

Title IX Sexual Harassment Terminology

Advisor of Choice. Complainants and respondents are permitted to have someone accompany them to any interviews, meetings, or hearings related to the Title IX process. This person may be an attorney, parent, counselor, advocate, friend, teacher, or anyone else the party chooses. Schools may place limitations on the role of the advisor in meetings, but may not limit the party's choice of advisor or their presence.

Actual knowledge “means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.”

-34 CFR 106.30(a)

Clear and Convincing. One of two standards of evidence schools may use in their sexual harassment grievance processes. In the Title IX regulations preamble, they offer this definition: “[c]lear and convincing evidence requires greater proof than preponderance of the evidence. To meet this higher standard, a party must present sufficient evidence to produce ‘in the ultimate factfinder an abiding conviction that the truth of its factual contentions are [sic] highly probable.’”

-34 CFR 106, footnote 1441, p. 30381, Federal Register, Vol. 85, No. 97, quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)

Complainant “means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.”

-34 CFR 106.30(a)

Consent. Schools may self-define consent. Many criminal codes use a “traditional” definition of consent, which defines consent by when it is not present. Many colleges, in their Title IX policies, have moved towards using an “affirmative” model, defining consent by what it takes to secure it.

Traditional consent example: Consent is not present when a person has been forced, threatened, or coerced, when then they are unable to consent due to age or to permanent or temporary mental or physical incapacity.

Affirmative consent example: Consent is knowing, voluntary, and clear agreement to participate in a sexual act, communicated clearly using words and/or actions.

Dating Violence (VAWA Amendments Definition). “The term “dating violence” means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.”
-34 U.S.C. 12291(a)(10)

Dating Violence, Teen (Oregon Definition). ““Teen dating violence’ means: (A) A pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age; or (B) Behavior by which a person uses or threatens to use sexual violence against another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age.”
-ORS 339.366(c)

Determination of Responsibility. A written document issued at the conclusion of a grievance process detailing whether a respondent has been found responsible, that includes specific elements outlined in 34 CFR 106.45(b)(7).

Domestic Violence (VAWA Definition). “[I]ncludes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”
-34 U.S.C. 12291(a)(8)

Educational Program or Activity. For the purposes of Title IX, schools are required to respond to sexual harassment that occurs within “...locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.”
-34 CFR 106.44(a)

Formal Complaint “a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”
-34 CFR 106.30(a)

Grievance Process. Formal procedures for investigating and adjudicating a formal complaint of sexual harassment described in 34 CFR 106.45(b).

Intimate Partner Violence (Oregon DHS Definition). “[I]nclude[s] forms of physical injury/abuse, sexual abuse or assault, intimidation, verbal abuse and emotional abuse or threats of such. These tactics are used by one adult to coerce or control another.”

Notice of Allegations (or Notice of Investigation). A written notice that must be provided to the respondent(s) and complainant(s) once a formal complaint is filed. It must contain specific elements described in 34 CFR 106.45(b)(2).

Notice of Rights and Options. A document required by ORS 342.704 to be provided to any person who reports experiencing sexual harassment, detailing specific options for reporting and support.

Preponderance of Evidence. One of two standards of evidence schools may use in their sexual harassment grievance processes. The 2020 Title IX regulations offer this definition: “[t]he burden of showing something by a ‘preponderance of the evidence,’ the most common standard in the civil law, ‘simply requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’”

-34 CFR 106, footnote 1441, p. 30381, Federal Register, Vol. 85, No. 97, quoting
In re Winship, 397 U.S. 358, 371– 372 (1970) (Harlan, J., concurring)

Remedies “must be designed to restore or preserve equal access to the recipient’s education program or activity. Such remedies may include the same individualized services described in § 106.30 as ‘supportive measures’; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.”

-34 CFR 106.44(b)(1)(i)

Respondent “means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

-34 CFR 106.30(a)

Sanctions (or Disciplinary Sanctions). Measures of discipline or accountability imposed on a respondent who has been found responsible of sexual harassment.

Sexual Assault (Clery Act definition) “means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.” This includes:

Forcible Rape. “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

Forcible Sodomy. “Oral or anal sexual intercourse with another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.”

Sexual Assault With An Object. “To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.”

Forcible Fondling. “The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.”

Incest. “Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.”

Statutory Rape. “Nonforcible sexual intercourse with a person who is under the statutory age of consent.”

-20 U.S.C. 1092(f)(6)(A)(v) and the FBI Uniform Crime Reporting System

Sexual Harassment “means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or
- (3) ‘Sexual assault’ as defined in 20 U.S.C. 1092(f)(6)(A)(v), ‘dating violence’ as defined in 34 U.S.C. 12291(a)(10), ‘domestic violence’ as defined in 34 U.S.C. 12291(a)(8), or ‘stalking’ as defined in 34 U.S.C. 12291(a)(30).”

-34 CFR 106.30(a)

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For technical assistance and support please contact Kate Hildebrandt, Civil Rights and Title IX Specialist, at 503-551-5713 or katherine.hildebrandt@state.or.us.

Stalking (VAWA Definition). “Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.”

-34 U.S.C. 12291(a)(30)

Stalking (Oregon law). “A person commits the crime of stalking if (a) The person knowingly alarms or coerces another person or a member of that person’s immediate family or household by engaging in repeated and unwanted contact with the other person; (b) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; and (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim’s immediate family or household.”

-ORS 163.732

Supportive Measures “means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party.”

-34 CFR 106.30 (a)