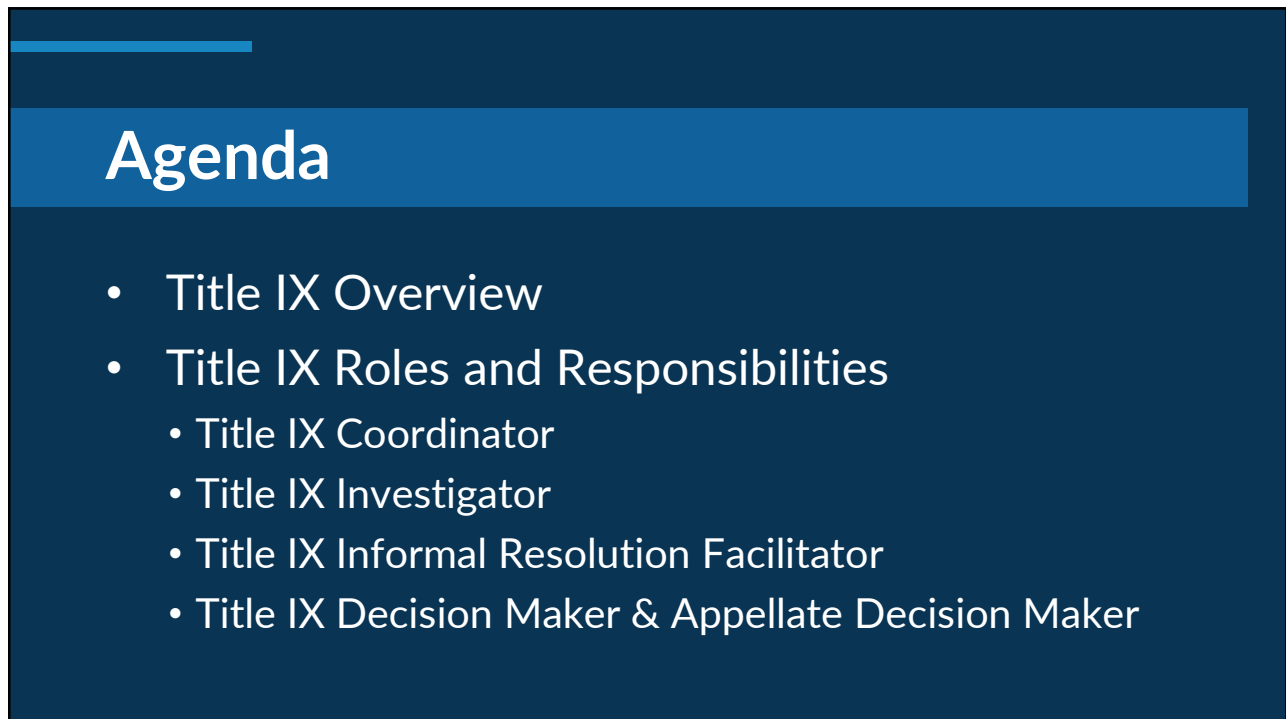




1



2

Title IX Statute

“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.”
20 U.S.C. 1681-1688

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

Title IX Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Clery Act/Violence Against Women Act

5

Quid Pro Quo

- An employee of the educational institution conditioning an aid, service or benefit of the educational institution on participation in unwelcome sexual conduct.
- Severity and harm are presumed.

6

Clery Act/ 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)

7

Hostile Environment

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, AND objectively offensive that it effectively denies a person’s equal access to the school’s education program or activity.

8

Title IX Coordinator

9

Title IX Coordinator Responsibilities

- Must be called the Title IX Coordinator
- Must be identified (with name or title, address, phone number, and email address) in Board Policy, and on website
- Must meet with alleged victims of Title IX Sexual Harassment

10

Title IX Coordinator Responsibilities

- Informs Complainant of availability of supportive measures and the formal complaint process
- Decides whether to “sign” a complaint when the complainant does not want to file a complaint
- Coordinates the implementation of supportive measures
- Ensure effective implementation of remedies
- Monitors the District’s ongoing compliance with Title IX

11

Initial Response

- Title IX Coordinator must promptly, even if no Formal Complaint is filed:
 - Contact the Title IX Complainant to discuss the availability of supportive measures
 - Consider the Title IX Complainant’s wishes with respect to supportive measures
 - Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a Formal Complaint
 - Explain the process for filing a Formal Complaint

12

Initial Response

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)

13

Emergency Removal

- Additional processes may be required for emergency removal to occur
 - Student discipline – state laws (e.g., Senate Bill 100)
 - Disability rights – IDEA, Section 504
 - Employee rights – Collective Bargaining Agreements, etc.

14

Emergency Removal

Notice of Title IX
Emergency Removal
of Student
(Franczek Letter 4(a))

Notice of Title IX
Emergency Removal
of Student (Franczek
Letter 4(b))

15

Title IX Informal Resolution Facilitator

16

When Can Informal Resolution Be Offered?

- Informal Resolution can only be used when a Formal Complaint has been filed
- Informal Resolution CANNOT be used in cases of employee-on-student harassment
- Informal Resolution can only be used if each party has given informed, written consent (cannot ever be required, indirectly or directly)

17

When Can Informal Resolution Be Offered?

- Informal Resolution can be offered generally and must be offered consistently
- It is most useful when there is no competing factual narrative

18

Who Should Serve as Informal Resolution Facilitator?

- Trained Facilitator
- Neutral Party/Impartial/Unbiased
- No prejudgment of case
- We do not recommend that the informal resolution facilitator be involved in the investigation

19

Impact of Informal Resolution Participation

- Can withdraw at anytime prior to resolution and return to investigation process
- Neither party can ask for the investigation to resume after resolution
- Records will be maintained for seven years

20

Role of the District in Informal Resolution

- The agreement is between the parties; the district is not a party
- The Informal Resolution Facilitator can:
 - Act as an intermediary
 - Make suggestions
 - Help draft the document

21

Title IX Investigator

22

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

23

Investigation

- Occurs when there is a Formal Complaint
- Must contain specific elements
- Must treat parties equally for any additional elements

24

Step One: Notice of Allegations

- By Title IX Coordinator or Investigator
- Promptly upon receipt of a Formal Complaint
- Issue to all known parties

25

Step One: Notice of Allegations

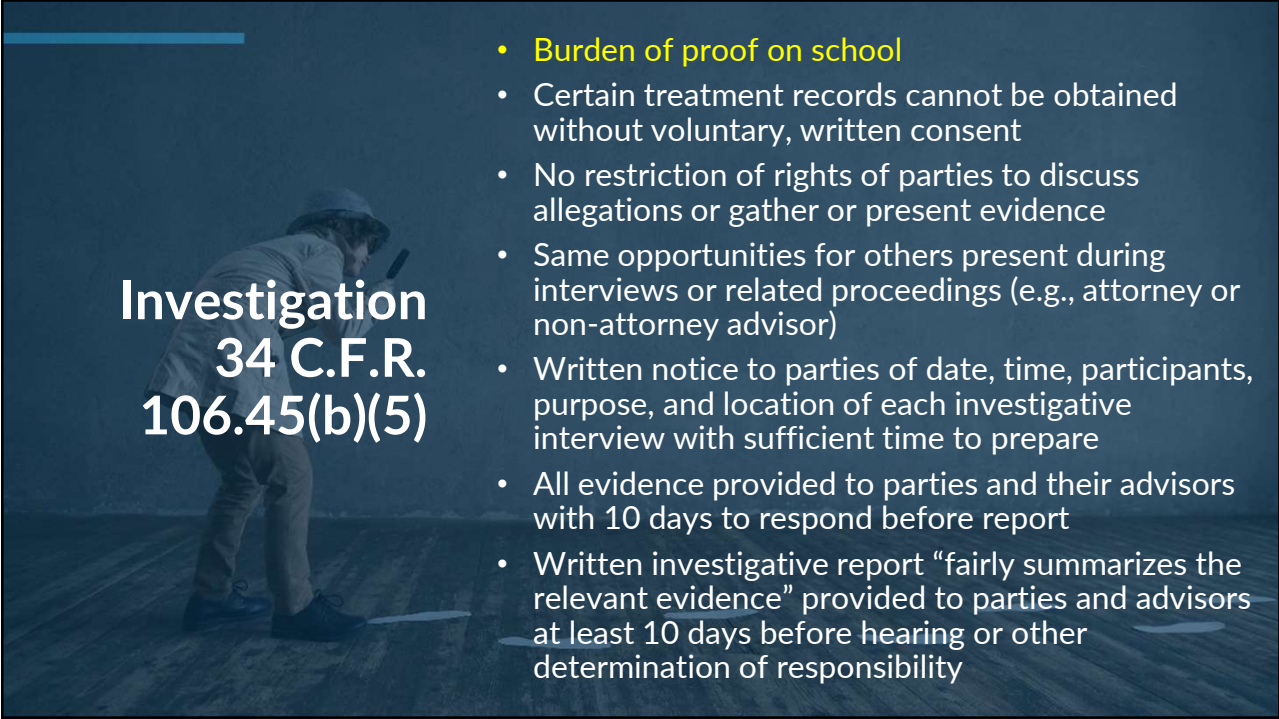
- Includes:
 - Notice of grievance process
 - Notice of allegations, including sufficient details
 - Statement that respondent is presumed not responsible until end of processWith sufficient time to prepare a response before any initial interview

26

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

27



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

28

Forms/Notices: Notice to Advisors

Advisor
Conduct
Expectations

29

Before Party Interviews

- Communicate in Writing:
 - Date, time, location, participants, purpose
 - With sufficient time to prepare
- The same is recommended for witness interviews (not required)

30

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))

31

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 and consider each party's responses
 - Share responses with the other party

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))

33

Investigation Report

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

34

Determining Relevance

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

35

Rape Shield

- Exclude evidence of complainant's sexual behavior or predisposition
 - Two narrow exceptions
 - Someone other than the respondent committed the conduct
 - Past conduct between complainant and respondent to show consent
 - Does not apply to respondent

36

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

37

Legally Privileged Information

- Cannot use questions or evidence that seek disclosure of legally privileged information, unless waived
- Consider:
 - Attorney client privilege
 - Privilege against self incrimination
 - Confessions to a clergy member or religious figure
 - Spousal privilege

38

Investigation report

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

39

Concurrent Law Enforcement Investigations

- Delays only temporarily allowed
 - Not “more than briefly” beyond timeframes
 - Not required
- Reasons: impact on police fact gathering, respondent self-incrimination privilege, police plan to release evidence that is material to investigation on a specific timeframe

40

Forms/Notices: Investigation 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))

41

Party Interview Tips

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

42

Prefaces for Witnesses

- Your identity and role as a neutral
- Notes and records
- Allegations
- Role of advisor
- Confidentiality
- Retaliation
- Rapport building

43

Ideas for Questions

- Relationships
- Identities of Parties
- Details of Conduct Between Parties
- Effect of Alleged Conduct on Parties
- Outcry/Reports

44

Ideas for Questions

- Responses of Parties
- Documentary or Other Evidence
- Identities of Witnesses

45

Avoid

- Discussing theories or assessments of the evidence
- Suggesting agreement or outcome
- Pressuring for more information or irrelevant incidents
- Body language or words suggesting judgment

46

Closing

- Anything else?
- Any questions?
- Advisor questions
- Encourage follow up
- Process

47

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

48

After Interviews

- Follow up in writing to summarize any points that might need clarification
- Clean up notes
- Document less formal interactions
- Send links or copies of policies if necessary
- Reassess allegations, investigation plan, and supportive measures

49

Title IX Decision Maker & Appellate Decision Maker

50

Decision Maker - Complaint

- Review evidence collected during the investigation
- Facilitate written cross examination (or live hearing process if elected)
- Make relevancy determinations
- Make independent judgment on responsibility and sanctions

51

Decision Maker – Appeal

- Review decision maker's written determination
- Review appeal documents
- Grant parties opportunity to respond
- Review party responses
- Make independent judgment on appeal questions

52

Decision Maker – Complaint – Review

- Formal complaint
- All relevant evidence gathered during the investigation
- Investigation report
- Written responses submitted by the parties

53

Written Cross Examination Process



54

Relevance

- What is relevance?
 - Something that makes a fact or issue in dispute more or less likely to be true.

55

Issues of Relevance

- Must objectively evaluate questions and make determinations on relevancy
- Includes inculpatory and exculpatory evidence
 - Inculpatory – tends to prove a policy violation
 - Exculpatory – tends to exonerate the accused

56

Rulings on Relevance

- Admit and consider all relevant questions
- Provide reasoning for irrelevance
- Consider exceptions
 - Sexual behavior of complainant (except in limited situations)
 - Legal privilege
 - Treatment records

57

Making a Determination

- Remain unbiased and impartial
- Render a reasoned decision based on evidence
- Base decisions on relevant evidence alone
- Evaluate witness credibility
- Consider weight of evidence (remember standard: preponderance of evidence)

58

Forms/Notices: Determination

Written
Determination
Template
(Franczek Form C)

59

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

60

Factual Findings

- Separate findings for each alleged policy violation
- For any facts in dispute, show your work and reasoning

61

Factual Findings

Consider	Consider both supporting/corroborating and conflicting/inconsistent information for each disputed fact
Make	Make credibility determinations by considering corroborating evidence, inconsistencies, logic of explanation/narrative, impact of trauma
Use	Use words of parties/witnesses
Be	Be detailed and precise

62

Opportunity to Review

Document opportunities given to parties to provide information, review evidence, and provide rebuttal

Explain if anything offered/mentioned was not considered/obtained and why.

63

Appeal Process

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

64

Appeal Process

- Procedural issue affecting the outcome
- New evidence that wasn't reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome
- Coordinator, Investigator, or Decision Maker had conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

65

Procedural Issue

- Failure to follow the rules in policy or procedure
- Can be intentional or inadvertent
- Resulted in inappropriate decision; not always the case

66

New Information

- New information
- Not known at the time
- Would change the opinion of the decisionmaker if known at the time
- Not a review of information known at the time

67

Bias/Conflict of Interest

- Bias toward one party or one type of party – personal or institutional
- Conflict of interest – personal or institutional
- Prejudgment of facts (avoid by “showing our work”)

68

Avoiding Bias/Conflict of Interest/Prejudgment

69

Bias/Conflict of Interest/Prejudgment

- 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
- Also they must not prejudge any matter before them

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Bias/Conflict of Interest/Prejudgment

- Consider perception, not just reality:
 - Institutional bias
 - Your friendship or other relationship with the accused or their family
 - Your personal characteristics
 - Your personal conflicts (even if just perceived)
 - Personality conflicts

71

Record Keeping

72

Written Notice Required

- Informal resolution
- Notice at start of investigation
- Dismissal
- Interview
- Report
- Notice of why proposed questions not asked on cross
- Written determination and notice of appeal rights

73

Written Notice Recommended

- Document information to complainant at initial meeting, including supportive measures requested/provided
- Document evidence provided to both parties
- Document opportunity to ask questions, answers, follow up questions, etc.

74

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

75

Recordkeeping

- Must maintain the following for 7 years:
 - Responses to formal and informal complaints and actions taken in response should include:
 - The basis for the school's conclusion that its response was not deliberately indifferent
 - Documentation that it has taken measures designed to restore or preserve equal access to the school's education program or activity
 - Supportive measures or, if no supportive measures are provided, the reasons why such a response was not clearly unreasonable in light of the known circumstances

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