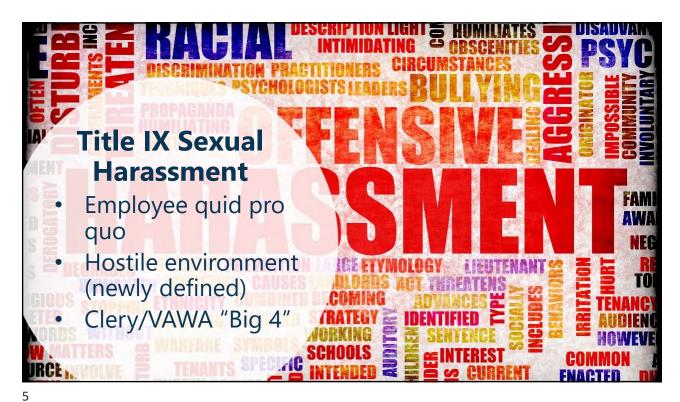


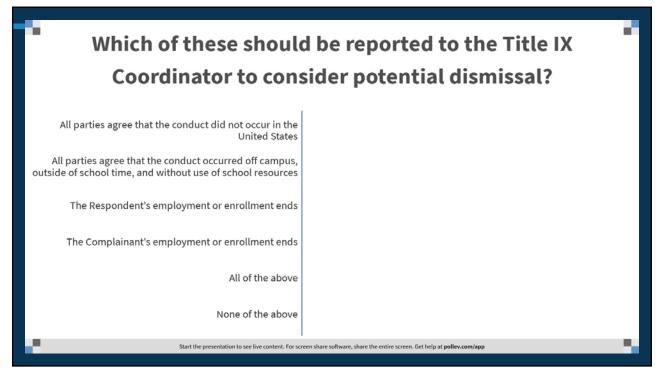
Agenda

- Investigator Responsibilities
- Serving Impartially
- Investigation Requirements & Best Practices
- Sharing Evidence and the Investigative Report
- Understanding "Relevant Evidence"
- Recordkeeping









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

7



Mandatory if conduct alleged:

Not Title IX Sexual Harassment Did not occur in the school's program or activity Did not occur in the United States

**can still address under non-Title IX policy

Permissive if:

Complainant requests to withdraw in writing Respondent's enrollment or employment ends Specific circumstances prevent school from gathering evidence sufficient to reach a determine (e.g., passage of time, lack of cooperation by complainant)

Title IX Investigator Responsibilities

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Serving Impartially

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Who should investigate?

- Trained
- No: bias, conflict of interest, prejudgment
- Appeal: can be based on improper, biased/conflicted investigator

Standard

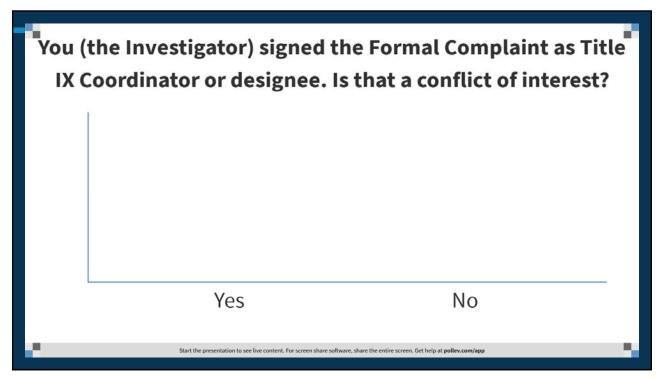
- Declined to define "bias," "conflict of interest," "prejudge"
- The Department encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....

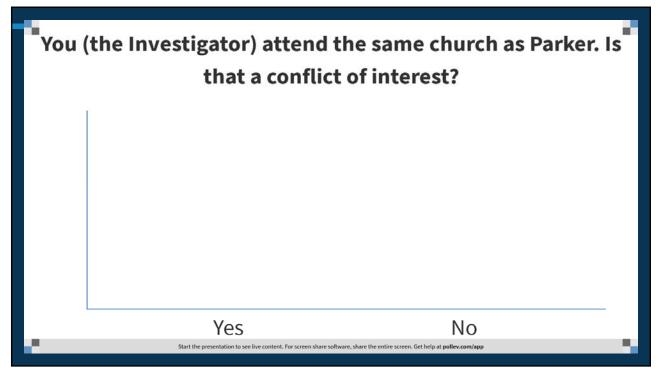
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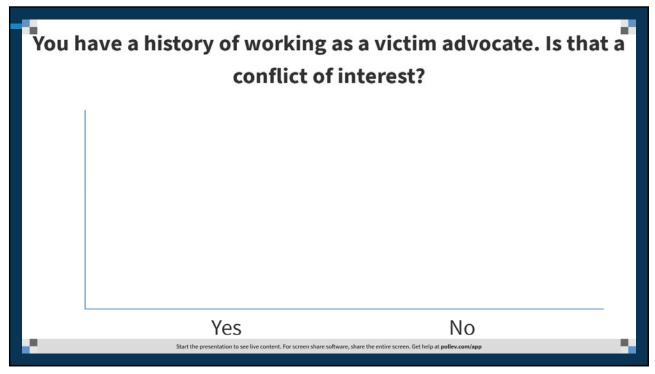
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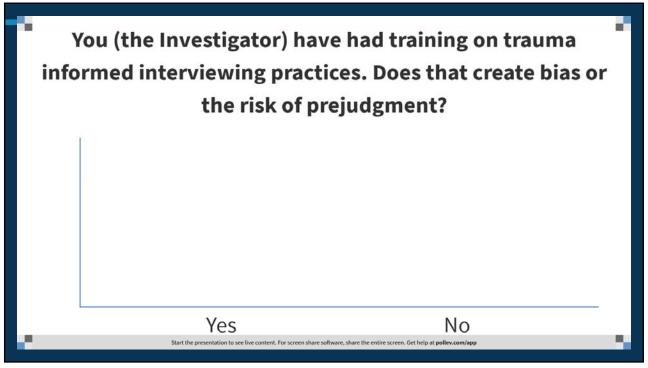
Cameron's Complaint

- Cameron, a freshman, claims that another student, a senior, Parker, sexually assaulted Cameron
- You are assigned the formal complaint and send the written notices of Title IX allegations to the parties









What Might be Bias, Conflict, Prejudgment?

- Discouraging a party from submitting certain evidence
- Using terms like "victim" and "perpetrator"
- Permitting credibility inferences or conclusions based on party status

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What Might be Bias, Conflict, Prejudgment?

- Using sex stereotypes
- Placing the burden of proof on one party
- Unauthorized interim suspensions or other penalties before conclusion of grievance process

What Likely Is Not...

- Deciding an allegation warrants an investigation
- Being an employee (and even attorney)
- Finding in favor of one party over another

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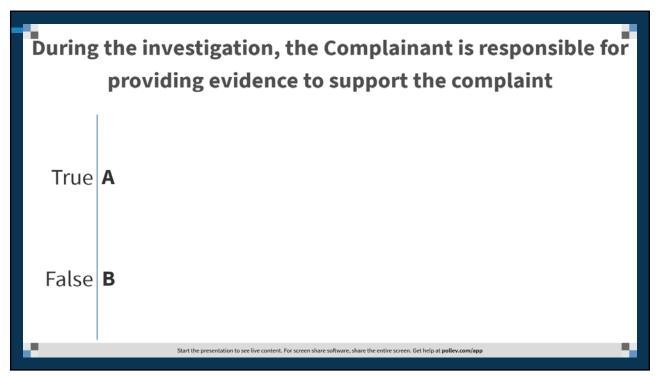
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Investigation: Required Elements

Investigation

- Occurs when there is a "formal complaint"
- Must treat parties equally
- Must contain specific elements

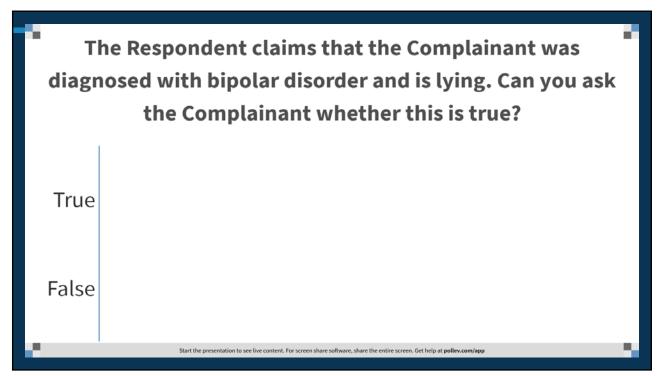
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Burden of proof on school

- 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



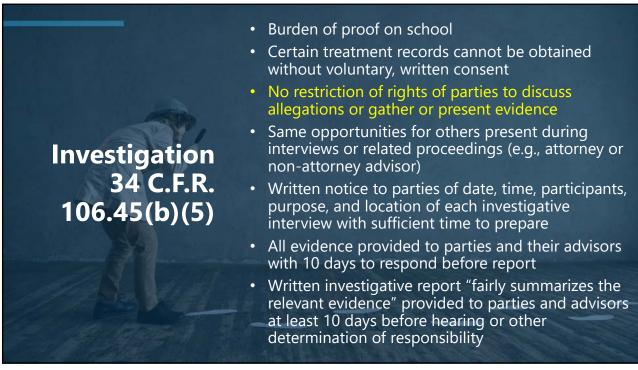


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Treatment Records

- 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





Retaliation and Gag Orders

- Gag order not allowed
- Warn of risks from speaking about the complaint
- Notify all parties and witnesses of retaliation rights and encourage follow up

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Parker wants to bring a classmate, who is also a witness, as the "advisor" during investigation meetings. Is that allowed? Yes, parties can bring the advisor of choice to a meeting No, Parker can bring a parent or attorney as an advisor, but not a witness



- Burden of proof on school
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A party brings an attorney to an investigative interview, and the attorney jumps in every time a question is asked. Can you kick out the advisor and continue the meeting?

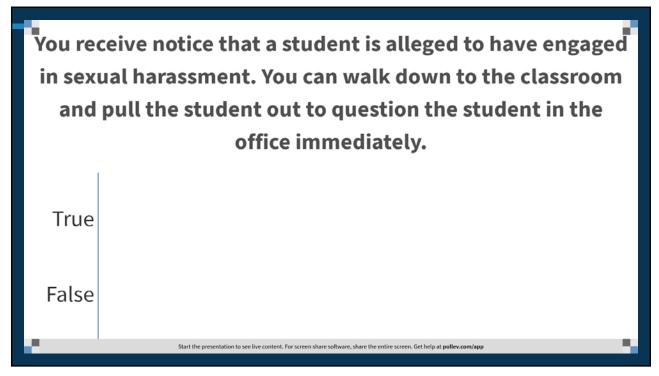
No, parties in Title IX matters have the absolute right to an advisor of their choice at every meeting

No, you should remind the advisor of the rules of decorum in place and warn that the advisor will be removed if the rules are not followed again

Yes, because you are allowed to have rules of decorum and if an advisor will not follow them there is no requirement to give a warning or delay the investigation

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





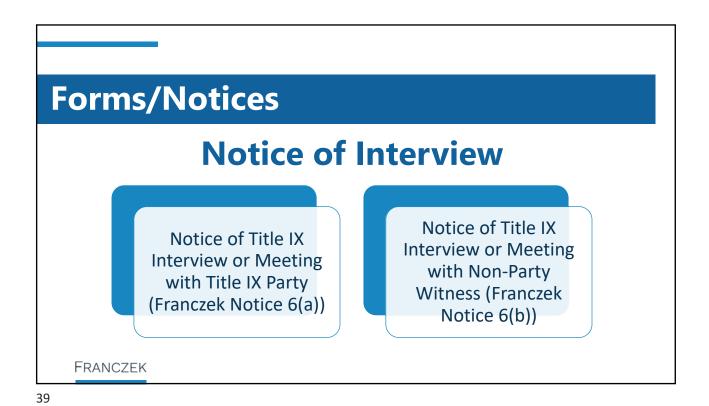


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Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
- With sufficient time to prepare Recommend same for witnesses (not required)



Before finalizing the investigative report, I must give both parties and their advisors a summary of all evidence and an opportunity to respond.

True

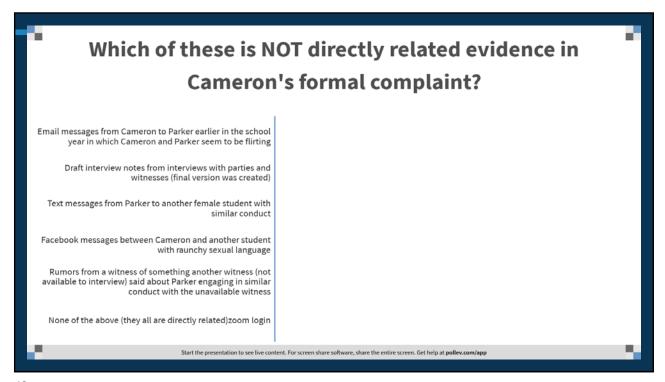
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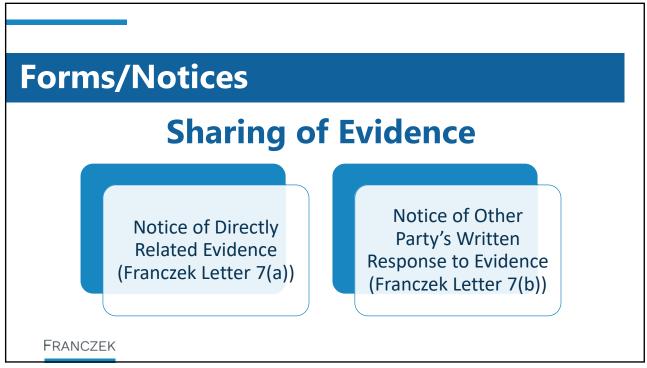


- Burden of proof on school
- Certain treatment records cannot be obtained without voluntary, written consent
- No restriction of rights of parties to discuss allegations or gather or present evidence
- Same opportunities for others present during interviews or related proceedings (e.g., attorney or non-attorney advisor)
- Written notice to parties of date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare
- All directly related 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

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/consider responses
 - ➤ Share responses with the other side







- 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)
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- Written investigative report "fairly summarizes the relevant evidence" provided to parties and advisors at least 10 days before hearing or other determination of responsibility

Investigation Report

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

Forms/Notices Investigative Report Transmittal Cover Title IX Investigative Notice of Investigative Notice of Other Party's Letter to Decision-Report Template Report (Franczek Written Response maker at Conclusion of (Franczek Form B) Notice 8(a)) (Franczek Notice 8(b)) Investigation (Franczek Letter 8(c)) **FRANCZEK**

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Investigation Report

- Must fairly summarize all <u>relevant</u> evidence
- Relevant evidence is different from evidence "directly related to the allegations"

Determining Relevance

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

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Rape Shield Law

- 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

Treatment Records

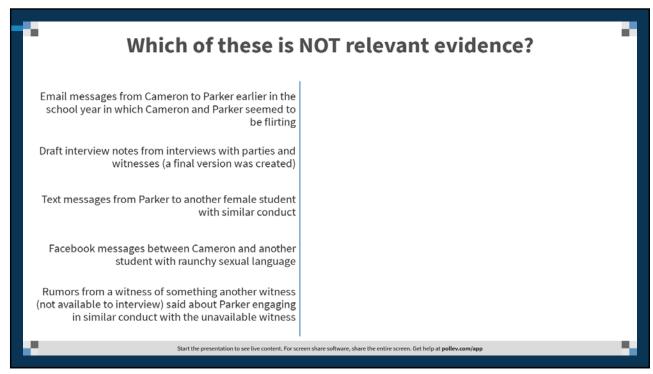
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- Made by a physician, psychologist, or other recognized professional
- Which are made and maintained in connection with the provision of treatment,
- Unless the party gives voluntary, written consent

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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
 - ➤ Confidentiality and trade secrets



Investigation: Techniques & Best Practices

The Investigation Plan

- Witness List
- Order of Interviews
- Questions for Witnesses
- Physical Evidence Needed, e.g., records, documents, reports, photos, and letters

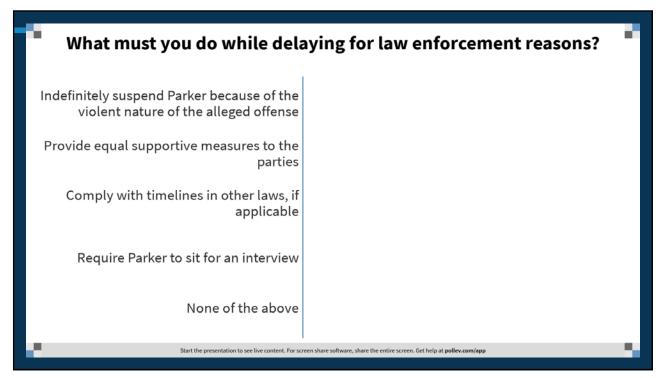


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Cameron's Formal Complaint

- Cameron reports that the sexual assault occurred after a party. Bobbie and Ali (students) were at the party.
- After the party, Cameron told Robin, Cameron's roommate, what happened. Cameron also talked to a teacher, Mr. Smith.
- Cameron submitted to a police interview and SANE exam shortly after the incident.



Concurrent Law Enforcement

- Police plan to release evidence on a specific timeframe that is material to investigation
- Only "temporary" or "limited" allowed
- Not "more than briefly" beyond timeframes
- Not required





Party Interview Tips

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

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Prefaces for Witnesses

- Role as a Neutral
- Notes and Records Confidentiality
- Allegations (if necessary)
- Your Identity and
 Role of Advisor (if allowed)

 - Retaliation
 - Rapport Building

Questions

- Relationships
- Details of Conduct
- Effect of Alleged Conduct on the **Parties**
- Outcry/Reports
- Identities of Parties Other Responses of **Parties**
 - Between the Parties Documentary and Other Evidence
 - Identities of Witnesses

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Avoid

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

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Closing

- Anything else?
- Any questions?
- Advisor questions (if allowed)
- Encourage follow-up
- Process (again for parties)

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Potential Trauma for CP and RP



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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

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Cardinal Sins of Interviewing

- · Questions that are evaluative
- Long, confusing questions
- Sticking blindly to a script
- Using undefined terms (witness can define)
- Interrupting and rushing

In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

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How did the conduct affect you?

What would you like to see as an outcome? (avoid making any promises)

Consider whether appropriate to ask for more incidents than offered

Perhaps instead, focus on repeating "Is there anything else you'd like to tell me or for me to look into?"

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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



After Interviews

- Follow up in writing to summarize any points that might need confirmation
- Clean up notes
- Document less formal interactions
- Send links/copies to policies if relevant
- REASSESS allegations, investigation plan, and supportive measures

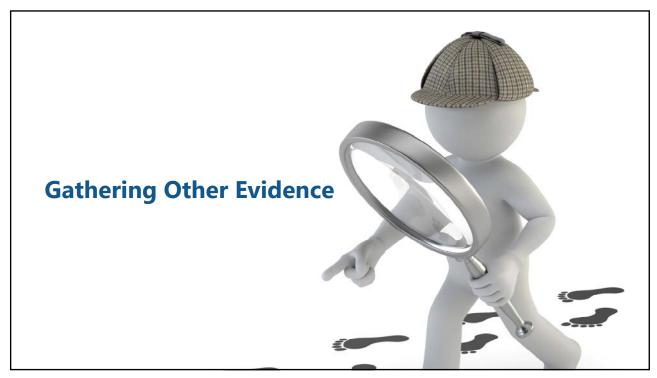
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Scope of the Investigation

Must be "thorough," but not required to review all potential sources of evidence parties or witnesses identify





Recordkeeping

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Investigation File

- What should be in the investigation file?
 - **≻**Complaint
 - ➤ Applicable Policies
 - ➤Investigation Plan (can be a living document)
 - ➤ Records of Communications
 - ➤ Interview Notes
 - ➤ Evidence Collected
 - **≻**Report

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Interview Notes

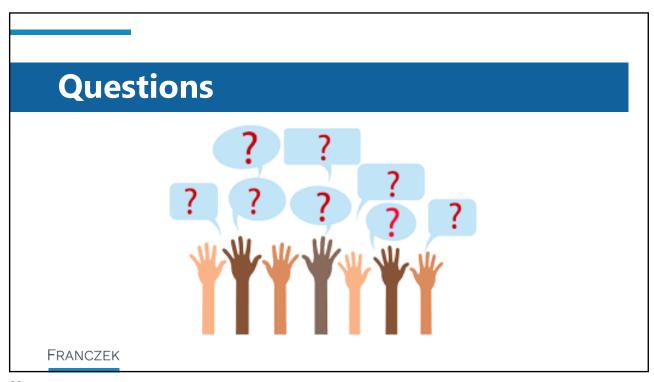
- Include: Facts + Statements (consider quotes)
- Don't Include: Conclusions + Judgements
- Label: Name of Witness, Date, Time, Interviewer, Location, Method, Those Present



Recordkeeping Essentials

- Overview of Required Recordkeeping
- File Checklist

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