

Title IX Definitions Updates *(as of July 2020)*

The new definitions of sexual harassment can be found on [page 549](#). The definitions below currently exist in the Title IX module and each relevant definition was evaluated to determine if an update is needed or if it should be removed. Any changes are highlighted in red in the current definitions and blue in the new definitions.

Hostile Environment Sexual Harassment

Current definition	New definition
<p>Hostile environment harassment occurs when unwelcome conduct of a sexual nature is sufficiently serious that it affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational environment. A hostile environment can be created by a school employee, another student, or even someone visiting the school, such as a student or employee from another school.</p>	<p>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. A hostile environment can be created by a school employee, another student, or even someone visiting the school, such as a student or employee from another school. The incident must have taken place within the United States.</p>

Justification:

Definition on [page 549](#) of the new regulations:

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;

(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).

We added the jurisdiction sentence in accordance to the requirement found on [page 551](#).

Quid Pro Quo Sexual Harassment

Current definition	<u>New definition</u>
Quid pro quo harassment occurs when a school employee causes a student to believe that he or she must submit to unwelcome sexual conduct in order to participate in a school program or activity. It can also occur when an employee causes a student to believe that the employee will make an educational decision based on whether or not the student submits to unwelcome sexual conduct.	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. The incident must have taken place within the United States.

Justification:

Definition on [page 549](#):

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;

(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).

We added the jurisdiction sentence in accordance to the requirement found on [page 551](#).

Gender Discrimination

Current definition	New title and definition
Gender discrimination is any act that treats someone unfavorably because of that person's gender.	Title: Sex Discrimination Sex discrimination is any act that treats someone unfavorably because of that person's sex.

Justification:

The administration has made it clear that their interpretation of Title IX focuses on sex assigned at birth and not gender. Their position throughout the new regulations as well as in recent cases in the media is that because there can be same sex Title IX cases that gender is not a necessary qualifier.

Sexual Violence

Current definition	New definition
Sexual violence is any physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.	Sexual violence is any physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. The incident must have taken place within the United States.

Justification:

Remains because it is a helpful description for the sub types below. We added the jurisdiction sentence in accordance to the requirement found on [page 551](#).

Sexual Violence Sub Types:

(When yes is selected for the Sexual Violence item, the following sub types appear)

Rape

Current definition	New definition
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.	No change

Justification:

Meets VAWA definitions, see:

Crime Definitions From the Summary Reporting System (SRS) User Manual From the FBI's UCR Program – referenced in the Violence Against Women Act -

<https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf>

Sexual assault

Current definition	New definition
Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.	No change

Justification:

[Page 549](#) of the new regulations indicates to use “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v):

The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

<https://www.govinfo.gov/content/pkg/USCODE-2015-title20/pdf/USCODE-2015-title20-chap28-subchapIV-partF-sec1092.pdf>

Sexual battery

Current definition	New definition
Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any	Remove from list

<p>instrumentality or any part of the body of the victim, when any of the offender acts without the consent of the victim; or the act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender; or the offender is seventeen years of age or older and any of the following exist where the act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist where the victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability; or the victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity; or the act is without consent of the victim, and the victim is sixty-five years of age or older.</p>	
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Justification:

The new regulations and the discussion do not directly mention sexual battery, it’s only mentioned twice in the footnotes. The previous definition appears to be multiple definitions put together so we’re separating them into their own items.

Fondling

Current definition	New definition
None	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.

Justification:

Separating it from the former Sexual Battery definition and creating it as its own item. The definition can be found here: <https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf#page=40>

Statutory Rape

Current definition	New definition
None	Sexual intercourse with a person who is under the statutory age of consent.

Justification:

Separating it from the former Sexual Battery definition and creating it as its own item. The definition can be found here: <https://www.govinfo.gov/content/pkg/FR-2014-10-20/pdf/2014-24284.pdf#page=40>

Sexual abuse

Current definition	New definition
Sexual harassment carried out by school employees that can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity.	Remove subtype from list

Justification:

This duplicates the definition of hostile environment

Sexual coercion

Current definition	New definition
Sexual coercion is the act of using pressure, drugs, alcohol, or force to have sexual contact with someone against their will or without their consent. Sexual coercion is any scheme, plan, or pattern intended to cause a person to believe that failure to perform a sexual act would result in serious harm to or physical restraint against any person.	No change

Justification:

Since quid pro quo only applies to employees, this definition was seen as relevant for all other cases

Dating violence

Current definition	New definition
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; and where the existence of such a relationship shall be 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.	No change

Justification:

[Page 549](#) specifies to use the definition in 34 U.S.C. 12291(a)(10) and that's what the current definition uses:

34 U.S.C. 12291(a)(10)

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.

<https://www.govinfo.gov/content/pkg/USCODE-2017-title34/pdf/USCODE-2017-title34-subtitle-chap121-subchapIII.pdf>

Domestic violence

Current definition	New definition
Domestic violence is felony or misdemeanor crimes of violence committed by a current or	Domestic violence includes felony or misdemeanor crimes of violence committed

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.	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.
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Justification:

There's only a one word difference between the two, this just updates it to match the language of the law.

34 U.S.C. 12291(a)(8)

Domestic violence The term "domestic violence" includes 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.

<https://www.govinfo.gov/content/pkg/USCODE-2017-title34/pdf/USCODE-2017-title34-subtitleI-chap121-subchapIII.pdf>

Stalking

Current definition	New definition
Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.	No change

Justification:

[Page 549](#) of the new regulations specifies to use the definition in 34 U.S.C. 12291(a)(30) and that's what the current definition uses

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

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

<https://www.govinfo.gov/content/pkg/USCODE-2017-title34/pdf/USCODE-2017-title34-subtitleI-chap121-subchapIII.pdf>

Other Definitions

Retaliation

Current definition	New definition
Retaliatory actions taken by the school, school officials or third parties including threats, intimidation, coercion, discrimination or harassment.	Intimidation, 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 purpose of interfering with any right or privilege secured by title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.
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Justification:

This definition is based on the interpretation of [page 553](#) of the new regulations

Marital, Parental or Pregnancy Status

Current definition	New definition
Marital, Parental or Pregnancy Status Discrimination is any student excluded from participating in its educational program or activity, including extracurricular activities, based on the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from such termination, unless the student voluntarily requests to be excluded from the program or activity and placed in a separate portion of the program. In addition, any school employee or job applicant inquiring about their marital/parental/pregnancy status or basing employment decision on such status; school employee is not provided unpaid pregnancy and/or childbirth-related leave for a reasonable period of time or reasonable	No change

accommodations are not provided for school employee for pregnancy-related disability.	
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Justification:

This item is not affected by the new regulations