


# FRANCZEK

## Title IX Sexual Harassment Supports and Investigations



Presented by Jackie Wernz to District 211  
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1

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2

## Agenda

- Title IX Basics
- Review of Title IX Sexual Harassment Requirements
- Scenarios to hone supportive measure and investigatory skills
- Questions Welcome Throughout!

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## Title IX Basics

- What is Title IX?
- To whom does it apply?
- What does it prohibit in schools?
- What must a school do if it learns of misconduct covered by Title IX?

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## Title Coordinators & Complaint Managers

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## More Information Online

Additional information regarding the Title IX Sexual Harassment Grievance Policy, including prevention and response efforts, making a report, processing and reviewing a report or complaint, and the formal grievance process, can be found in Board Policy GAD/JB/KAB (available through the District's [BoardDocs](#) website).

[District 211 Title IX Formal Complaint Form \(Online\)](#)

[District 211 Title IX Formal Complaint Form \(PDF\)](#) 

[District 211 Title IX Administrative Procedures](#)

[District 211 Title IX Glossary of Terms](#)

Training materials for District 211 Administrators can be found here:

• [2020 Title IX Regulations: K-12 Basic Compliance Training](#)

• [2020 Title IX Regulations: Investigator Training](#) 

• [2020 Title IX Regulations: Supportive Measures Meeting](#) 

• [2020 Title IX Regulations: Decision-Maker Training](#) 

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## When Do the Title IX SH Rules Apply?

T9 Grievance Procedure (Policy GAD/JB/KAB)  
– only applicable to conduct that is:

1. “Title IX Sexual Harassment”
2. “in a program or activity”
3. “in the United States”

Other complaints handled under Uniform  
Grievance Procedure

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## Title IX Basics

- REMEMBER “actual knowledge”
- There are no “confidential resources” in K-12 under Title IX (exists in higher ed only)
- Even if the police are involved, school has responsibility to investigate, make a determination (may delay temporarily for good cause)

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## “Title IX Sexual Harassment”

### The Title IX “Big 5”

- Employee quid pro quo
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

### “Hostile Environment”

- So severe, Pervasive, and objectively offensive
- That it effectively denies equal access

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## “In a Program or Activity”

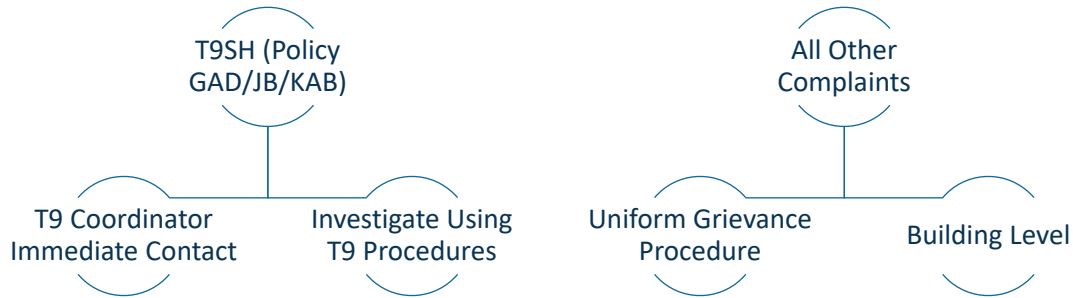
- Locations, events, circumstances
- Over which the school district exercises substantial control
  - The respondent (alleged perpetrator)
  - The context in which the sexual harassment occurs

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## What if the Title IX Rules Apply?



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## What if the Title IX SH Rules Apply?

- Policy GAD/ JB/ KAB and related administrative procedures should be followed from the very start
- Use the Franczek Title IX Toolkit documents to guide your work

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## What if Title IX Does Not Apply?

- Supportive Measures
- Consider "Downstream Effects"
- Consider Other Laws/Policies → Non T9 SH
- Consider "Soft Responses"

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## Evaluation



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## Purpose: Evaluation

- Key terms
  - Evaluation: collect information to decide what kind of violation has been alleged
  - Intake Meeting: this is not an interview, it is a process to decide which kind of complaint this is and, therefore, what type of procedure to use
  - Investigation: collect information to decide if violation of rule occurred

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## Scenario

- Anonymous report that Riley (student) has been sending inappropriate electronic communications to Cameron (student)
- Special education teacher says this is a pattern of disruptive behavior by Riley (first sex-based issue, though); provides names of 3 other students who were impacted
- Teacher talked to Riley; just wants this to go away

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## Breakout Room (5 Minutes)

- What steps would the building-level team take in a non-sexual harassment case?
- What are the steps that should be taken considering the sexual nature of the complaint (evaluation)?
- What types of questions would you ask?
- Report back!

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18

## Report Back

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## Breakout Room (5 Minutes)

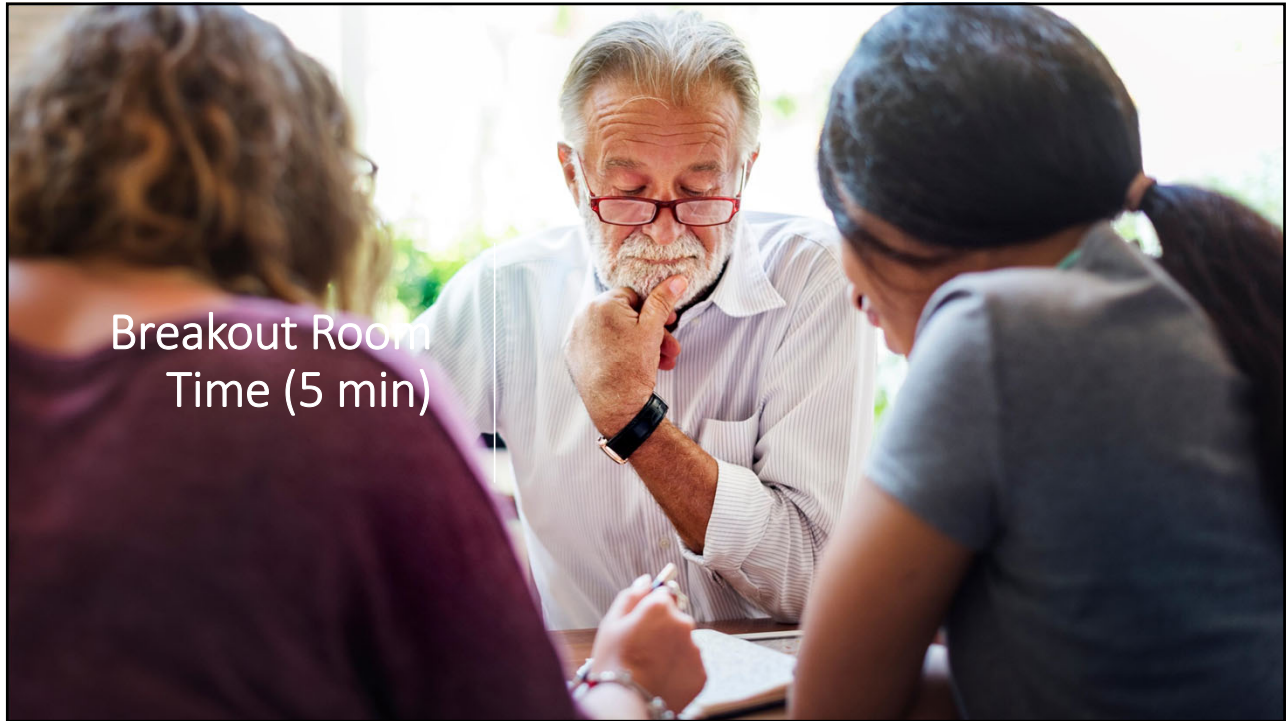
Based on what we learned during the intake interview, does Policy GAD/JP/KAB apply? Consider:

1. "Title IX Sexual Harassment"
2. "in a program or activity"
3. "in the United States"

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20



21

# Group Report Out

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## Initial Meeting



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## Title IX SH Process: Step 1

If a matter is Title IX SH + PA + US...

1. Title IX Coordinator or designee must meet with the Complainant to discuss supportive measures and explain process to file a Title IX Formal Complaint.

The Coordinator or designee should send to the Complainant(s) **Notice 1(a)** before the meeting and **Notice 1(b)** after the meeting.

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## Title IX SH Process: Step 2

If a matter is Title IX SH + PA + US....

2. And the Complainant does not want to file a Formal Complaint, the Title IX Coordinator or designee must decide whether or not to sign a Formal Complaint.

The Coordinator or designee should send to the Complainant(s) and Respondent(s) **Notice 2(a)** or **Notice 2(b)**, depending on how the Formal Complaint is initiated. If a Formal Complaint is not initiated, the Coordinator or designee should indicate in the file why a Formal Complaint was not signed.

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## Title IX SH Process: Step 3

If a Formal Complaint is filed, but dismissal is warranted...

3. The Title IX Coordinator or designee should dismiss the Formal Complaint.

The Coordinator or designee should send **Notice 3(a)** (for mandatory dismissals) and **Notice 3(b)** (for permissive dismissals) to both the Complainant and the Respondent.

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## Title IX SH Process: Step 4

If a matter is Title IX SH + PA + US....

4. The Title IX Coordinator or designee should consider an emergency removal or administrative leave.

The Coordinator or designee should send **Notice 4(a)** (for emergency removals) and **Notice 4(b)** (for administrative leaves) to the Complainant(s).

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## Breakout Room (5 Minutes)

You have been designated to hold the initial meeting with the Complainant. Discuss:

- With whom do you meet?
- What do you say/what questions do you ask?
- What supportive measures might you offer?
- What if no Complainant wants to sign a Formal Complaint?
- Is an emergency removal warranted?

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29

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## Informal Resolution



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## Title IX SH Process: Step 5

If a matter is Title IX SH + PA + US...

The Title IX Coordinator or designee can offer informal resolution.

The Coordinator or designee should send **Notice 5(a)** (offer of IR) and **Notice 5(b)** (when IR ends) to Complainant(s) and Respondent(s).

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## Investigation



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## Title IX SH Process: Step 6 (Notice)

- The investigator will conduct investigatory interviews and meetings with parties and witnesses.
- Before any meeting or interview with a party, the investigator must send **Notice 6(a)** to the party.
- Before any meeting or interview with a witness, we recommend that the investigator send **Notice 6(b)** to the witness.

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## Title IX SH Process: Step 6 (Advisors)

- Parties can bring advisors to meetings.
- We recommend providing parties and their advisors the **Advisor Conduct Expectations** document prior to any meeting.
- Advisors can be allowed for witnesses; but it is not required.

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## Cameron's Complaint

### 3. Where did the alleged sexual misconduct occur?

Online and on electronic devices including Riley's personal snapchat, text, and email during school hours/remote learning and also sometimes on school devices.

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## Cameron's Complaint

**Date(s) of Incident(s) (or time frame during which behavior persisted):**

Since the beginning of this semester, Cameron says these messages were frequent. 2-5x a week.

**Describe the alleged incident(s) with as much detail as possible including the place it occurred, date, time, and individuals involved:**

It was reported that Riley sent Cameron multiple messages of a sexual nature, including requests for sexual activity, threats of sexual assault, and photographs/images of Riley's naked genitalia. Cameron was not able to produce copies of sex-based comments; says most of the messages were sent in ways that were not recorded (Face Time, Snapchat, etc.). Cameron says that Wei W. (student) saw some of the messages. Cameron also talked to Wei about the messages and how they were impacting Cameron.

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## Breakout Room (5 Minutes)

You are the investigator. Discuss:

- Who will you interview?
- What do you say/what questions do you ask?
- What other evidence will you consider?

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## Title IX SH Process: Step 7

The investigator must provide both parties all "directly related evidence" with 10 days to respond before the investigative report is completed

The Coordinator or designee should send **Notice 7(a)** (notice of directly related evidence) and **Notice 7(b)** (notice of other party's response) to the parties.

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## After the Interview

Review the interview notes with your team:

- Is the investigation complete? If not, what more would you want to do, see, or know?
- What credibility issues can you spot? How can you collect more information to address them?

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## Title IX SH Process: Step 8

The investigator must create a report that fairly summarizes the relevant evidence. This must be provided to both parties at least 10 days before a final decision is made (by the decision-maker).

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## Scenario Update

- The investigator found both the Complainant and the Respondent to be forthright and cooperative, as well as relatively consistent.
- Each party arguably has a motive to achieve an outcome in their favor even if the situation does not warrant it. But there was no evidence of any such motive that was greater or less for either party.

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44

## Scenario Update

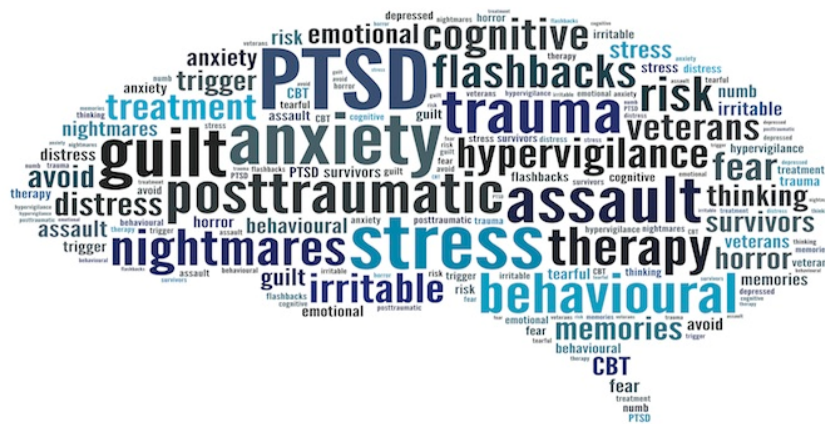
- The investigator should consider the logic of explanations and corroborating and contradicting evidence when considering credibility.

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## Trauma



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## They Said, They Said

- Consider:
  - Corroborating or Conflicting Evidence
  - Detail and Consistency
  - Demeanor
  - Action Taken
  - Plausibility
  - Source of Information (Bias)

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## They Said, They Said

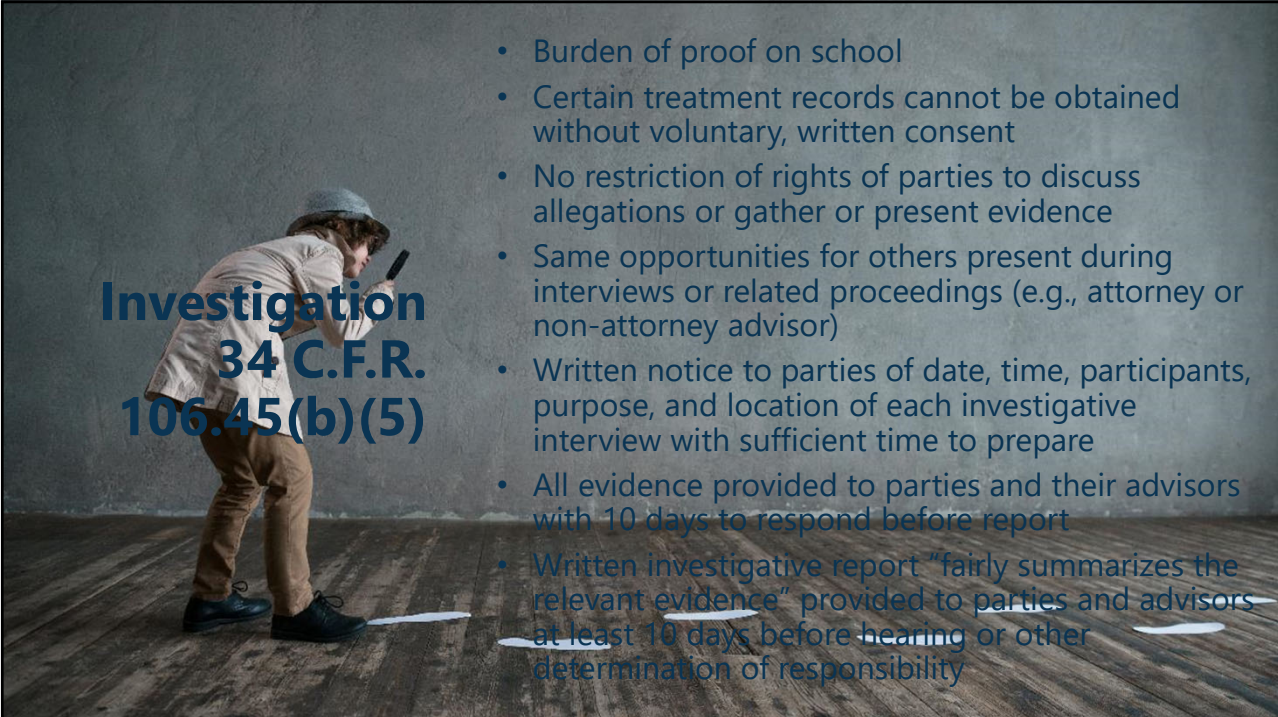
- Irrelevant:
  - Explanations by responding party for why the misconduct occurred, e.g. "I was just joking around."
  - Character witnesses
  - Popularity with staff and students
  - Academic performance
  - Clothing, appearance
  - Flirting behavior

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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

49



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## 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

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## 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

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## 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

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## 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

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## Investigation Report

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

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56

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