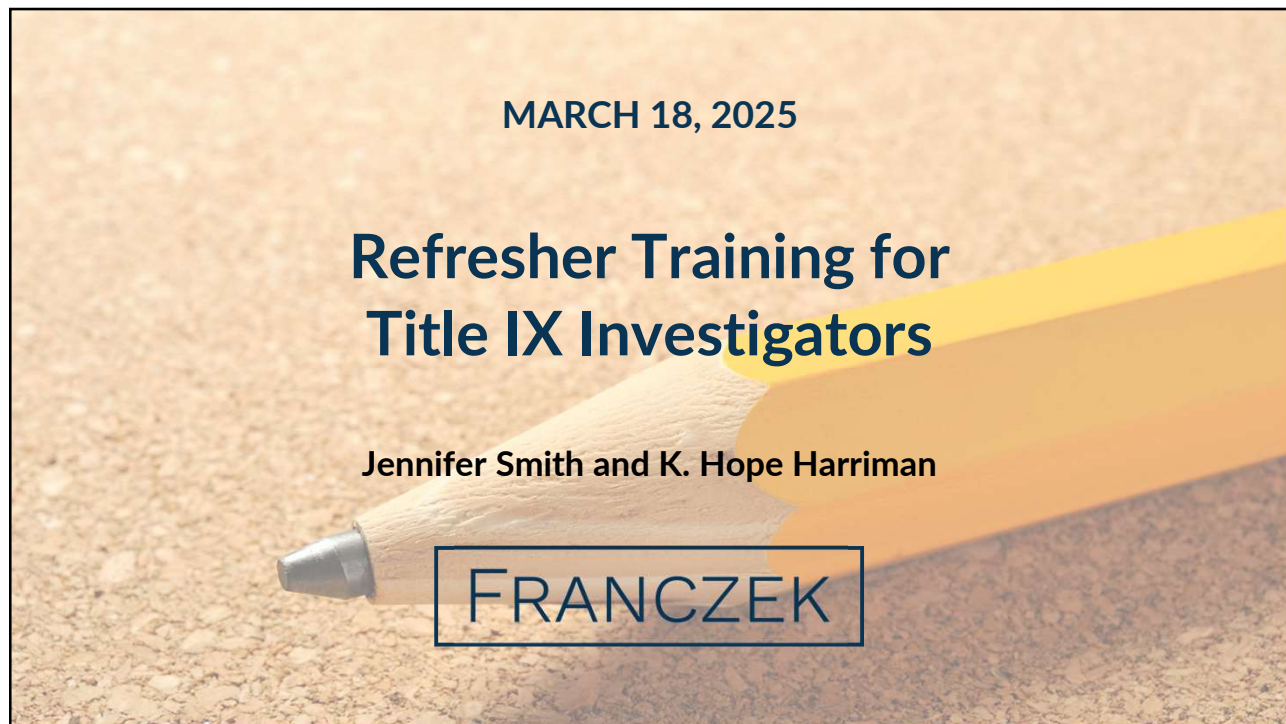




1

Agenda

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

FRANCZEK

2

What is Title IX Sexual Harassment

- Unwelcome sexual conduct that is sufficiently severe, persistent, or pervasive to limit a person's ability to participate in or benefit from an educational program or activity.
- Quid pro quo by an employee
- Sexual assault, dating violence, domestic violence, and stalking.

3

When must a school respond to Title IX sexual harassment?

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond

4



DISMISSALS

Mandatory if conduct alleged: Not Title IX Sexual Harassment Did not occur in the school's program or activity Did not occur in the United States **can still address under non-T9 SH policy	Permissive if: Complainant requests to withdraw in writing Respondent's enrollment or employment ends Specific circumstances prevent school from gathering evidence sufficient to reach a determination (e.g., passage of time, lack of cooperation by complainant)
---	---

5

Title IX Investigator Responsibilities

FRANCZEK

6

Investigator Responsibilities

1

Identify and
interview parties
and witnesses

2

Gather and
assess evidence

3

Share evidence
with parties and
provide for
written response

4

Write and share
investigative
report

FRANCZEK

7

Serving Impartially

FRANCZEK

8

Who should investigate?

- Trained
- No: bias, conflict of interest, prejudgment
- Appeal: can be based on improper, biased/conflicted investigator

FRANCZEK

9

Standard

- Declined to define “bias,” “conflict of interest,” “prejudge”
- The Department encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....

FRANCZEK

10

What Might be Bias, Conflict, Prejudgment?

- Discouraging a party from submitting certain evidence
- Using terms like “victim” and “perpetrator”
- Permitting credibility inferences or conclusions based on party status

FRANCZEK

11

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

12

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

13

Investigation: Required Elements

FRANCZEK

14

Investigation

- Occurs when there is a “formal complaint”
- **Must contain specific elements**
- Must treat parties equally for any additional elements

FRANCZEK

15

Step One: Notice of Allegations

- By Title IX Coordinator or Investigator
- Promptly upon receipt of a formal complaint
- To all known parties

FRANCZEK

16

Step One: Notice of Allegations

Include

- Notice of grievance process
- Notice of allegations, including sufficient details
- Statement that respondent is presumed not responsible until end of process

With sufficient time to prepare a response before any initial interview

FRANCZEK

17

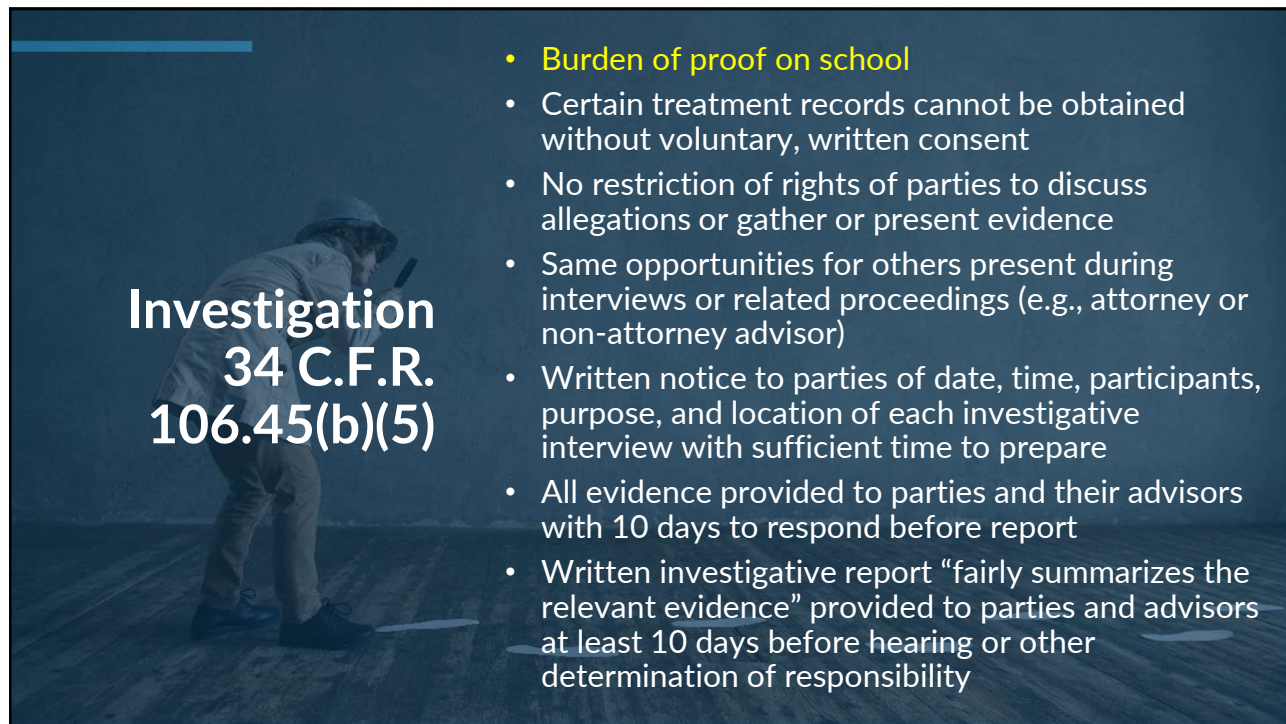
Step One: Notice of Allegations

Sufficient details include:

- Identities of the parties involved in the incident, if known
- The conduct allegedly constituting sexual harassment under Title IX
- The date and location of the alleged incident, if known

FRANCZEK

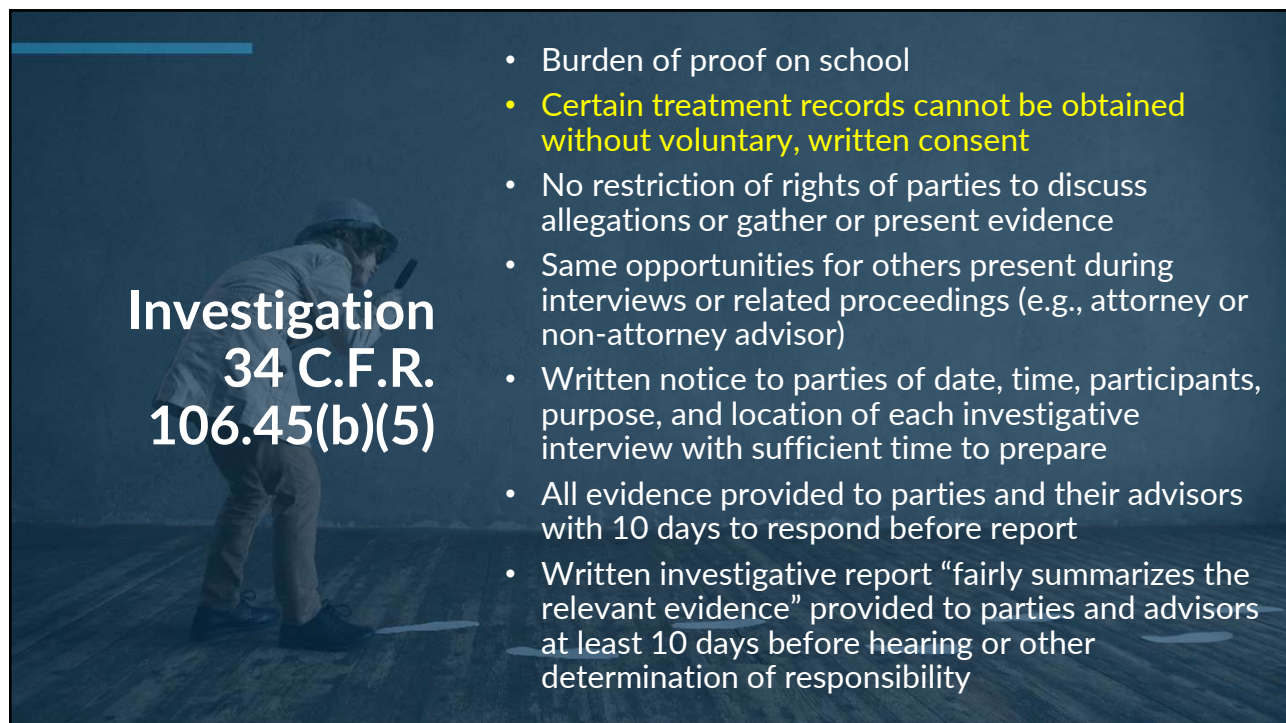
18



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

19



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

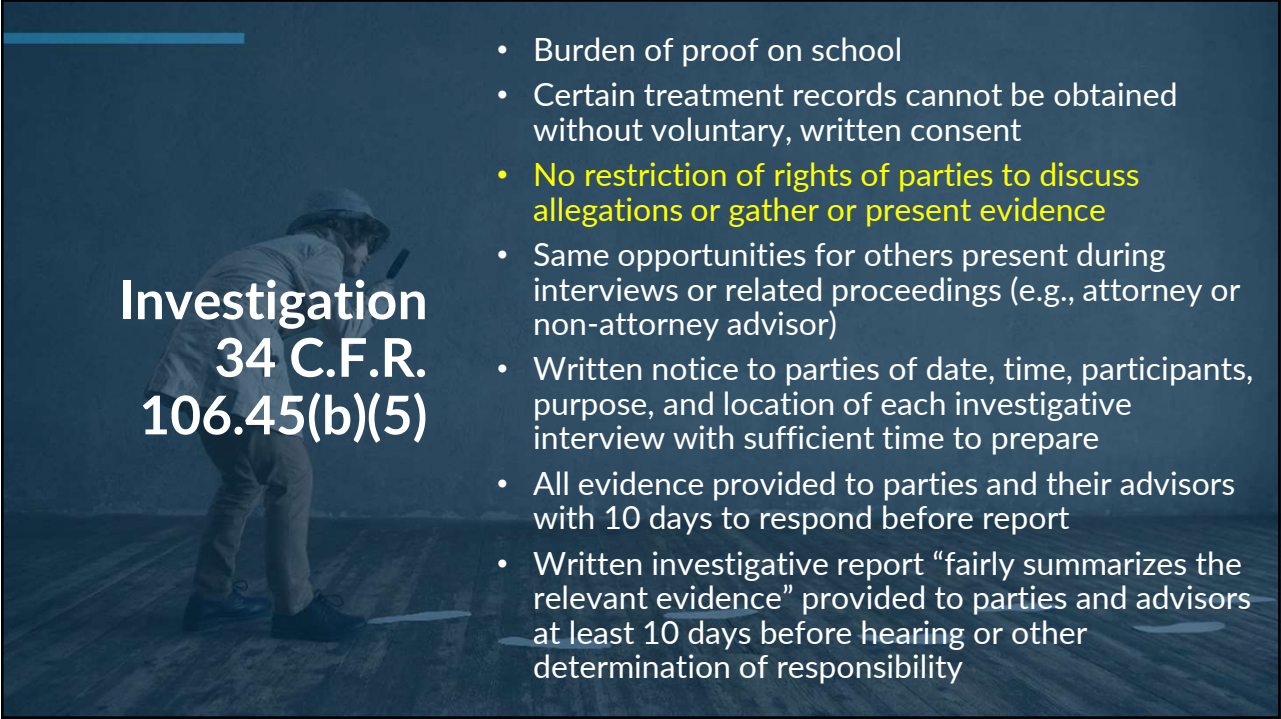
20

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

21



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

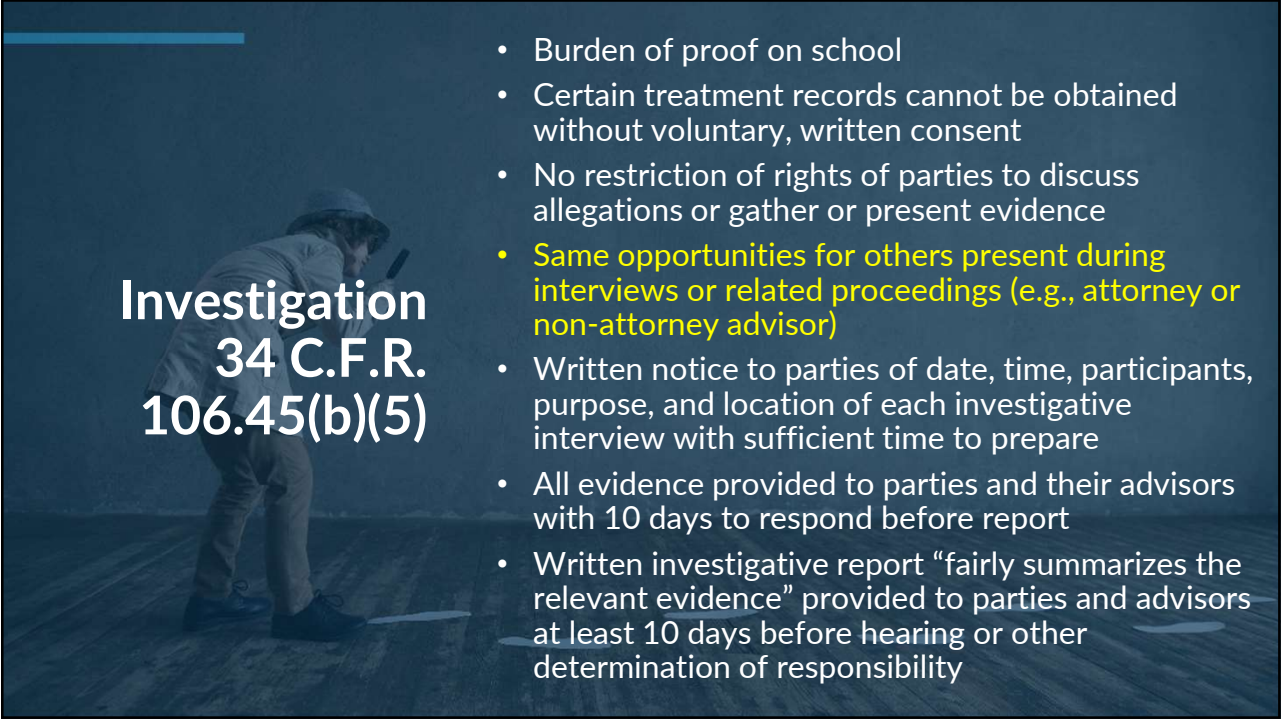
22

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

23



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

24

Forms/Notices

Notice to Advisors

Advisor
Conduct
Expectations

FRANCZEK

25

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

26

Before Party Interviews

Communicate in Writing:

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

Recommend same for witnesses (not required)

FRANCZEK

27

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

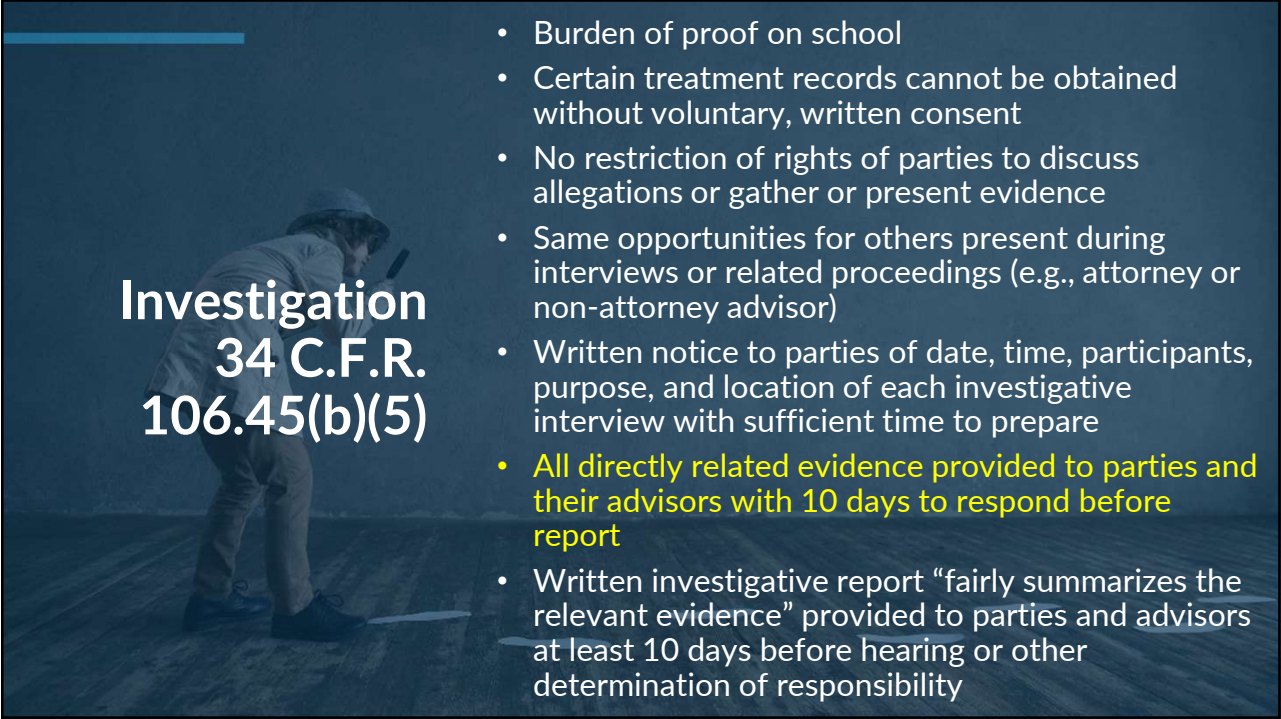
28

Hypothetical

- Before finalizing the investigation report, both parties and their advisors must receive a summary of all evidence and have an opportunity to respond

FRANCZEK

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 directly related evidence provided to parties and their advisors with 10 days to respond before report**
- Written investigative report “fairly summarizes the relevant evidence” provided to parties and advisors at least 10 days before hearing or other determination of responsibility

30

Directly Related Evidence

- Must share evidence directly related to the allegations with both parties and advisors simultaneously with 10 days to respond before writing the report
 - Review/consider responses
 - Share responses with the other side

FRANCZEK

31

Examples of Directly Related Evidence

- Emails and text messages between complainant and respondent
- Interview notes
- Information relevant to credibility of witnesses

FRANCZEK

32

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

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 Report

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

FRANCZEK

35

Determining Relevance

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

FRANCZEK

36

Rape Shield

- Exclude evidence of Complainant's sexual behavior or predisposition
- Two narrow exceptions
 - Someone other than RP committed conduct
 - Past conduct between CP & RP to show consent
- Does not apply to Respondent

FRANCZEK

37

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

FRANCZEK

38

Investigation Report

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

FRANCZEK

39

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

40

Investigation: Techniques & Best Practices

FRANCZEK

41

Order of Interviews



42

Party Interview Tips

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

FRANCZEK

43

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

44

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

45

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

46

Closing

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

FRANCZEK

47

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

48

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

49

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

50

Retaliation

IN EVERY INTERVIEW, warn about retaliation and explain that a complaint can be filed if someone retaliates.

Watch for different treatment

Actions by staff in avoiding complainant

Harassment by the Respondent or their friends



51

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

52

Scope of the Investigation

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



FRANCZEK

53

Recordkeeping

FRANCZEK

54

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



CONFIDENTIAL

55

Interview Notes

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

FRANCZEK

56

Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

FRANCZEK

57

Questions



FRANCZEK

58

© Franczek P.C. 2025. 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.