



NEW TRIER TOWNSHIP HIGH SCHOOL DISTRICT

# Title IX Training for Student Advisors and Social Workers

September 19, 2023  
Kaitlin Atlas

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## Agenda

- The Law
- Confidentiality
- Support Services
- Questions Welcome Throughout!

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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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## 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 the School Respond to Sexual Harassment?

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**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

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**Actual Knowledge**

1. Sense
2. Report

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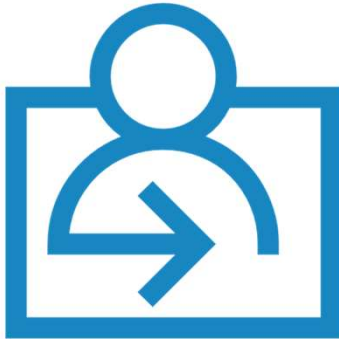
## Review of T9 Requirements

- 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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## Official with Authority



- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures by the school district
- K-12: All employees

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## School Psychologist and Social Workers

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## Key Word: “Allegation”

Once a school has notice of **an allegation** that, **if true**, would constitute Title IX Sexual Harassment, it must respond

“Well, we didn’t believe there was enough evidence it happened” does not get you past your responsibility to use your Title IX Sexual Harassment grievance process

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## What is Sexual Harassment?

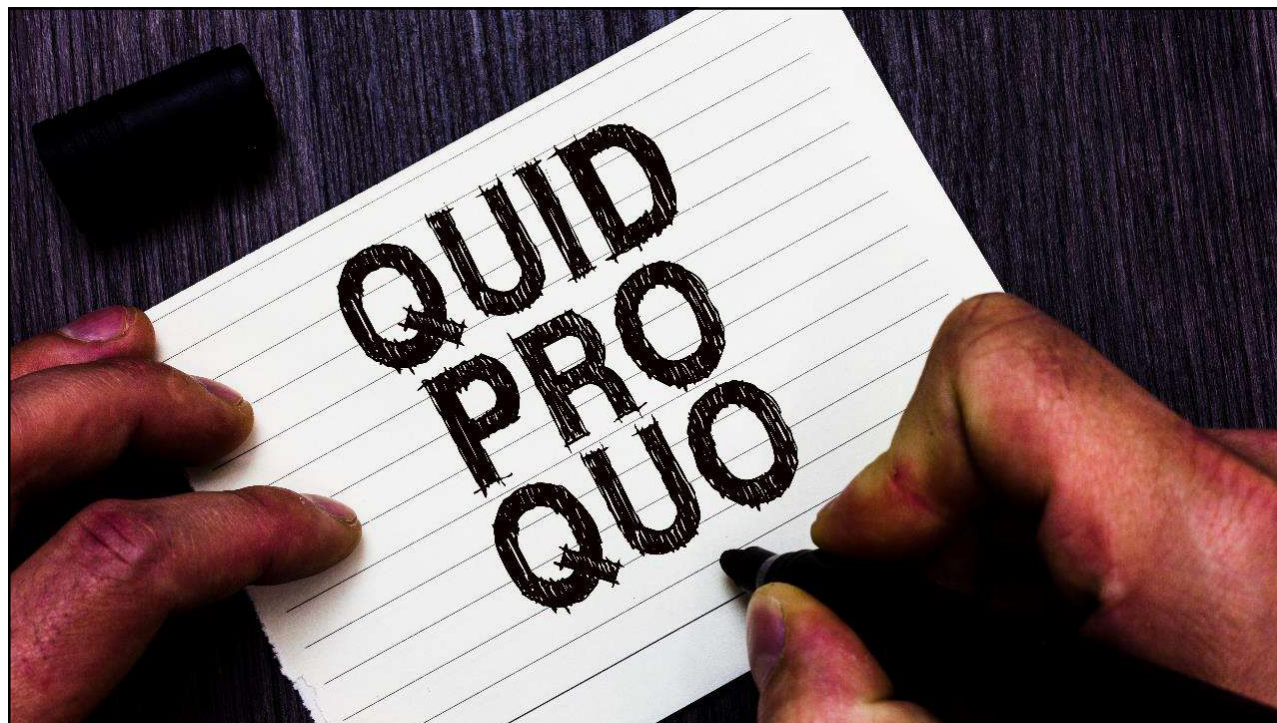
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## Title IX – What is Sexual Harassment?

- Hostile Environment
- Quid pro quo by an employee
- Sexual Assault  
Domestic Violence  
Dating Violence  
Stalking

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## Quid Pro Quo

Quid = Something

Pro = For

Quo = Something

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## Title IX Quid Pro Quo

**Definition:** An employee of the educational institution conditioning an aid, service, or benefit of the educational institution on participation in unwelcome sexual conduct

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

**Codified:** Severity and harm presumed

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## Clery Act/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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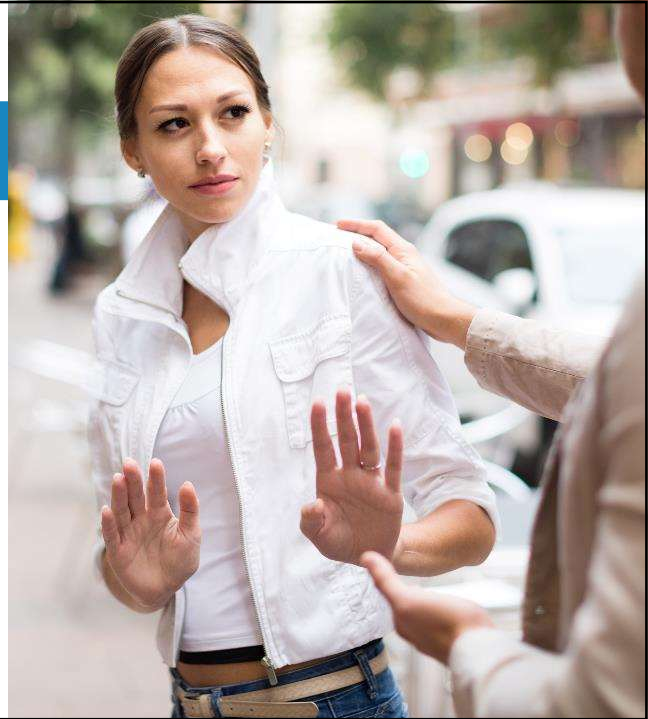
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## Unwelcome Conduct

- Not **Participation**
- Not **Silence**
- Age Matters
- Intoxication Matters
- Culture Matters
- Ability Matters

\*\*subjective + reasonable person

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## Severe

- Something more than juvenile behavior
- Something more than antagonistic, non-consensual, and crass conduct
- Simple acts of teasing and name-calling are not enough, even when comments are based on sex
- It is not enough to show that a student has been teased or called offensive names

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## Pervasive

- Systemic or widespread
- Multiple incidents of harassment
- One incident is not enough, even if very severe

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## Objectively Offensive

- Behavior that would be offensive to a reasonable person under the circumstances
- Not just offensive to the victim, personally or subjectively
- Consider ages, numbers, relationships

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Constellation of surrounding circumstances, expectations, and relationships

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## Hostile Environment Factors

Context, Nature, Scope, Frequency, Duration, and Location of the Incidents

Identity, Number, Ages, and Relationships of the Persons involved

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**Program or Activity:** Any location, events, or circumstance over which the school exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred

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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 Title IX Does Not Apply?

- Supportive Measures
- Consider Patterns → Title IX
- Consider Other Laws/Policies → Non T9 SH
- Consider “Soft Responses”

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**A student makes multiple statements calling another student “Gay” over Google chat.**

**Title IX Sexual Harassment?**

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**A teacher asks students to group up based on whether their moms are “MILFs”.**

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**One student grabs another student’s breasts during soccer game**

**Title IX Sexual Harassment?**

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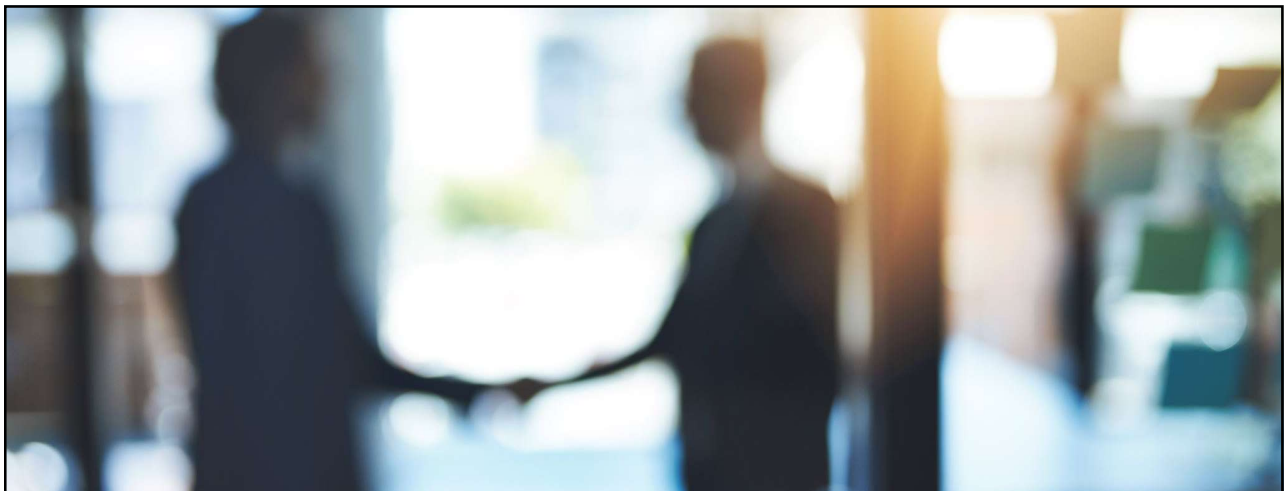
**A student “uses tongue”  
unexpectedly while kissing  
“boyfriend” during recess.**

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**Teacher learns of co-  
workers engaged in  
sexual relationship**

**Title IX Sexual Harassment?**

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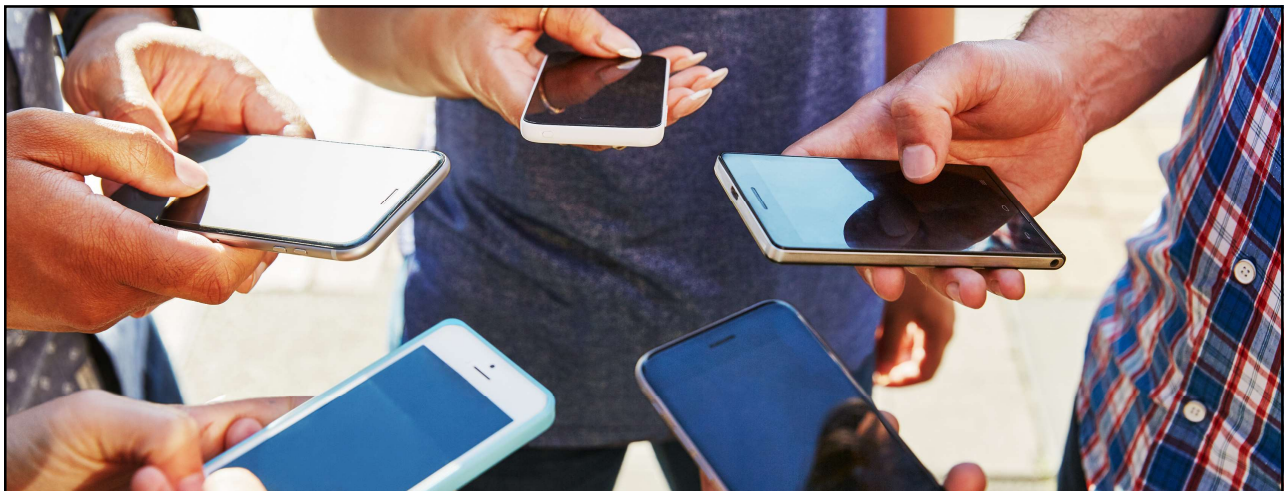
**Students mock a female student for not wearing makeup**

Title IX Sexual Harassment?

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**Students share nude photos of another student**

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**Students send group text messages rating other students by attractiveness**

Title IX Sexual Harassment?

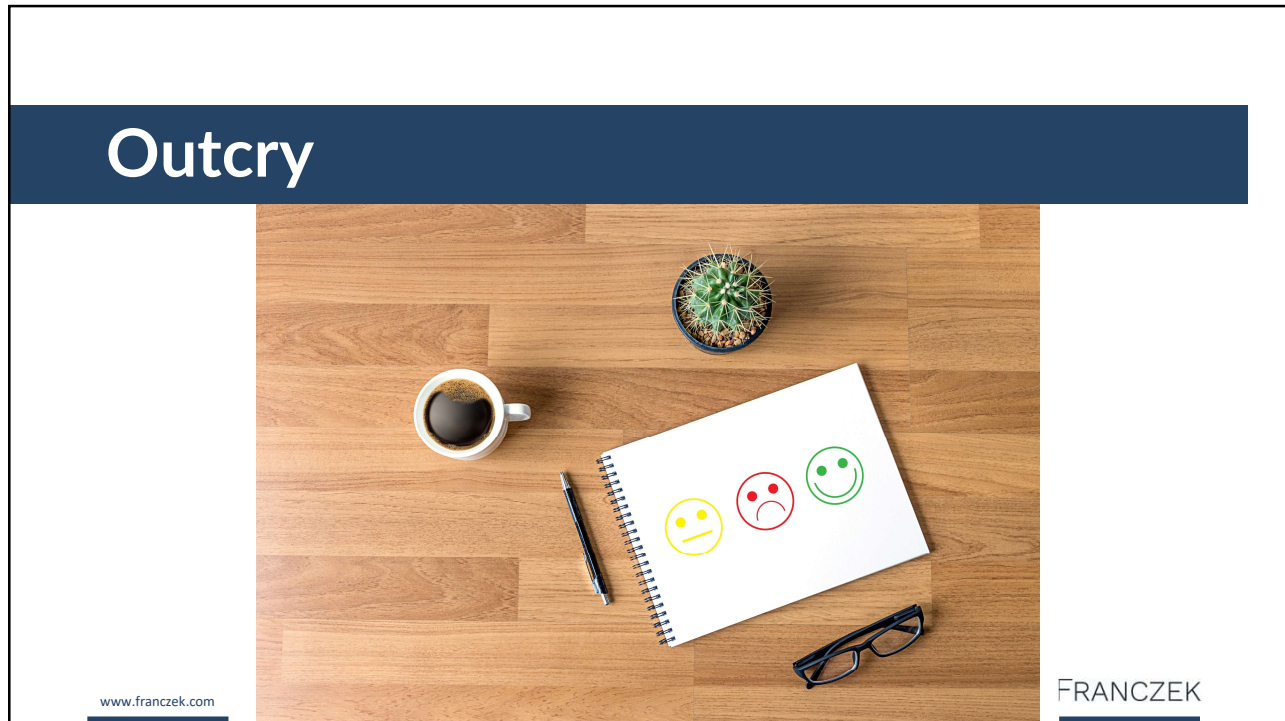
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**Confidential?**

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Title IX Coordinator (or designee) must promptly, **even if no Formal Complaint is filed:**

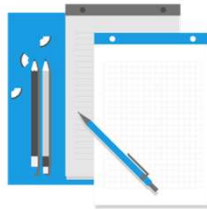
- Contact the Title IX Complainant to discuss the availability of “supportive measures”
- Consider the Title IX Complainant’s wishes with respect to supportive measures
- Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain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

**New:  
Initial  
Response**

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## Only option for confidentiality from Respondent is to not file Formal Complaint.



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## Who Needs to Know about Complaint?

- Title IX Coordinator
- If Formal Complaint filed:
  - Respondent
  - Witnesses
  - Investigator
  - Decision Makers
  - Informal Resolution Facilitator

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**Supportive measures confidential except as necessary to provide the supportive measure.**

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**No Contact Confidentiality**

- Who needs to know?
  - Respondent
  - Monitors
  - Disciplinarian for Violations
  - Social Skill Support

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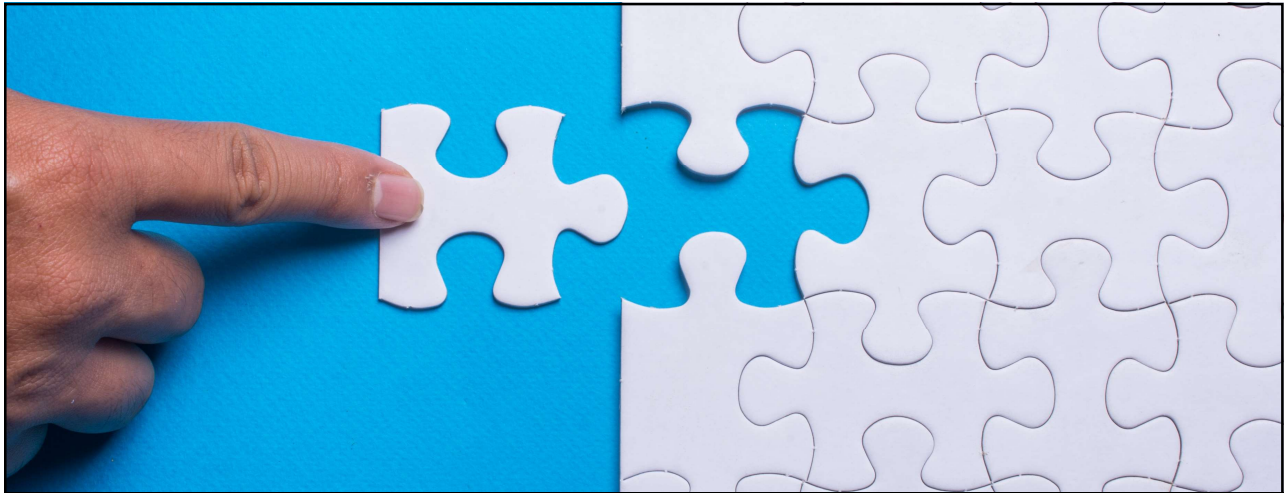
**Exercise of Free Speech is not retaliation.** It is also not a violation of confidentiality.

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<b>Supportive Measures</b>  <b>What Changed?</b>	<b>OLD TERM (OCR Guidance)</b> <ul style="list-style-type: none"><li>• Used terms such as “interim measures” or “interim steps” to describe measures to help a complainant maintain equal educational access</li><li>• Implied only available during pendency of investigation, did not mandate offering them, not clear if could be punitive or disciplinary, and did not clarify if available to respondents</li></ul>	<b>NEW TERM (Final Rule)</b> <ul style="list-style-type: none"><li>• <b>Non-punitive</b>, 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)).</li><li>• <b>Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party</b></li><li>• <b>Should be confidential</b></li></ul>

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## Identify supportive measures that could be effective

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QUESTIONS?

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