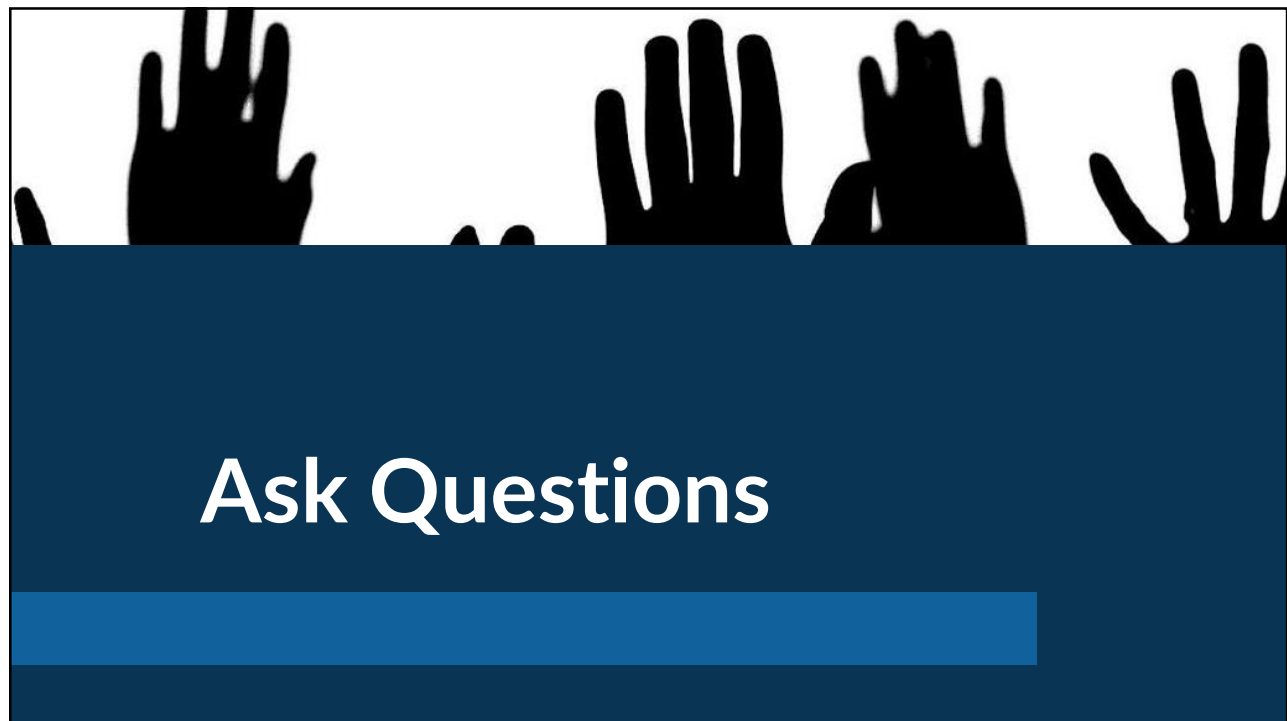




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# Title IX – What is Sexual Harassment?

Hostile Environment

Quid pro quo by an employee

Sexual Assault  
Domestic Violence  
Dating Violence  
Stalking

3

# Title IX – Hostile Environment

2020 Rules Definition (8/14/20)

Unwelcome conduct

determined by a reasonable person to be

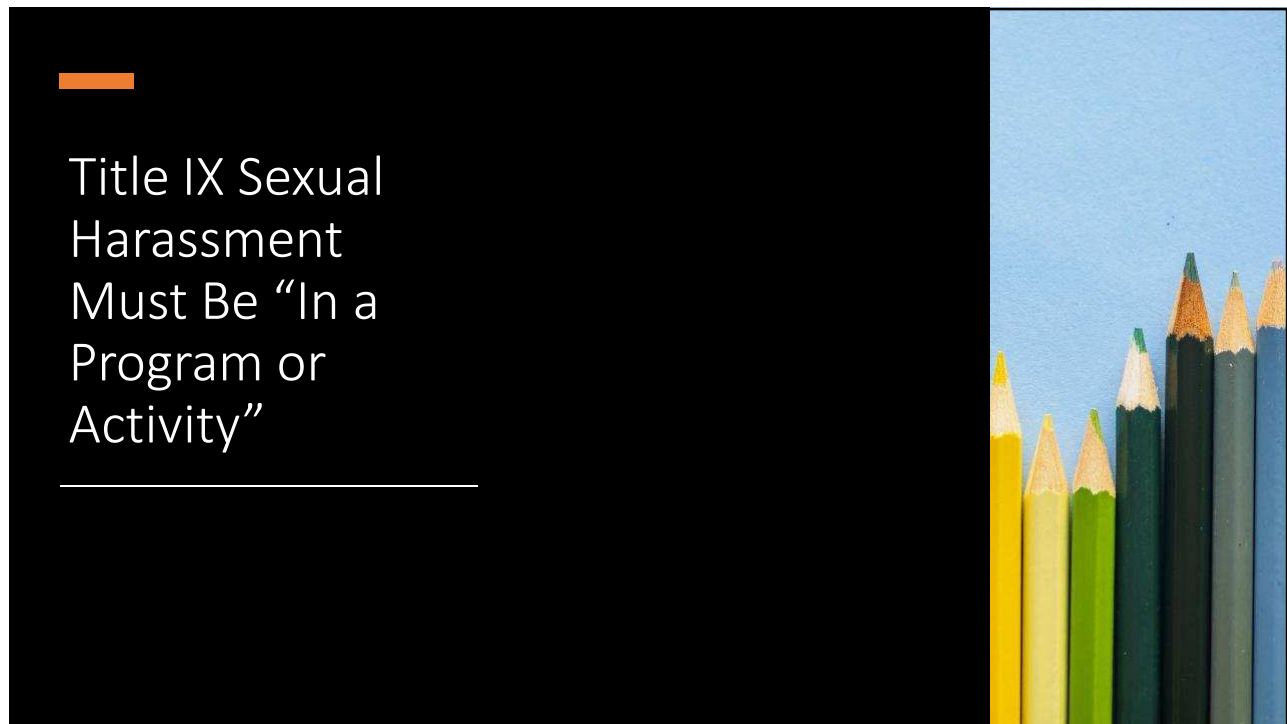
so severe,

pervasive, and

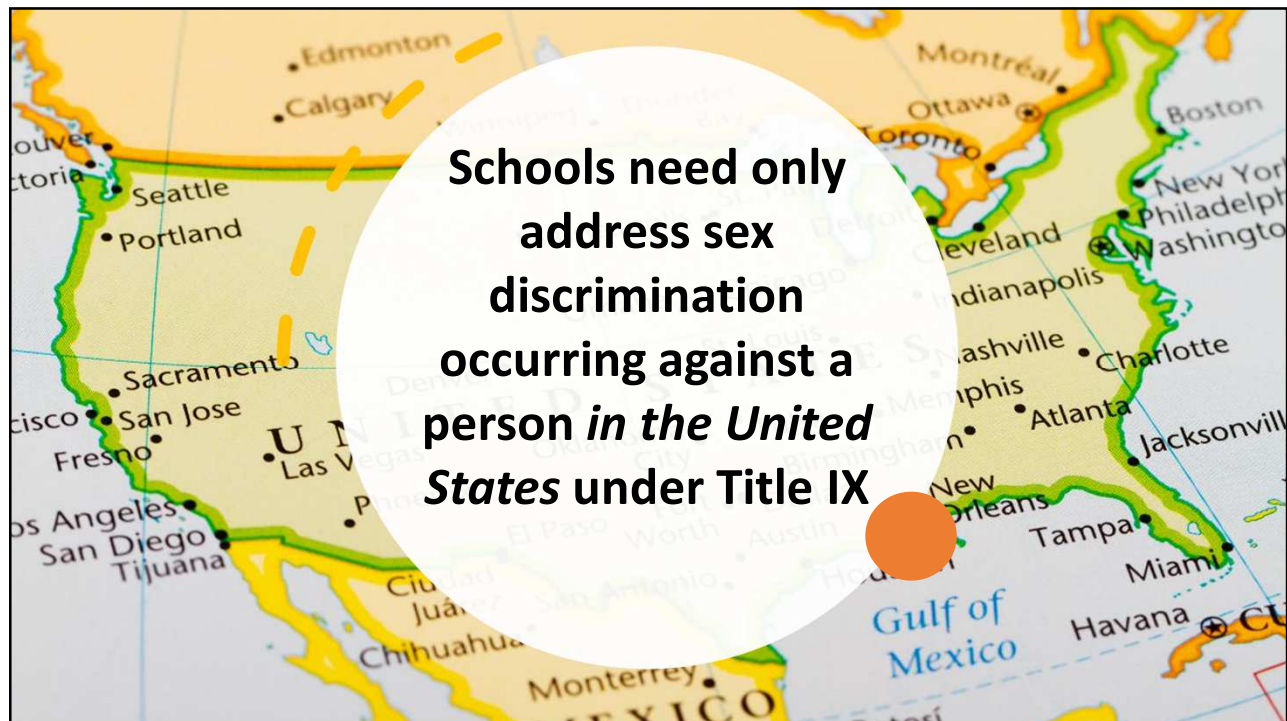
objectively offensive

that it effectively denies a person’s equal access to the school’s education program or activity

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## What is Informal Resolution?

An informal method to settle formal complaints of Title IX sexual harassment that does not involve full investigation and adjudication

Examples:

Mediation, Restorative Justice

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## WHY ALLOW IR?

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## 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)


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## When Can IR Be Offered?

Can be offered generally

Must be offered consistently

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When is IR most useful?

No Competing Factual Narratives

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Scenario

Robin	<ul style="list-style-type: none"> <li>Reporter</li> <li>Freshman</li> </ul>
Cameron	<ul style="list-style-type: none"> <li>Alleged victim (complainant)</li> <li>Freshman</li> </ul>
Parker	<ul style="list-style-type: none"> <li>Alleged perpetrator (respondent)</li> <li>Senior</li> </ul>

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## Scenario

Robin said Parker had been sending inappropriate email messages to Cameron.

Robin encouraged Cameron to report, but Cameron refused.

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## Scenario

Robin was talking to another student, at a party last weekend. That student reported also receiving inappropriate messages from Parker.

Because this seemed like a pattern, Robin felt the need to report.

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Scenario

According to Robin, the emails began with requests for dates but evolved into name calling (slut, skank), rambling comments about Cameron’s “obvious” desire for Parker, and incessant requests for connection.

Cameron is not interested in filing a formal complaint.

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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

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**Cameron files a complaint against Parker. Should informal resolution be allowed?**

Yes, if both parties agree

Yes, but only if there is enough evidence to substantiate the allegations

No, not between students

No, they are unlikely to reach a resolution

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## 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

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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....

Standard

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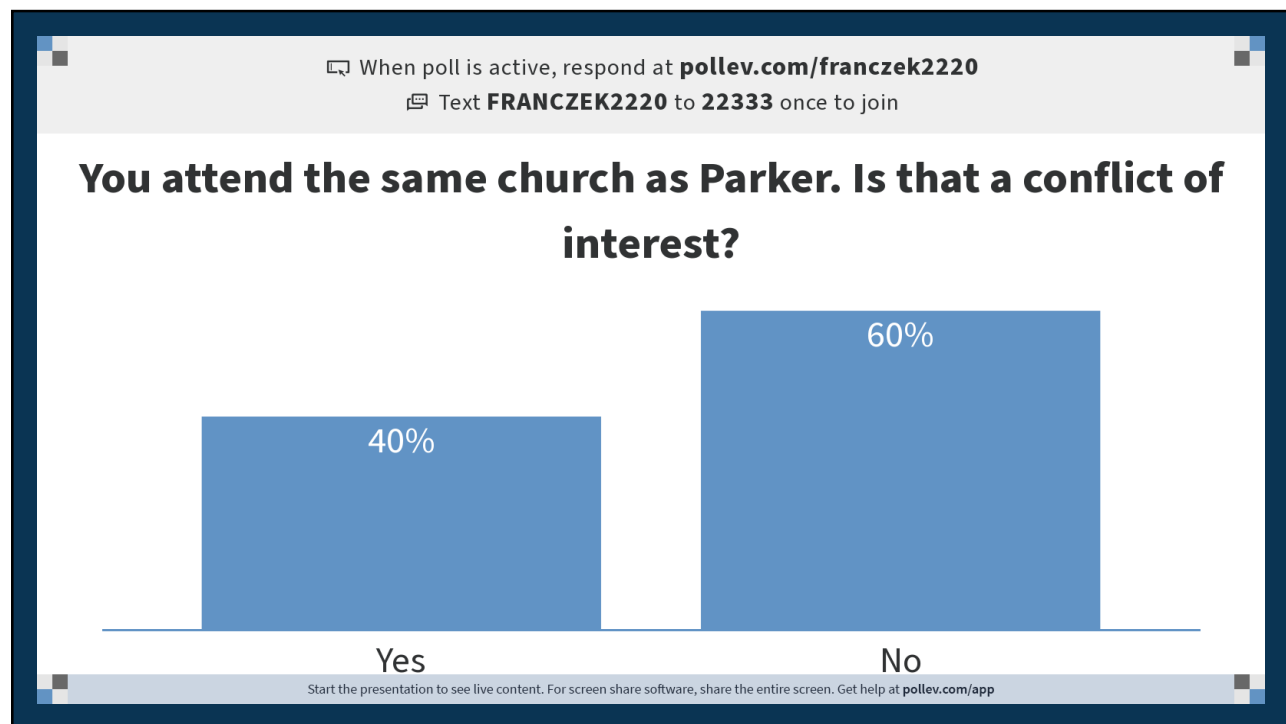
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**You signed the Formal Complaint as Title IX Coordinator or designee. Is that a conflict of interest?**

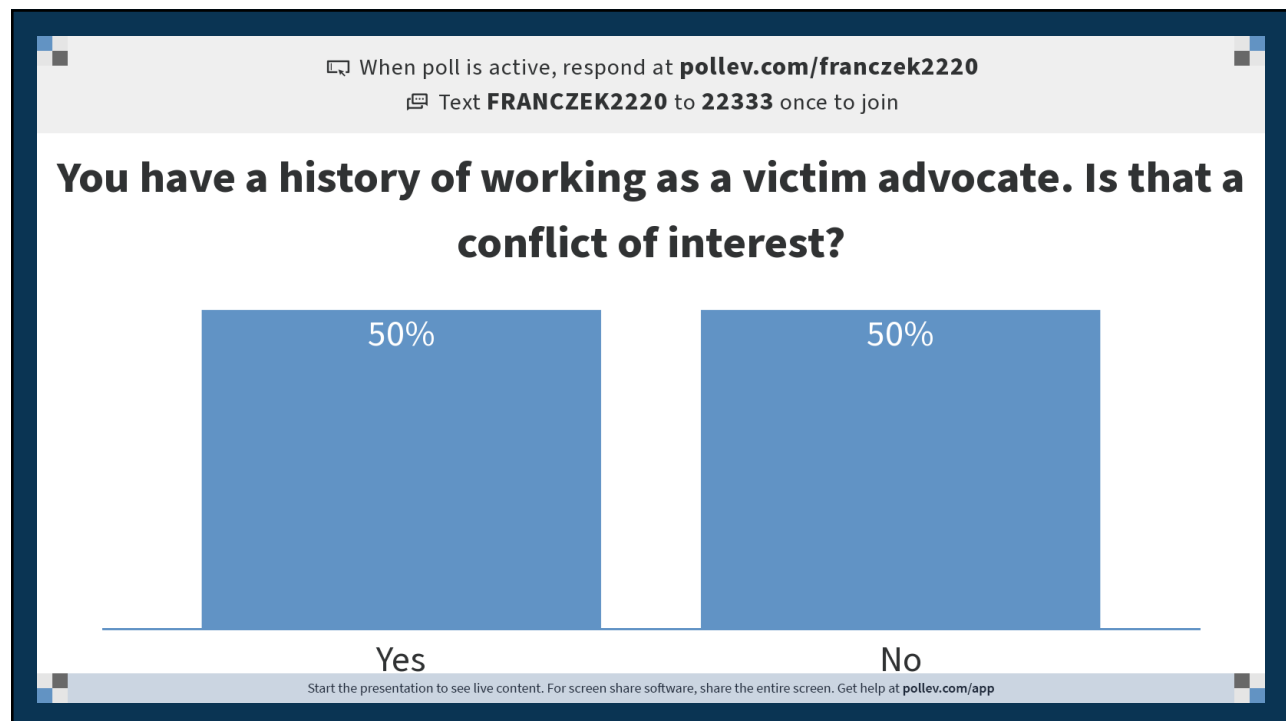
Yes No

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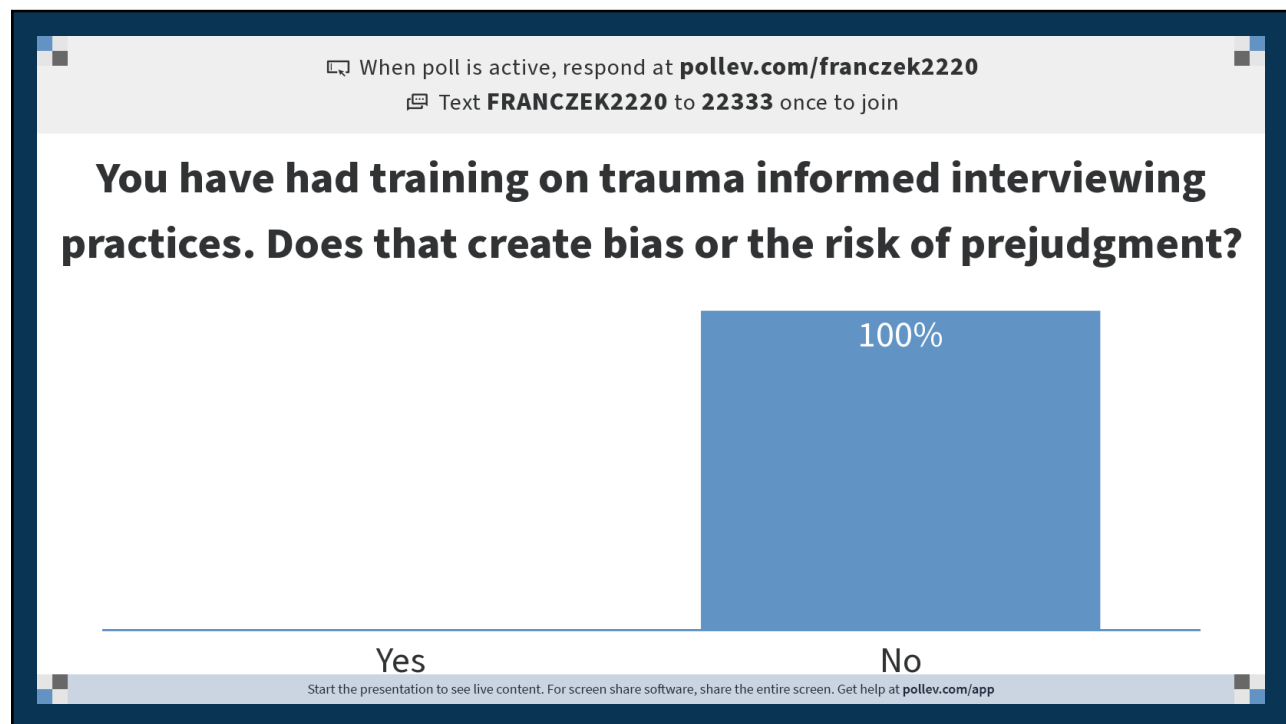
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## Conflict of Interest

- 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

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## Bias, Conflict, Pre- Judgment

### Tips for avoiding:

- 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

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## Sex Stereotypes

### Must not rely on sex stereotypes like:

- 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

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## 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

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## Other Impacts of IR Process

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

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## The Mediation Process

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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
- Treat parties equitably

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## Preparation

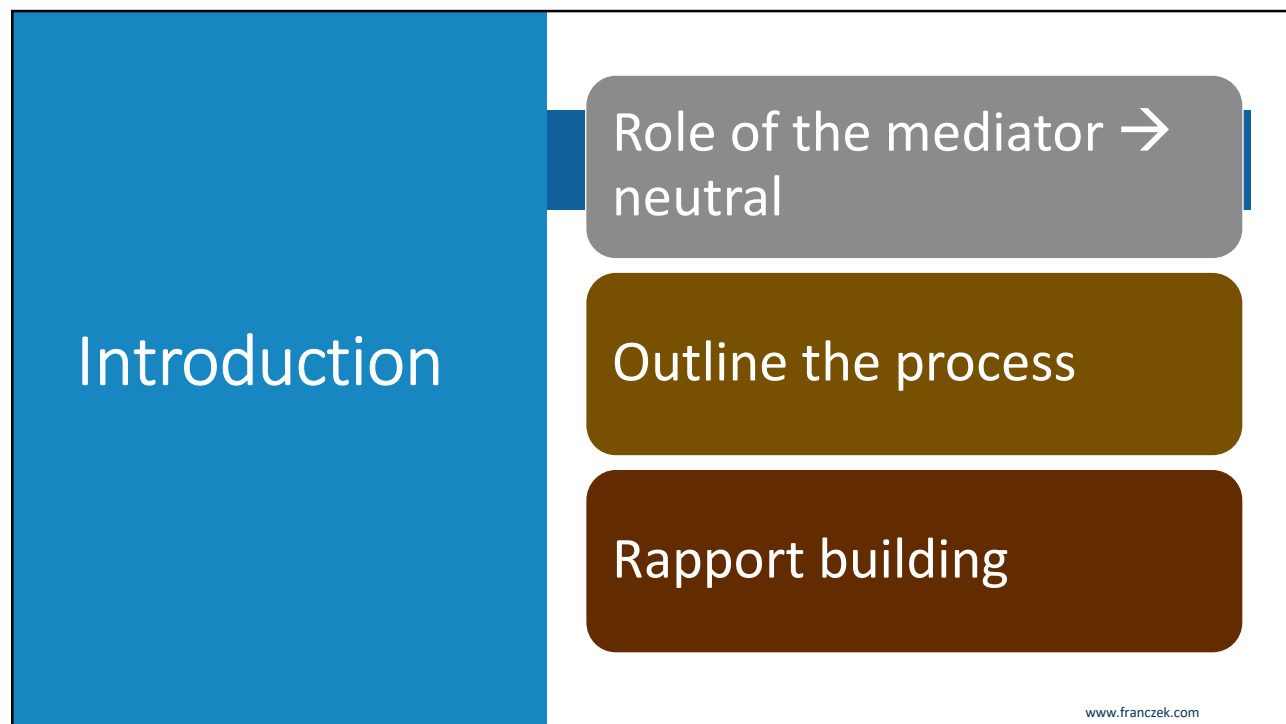
Background information

Select location and method

Advisor participation and guidelines

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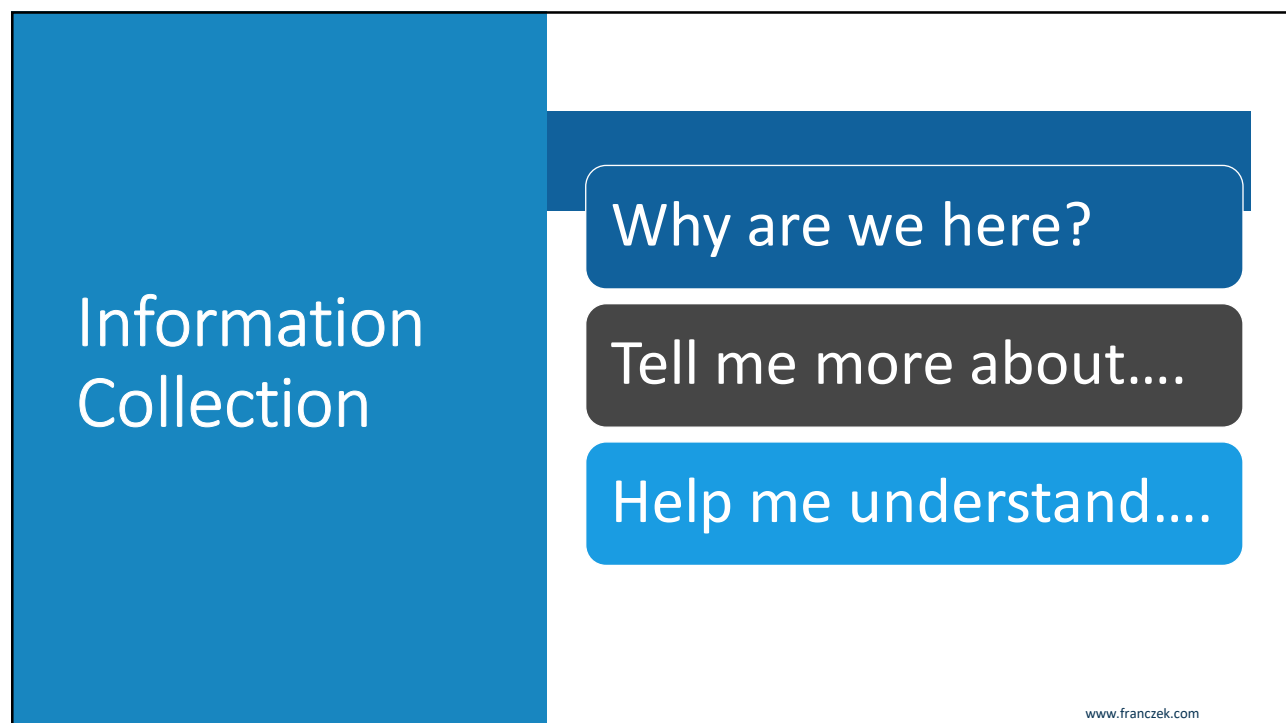
Slide 35 features a large blue rectangle on the left with the word "Introduction" in white. To its right are three stacked rounded rectangles: a grey one with "Role of the mediator → neutral", a gold one with "Outline the process", and a brown one with "Rapport building". A small URL "www.franczek.com" is at the bottom right.

Introduction

- Role of the mediator → neutral
- Outline the process
- Rapport building

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Slide 36 features a large blue rectangle on the left with the words "Information Collection" in white. To its right are three stacked rounded rectangles: a dark blue one with "Why are we here?", a dark grey one with "Tell me more about....", and a light blue one with "Help me understand....". A small URL "www.franczek.com" is at the bottom right.

Information Collection

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

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## Brainstorming Solutions

Don't shut down ideas

Write down all ideas

Suggest but don't advocate

Discuss pros/cons and feasibility

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## 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

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**What types of solutions might you brainstorm for Cameron and Parker?**

“ Block ”

“ No emails!!! ”

“ talk through it with each student? ”

“ stop emails. ”

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**Brokering a Deal**

- Empathy
- Honesty, trustworthiness
- Tenacity
- Respect

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## Outcome of IR

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

- 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 before a resolution is reached

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## 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

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## Role of the School District

- Agreement is between the parties; school district is not a party
- IR Facilitator can:
  - Act as intermediary
  - Make suggestions, evaluations
  - Help with drafting document

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