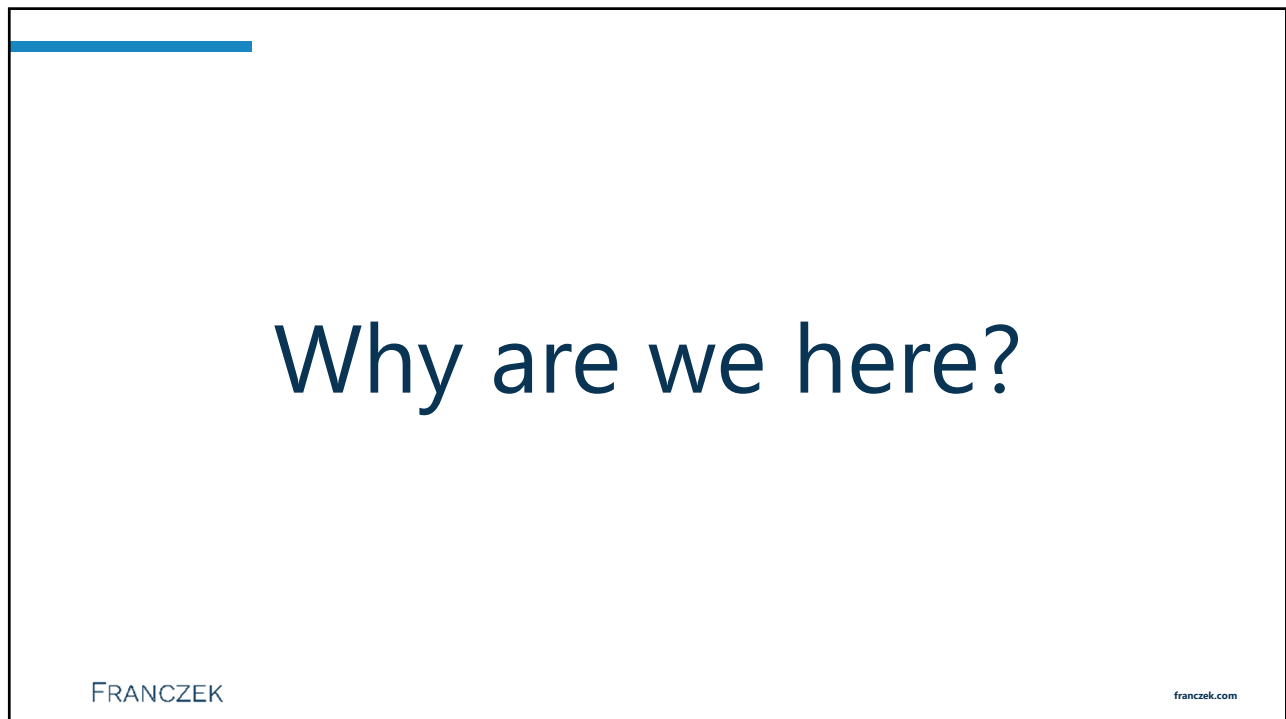




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New Rules



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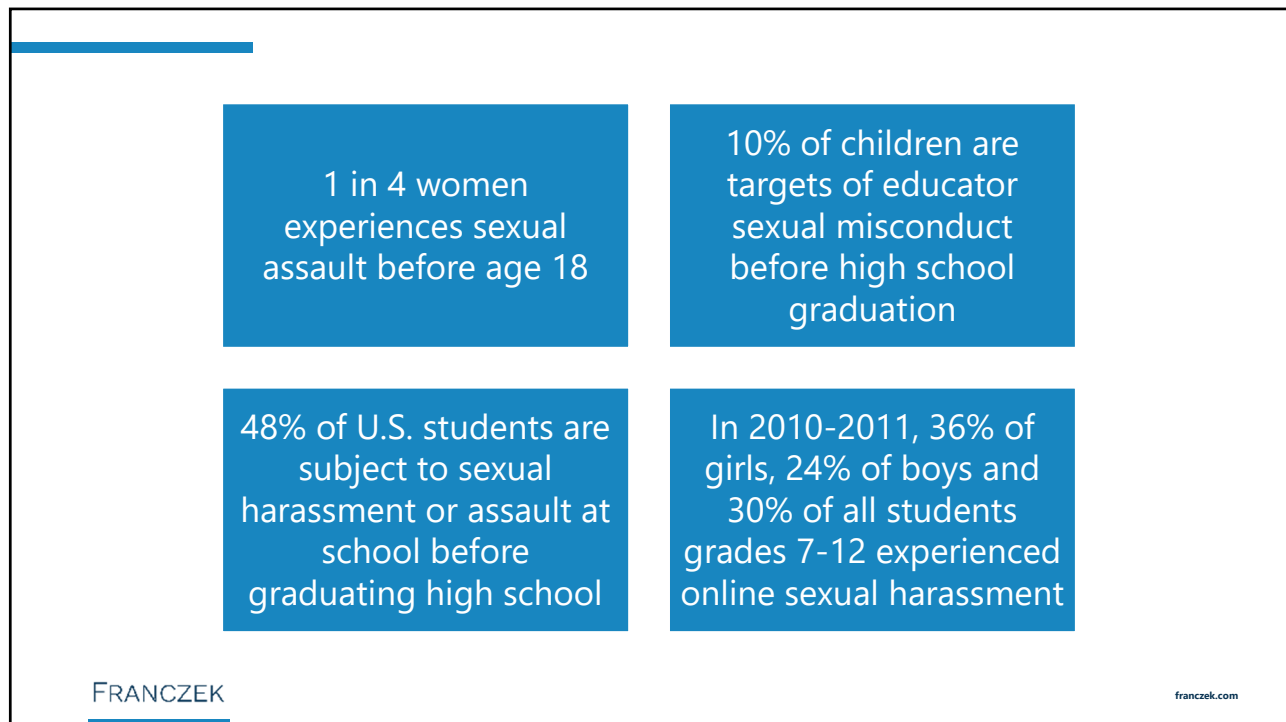
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Why is this so important?

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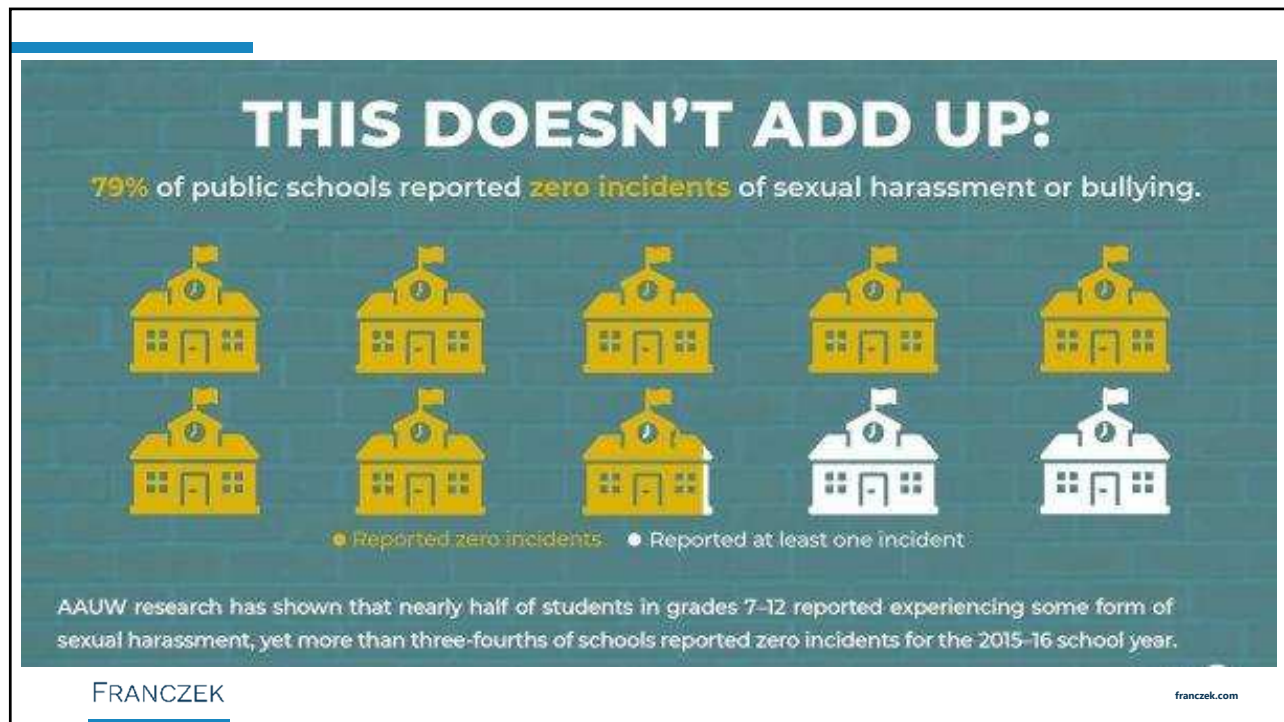
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*Harassment
and assault can have
long lasting,
detrimental effects on
victims*

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

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AVOIDING RISK



The law requires responding
to sexual harassment
complaints.

Failure to do so can lead to
legal challenges (with OCR
or in court)

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What is Title IX?

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Title IX



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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."

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What falls under Title IX?

Recruitment,
Admissions, and
Counseling

Financial
Assistance

Athletics

Sex-Based
Harassment

Treatment of
Pregnant &
Parenting Students

Discipline

Single-Sex
Education

Employment

Retaliation

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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)
 - And many more requirements!

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When must a school district respond to Sexual Harassment?

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It Depends Who [Well, Which Law] You Ask

Employment

- Illinois Human Rights Act
- Title VII
- Title IX

Students

- Illinois Human Rights Act
- Illinois Sex Equity Regulations
- Title IX

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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.

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Actual Knowledge

1. Sense
2. Report

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Official with Authority



- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures by the school district
- K-12: All employees

Board members should still report

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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

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What is Sexual Harassment?

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It Depends Who [Well, Which Law] You Ask

Employment

- Illinois Human Rights Act
- Title VII
- Title IX

Students

- Illinois Human Rights Act
- Illinois Sex Equity Regulations
- Title IX

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Title IX – What is Sexual Harassment?

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

PLUS quid pro quo by an employee AND VAWA & Clery Act "big four"

Old Definition

Unwelcome conduct determined by a reasonable person to be severe, pervasive or persistent and to interfere with or limit a student's ability to participate in or benefit from school services, activities, or opportunities

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Title IX 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

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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)

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Title IX Hostile Environment



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Title IX – Hostile Environment

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

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Program or Activity: Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the "context" in which the harassment occurred



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Online & Off Campus



Substantial
control over
the context?

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Schools need only address Title IX sex discrimination occurring against a person *in the United States* under Title IX



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**How must a district
respond to sexual
harassment?**

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It Depends Who [Well, Which Law] You Ask

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- Title VII
- Title IX

Students

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- Illinois Sex Equity Regulations
- Title IX

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Board Policies on Harassment

Option 1: NEW Board Policy 2111

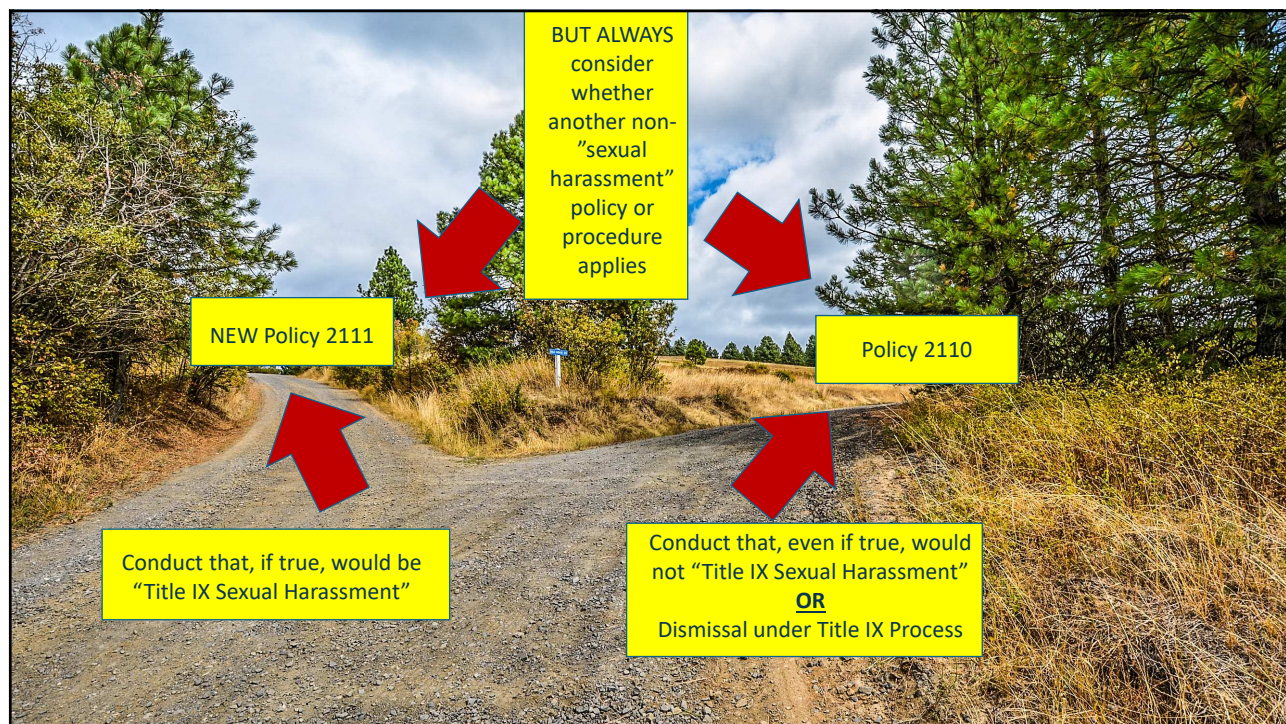
Option 2: Board Policy 2110 Uniform Grievance Procedure
(for any other violation of law or Board policy, including
other types of "sexual harassment")

Option 3: Other rules prohibiting conduct, e.g., bullying,
fighting, etc.

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Response to Reports & Complaints Under Title IX

- Title IX Coordinator "supportive measures" meeting (whether formal or informal complaint)
- If formal complaint filed or opened
 - Informal resolution
 - Investigation
 - Decision
 - Appeal

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Formal Complaint

Defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. 34 C.F.R. § 106.30(a).



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Signing a Complaint

Factors to consider

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Response to Reports & Complaints Under Title IX

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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

**New:
Initial
Response**

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Confidentiality

- Complainant confidentiality should be maintained until formal complaint filed
- Once formal complaint filed, confidentiality of complainant cannot be maintained

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Supportive Measures

What Changed?

NEW TERM

(Final Rule)

- **Non-punitive**, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed (34. C.F.R.106.30(a)).
- **Should be designed to restore or preserve equal access to the education program or activity without "unreasonably" burdening the other party**

OLD TERM

(OCR Guidance)

- 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

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Examples of Supportive Measures

- Counseling
- Course modifications
- Schedule changes
- Increased monitoring or supervision

A supportive measure that completely removes a respondent from an activity would likely be considered punitive, except for "emergency removals" for students and "administrative leaves" for employees

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Emergency Removal/ Admin Leave

| Immediate emergency removal | Employee administrative leave |
|--|---|
| (34 C.F.R. 106.44(c)) | (34 C.F.R. 106.44(d)) |
| <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, e.g., SB100, "change in placement" under IDEA | <ul style="list-style-type: none">• Not prohibited• Consider state law, board policy, handbooks, and bargaining agreements |

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Informal Resolution

INFORMAL RESOLUTION IS NOT PERMITTED UNDER THE FOLLOWING CONDITIONS:

- Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure
- Cannot require use of informal resolution process
- Cannot offer informal resolution process until formal complaint is filed
- Not available to resolve allegations that employee sexually harassed a student

INFORMAL RESOLUTION MAY MOVE FORWARD UNDER THE FOLLOWING CONDITIONS:

- Any time prior to reaching a determination, either party may request informal resolution
- Requires voluntary, written consent from both parties
- Any party has a right to withdraw prior to agreement

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Response to Reports & Complaints Under Title IX

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 - **Investigation**
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New: 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

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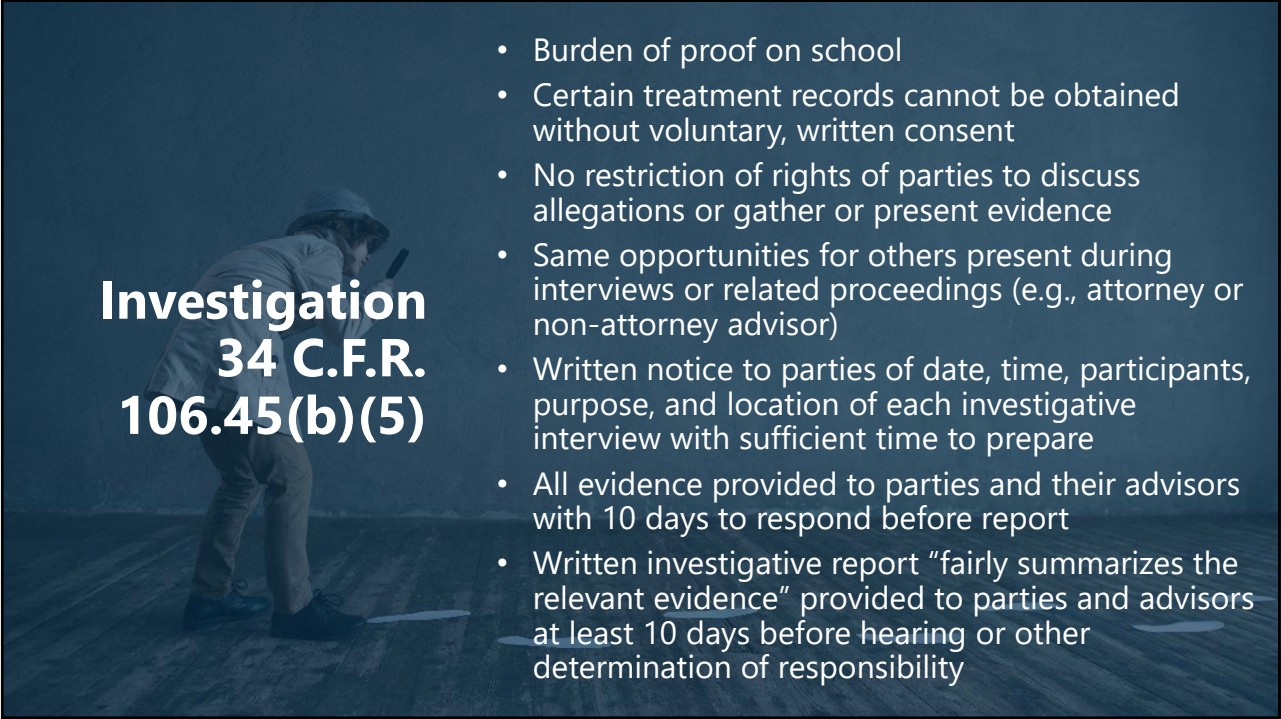
Who should investigate?

- We do not recommend that the investigator be the Title IX Coordinator
- Trained, unbiased investigator
 - No actual or perceived conflict of interest
 - Check "institutional interests"
 - Presumption that Respondent is not responsible

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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

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Response to Reports & Complaints Under Title IX

- Title IX Coordinator "supportive measures" meeting (whether formal or informal complaint)
- **If formal complaint filed or opened**
 - Informal resolution
 - Investigation
 - **Decision**
 - Appeal

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Decisionmaker(s) (Complaint)

- Cannot be the Title IX Coordinator or the investigator(s)
- Live hearing not required
- Written determination issued

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“Written Cross Examination”

Each party allowed to submit written, relevant questions to be asked of another party or witness to the decisionmaker, who will provide each party with the answers and the opportunity for follow-up questions

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Relevance

- Rape shield laws
- Treatment records
- Legally privileged information

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**Remember the
Standard of
Proof**

**Preponderance
of the Evidence**

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Remedies

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

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 - Investigation
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 - Appeal

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Appeal Process

- Available to both parties
- Three bases for appeal
 - Procedural issue, new evidence, bias/conflict of interest
 - Must impact outcome
- Opportunity to submit written statement
- Issue written decision to both parties

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Decisionmaker(s) (Appeal)

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

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Bias, Conflicts, and Fairness

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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.

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Recordkeeping

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Questions



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