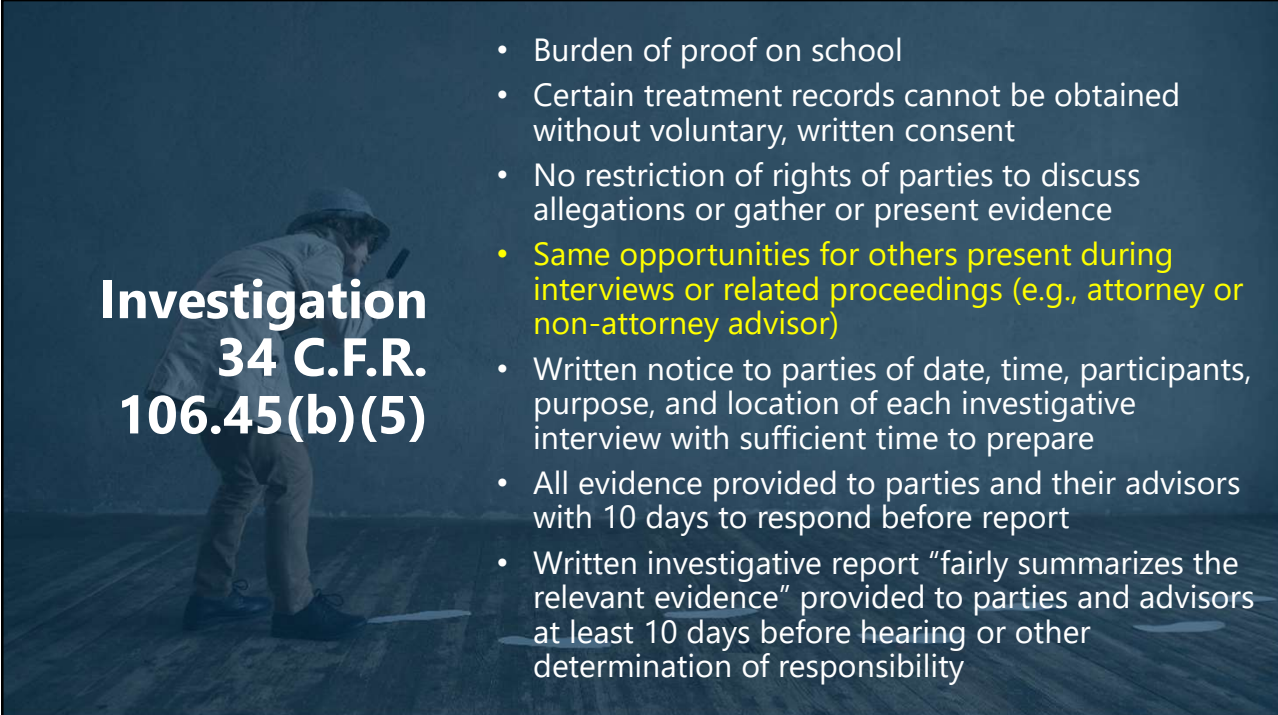
95



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

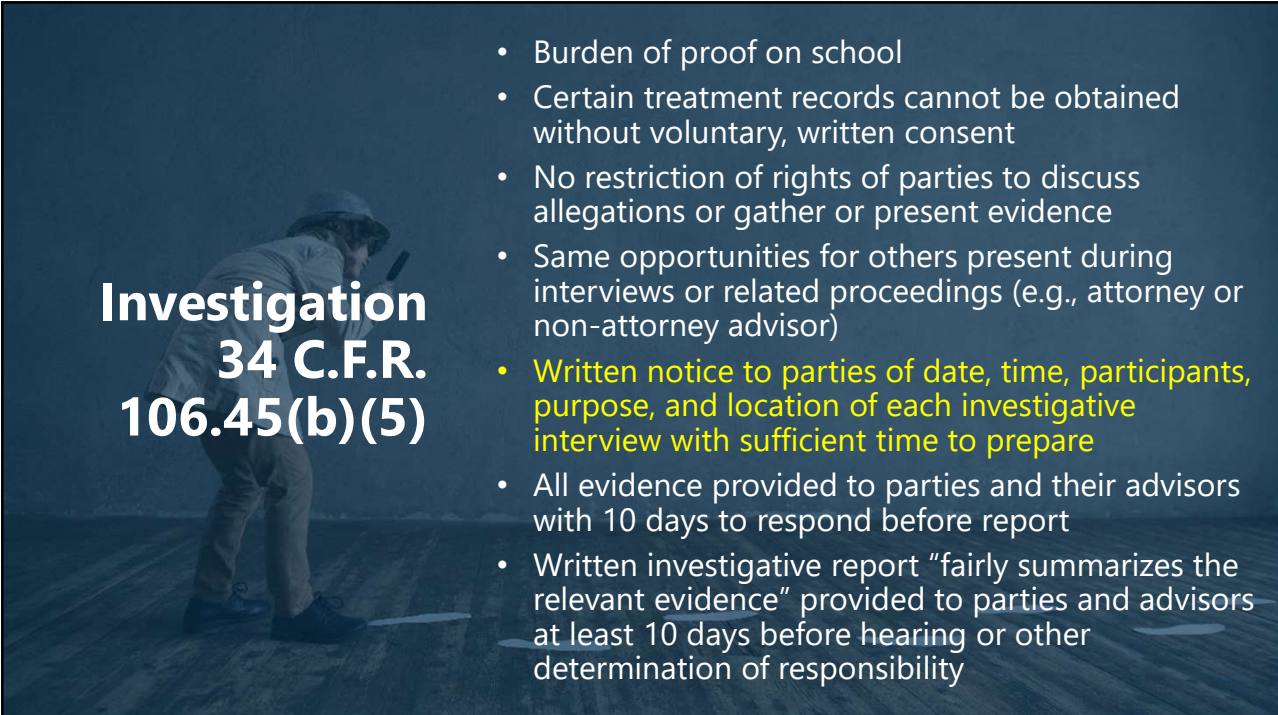
96



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

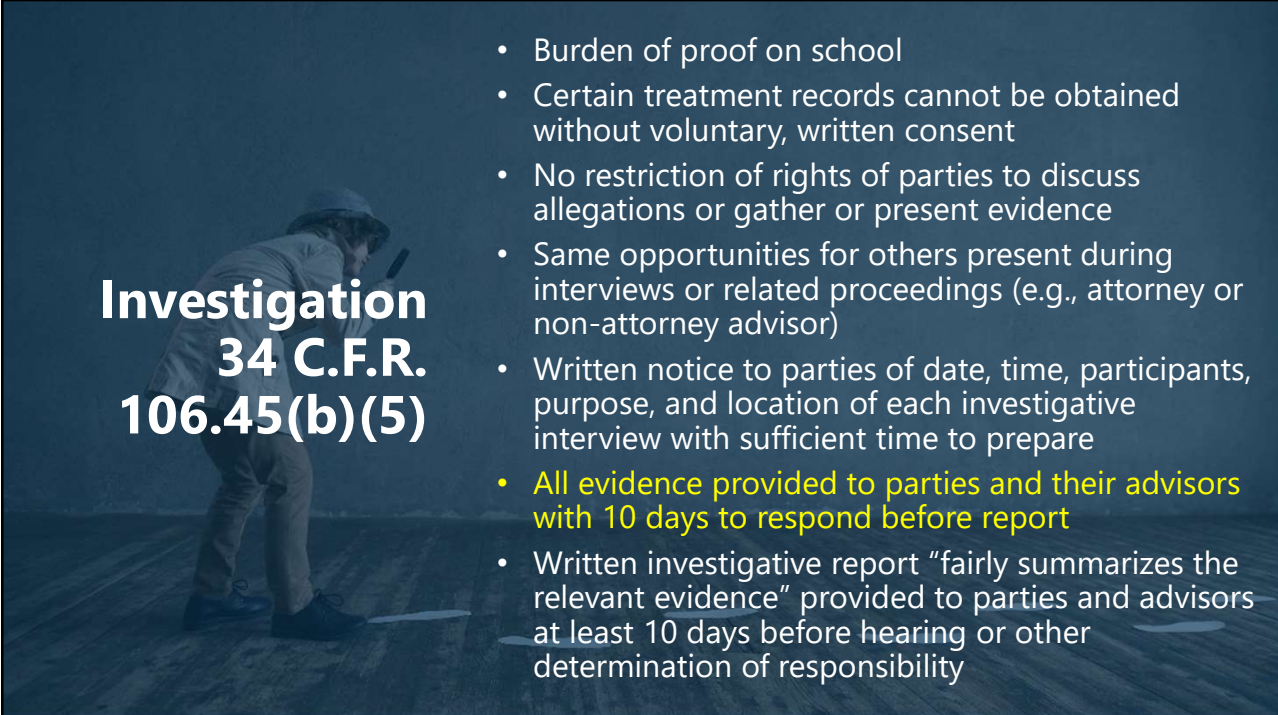
97



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

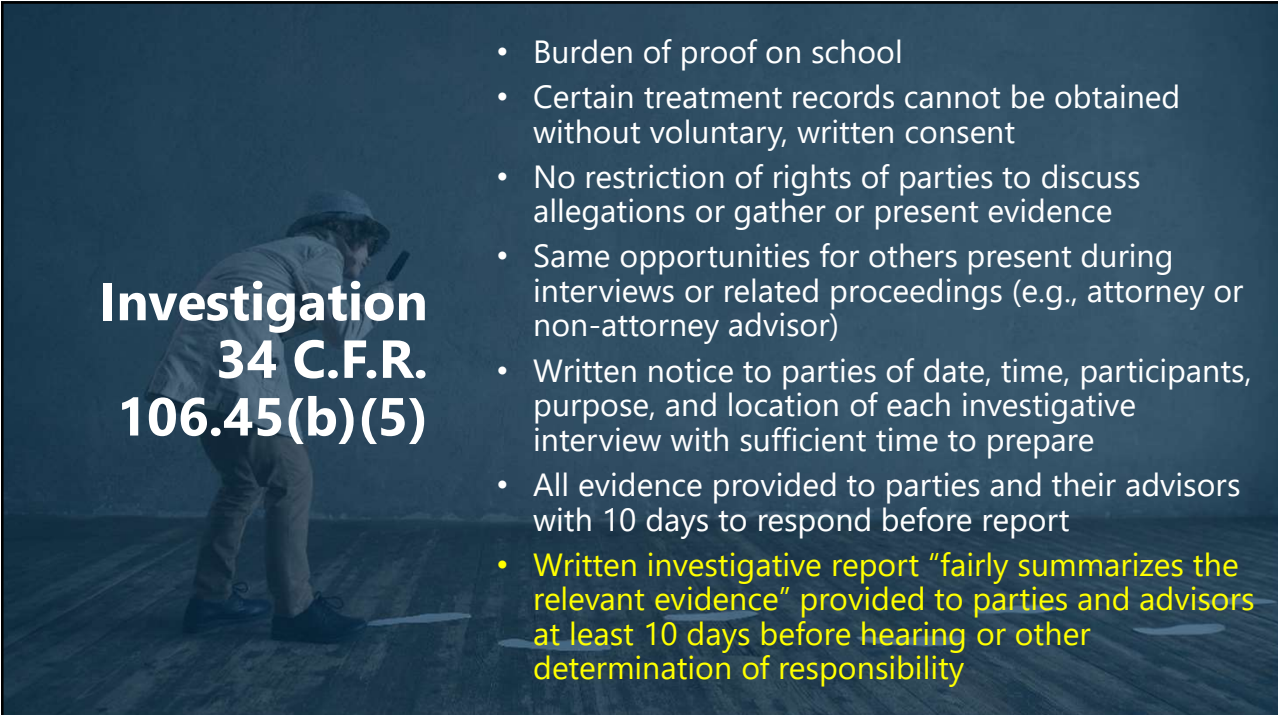
98



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

99



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**

100

The Investigation Plan

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



FRANCZEK

101

Cameron's Formal Complaint

- Cameron reports that the sexual assault occurred after a party. Bobbie and Ali, both students and were at the party.
- After the party, Cameron told Robin, Cameron's roommate, what happened. Cameron also talked to a professor, Dr. Smith.
- Cameron submitted to a police interview and SANE exam shortly after the incident.

FRANCZEK

102

Concurrent Law Enforcement

- Police plan to release evidence on a specific timeframe that is material to investigation
- Only “temporary” or “limited” allowed
- Not “more than briefly” beyond timeframes
- Not required

FRANCZEK

103

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

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

104



105

What is your order of interviews?

- Outcry Witness/Student - Robin
- Outcry Witness/Employee - Mr. Smith
- Complainant - Cameron
- Direct Witnesses/Students - Ali and Bobbie
- Respondent - Parker
- Police Witness
- Medical Witness

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

106

Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
- With sufficient time to prepare

Recommend same for witnesses (not required)

FRANCZEK

107

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))

FRANCZEK

108

Forms/Notices

Notice to Advisors

Advisor
Conduct
Expectations

FRANCZEK

109

Prefaces for Parties

- Your Identity and Role as a Neutral
- Notes and Records
- Allegations
- Process
- Role of Advisor
- Confidentiality
- Retaliation
- Rapport Building

FRANCZEK

110

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

FRANCZEK

111

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

FRANCZEK

112

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

FRANCZEK

113

Closing

- Anything else?
- Any questions?
- Advisor questions (if allowed)
- Encourage follow-up
- Process (again for parties)

FRANCZEK

114



117

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

FRANCZEK

118

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

FRANCZEK

119

119

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

FRANCZEK

120

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

121

How did the conduct affect you?

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

122

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?”

123

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

FRANCZEK

124

Scope of the Investigation

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



FRANCZEK

125

Gathering Other Evidence



126

Sharing Evidence and the Investigative Report

FRANCZEK

127

So the investigation is done....

- 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

FRANCZEK

128

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))

FRANCZEK

129

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 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

Start the presentation to see live content. For screen share software, share the entire screen. Get help at polllev.com/app

130

Investigation Report

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

FRANCZEK

131

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))

FRANCZEK

132

Investigation Report

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

FRANCZEK

133

Hearing and Decision

- Notice of Hearing
- Written determination (Franczek Form C - Written Determination Template)

FRANCZEK

134

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))

FRANCZEK

135

Understanding Relevant Evidence

FRANCZEK

136

Determining Relevance

- Evidence is generally considered relevant if it has value in proving or disproving a fact at issue
- Exceptions
 - Sexual behavior (except in limited situations)
 - Legal privilege
 - Treatment records

FRANCZEK

137

Rape Shield Law

- Exclude evidence of Complainant's prior 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

FRANCZEK

138

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

FRANCZEK

139

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
 - Confidentiality and trade secrets

FRANCZEK

140

Recordkeeping

FRANCZEK

141

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

CONFIDENTIAL

FRANCZEK

142

Interview Notes

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

FRANCZEK

143

Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

FRANCZEK

144



145

© Franczek P.C. 2021. These materials are not legal advice. These materials are subject to a LIMITED LICENSE AND COPYRIGHT. These materials are proprietary and are owned and copyrighted by Franczek P.C. As training materials used to train Title IX personnel, these materials must be posted publicly by any organization or entity that purchased training for its Title IX personnel using these materials on that organization or entity's website or, if it has no website, must be made available by any such organization or entity for inspection and review at its offices. Accordingly, Franczek P.C. has granted a LIMITED LICENSE to the organization or entity that lawfully purchased training using these materials (the "LICENSEE") to post these materials on its website or otherwise make them available as required by 34 C.F.R. 106.45(B)(10). The LICENSEE and any party who in any way receives and/or uses these materials agree to accept all terms and conditions and to abide by all provisions of this LIMITED LICENSE. Only the LICENSEE may post these materials on its website, and the materials may be posted only for purposes of review/inspection by the public; they may not be displayed, posted, shared, published, or used for any other purpose. Franczek P.C. does not authorize any other public display, sharing, posting, or publication of these materials by the LICENSEE or any other party and does not authorize any use whatsoever by any party other than the LICENSEE. No party, including the LICENSEE, is authorized to copy, adapt, or otherwise use these materials without explicit written permission from Franczek P.C. No party, including the LICENSEE, is authorized to remove this LIMITED LICENSE AND COPYRIGHT language from any version of these materials or any copy thereof. Should any party, including the LICENSEE, display, post, share, publish, or otherwise use these materials in any manner other than that authorized by this LIMITED LICENSE, Franczek P.C. will exercise all available legal rights and seek all available legal remedies including, but not limited to, directing the party to immediately remove any improperly posted content, cease and desist any unauthorized use, and compensate Franczek P.C. for any unauthorized use to the extent authorized by copyright and other law. These materials may not be used by any party, including the LICENSEE, for any commercial purpose unless expressly authorized in writing by Franczek P.C. No other rights are provided, and all other rights are reserved.