

**AR Code: 1725/4035/7236-R      Title IX Sexual Harassment – Definitions**

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*[NOTE: This regulation provides necessary definitions for types of conduct that constitute sexual harassment under the Department of Education’s Title IX sexual harassment regulations. Definitions for these terms should be included either in the policy or in this separate regulation and should be made publicly available in order to provide notice as to what conduct constitutes sexual harassment.]*

Terms used in board policy 1725/4035/7236, Title IX Sexual Harassment – Prohibited Conduct and Reporting Process, are defined as follows:

1.      Sexual assault

A sexual assault is any one of the following offenses:

*[The Title IX regulations reference the federal Clery Act’s definition of sexual assault, which in turn references offenses under the uniform crime reporting system of the Federal Bureau of Investigation (FBI UCR). The following offenses are identified in the FBI UCR.]*

a.      Rape

Rape is the penetration 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.

b.      Statutory rape

*[Statutory rape is defined consistent with state law because the definition provided by the FBI UCR lacks specificity. Please consult with the board attorney before modifying this definition.]*

Statutory rape is sexual intercourse with a child 15 years of age or younger and the perpetrator is at least 12 years old and more than four years older than the victim.

c.      Fondling

*[The commentary released with the Title IX regulations provides that the definition of fondling may be modified by adding or subtracting body parts or by allowing touching over the clothing to constitute fondling.]*

Fondling is the touching, underneath the clothing, of a person’s genitalia, anus, buttocks, or breasts without the consent of the victim for purposes of sexual gratification.

d.      Incest

*[Incest is defined consistent with state law because the definition provided by the FBI UCR lacks specificity. Please consult with the board attorney before modifying this definition.]*

Incest is sexual intercourse between: (i) grandparent and grandchild; (ii) parent and child/stepchild/legally adopted child; (iii) siblings of half or full blood; or (iv) uncle or aunt and nephew or niece.

2. Dating violence

Dating violence is 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 is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

3. Domestic violence

Domestic violence is a crime of violence committed by: a current or former spouse or intimate partner 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 who is the parent or child of the victim, including others acting in loco parentis to a minor child; a person who is the grandparent or grandchild of the victim; a person who is a current or former member of the victim's household; a person who is of the opposite sex of, and lives or has lived with, the victim; or a person who is of the opposite sex of, and is or was in a dating relationship with, the victim.

4. Stalking

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for his or her safety or the safety of others or (ii) suffer substantial emotional distress.

Where lack of consent is an element of the offense, the following definition applies:

*[The Department of Education did not define the term "consent," leaving that task to local school systems. The following definition may be modified.]*

Consent is informed, freely and affirmatively given through mutually understandable words or actions that indicate a willingness to participate in the sexual activity. Consent can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Consent to one type of sexual activity does not amount to consent to another type of activity. Prior consent or sexual relations with the same person do not imply future consent. The fact that both people are in a relationship does not, by itself, establish

consent. A person cannot consent if they are unconscious, asleep, or impaired to the extent that they do not understand what is going on. Minors under the age of 16 are incapable of giving consent to sexual activity with a person more than four years older than the minor. Consent may never be given by mentally disabled persons if their disability was reasonably knowable to a sexual partner who is not mentally disabled. Consent between parties engaging in sexual activity does not prevent the school system from taking disciplinary action against the parties for violation of any other board policy.

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