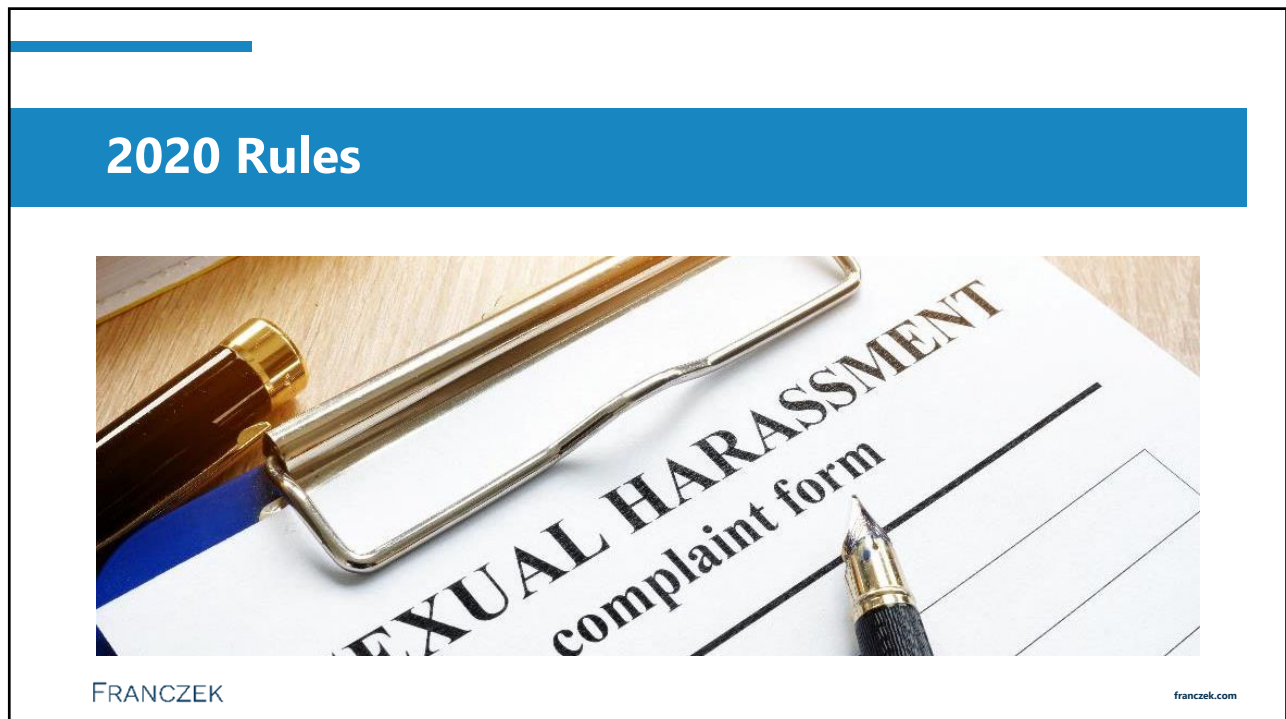




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## Here for 2021-2022



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Questions and Answers on the  
Title IX Regulations on Sexual  
Harassment (July 2021)

- Reiterates information in the preamble to the 2020 amendments
- OCR highlights

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## Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment

Helping schools reopen safely and in ways that support equity among students is a top priority for the Department of Education. The purpose of this Q&A is to help students, families, schools, and the public support all students' rights in educational environments, including in elementary and secondary schools and postsecondary institutions, during the COVID-19 pandemic.<sup>1</sup>


This question and answers (Q&A) document provides answers to common questions about schools' responsibilities under the civil rights laws the Office for Civil Rights (OCR) enforces.<sup>2</sup> These laws prohibit discrimination based on race, color, national origin, sex, disability, and age by state and local recipients of Federal financial assistance:<sup>3</sup>

- Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination based on race, color, or national origin;
- Title IX of the Education Amendments Act of 1972 (Title IX), which prohibits discrimination based on sex; and
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibit discrimination based on disability.<sup>4</sup>

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## Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students

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

JUNE 16, 2021

Contact: Press Office, (202) 401-1576, [press@ed.gov](mailto:press@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 *Bostock 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."

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## Impact

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

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)

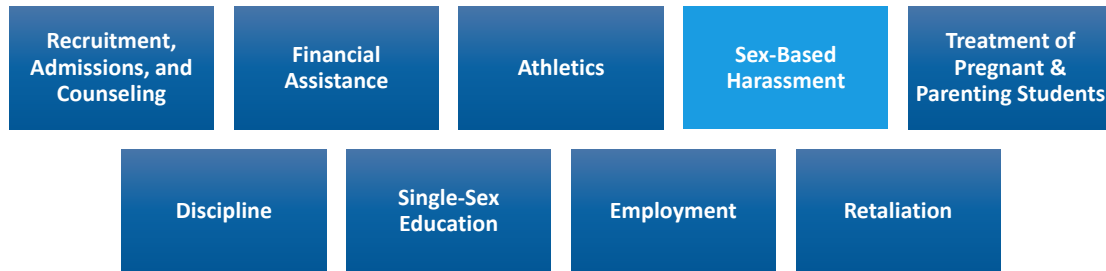
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

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## What falls under Title IX?



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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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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 promptly and in a manner that is not deliberately indifferent.

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## What is Actual Knowledge?

1. Sense
2. Report



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## Who, How, and When?

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Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct

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Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator

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Or by any means that results in the Title IX Coordinator receiving the person's report

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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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## Official with Authority



- Title IX Coordinator
  - K-12: All employees
- Board members are mandated reporters under IL Law**

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## What is Sexual Harassment?

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## Title IX – What is Sexual Harassment?

Hostile Environment

Quid pro quo by an  
employee

Sexual Assault  
Domestic Violence  
Dating Violence  
Stalking

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## Title IX Quid Pro Quo

**Definition:** An employee of the school conditioning an aid, service, or benefit of the school on an individual's participation in unwelcome sexual conduct

Only an employee (not a volunteer, another student, etc.)

Severity and harm presumed

Quid = Something

Pro = For

Quo = Something

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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

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



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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 sexual harassment 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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## Three Options

Policy 2:265	Policy 2:260	Code of Conduct
Title IX Sexual Harassment only	Uniform Grievance Procedure (for any other violation of law or Board policy, including other types of "sexual harassment")	Other school rules or policies prohibiting misconduct

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## Response to Reports & Complaints Under Title IX

→ Title IX Coordinator “supportive measures” meeting

If formal complaint filed or opened

- Informal resolution
- Investigation
- Decision
- Appeal

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Title IX Coordinator must promptly, **even if no Formal Complaint is filed:**

- Contact the Complainant to discuss the availability of “supportive measures”
- Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Consider the Complainant’s wishes with respect to supportive measures
- Explain the process for filing a Formal Complaint

**Initial  
Response**

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## Confidentiality



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Complainant confidentiality should be maintained until a formal complaint is filed

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Once a formal complaint is filed, confidentiality of complainant cannot be maintained

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## Supportive Measures

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**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)).

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**Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party**

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## Emergency Removal & Administrative Leave

### Student immediate emergency removal

- 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

### Employee administrative leave

- Not prohibited
- Consider state law, board policy, handbooks, and bargaining agreements

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## Student Removals

### EMERGENCY REMOVAL

- By the Title IX Coordinator
- No formal hearing required
- Can lead to removal for more than 10 days

### DISCIPLINE LAW

- Only Board can expel (removal for more than 10 day)
- IDEA and 504: removal for more than 10 days may be a change in placement

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## Response to Reports & Complaints Under Title IX

Title IX Coordinator “supportive measures” meeting

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## Formal Complaint

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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## Formal Complaint

Complainant files

Title IX Coordinator signs



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## Response to Reports & Complaints Under Title IX

Title IX Coordinator “supportive measures” meeting

If formal complaint filed or opened

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- Decision
- Appeal

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## Informal Resolution

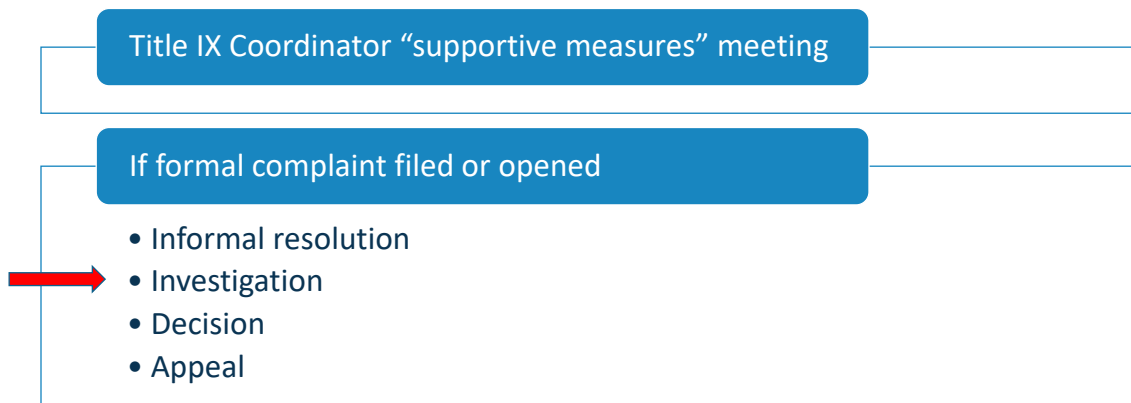
INFORMAL RESOLUTION IS NOT REQUIRED	NOT ALLOWED FOR EMPLOYEE -STUDENT	TIMING
<ul style="list-style-type: none"><li>• Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure</li><li>• Both parties must voluntarily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

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## Response to Reports & Complaints Under Title IX



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## Formal Complaint Response

- 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

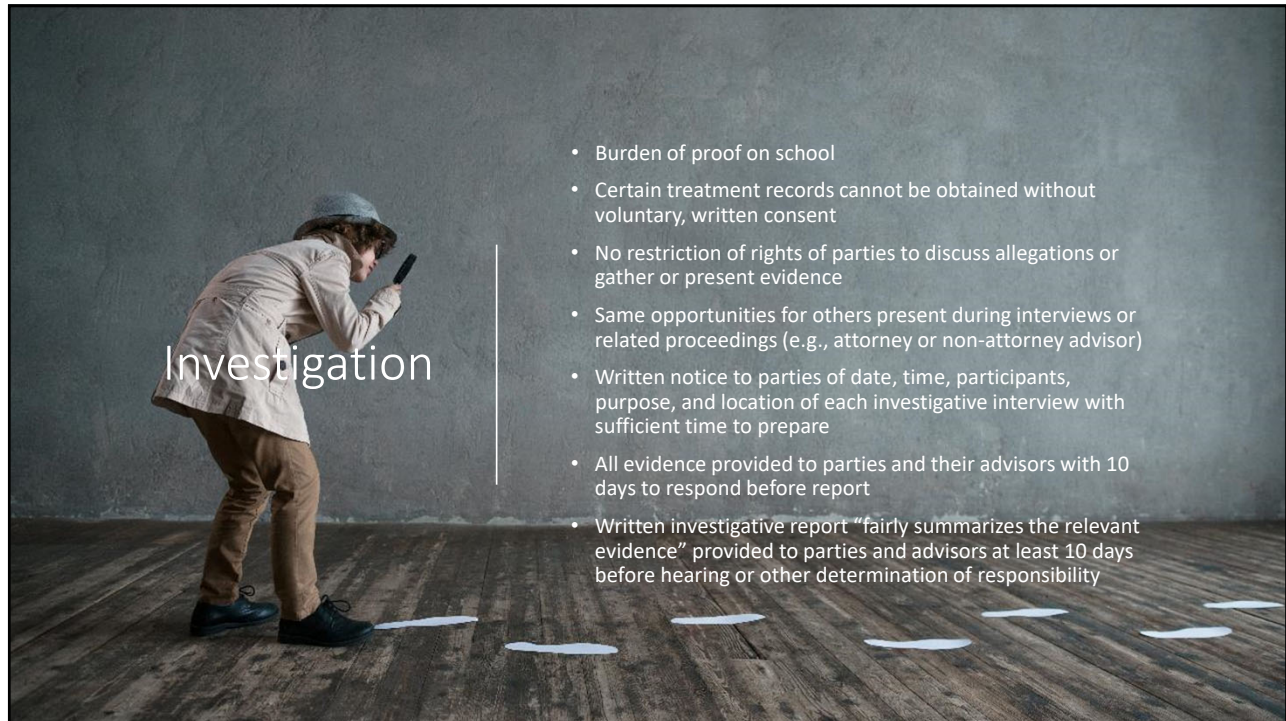
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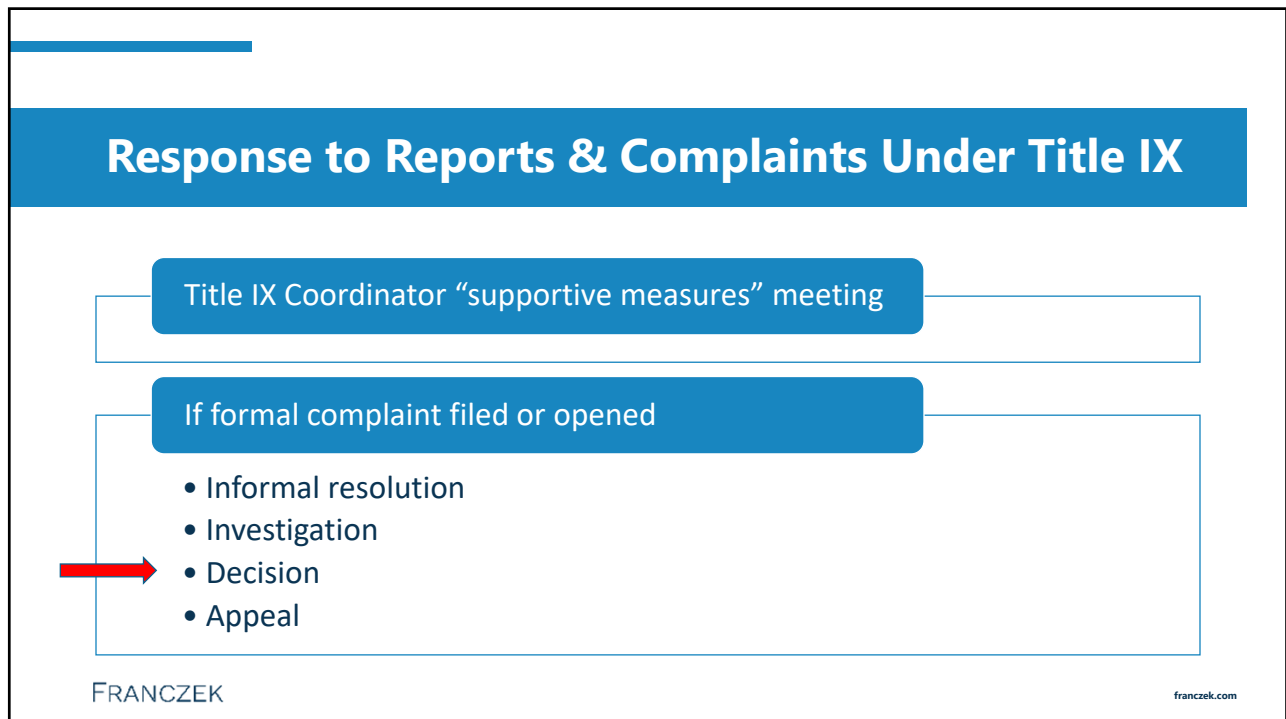
## Who should investigate?

- Consider not using the Title IX Coordinator
- Trained, unbiased investigator
  - No actual or perceived conflict of interest
  - Presumption that Respondent is not responsible
  - But also do not presume Complainant is lying

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## Decision Maker (Complaint)



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Cannot be

- Title IX Coordinator or
- Investigator(s)

Live hearing not required

Written determination  
issued

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## Written Cross Examination

Each party is 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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## Remedies

Disciplinary action against perpetrator

Counseling for perpetrator/victim

Changes to services or policies

Remedies for complainant and others

Etc.!!

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## Response to Reports & Complaints Under Title IX

Title IX Coordinator “supportive measures” meeting

If formal complaint filed or opened

- Informal resolution
- Investigation
- Decision
- Appeal

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## Decision Maker (Appeal)



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Cannot be

- Title IX Coordinator
- Investigator(s) or
- Decisionmaker (complaint)

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## Appeal Process

### Process

- Available to both parties
- Opportunity to submit written statement
- Issue written decision to both parties

### Bases for appeal (must impact outcome)

- Procedural issue
- New evidence
- Bias/conflict of interest

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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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