



Sexual harassment

DEFINITION OF SEXUAL HARASSMENT

Under the 2020 Title IX Regulations

with Cherie Scricca

AGENDA

- | Definition of Sexual Harassment
- | Forms of Prohibited Conduct
- | Examples

SEXUAL HARASSMENT: *SECTION 106.30*

Conduct **on the basis of sex** that satisfies one or more of the following:

Quid Pro Quo

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

Hostile Environment

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

VAWA Crimes

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).

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Hostile Environment and Quid Pro-Quo Sexual Harassment

HOSTILE ENVIRONMENT: THE ELEMENTS

Unwelcome

Severe

Pervasive

Objectively Offensive

Effectively Denies

Education Program or Activity

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

The threshold for hostile environment sexual harassment is high.

The alleged misconduct must meet **ALL** the conditions of the definition to be reviewed under the Title IX grievance process.

Check for review under other institutional policies and procedures.

IS THIS HOSTILE ENVIRONMENT HARASSMENT?

Example 1

Student A repeatedly makes sexually explicit and unwelcome comments, jokes, and innuendoes about Student B in their lab section. These comments occur in person during lab, in the hallway before and after lab, and in the campus dining hall. Student A has asked Student B to stop making these comments on multiple occasions. The lab instructor has also asked Student A to stop making comments directed at Student B, but the behavior persists. Student B stops attending class and avoids eating in the campus dining hall in an effort to avoid Student B.

Example 2

A student sends sexually explicit photos and memes to a group chat of fellow classmates all working on a group project. Two of the classmates ask the student to stop, but the student says they are just joking and continues to send the photos to the group chat.

The classmates leave the group chat, missing important information about the work the group is doing for the project.

EXAMPLES OF BEHAVIORS THAT DO NOT MEET THE DEFINITION OF HOSTILE ENVIRONMENT SEXUAL HARASSMENT

A faculty or staff member and an adult student whom they do not teach or supervise engaging in a consensual sexual relationship.

An employee asking a colleague on a date.

Sexual harassment that occurs on a study abroad trip outside of the United States.

QUID PRO QUO SEXUAL HARASSMENT

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.

- Title IX applies only when the Respondent in the matter is an employee of the institution.
- The aid, benefit, or service may look either like a reward or punishment.

EXAMPLES OF QUID PRO QUO SEXUAL HARASSMENT



A student who agrees to go on a date with a faculty member is given a better grade than what they actually earned.



An employee who declines a sexual advance from their manager is denied funding to attend a conference that had previously been approved.

In both examples an employee of the institution, who holds a position of authority, offered or withheld a benefit in exchange for unwanted sexual activity.

ADDITIONAL TYPES OF SEXUAL HARASSMENT

1

Sexual Assault

2

Dating Violence

3

Domestic Violence

4

Stalking

SEXUAL ASSAULT

Rape

The 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 or by a sex-related object, without the consent of the victim.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Sexual Contact (Replaced Fondling)

The intentional, nonconsensual touching of the clothed or unclothed body parts of another person for the purpose of sexual degradation, sexual gratification, or sexual humiliation. Sexual Contact also includes the forced, nonconsensual touching by the victim of the actor's clothed or unclothed body parts for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent.

DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim

The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:

The length of the relationship

The type of relationship

The frequency of interaction between the persons involved in the relationship

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence” committed by:

A current or former spouse of the victim

A person with whom the victim shares a child in common

A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner

A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred

Or 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 in which the crime of violence occurred

STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1

fear for the person's safety
or the safety of others

or

2

suffer substantial
emotional distress

**Have all of the
elements been
met for the Title
IX grievance
process?**



IN CONCLUSION...

- No two reports are the same
- Carefully evaluate the circumstances of each complaint as outlined in the 2020 Title IX regulations.





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