



1

Agenda

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

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2

Investigator Responsibilities

1

Identify and
interview parties
and witnesses

2

Gather and
assess evidence

3

Share evidence
with parties and
provide for
written response

4

Write and share
investigative
report

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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

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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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Cameron's Complaint

- Cameron, a freshman, claims that another student, a senior, Parker, sexually assaulted Cameron
- Can you serve as the investigator?

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

(A) Yes



100%

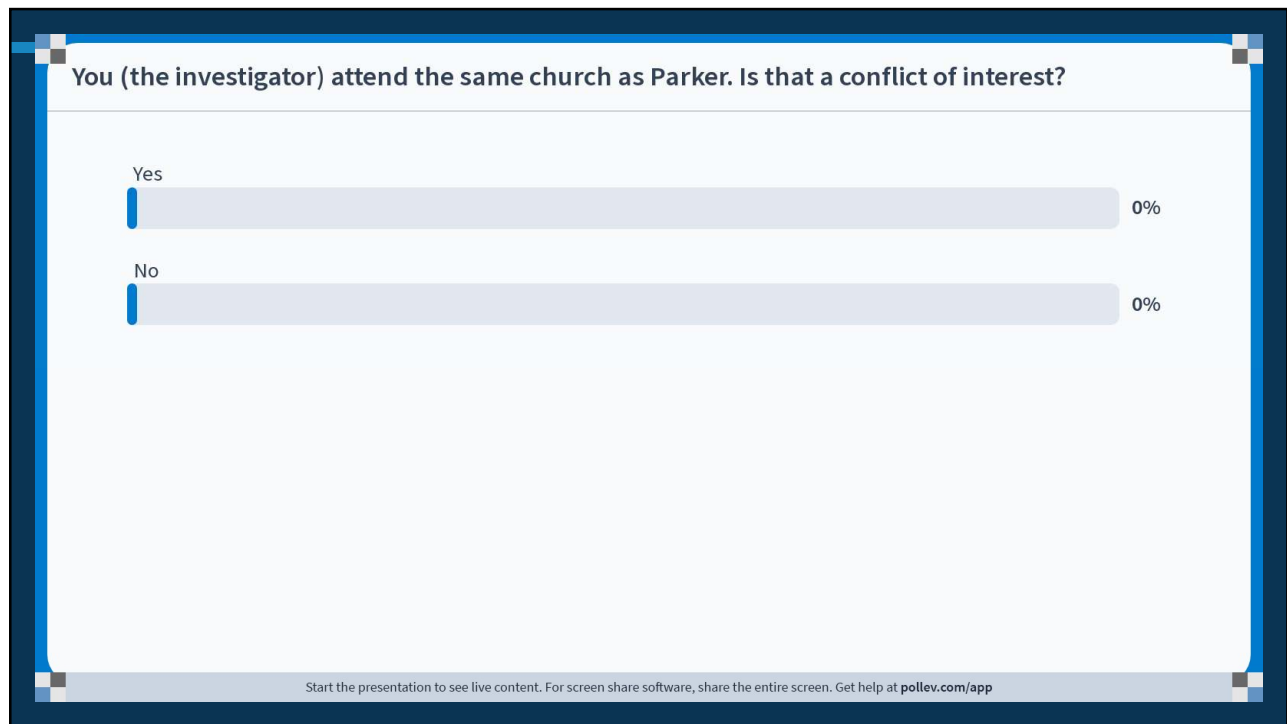
(B) No



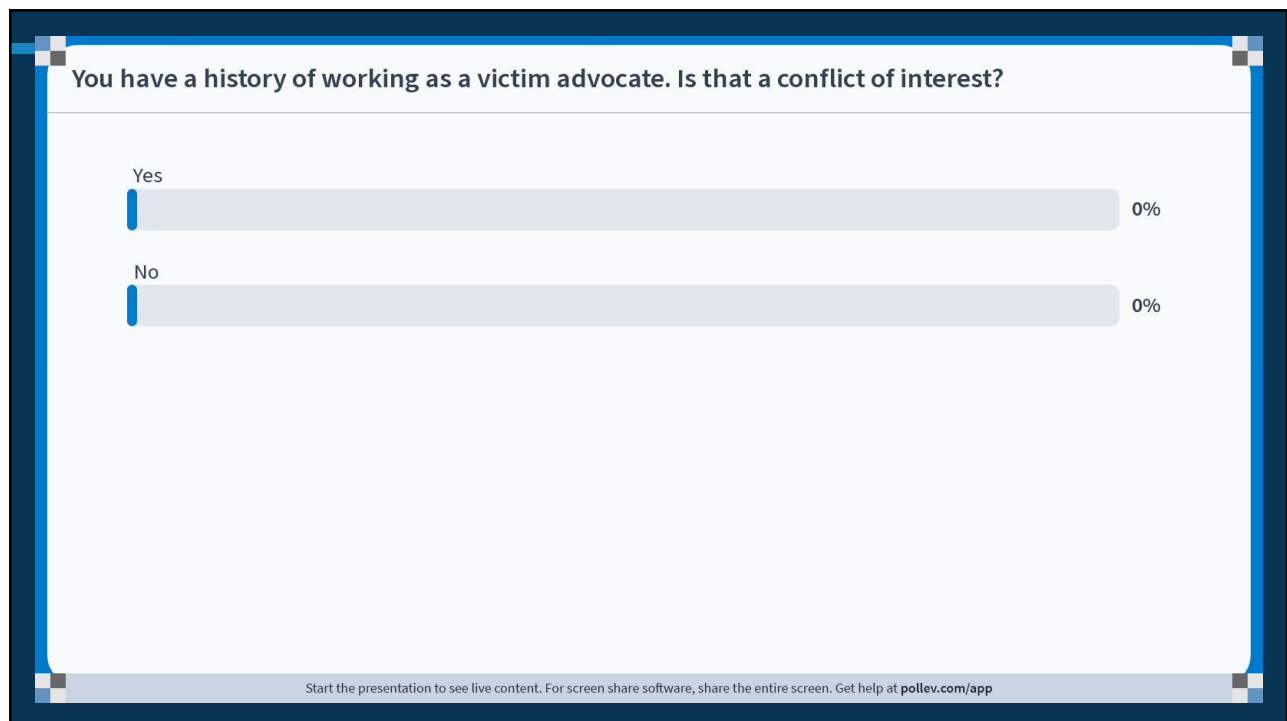
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8



9



10

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

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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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Investigation: Required Elements

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Investigation

- Occurs when there is a “formal complaint”
- **Must contain specific elements**
- Must treat parties equally for any additional elements

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Step One: Notice of Allegations

- By Title IX Coordinator or Investigator
- Promptly upon receipt of a formal complaint
- To all known parties

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Step One: Notice of Allegations

Include

- Notice of grievance process
- Notice of allegations, including sufficient details
- Statement that respondent is presumed not responsible until end of process

With sufficient time to prepare a response before any initial interview

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Step One: Notice of Allegations

Sufficient details include:

- Identities of the parties involved in the incident, if known
- The conduct allegedly constituting sexual harassment under Title IX
- The date and location of the alleged incident, if known

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18



19

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


20

Parker claims that Cameron was diagnosed with bipolar disorder and is lying. Can you ask Cameron whether this is true?

True	0%
False	0%

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21



Investigation
34 C.F.R.
106.45(b)(5)

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22

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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During the investigation, the investigator can tell Cameron and Parker (or an employee if involved in a complaint) not to talk to others about the complaint or investigation

True



0%

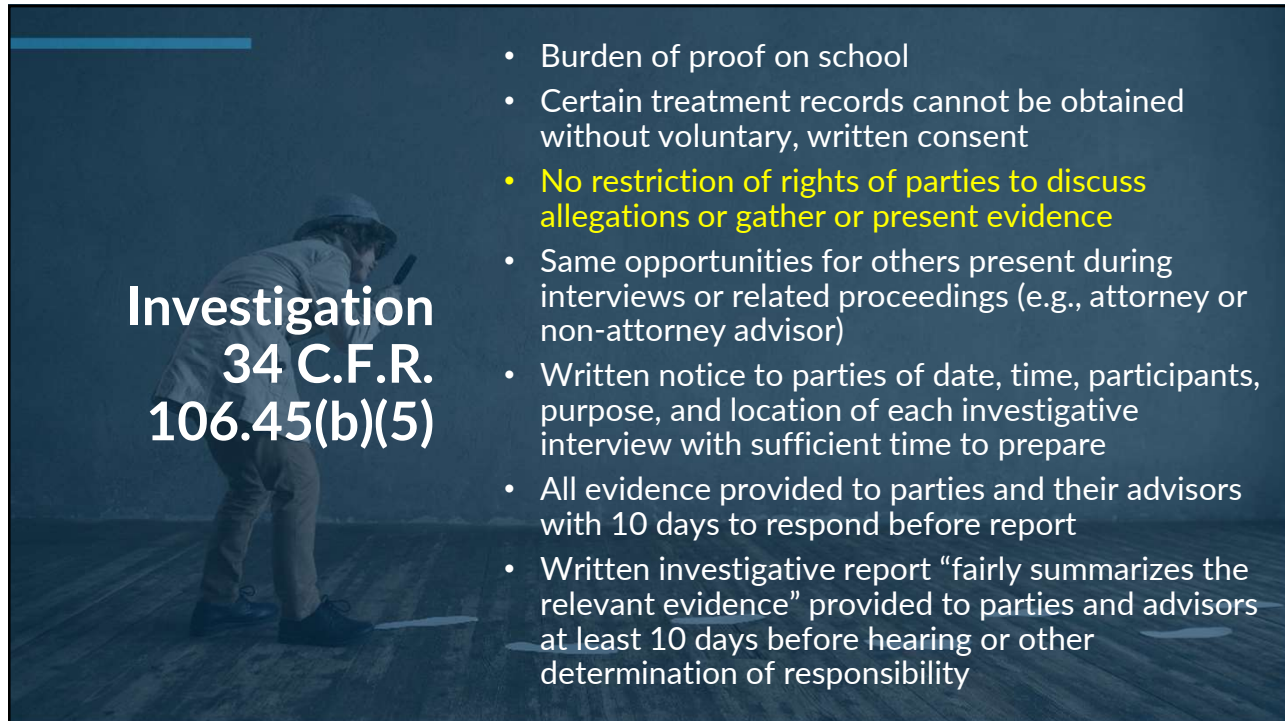
False



0%

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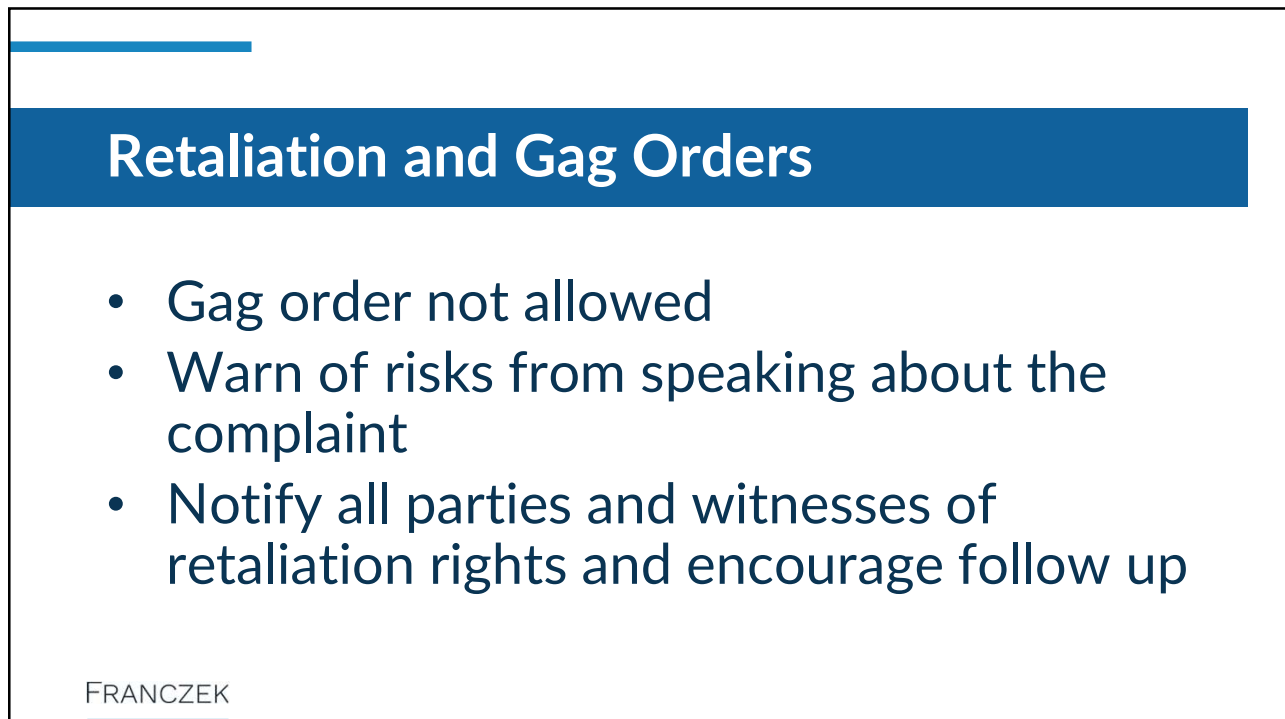
24

A slide titled "Investigation 34 C.F.R. 106.45(b)(5)" featuring a background image of a person in a white lab coat and cap, possibly a forensic investigator, looking down at the ground. The text "Investigation 34 C.F.R. 106.45(b)(5)" is overlaid on the left side. A list of seven bullet points is on the right side.

Investigation 34 C.F.R. 106.45(b)(5)

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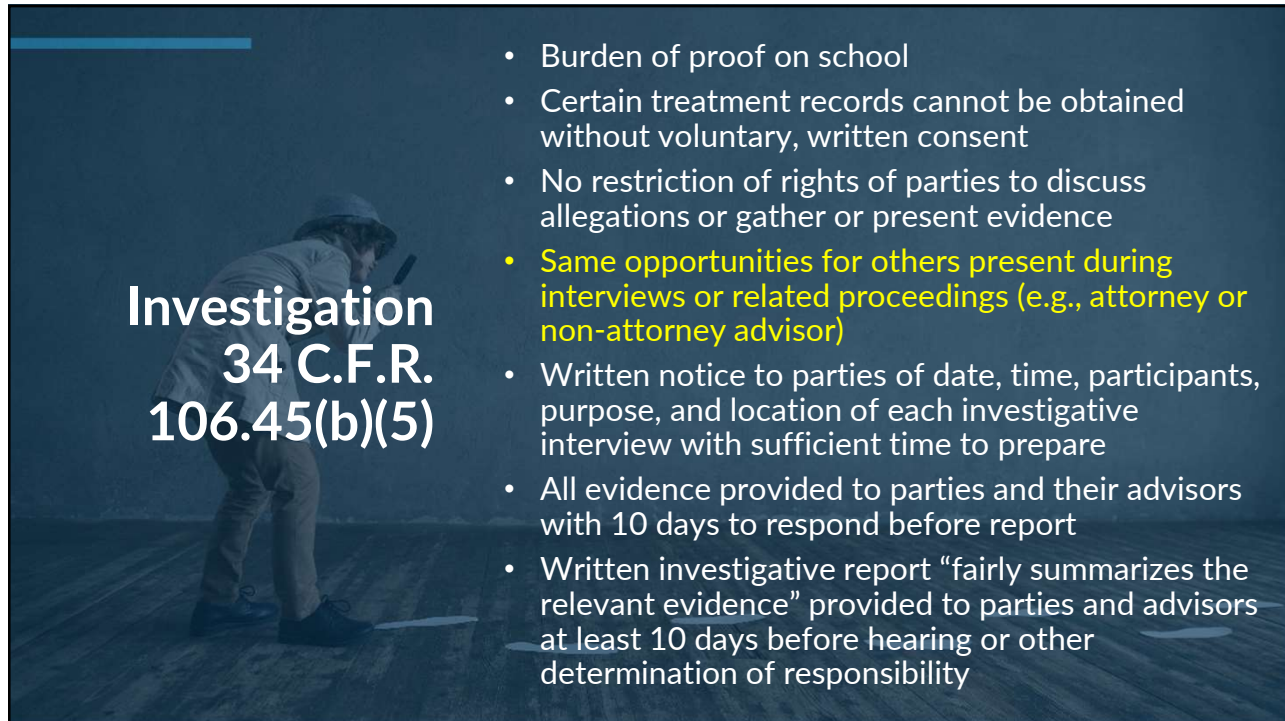
A slide titled "Retaliation and Gag Orders" with a blue header bar. Below the header, there is a list of three bullet points. The Franczek logo is in the bottom left corner.

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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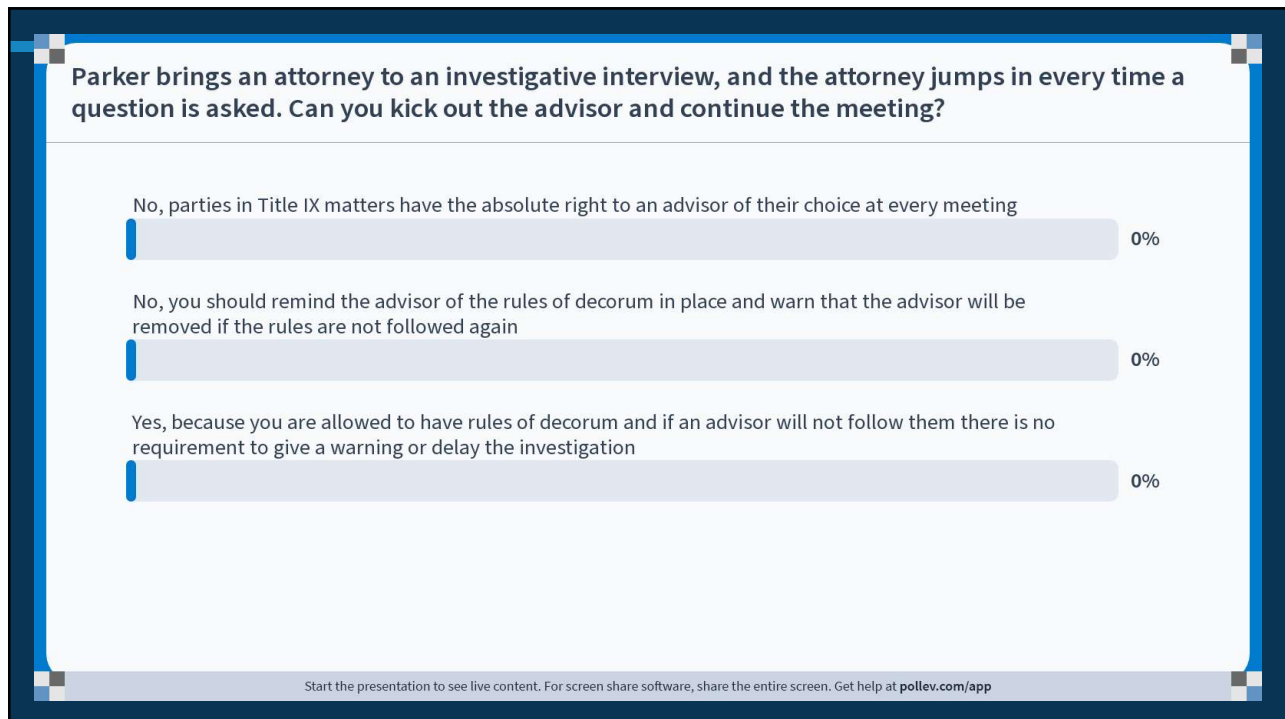
26



Investigation
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106.45(b)(5)

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27



Parker 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	0%
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	0%
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	0%

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28

Forms/Notices

Notice to Advisors

**Advisor
Conduct
Expectations**

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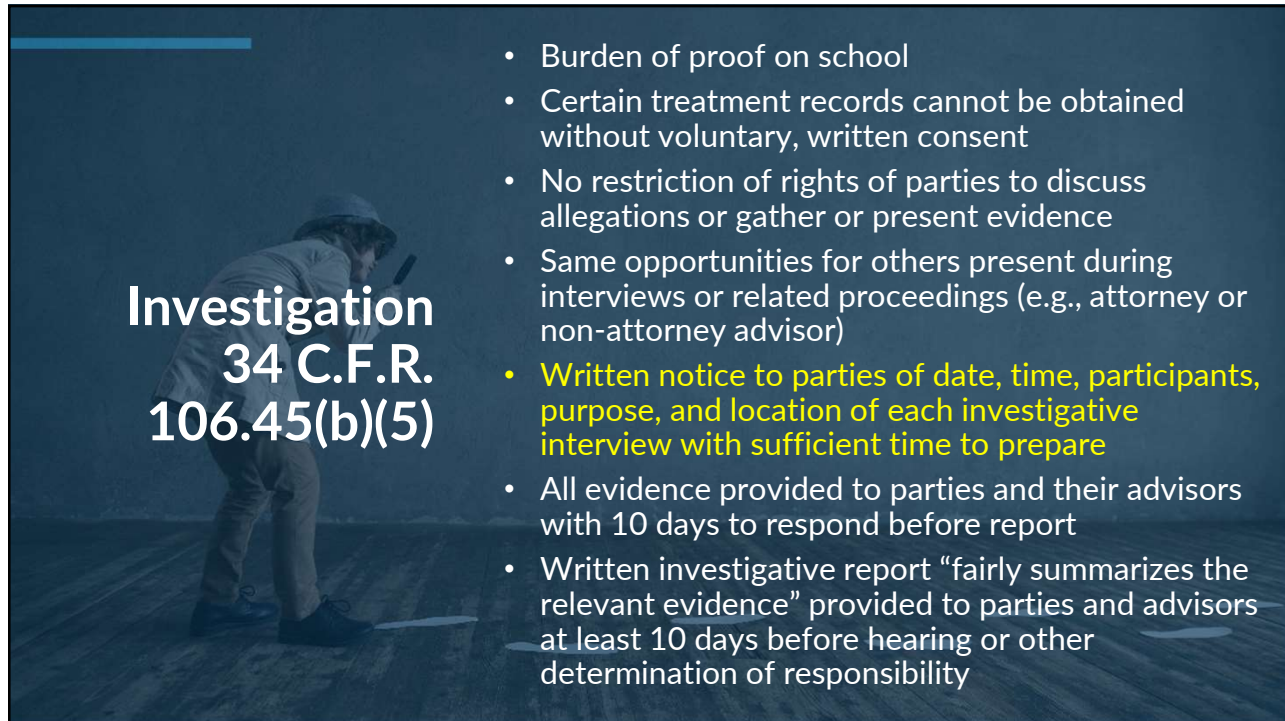
29

After receiving notice of the reported misconduct, you can walk down to Parker's classroom, pull Parker out, and question Parker immediately

Response	Percentage
True	0%
False	0%

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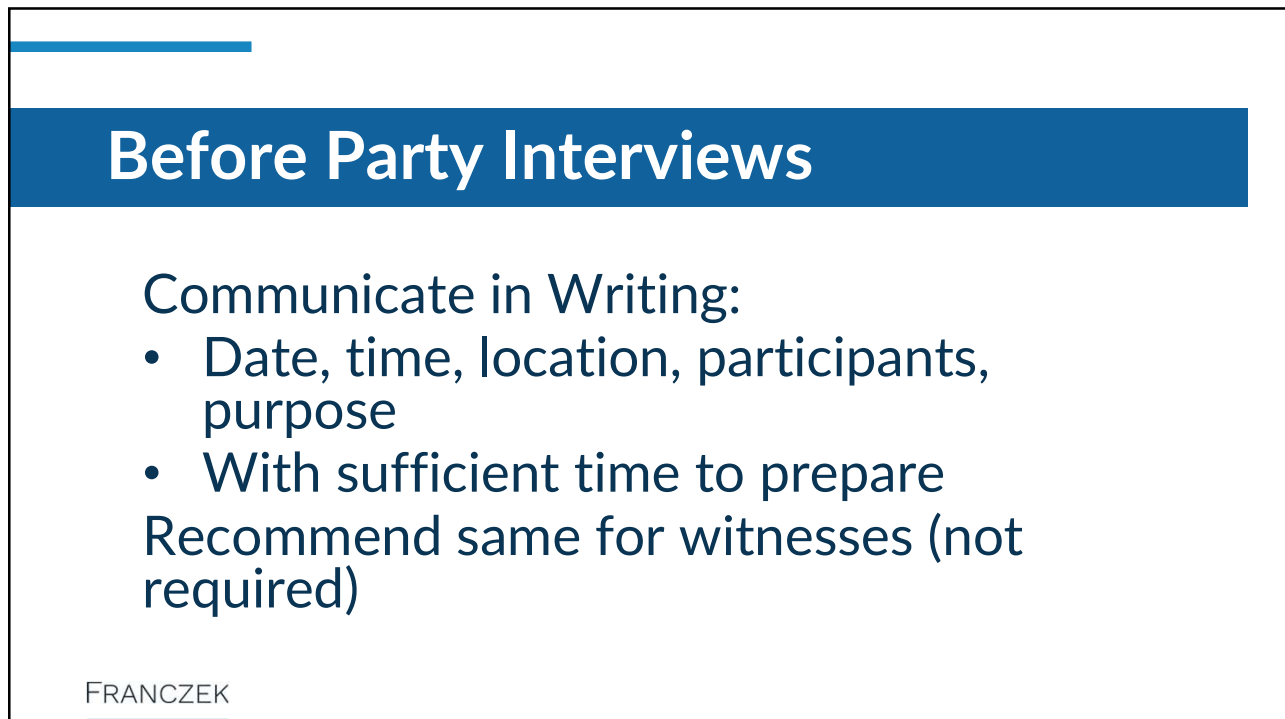
30

A slide titled "Investigation 34 C.F.R. 106.45(b)(5)" with a background image of a person in a white lab coat and a hard hat, looking down at a device. The slide lists several requirements for investigations.

Investigation 34 C.F.R. 106.45(b)(5)

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31

A slide titled "Before Party Interviews" with a blue header. The slide contains text about communication in writing and a recommendation for witnesses.

Before Party Interviews

Communicate in Writing:

- Date, time, location, participants, purpose
- With sufficient time to prepare

Recommend same for witnesses (not required)

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32

Forms/Notices

Notice of Interview

Notice of Title IX
Interview or Meeting
with Title IX Party
(Franczek Notice 6(a))

Notice of Title IX
Interview or Meeting
with Non-Party
Witness (Franczek
Notice 6(b))

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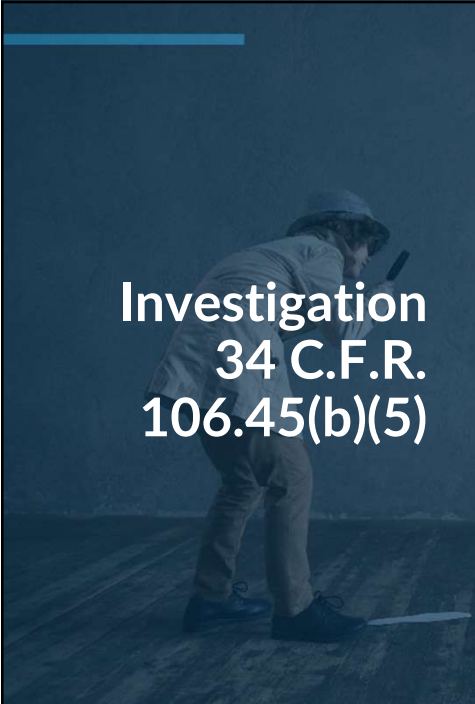
33

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

True	0%
False	0%

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Investigation
34 C.F.R.
106.45(b)(5)

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- 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

35

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

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Which of these is NOT directly related evidence in Cameron's formal complaint?

Email messages from Cameron to Parker earlier in the school year in which Cameron and Parker seem to be flirting	0%
Draft interview notes from interviews with parties and witnesses (final version was created)	0%
Text messages from Parker to another female student with similar conduct	0%
Facebook messages between Cameron and another student with raunchy sexual language	0%
Rumors from a witness of something another witness (not available to interview) said about Parker engaging in similar conduct with the unavailable witness	0%
None of the above (they are all directly related)	0%

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37

Forms/Notices

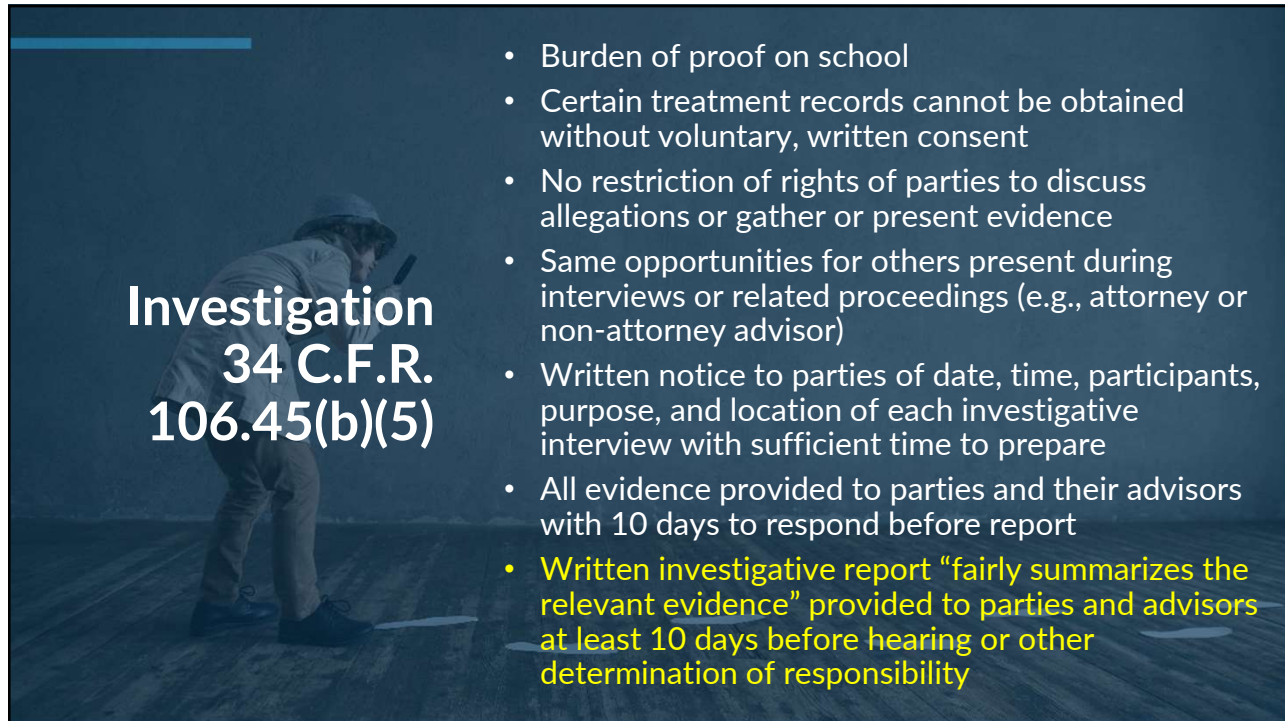
Sharing of Evidence

Notice of Directly Related Evidence
(Franczek Letter 7(a))

Notice of Other Party's Written Response to Evidence
(Franczek Letter 7(b))

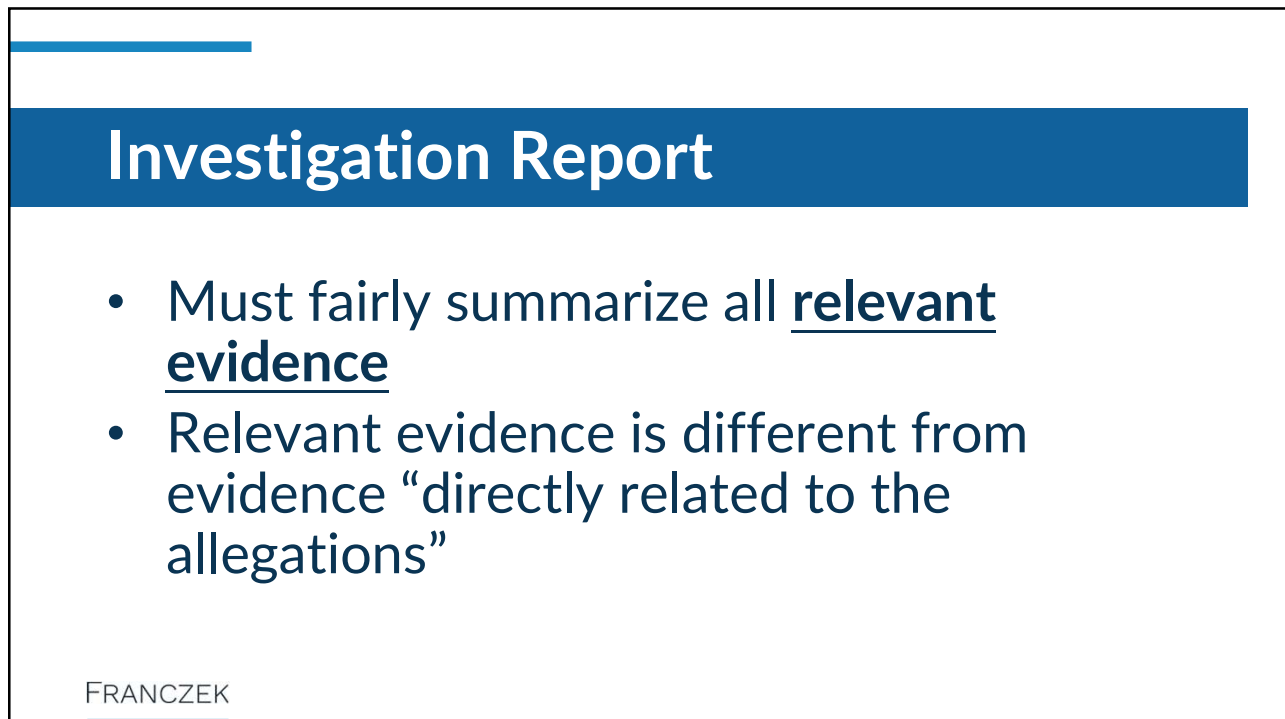
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A slide titled "Investigation 34 C.F.R. 106.45(b)(5)" featuring a background image of a person in a white lab coat and a hard hat, looking down at a device on a wooden floor. The title is in large white text on the left. A bulleted list of requirements is on the right, with the last item highlighted in yellow.

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39

A slide titled "Investigation Report" with a blue header bar. Below the header, a bulleted list of requirements is shown. The word "relevant" is underlined in the first bullet point. The Franczek logo is in the bottom left corner.

Investigation Report

- Must fairly summarize all relevant evidence
- Relevant evidence is different from evidence “directly related to the allegations”

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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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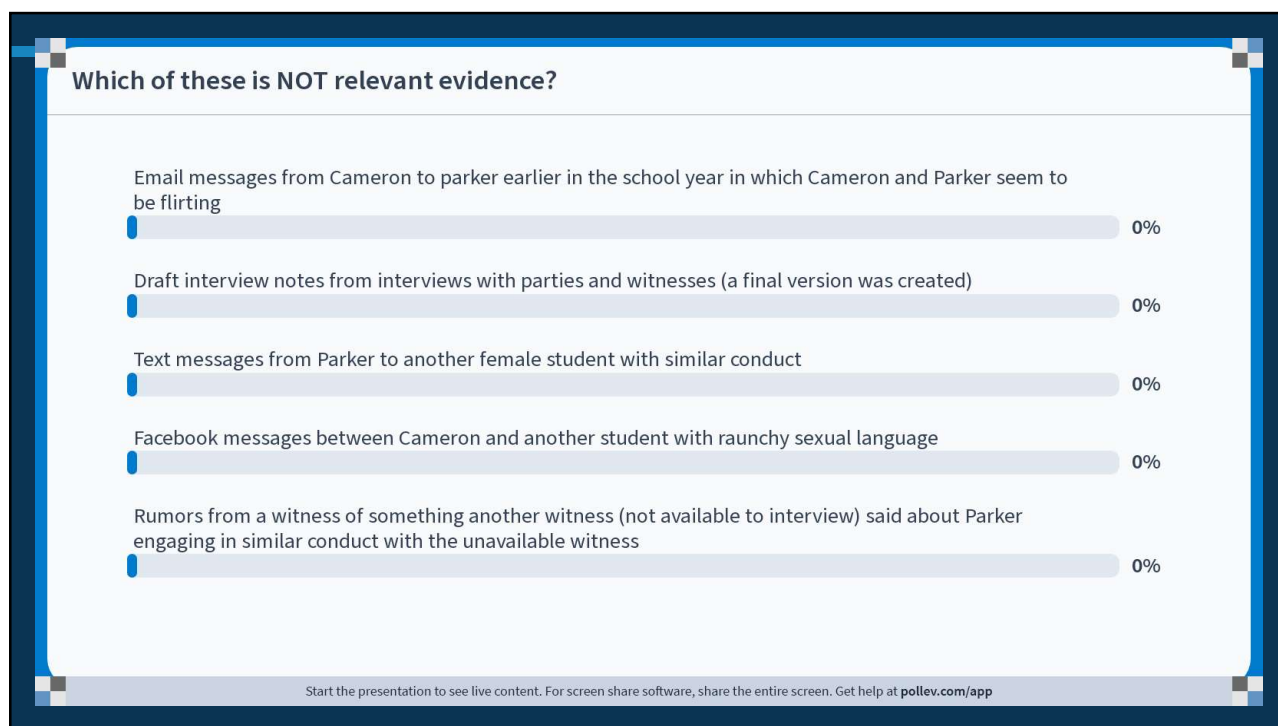
43

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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45

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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Forms/Notices

Investigative Report

Title IX Investigative
Report Template
(Franczek Form B)

Notice of Investigative
Report (Franczek
Notice 8(a))

Notice of Other Party's
Written Response
(Franczek Notice 8(b))

Transmittal Cover
Letter to Decision-
maker at Conclusion of
Investigation (Franczek
Letter 8(c))

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Investigation: Techniques & Best Practices

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48

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.

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Concurrent Law Enforcement

- Only "temporary" or "limited" allowed
 - Not "more than briefly" beyond timeframes
 - Not required
- Reasons: Impact on police fact gathering; RP self incrimination privilege; police plan to release evidence that is material to investigation on a specific timeframe

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Order of Interviews



51

What is your order of interviews?

Outcry Witness/Student - Robin	0%
Outcry Witness/Employee - Mr. Smith	0%
Complainant - Cameron	0%
Direct Witnesses/Students - Ali and Bobbie	0%
Respondent - Parker	0%
Police Witness	0%
Medical Witness	0%

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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

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

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Questions

- Relationships
- Identities of Parties
- Details of Conduct Between the Parties
- Effect of Alleged Conduct on the Parties
- Outcry/Reports
- Other Responses of 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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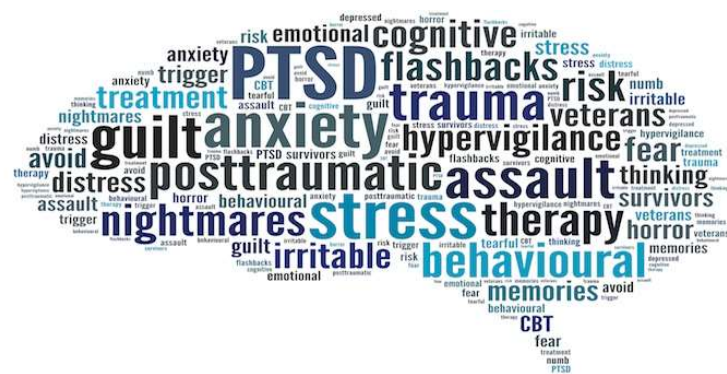
Closing

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

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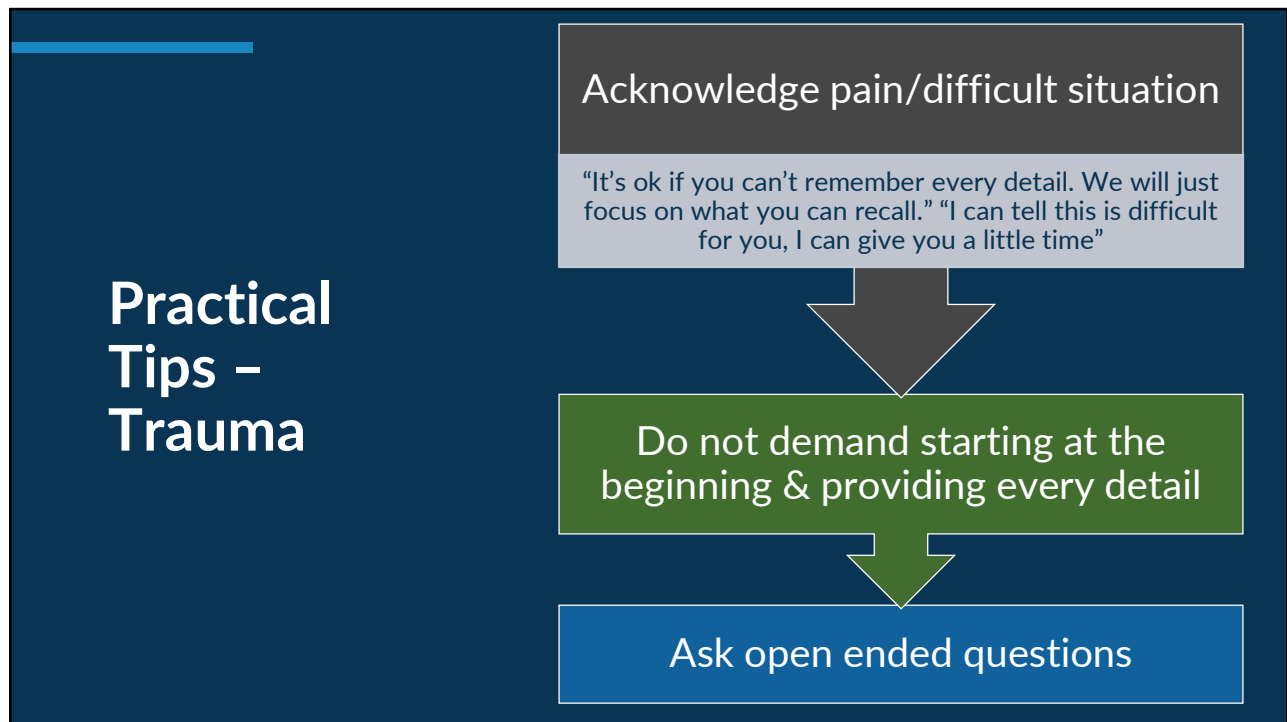
57

Potential Trauma for CP and RP



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58



59



60

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

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In your own words, what happened?

What did you witness?

Did you respond? If so, how?

For all: where, when, who present?

63

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



64

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



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Interview Notes

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

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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

A red rectangular stamp with the word "CONFIDENTIAL" in bold, capital letters. The stamp is slightly tilted and has a distressed, ink-like texture. It is placed on a yellow background that appears to be a piece of paper or a folder cover.

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68

Questions



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