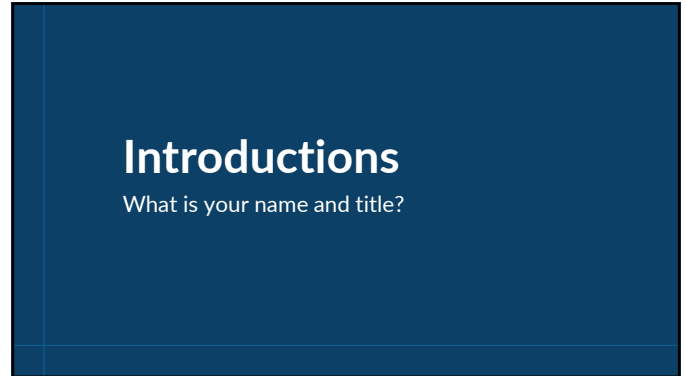
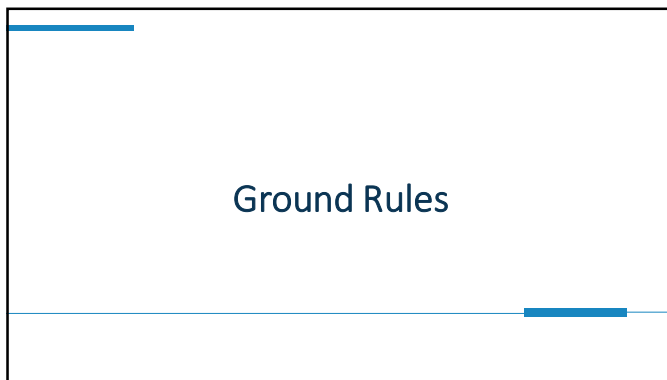




1



2



3



4



5



6

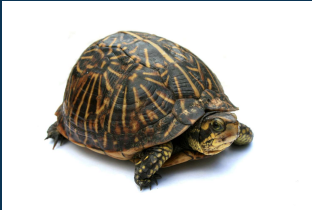
Why Are We Here?

7

Know the Rules

8

New Rules?



9

U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity

DATE: 8/1/2023
 Contact: Press Office, (202) 401-1576, news@ed.gov

The U.S. Department of Education's Office for Civil Rights today issued a [notice of interpretation](#) explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation, and (2) discrimination based on gender identity. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance.

The Department's interpretation stems from the landmark U.S. Supreme Court decision in *Dobson v. Clayton County*, issued one year ago this week, in which the Supreme Court recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.

"The Supreme Court has upheld the right for LGBTQ+ people to live and work without fear of harassment, exclusion, and discrimination -- and our LGBTQ+ students have the same rights and deserve the same protections. I'm proud to have directed the Office for Civil Rights to enforce Title IX to protect all students from all forms of sex discrimination," said U.S. Secretary of Education Miguel Cardona. "Today, the Department makes clear that all students—including LGBTQ+ students—deserve the opportunity to learn and thrive in schools that are free from discrimination."

10

Recognize Title IX Sexual Harassment and Related Misconduct

11



But not just any action, the right action for the conduct at issue!

12

Why is this so important?

13

- 1 in 5 women experiences attempted or completed sexual assault in college
- 20% of women and 10% of men are sexually assaulted in college
- 62% of women and 61% of men experience sexual harassment during college
- 21-38% of college students experience staff-perpetrated and 39-64.5% experience student-perpetrated sexual harassment

14

According to a 2017 report from the Justice Department, only **23 percent** of all sexual assaults are reported to the police.

15

Harassment and assault can have long lasting, detrimental effects on victims (Trauma)

16

Effects on Individuals

Poor performance in school

- Stress
- Disengagement
- Fear
- Distraction
- Anger
- Mistrust
- Conflict
- Lost Opportunities
- Acting out
- Absenteeism
- Drop-out
- Suicide
- ANXIETY
- DEPRESSION
- PTSD

17

Effects on Teams

- Decreased focus
- Lost productivity
- Withdrawal
- Neglect
- Absenteeism
- Malingering
- Lack of trust in leadership
- Turnover



18

*Unfair processes can
have
long lasting,
detrimental effects on
the accused*

19

Mattress Protest and Its Aftermath

Case of alleged rape at Columbia first yielded much sympathy for the accuser and her unusual protest, but ends with the university apologizing to the accused. The case has had a lasting impact on the discussion of sexual assault on campus.

By [Jeremy Bauer-Wolf](#) // July 24, 2017

20



Harassment Is Illegal
Including Sexual Harassment

21

ED Office for Civil Rights (OCR)



FRANCZEK

franczek.com

22

You could be responsible.

23

Thumbs Up or Down

Have you been directly involved in a Title IX complaint during your time at the Institution?

24

What is Title IX?

25



26

What falls under Title IX?



FRANCZEK

franczek.com

27

Title IX Statute

(20 U.S.C. §§ 1681-1688)

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

FRANCZEK

franczek.com

28

Title IX Regulations

(34 C.F.R. Part 106 – Amended as of 8/14/2020)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
 - Policy
 - Detailed Grievance procedure
 - Designation of Title IX coordinator(s)
 - Many many requirements

FRANCZEK

franczek.com

29

Other Applicable Laws

30

```

    graph TD
      subgraph Employment
        E1[• Illinois Human Rights Act]
        E2[• Title VII]
        E3[• Title IX]
        E4[• Clery Act/Violence Against Women Act]
      end
      subgraph Students
        S1[• Illinois Human Rights Act]
        S2[• Preventing Sexual Violence in Higher Education Act]
        S3[• Title IX]
        S4[• Clery Act/Violence Against Women Act]
      end
  
```

31

How Does Clery/VAWA Relate to Title IX?

- Contains policy and procedural requirements for addressing complaints of domestic violence, dating violence, sexual assault, and stalking
 - Timely warnings, emergency notifications
 - Requirements following a report
 - Broader AND narrower than Title IX
- ASR and other reporting
- Prevention requirements

32

What Does VAWA Require?

- Specific requirements for policies and procedures, including:
 - Description of disciplinary proceedings
 - Steps, anticipated timelines, and decision-making process
 - How to file a complaint
 - Standard of evidence
 - List of all possible sanctions and description of protective measures
 - Prompt, fair and impartial process
 - Conducted by individuals who receive annual training
 - Advisor of choice
 - Various written notification requirements, including:
 - Written notification about options for accommodations and protective measures
 - Simultaneous notification to parties of certain results

33

Required Programming Under VAWA

- Primary prevention and awareness programs for all incoming students and new employees
- Ongoing prevention and awareness campaigns for students and employees
- Range of topics, including definitions of prohibited conduct, resolution procedures, possible sanctions and protective measures, and available resources and options

34

Illinois Preventing Sexual Violence in Higher Education Act

- Comprehensive policy and procedure concerning sexual violence, domestic violence, dating violence and stalking
 - Several required components
- Written explanation of rights and options to survivors
- Confidential Advisors to survivors
- Training requirements

35

Additional Requirements

- Offer students options to make reports in various ways, including anonymously
- Respond to electronic report within 12 hours
- Define consent in policy
- Participate in campus-wide or regional task force
- Annually report data

36

When Must the Institution Respond to Sexual Harassment?

37

It Depends Who [Well, Which Law] You Ask

Employment

- Illinois Human Rights Act
- Title VII
- Title IX
- Clery Act/Violence Against Women Act

Students

- Illinois Human Rights Act
- Preventing Sexual Violence in Higher Education Act
- Title IX
- Clery Act/Violence Against Women Act

38

When must a school respond to Title IX sexual harassment?

A recipient with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond promptly and in a manner that is not deliberately indifferent.

39

Actual Knowledge - Official with Authority



- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures on behalf of the recipient

FRANCZEK

franczek.com

40

Official with Authority – Illinois Tech Policy

- Under Illinois Tech's Policy, "Officials with Authority" are defined to include "any official designated by Illinois Tech to have authority to institute corrective measures on behalf of the institution, specifically:
 - President
 - Provost
 - Vice Presidents and Provosts
 - The Title IX Coordinator and the Office Personnel, Academic Deans, Department Chairs
 - Student Affairs and Residential L Directors
 - Athletic Directors
 - Director and Assistant Directors of Public Safety."

FRANCZEK

franczek.com

41

Title IX Actual Knowledge

1. Sense
2. Report

42

Reporting Sexual Harassment: Who, How and When?

- Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
- Or by any means that results in the Title IX Coordinator receiving the person's report
- Such a report may be made at any time, including during non business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator

43

Key Word: "Allegation"

Once a school has notice of an **allegation** that, if true, would constitute sexual harassment, it must respond

"Well, we didn't believe there was enough evidence it happened" does not get you past your responsibility to use your Title IX procedures

44

What about VAWA/Clery Act?

- CSA = "campus security authority"
 - Special designation under Clery Act
 - Designed to facilitate crime reporting in annual report
- WHO?
 - Anyone with responsibility for campus security
 - Anyone to whom crimes can be reported
 - Anyone with "significant responsibility for student and campus activities" (housing, discipline)
 - Excludes pastoral/professional counselors
- CSA *may* be considered an "official with authority" under Title IX such that notice to that person constitutes actual knowledge

45

Campus Security Authority

The relevant titles and capacities are:

President, Provost and those designated to serve in the role of Associate or Assistant Vice Presidents/Provosts; academic deans, directors and department chairs, including those serving in associate or assistant roles; student affairs directors; residential life personnel, including resident advisors; Greek life coordinators; athletic administrators, including directors, assistant directors, coaches, assistant coaches and trainers; student activities coordinators; faculty and staff advisors to IIT recognized student organizations; academic advisors; and Public Safety staff.

46

Key Roles in Responding to Reports

- Medical providers
- Law enforcement
- Community/outside agencies

47

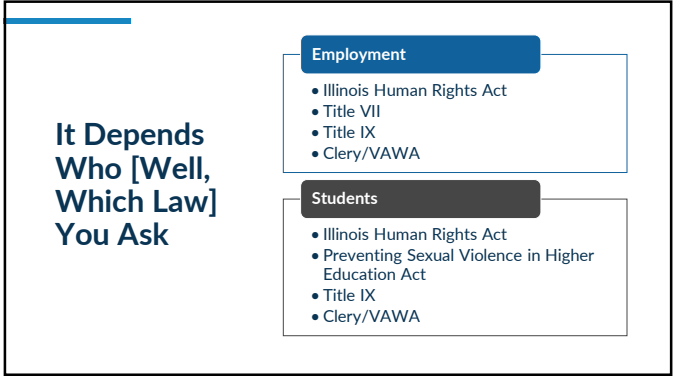
Involvement of Law Enforcement

- Complainant has the option to involve law enforcement, including:
 - Notifying law enforcement, including on-campus and local police
 - Request assistance from campus authorities
 - Decline to notify law enforcement or campus authorities
- Orders of protection, no contact orders, restraining orders

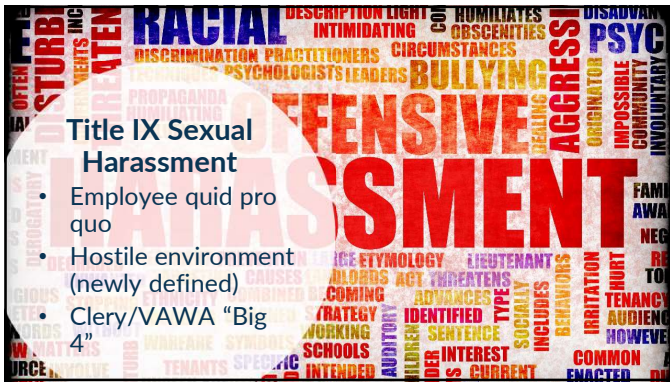
48



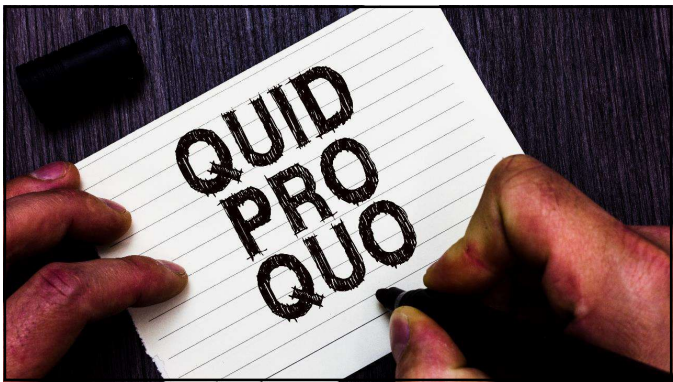
49



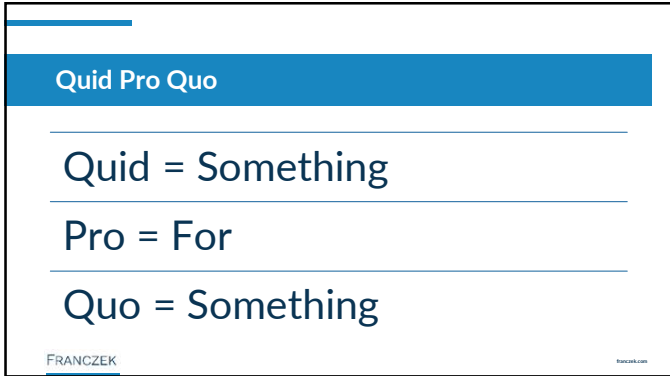
50



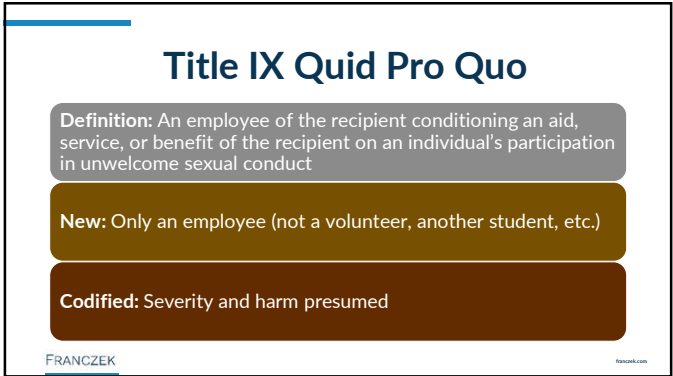
51



52



53



54

Clery/VAWA

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)

FRANCZEK

FRANCZEK.COM

55



Title IX Hostile Environment

56

Title IX – What is Sexual Harassment?

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)

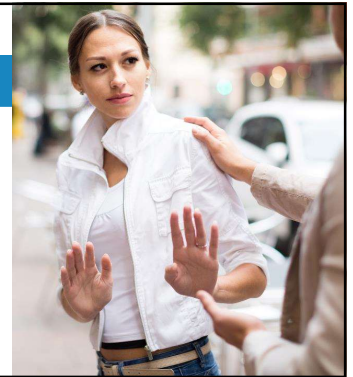
Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person's equal access to the recipient's education program or activity

57

Unwelcome Conduct

- Not **Consent**
- Not **Participation**
- Not **Silence**
- Age Matters
- Intoxication Matters
- Culture Matters
- Ability Matters

FRANCZEK



58

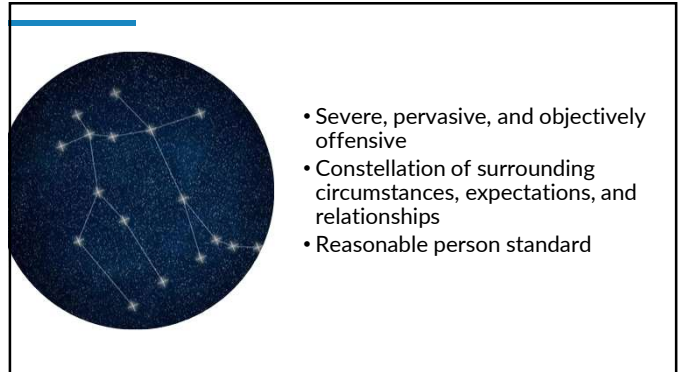
Unwelcome vs. Consent

- Consent under Illinois law
- Consent under your Institution's policy
 - Article IV, Section N of Student Code of Conduct
- Role of drugs and alcohol on ability to consent

FRANCZEK

FRANCZEK.COM

59



- Severe, pervasive, and objectively offensive
- Constellation of surrounding circumstances, expectations, and relationships
- Reasonable person standard

60



61

Hostile Environment Factors

- Context, Nature, Scope, Frequency, Duration, and Location of the Incidents
- Identity, Number, Ages, and Relationships of the Persons Involved

FRANCZEK franczek.com

62



63

Thumbs Up or Down

Is this severe, pervasive, and objectively offensive?

64



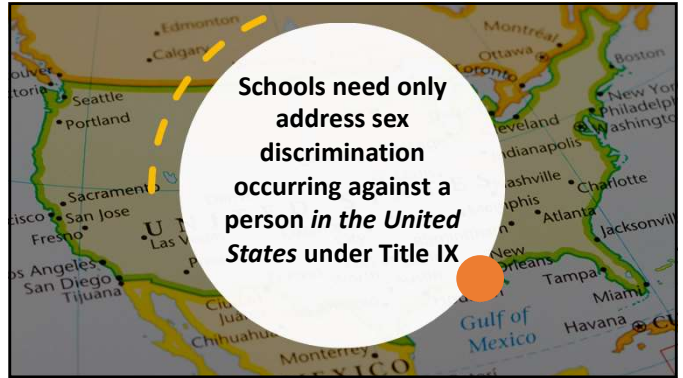
65



66



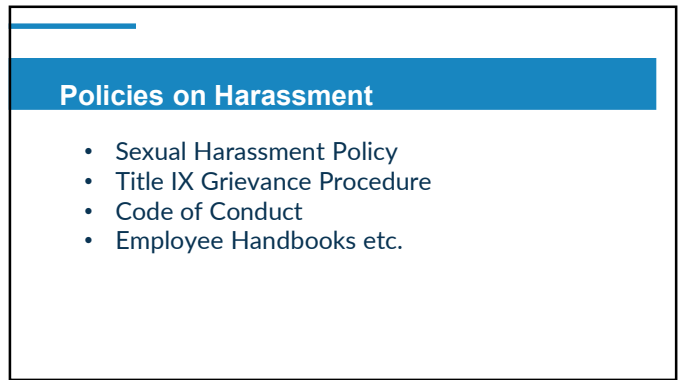
67



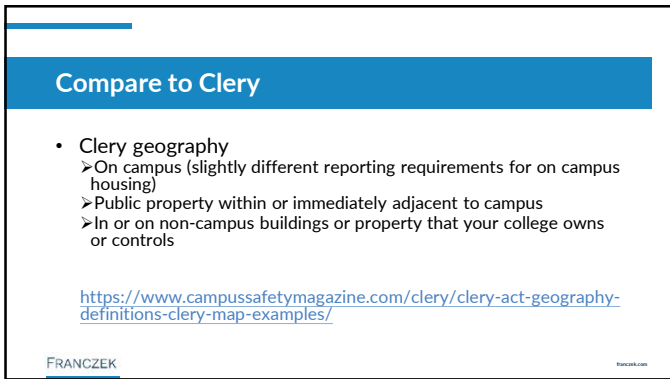
68



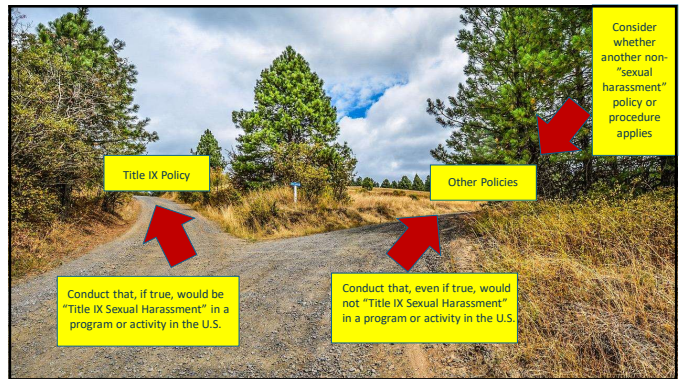
69



70



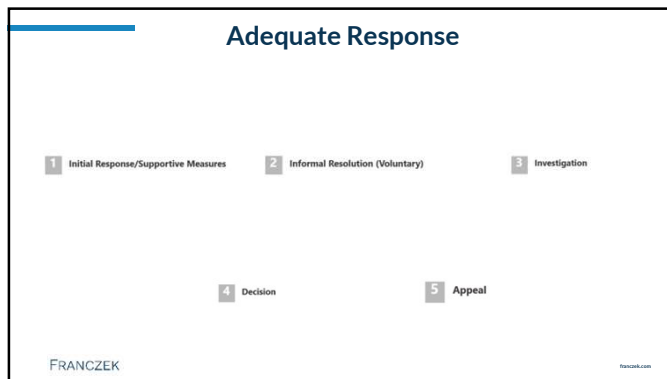
71



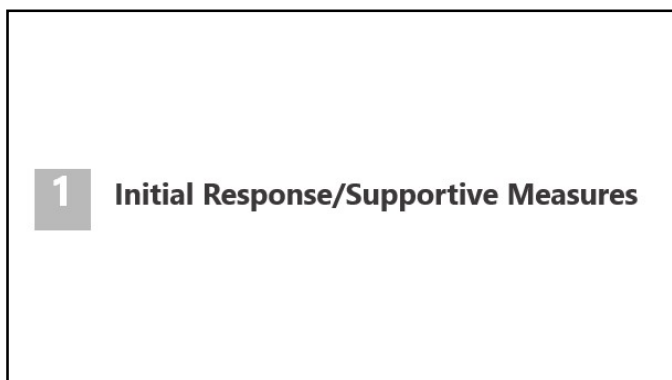
72



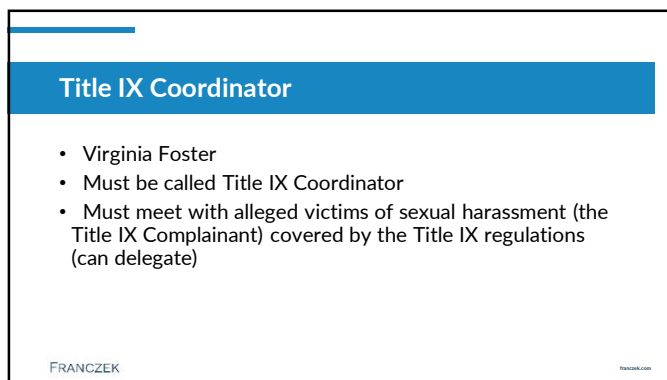
73



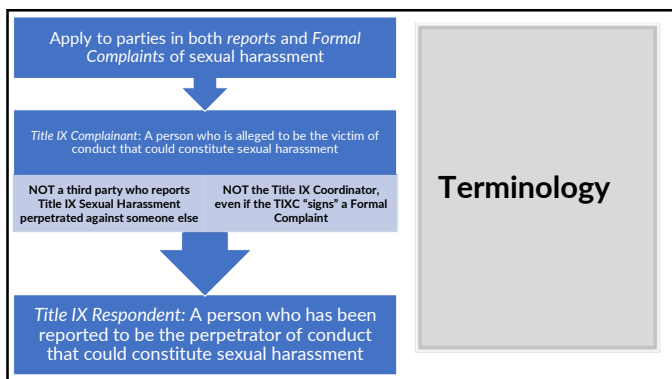
74



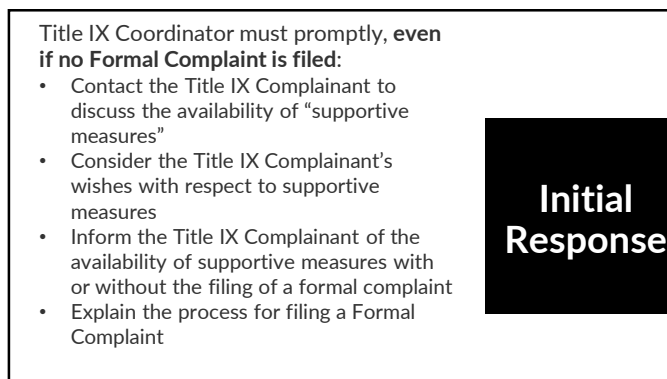
75



76



77



78



79



80

Supportive Measures What Changed?	OLD TERM (OCR Guidance)	NEW TERM (Final Rule)
		<ul style="list-style-type: none"> Used terms such as "interim measures" or "interim steps" to describe measures to help a complainant maintain equal educational access Implied only available during pendency of investigation, did not mandate offering them, not clear if could be punitive or disciplinary, and did not clarify if available to respondents

81



82

Clery Act Accommodations vs. Supportive Measures

- Complainant/victim must receive notification of existing and available options for available assistance in and how to request changes to:
 - Academic, living, transportation, and working situations
 - Protective measures
 - Legal and advocacy assistance
 - Visa and immigration resources

FRANCZEK

83

Clery/VAWA

- Notify Parties *in writing* of various items:
 - Standard of evidence
 - Steps survivors should follow after covered crime
 - Available rights and options internally and externally
 - How confidentiality will be preserved
 - Available resources on- and off-campus
 - Finding and sanctions (and rationale)

FRANCZEK

84

Emergency Removal/ Admin Leave

<p>Student immediate emergency removal (34 C.F.R. 106.44(c))</p> <ul style="list-style-type: none"> 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 Consider other laws 	<p>Employee administrative leave (34 C.F.R. 106.44(d))</p> <ul style="list-style-type: none"> Not prohibited Consider state law, board policy, handbooks, and bargaining agreements
--	--

85

Confidentiality

- Not required to maintain anonymity of Complainant after formal complaint is filed
- Both parties must be identified (if identity is known) in written notice of allegations
- Using party initials or withholding Complainant's identity is insufficient

FRANCZEK

86

2 Informal Resolution (Voluntary)

87

Informal Resolution

INFORMAL RESOLUTION IS NOT REQUIRED	NOT ALLOWED FOR EMPLOYEE -STUDENT	TIMING
<ul style="list-style-type: none"> Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure Both parties must voluntarily consent in writing 	<ul style="list-style-type: none"> Not available to resolve allegations that employee sexually harassed a student 	<ul style="list-style-type: none"> Cannot offer informal resolution process until formal complaint is filed Any time prior to reaching a determination, either party may request informal resolution Any party has a right to withdraw prior to agreement

FRANCZEK franczek.com

88



Informal Resolution Facilitators

- We do not recommend using the Title IX Coordinator or investigator(s) or decisionmakers (complaint and appeal)

89



Written Notice: Required

- To both parties
- In writing
- Allegations
- Requirements of informal resolution process (including circumstances under which the party cannot resume a formal complaint arising from the allegations)
- Resulting consequences of participating (e.g., records)

90

3 Investigation

91

Formal Complaint Response

34 C.F.R. 106.45(b)

- Requires a number of specific steps for investigating, dismissing, and determining responsibility in formal complaint
- Major shift from previous, more deferential stance toward specific policies and practices for complaint resolution

92

ANATOMY OF AN INVESTIGATION

Written notice to the parties

Choosing an investigator

Required elements of an investigation

93

- Written notice to known parties “upon receipt of written complaint”
- In sufficient time to allow respondent to prepare a response before any initial interview
- Must include:
 - Notice of grievance process, including any informal resolution process
 - Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduct, if known)

**More Steps:
Written Notice**

94

- Must include:
 - Statement that respondent presumed not responsible and that responsibility determined at conclusion of grievance process
 - Notice of parties’ rights to have an attorney or non-attorney advisor and to inspect and review evidence
 - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process
- Must be supplemented if new allegations opened for investigation

**More Steps:
Written Notice**


95



**Written Notice:
Required**

- Informal resolution notice
- Notice at start of investigation
- Dismissal notice
- Interview notices
- Report
- Written determination and notice of appeal rights

96



Written Notice: Recommended

- Document information to complainant at initial meeting, including supportive measures requested/provided
- Document that review of evidence provided to both parties
- Notice of party's written response to investigative report
- Etc.

97



Who should investigate?

- Can be the Title IX Coordinator
- But should it?

98

Who should investigate?

- Trained, unbiased investigator
 - No actual or perceived conflict of interest
 - Check "institutional interests"
 - Presumption that Respondent is not responsible

FRANCZEK

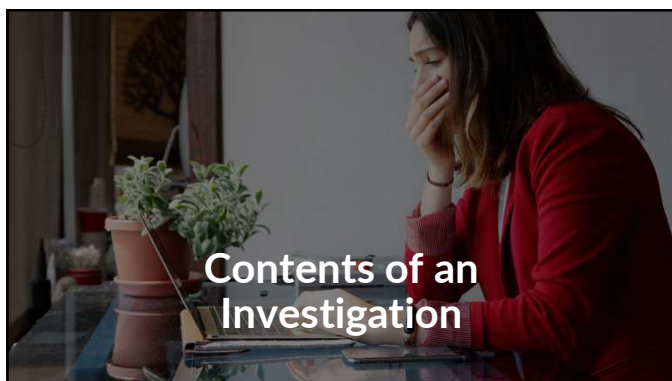
99

Who should investigate?

- No "one size fits all" approach
- May need to designate
- Consider the perception of bias
 - Friendship or other relationship with the accused or their family
 - Sex/gender identity
 - Personal conflicts (even if just perceived)
 - Personality conflicts

FRANCZEK

100



Contents of an Investigation

101

**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

102

Investigation Best Practices

- Investigation plan
- Follow steps in policies closely
- Coordinate with law enforcement as required by policy and practice
- Remember that both complainants and respondents may be experiencing trauma and other strong emotions
- Consult with Title IX Coordinator and/or counsel as needed

FRANCZEK

103

Notice to Parties in Interviews

- What to expect about future contact (timing, updates, encourage follow-up to you)
- Written copy of policies/procedures
- Notify of retaliation rights – provide specific examples
- No “Gag” order but can warn of retaliation risks

FRANCZEK

104

Interviewing Best Practices

- Explain your role as a neutral
- Open-ended questions followed by more tailored follow up
- Allow ample time, don't interrupt or rush
- Ask “Is there anything else?”
- Ask for other witnesses, evidence, incidents

FRANCZEK

105

Interview Notes

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

FRANCZEK

106

Investigation Plans Aren't Static

Reassess plan for investigation frequently



FRANCZEK

107

Gathering Other Evidence

108

Warning! Medical Records

- Notice of allegations should not divulge either party's medical information
- Prohibited from accessing or using medical, psychological, or similar records in grievance process without a party's (or parent's) voluntary, written consent

FRANCZEK

109

Opportunity to Review Evidence

- Before the investigatory report is completed, evidence directly related to the allegations must be sent to each party and advisor
- Includes both exculpatory and inculpatory evidence, and evidence that you do not intend to rely upon
- Parties have 10 days to provide a written response

FRANCZEK

110

Investigation Report Writing

- Fairly summarizes the relevant evidence
- Provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or other determination of responsibility

FRANCZEK

111

Investigation Report Should Include

Applicable policies and procedures

Timeline of investigation

Description of allegations

Unbiased summary of evidence gathered, including interviews

Credibility determination(s)

112

Live Hearing



113

Live Hearings

- Questioning
- Cross-examination
- Advisor(s)
- Virtual hearings

FRANCZEK

114

Relevance

- Cross-Examination
- Provide reasoning for irrelevance
- Consider all relevant evidence
- Exceptions

FRANCZEK

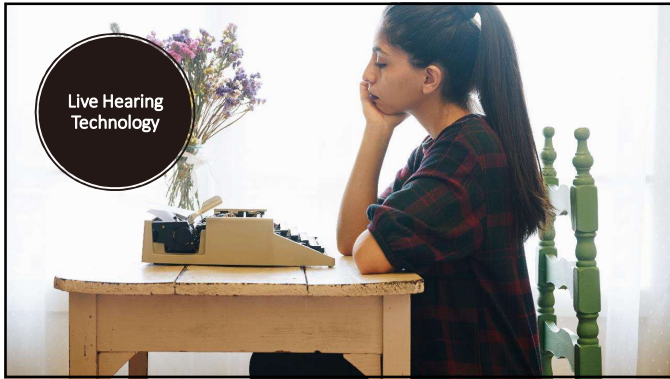
115

Relevance

- Rape shield laws
- Treatment records
- Legally privileged information
- Improper inference
- Prior statements

FRANCZEK

116



117

4 Decision

118

**Decisionmaker(s)
(Complaint)**

- Cannot be the Title IX Coordinator or the investigator(s)

119

The Decision

120

Written Determination

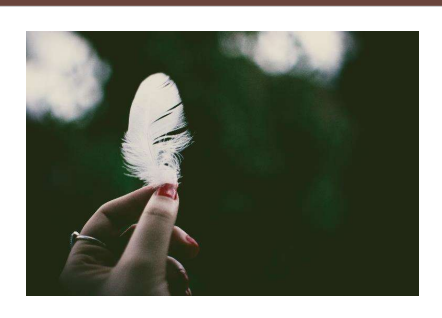
Identify	Identify the allegations
Describe	Describe procedural steps taken
Cite	Cite potential policy violations
Summarize	Fairly summarize all relevant evidence
Provide	Provide statement of result, with rationale, for each allegation
Appeal	Appeal procedures

121

Factual Findings

- Separate findings for each alleged policy violation
- Focus on material facts (i.e., those that affect outcome)
- Can describe undisputed and disputed facts separately
- For any facts in dispute, show your work and reasoning

122



Remember the Standard of Proof

Preponderance of the Evidence

123

Remedies

- Disciplinary action against perpetrator
- Counseling for perpetrator/victim
- Changes to services or policies
- Remedies for complainant and others
- Etc.!!

124

5 Appeal

125



Decisionmaker(s) (Appeal)

Cannot be the Title IX Coordinator or the investigator(s) or the decisionmaker (complaint)

126

Appeal Process

- Available to both parties
- Three bases for appeal
- Notify party of appeal in writing
- Apply procedures equally for both parties
- Opportunity to submit written statement
- Issue written decision to both parties

FRANCZEK

127

Bias, Conflicts of Interest, and Other Fairness Concerns

128

Bias

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And that they not prejudice any matter before them.

FRANCZEK

129

Discuss

What do these words mean to you:

Prejudgment

Conflict of Interest

Bias

130

5 Min Guided Breakout

What steps can you take to avoid:

Prejudgment

Conflict of Interest

Bias

131

Recordkeeping

132

Recordkeeping

Must maintain the following for 7 years:

- Sexual harassment investigation documents, including:
 - Determination regarding responsibility
 - Recordings or transcripts of live hearing
 - Disciplinary sanctions imposed on Respondent
 - Remedies provided to Complainant
- Appeal and result
- Informal resolution and result
- Actions taken in response to a report of sexual harassment
- Actions taken in response to a formal complaint of sexual harassment

FRANCZEK

133

Recordkeeping

Responses to formal and informal complaints and actions taken in response should include:

- The basis for the recipient's conclusion that its response was not deliberately indifferent
- Documentation that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity
- Supportive measures or if no supportive measures are provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

FRANCZEK

134

Programming

135

Clery/VAWA Programming

- Primary prevention and awareness programs for all incoming students and new employees
- Ongoing prevention and awareness campaigns for students and employees
- Range of topics, including definitions of prohibited conduct, resolution procedures, possible sanctions and protective measures, and available resources and options

FRANCZEK

136

Questions



FRANCZEK

137



1

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

2

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

3

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

4

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

5

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

6

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

7

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

8

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

9

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

10

Investigations

11

Agenda

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

FRANCZEK

12

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

13

Example Report

FRANCZEK

14

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

15

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

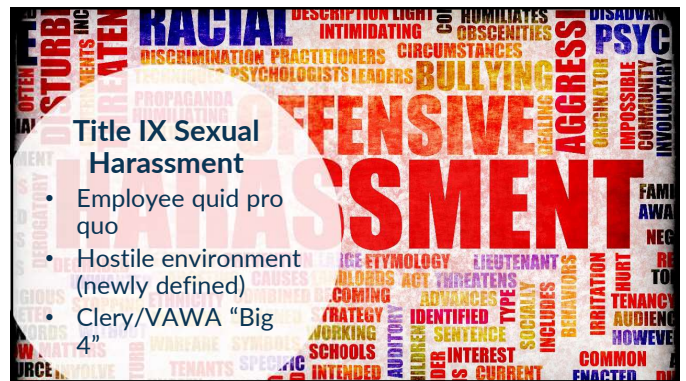
16

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

17



18

VAWA "Big Four"

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)

19

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

20

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

21

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

22

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

23

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

24

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

25

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

26

Investigation Requirements & Best Practices

FRANCZEK

27

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

28

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

29

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

30

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

31

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

32

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

33

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

34

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

35

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**

36

The Investigation Plan

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



FRANCZEK

37

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

38

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

39



40

Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
 - With sufficient time to prepare
- Recommend same for witnesses (not required)

FRANCZEK

41

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

42

Forms/Notices

Notice to Advisors

Advisor
Conduct
Expectations

FRANCZEK

43

Prefaces for Parties

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

FRANCZEK

44

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

45

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

46

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

47

Closing

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

FRANCZEK

48

Potential Trauma for CP and RP

A word cloud centered around the acronym PTSD. Other prominent words include anxiety, stress, flashbacks, hypervigilance, nightmares, guilt, trauma, veterans, fear, assault, stress, therapy, behavioural, memories, and CBT. Smaller words include emotional, cognitive, risk, trigger, treatment, avoid, distress, posttraumatic, and irritability.

FRANCZEK

49

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

50



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 equality not equity is goal for processes

FRANCZEK

52

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

53

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

54

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

55

How did the conduct affect you?

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

56

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?”

57

After Interviews

- Follow up in writing to summarize any points that might need confirmation
- Clean up notes
- Send notes to witnesses for review and confirmation within timelines set forth in IIT policy
- Document less formal interactions
- Send links/copies to policies if relevant
- REASSESS allegations, investigation plan, and supportive measures

FRANCZEK

58

Scope of the Investigation

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



FRANCZEK

59

Gathering Other Evidence



60

Sharing Evidence and the Investigative Report

FRANCZEK

61

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

62

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

63

Investigation Report

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

FRANCZEK

64

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

65

Investigation Report

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

FRANCZEK

66

Hearing and Decision

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

FRANCZEK

67

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

68

Understanding Relevant Evidence

FRANCZEK

69

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

70

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

71

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

72

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

73

Recordkeeping

FRANCZEK

74

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

FRANCZEK

75

Interview Notes

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

FRANCZEK

76

Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

FRANCZEK

77



78



1

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

2

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

3

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

4

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

5

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

6

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

7

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

8

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

9

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

10

Informal Resolution

What is Informal Resolution?

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

FRANCZEK

12

11

When Can IR be Offered?

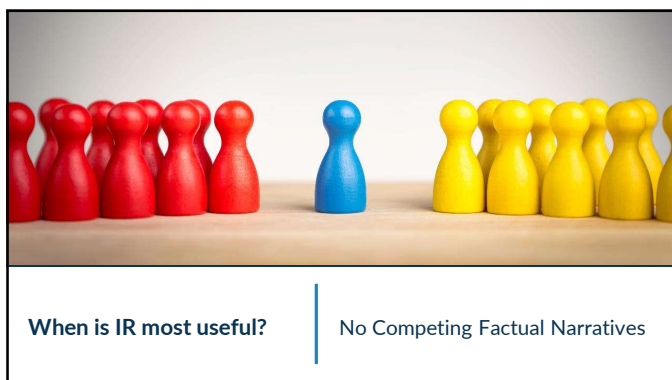
- Can only be used when formal complaint has been filed
- Cannot be used in cases of employee-on-student harassment
- Can only be used if each party has given informed, written consent (cannot ever be required, indirectly or directly)

FRANCZEK

13

WHY ALLOW IR?

14



When is IR most useful?

No Competing Factual Narratives

15

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

16

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

17

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

18

Types of Informal Resolution

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

FRANCZEK

19

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

FRANCZEK

20

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

21

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

FRANCZEK

22

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?

FRANCZEK

23

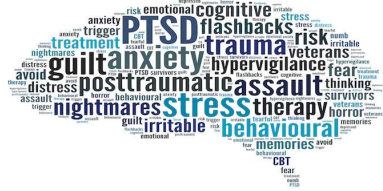
The Mediation Process

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

FRANCZEK

24

Potential Trauma for CP and RP



FRANCZEK

25

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

26

Introductions

FRANCZEK

27

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

28

Critique an Introduction



FRANCZEK

29

Brainstorming Solutions

FRANCZEK

30

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

31

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

32

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

33

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

34

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

35



Recordkeeping

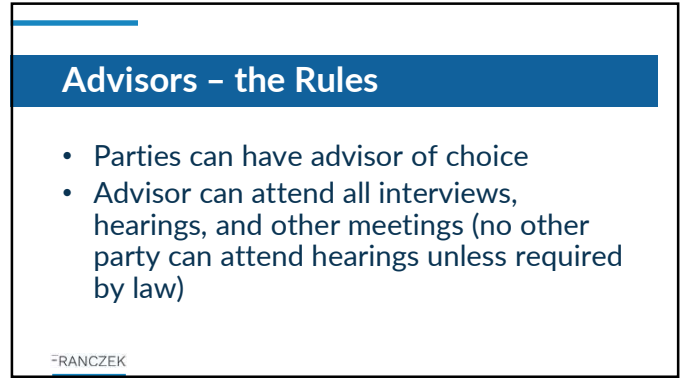
36



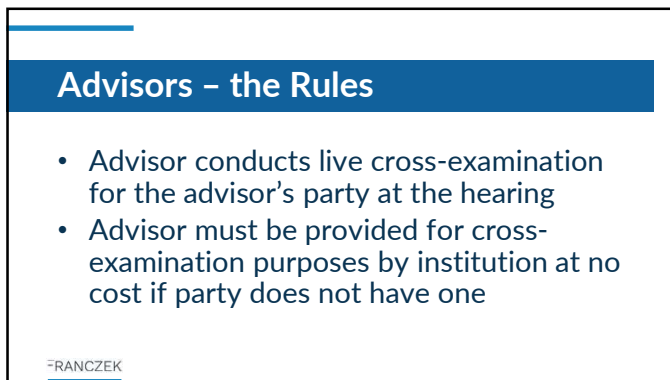
37



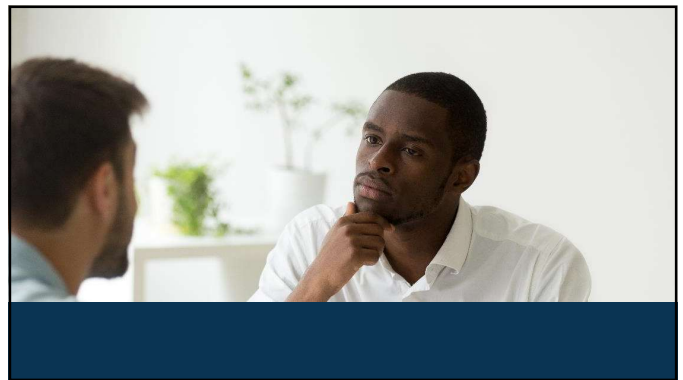
1



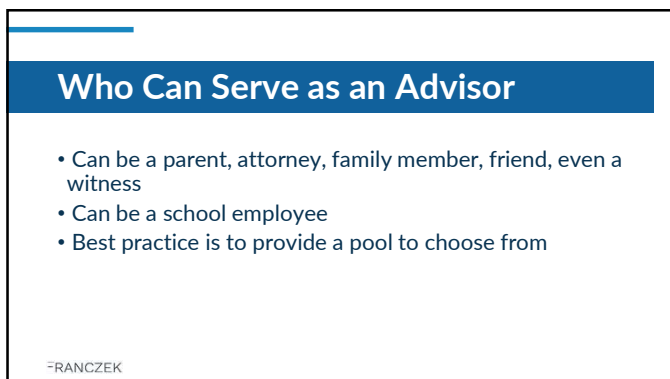
2



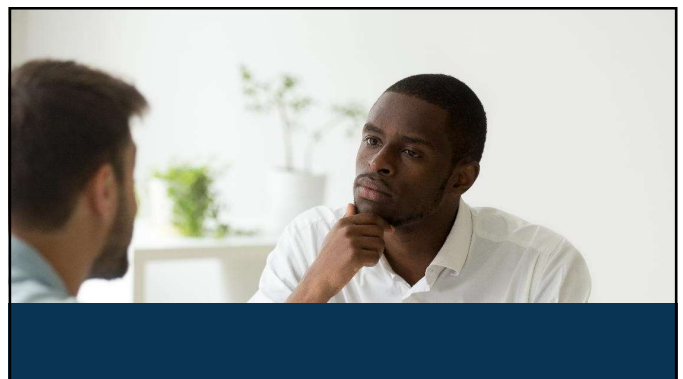
3



4



5



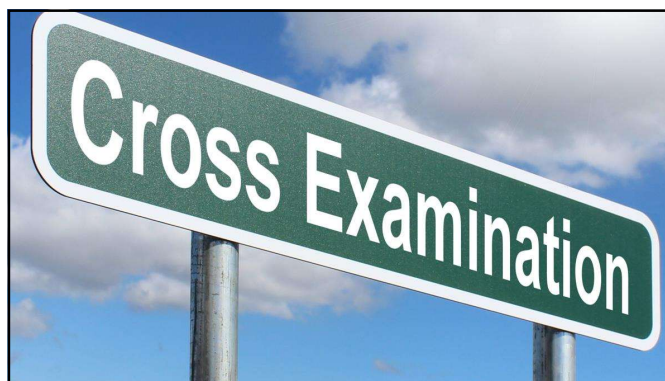
6

Advisor Notices

- The evidence subject to inspection and review in an electronic format or a hard copy with 10 days to submit a written response
- Investigative report at least 10 days prior to a hearing

FRANCZEK

7



8

Cross Examination

Important part of truth seeking partly because of live, in-the-moment nature and because conducted by someone whose purposes is to advance one side's perspective

FRANCZEK

9

Cross Examination

- Not for the protection only of respondents
- Both parties' advisors may direct decisionmaker's attention to implausibility, inconsistency, unreliability, ulterior motives, lack of credibility

FRANCZEK

10

Cross Examination Rules

- Must be conducted by the advisor
- Advisor asks questions and follow-up questions
- Directly, orally, and in real time
- May be in separate rooms (party request, institution choice)

FRANCZEK

11

Cross Examination Rules

- Advisor can appear even if party does not appear
- If advisor *and* party do not appear, a recipient-provided advisor must still cross-examine the other appearing parties and witnesses

FRANCZEK

12

Cross Examination Tips

- Leading questions – elicit a “yes” or “no” answer
- Try to only ask necessary questions
- Try to only ask questions to which you already know the answer

FRANCZEK

13

Cross Examination Tips

Leading questions

- “Isn’t it true that...”
- “...correct?”
- Or just state the fact, without any question words. “The Respondent did not force you?” Wait for, “Yes.”

FRANCZEK

14

Cross Examination Tips

- Only include one fact per question
- Including too many facts or issues can be confusing and allow the witness an “out”

FRANCZEK

15

Cross Examination Tips

- New, Known Facts
- Concession on Known Facts
- Errors in Direct Testimony
- Neutralizing Direct Testimony
- Impeachment
- Attack Credibility

FRANCZEK

16

Cross Examination Tips

Impeachment

- Verify the document first
- Point out and confirm statement in document
- Compare to previous testimony and confirm contradiction

FRANCZEK

17

Cross Examination Tips

Witnesses you might not cross-examine

- The witness did not hurt your party’s position
- The witness is certain to just repeat the same answers as on direct

FRANCZEK

18

Cross Examination Plan

19

If you do not know where
you are going, every road
will get you nowhere

Henry A. Kissinger

20

Cross Examination Preparation

- Review all directly related evidence and party responses
- Review the investigation report
- Talk to your party about witnesses' personalities

FRANCZEK

21

Cross Examination Preparation

- Prepare an outline (but plan to vary if needed)
- Use documents and other evidence, especially to impeach
- Listen carefully during direct questioning

FRANCZEK

22

Cross Examining Experts

- Make the expert your own
- Challenge facts and conclusions
- Attack qualifications, preparation, bias
- Impeach with your expert or literature

FRANCZEK

23

Relevance

- Makes something more or less likely to be true
- Exceptions
 - Sexual behavior
 - Legal privilege
 - Treatment records

FRANCZEK

24

Rape Shield Law

- Excludes evidence of Complainant's sexual behavior or predisposition
- Two narrow exceptions
 - Someone other than RP committed the conduct
 - CP and RP conduct to show consent
- Does not apply to Respondent

FRANCZEK

25

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

26

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

27

Limitations on Advisor

28

Can We Talk About That?

- School not required to allow debate from advisors
- School not required to provide after-hearing explanation (but can, e.g., to revise)

FRANCZEK

29

Advisor Decorum

- Essential function is not to embarrass, blame, humiliate, or emotionally berate
- Essential function is to give the decisionmaker the fullest view possible of the relevant evidence

FRANCZEK

30

Advisor Rules

- Institution can set rules of participation, decorum (must be same for both parties)
- Review any advisor agreement carefully
- Self-control is significant

FRANCZEK

31



32



33



34