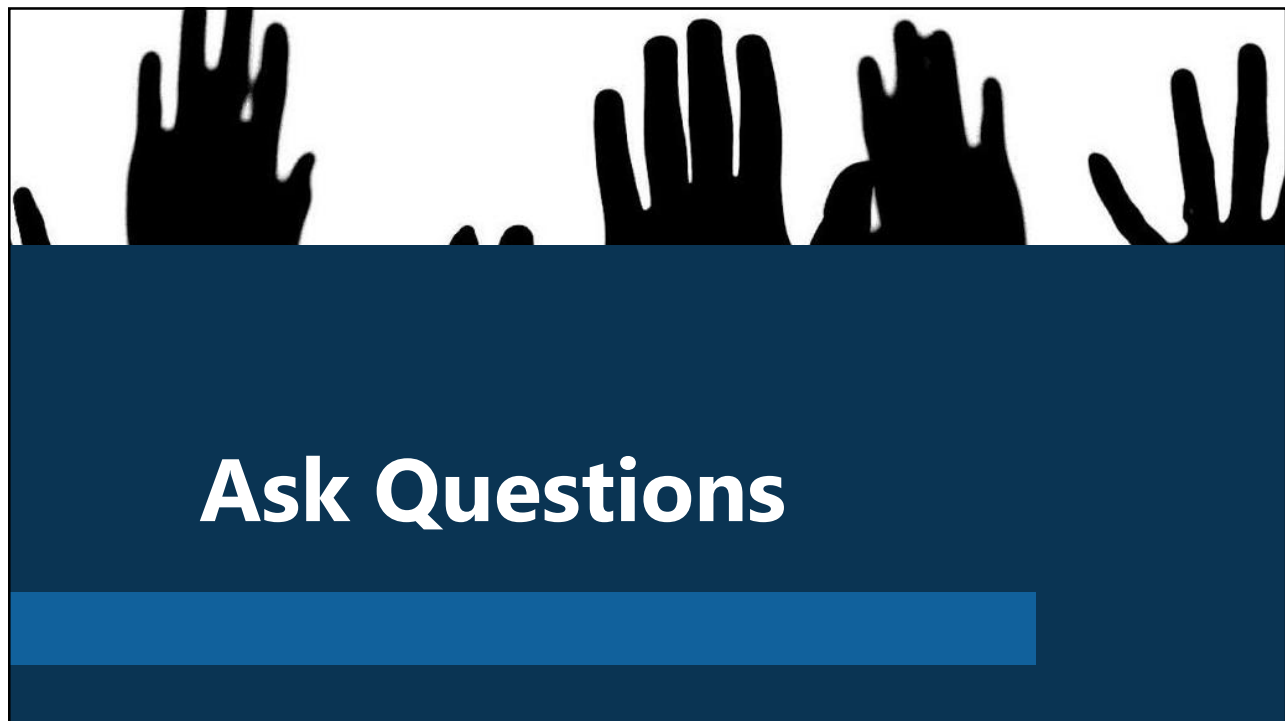




1



2

Remember Your “Basic Training”

- Definition of Title IX Sexual Harassment
- Scope of Education Program/Activity

FRANCZEK

www.franczek.com

3

Title IX – What is a Hostile Environment

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 school's education program or activity**

4

What is Informal Resolution?

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

FRANCZEK

www.franczek.com

5

Types of Informal Resolution

- Restorative Justice
- Mediation/Facilitated Dialogue
 - Face to face
 - "Shuttle diplomacy"

FRANCZEK

www.franczek.com

6

Robin's Report

- Robin, a freshman, said a friend, Cameron, also a freshman, told Robin that another student, a senior, Parker, had been sending inappropriate email messages to Cameron.

FRANCZEK

www.franczek.com

7

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

www.franczek.com

8

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

www.franczek.com

9

Your school district offers face-to-face restorative justice. Can you use this with Cameron and Parker?

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

Yes, as long as the facilitator has been trained

No, because Cameron has not filed a formal complaint

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

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

10



Old Rules vs. New Rules

- Discouraged by OCR before
- Allowed in 2017 (but did not prohibit in cases involving employee sexual harassment of a student)
- Now allowed but only where formal complaint is filed and not in cases involving employee-on-student misconduct

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

www.franczek.com

12

WHY ALLOW IR?

13



When is IR most useful?

No Competing Factual Narratives

14

Cameron files a complaint against Parker. Should Informal Resolution be allowed?

Yes

No

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

15

Who Should Serve as an IRF?

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

FRANCZEK

www.franczek.com

16

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

17

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

Yes

No

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

18

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

Yes No

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

19

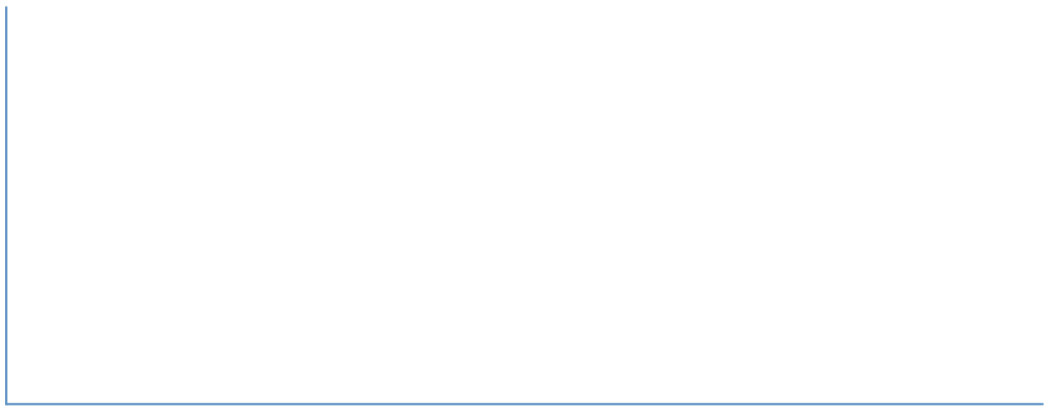
You have a history of working as a defense attorney. Is that a conflict of interest?

Yes No

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

20

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

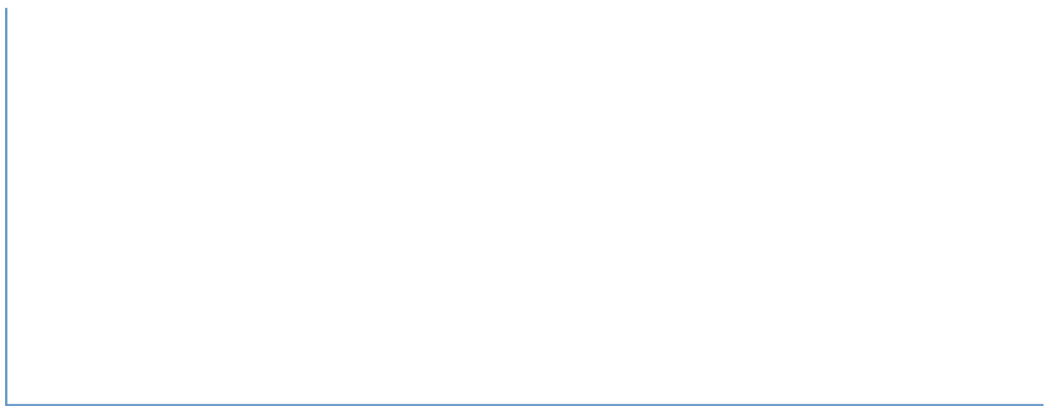


Yes No

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

21

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



Yes No

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

22

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

www.franczek.com

23

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, even if you believe one is right

FRANCZEK

www.franczek.com

24

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

www.franczek.com

25



Required & Recommended Notices

- Notice of allegations + existence of IR process
- Offer of informal resolution (with impacts of participation)
- Notice of end of informal resolution without agreement
- Notice of successful informal resolution

26

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

27

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

28

Other Impacts of IR Process

- Can IR give information against the parties in a later investigation?
- Can facts be used against the parties in a later investigation?

29

The Mediation Process

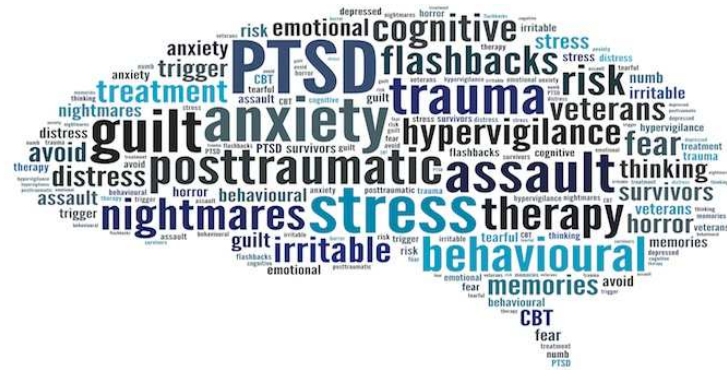
- Preparation
- Introductions
- Information Collection
- Problem Identification
- Brainstorming Solutions
- Brokering the Deal
- Agreement

FRANCZEK

www.franczek.com

30

Potential Trauma for CP and RP



FRANCZEK

31

Trauma and Informal Resolution

Empowerment

Recognition

Resolution

FRANCZEK

32

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

33

Preparation

34

Preparation

- Appropriateness of IR
 - Under Title IX
 - Readiness of parties
- Background information
 - Complaint and related documentation
 - Ask parties for background documentation
- Select location/method
- Advisor participation/guidelines

FRANCZEK

www.franczek.com

35

Introductions

36

Information Collection

37

Information Collection

- Why are we here?
- Tell me more about....
- Help me understand....

****remember your trauma-sensitive approach**

FRANCZEK

www.franczek.com

38

Trauma Informed Mediation

FRANCZEK

www.franczek.com

39

Brainstorming Solutions

40

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

www.franczek.com

41

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

www.franczek.com

42

Length of Informal Resolution

- Will vary depending on complexity
- 20 days is a reasonable time, but extensions will be warranted in many cases
- Try to obtain agreement to extensions from all parties
- Keep the Title IX Coordinator apprised of progress

FRANCZEK

www.franczek.com

43

Brokering the Deal

44

Brokering a Deal

- Empathy
- Honesty
- Trustworthiness
- Tenacity

FRANCZEK

www.franczek.com

45



46

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

Yes, if Parker fails to comply with the terms

Yes, but only for allegations not resolved in informal resolution

No, because you can only recommence an investigation if a resolution is not reached

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

47

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

www.franczek.com

48



49



50

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