

DEFINITION OF KEY TERMS:

U.S. Department of Education Title IX Final Rule Overview (PDF)

A SCHOOL'S RESPONSE TO SEXUAL HARASSMENT

Under the Final Rule, any of the following conduct on the basis of sex constitutes sexual harassment:

- A school employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (often called "quid pro quo" harassment);
- 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 school's education program or activity; or
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)).

Title IX Rules and Regulations § 106.30 Definitions.

(a) As used in this part:

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. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

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

Consent. The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

MCC Consent: *The freely given agreement evidenced by actual words or conduct to the act of the sexual conduct in question. Lack of verbal or physical resistance or submission by the Complainant shall not constitute Consent. There is no Consent if force or coercion is used to accomplish the sexual conduct. The manner of dress of the Complainant at the time of the offense shall not constitute Consent. Consent may be withdrawn at any time, and a person who initially Consents to sexual conduct is not deemed to have Consented to any sexual penetration or sexual conduct that occurs after he or she withdraws Consent during the course of that sexual penetration or sexual conduct. A person's Consent to sexual penetration or sexual conduct with one person*

does not constitute Consent to engage in such activity with another person. A person cannot Consent to sexual penetration or sexual conduct if that person is unable to understand the nature of the activity or give knowing Consent due to the circumstances, including without limitation the following: the person is incapacitated due to the use or influence of alcohol or drugs; the person is asleep or unconscious; the person is under age; or the person is incapacitated due to a mental disability. A determination regarding the presence or absence of consent shall be based on the totality of the circumstances present in a particular case, including the context in which the alleged incidents occurred.

Formal complaint means 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. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

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

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).

Clery Act, 20 U.S.C. § 1092(f)

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. (i) 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, and the frequency of interaction between the persons involved in the relationship. (ii) For the purposes of this definition— (A) Dating violence includes, but is not limited to, sexual or physical

abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence. (iii) For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Domestic violence. (i) A felony or misdemeanor crime of violence committed— (A) By a current or former spouse or intimate partner of the victim; (B) By a person with whom the victim shares a child in common; (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (E) 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 in which the crime of violence occurred.

Sexual assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart.

Stalking. (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) Fear for the person's safety or the safety of others; or (B) Suffer substantial emotional distress. (ii) For the purposes of this definition— (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. (iii) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

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, without the consent of the victim

Sex Offenses Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. A. Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. B. Incest—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. C. Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

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, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

VAWA Definitions (Title 42 - The Public Health and Welfare, Subchapter III - Violence Against Women § 13925 Definitions and Grant Provisions)

(6) Domestic violence

The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, 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.

(7) Dating partner

The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of—

- (A) the length of the relationship;
- (B) the type of relationship; and
- (C) the frequency of interaction between the persons involved in the relationship.

(8) Dating violence

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.

(23) Sexual assault

The term "sexual assault" means any conduct proscribed by chapter 109A of title 18, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or

in a Federal prison and includes both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

(24) Stalking

The term “stalking” means 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.

Kansas State Legislature

For a complete description of various forms of sexual offenses under Kansas State law, the reader is directed to K.S.A. Chapter 21 Articles 54 & 55.

http://www.kslegislature.org/li/b2021_22/statute/021_000_0000_chapter/

21-5414. Domestic battery; aggravated domestic battery. (Kansas definition for domestic violence.)

21-5427. Stalking

21-5501. Definitions. (general definitions specifically referencing sexual intercourse and Unlawful sexual act.)

21-5503. Rape

21-5505. Sexual battery; aggravated sexual battery.

21-5507. Unlawful voluntary sexual relations.

21-5512. Unlawful sexual relations.

21-5513. Lewd and lascivious behavior.

Retaliation

MCC Policy “Any attempted or completed adverse action taken without a legitimate reason against an individual because he or she has filed a complaint under this Policy, opposed a policy or practice the individual believed was discrimination under this Policy, engaged in other protected activity such as making a request for a reasonable accommodation, or participated in the investigation or resolution of a complaint under this Policy.”

DOE-OCR Questions And Answers on Title IX July 2021

“[[i]ntimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by [the] Title IX [statute or regulations].”