

Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual Harassment, Type 1

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

1. A school employee conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct

This is the quid pro quo (something for something else) type.

Sexual Harassment, Type 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

- With the 3rd prong covering most everything physical, this prong is focused on verbal or written/electronic forms of harassment.
- Standard is subjective with respect to the unwelcome-ness of the conduct (i.e., whether the complainant viewed the conduct as unwelcome), but as to elements of severity, pervasiveness, objective offensiveness, and denial of equal access, determinations are made by a reasonable person in the shoes of the complainant.

Why severe “and” pervasive?

Rationale for preventing a hostile workplace environment free from any severe or pervasive sexual harassment that alters conditions of employment does not allow for the social and developmental growth of young students learning how to interact with peers in the elementary and secondary school context and fostering robust exchange of speech, ideas, and beliefs in a college setting. Thus, the Department does not believe that aligning the definitions of sexual harassment under Title VII and Title IX furthers the purpose of Title IX or benefits students and employees participating in education programs or activities.

In other words, U.S. Dept. of Education thinks the nature of education means a higher quantity of low grade offensive speech must be tolerated as part of free expression.

While non-severe instances of unwelcome harassment may negatively impact a person, and schools retain authority to address such instances, Title IX is focused on sex discrimination that jeopardizes educational access.

In other words, U.S. Dept. of Education thinks sex-based conduct toward students must be severe to rise to the level of sexual harassment.

Complainant

com·plain·ant

/kəm'plānənt/

Noun: complainant; plural noun: complainants

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

Respondent

re·spond·ent

/rə'spɒndənt/

noun: respondent; plural noun: respondents

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

Supportive Measures

Supportive measures means...

Offered as appropriate

Without fee or charge

Designed to restore or preserve equal access to the education program or activity:

- without unreasonably burdening the other party
- including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

Nondisciplinary, nonpunitive individualized services

As reasonably available

To the complainant or respondent

Before or after the filing of a formal complaint or where no formal complaint has been filed.

Types of Supportive Measures

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
Monitoring of
Certain Areas of
the Campus

Other Similar
Measures

Supportive Measures

Unreasonable Burden

- Schedule and housing adjustments do not necessarily constitute an “unreasonable” burden on a respondent.
- Removal from sports teams (and similar exclusions from school-related activities, such as student government) also require a fact-specific analysis, but whether the burden is “unreasonable” does not depend on whether the respondent still has access to academic programs – must analyze whether a respondent’s access to the array of educational opportunities and benefits offered by the recipient is unreasonably burdened.

Inherently Punitive or Not?

No/Not Punitive/Can Do Without the Grievance Process

1. Educational conversations
2. Sending students to the principal's office
3. Changing student seating or class assignments

So, such actions may be taken to maintain order, protect student safety, and counsel students about inappropriate behavior.

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Yes/Punitive/Cannot Do Without the Grievance Process

By contrast, expulsions and suspensions constitute disciplinary sanctions (and/or constitute punitive or unreasonably burdensome actions) that could not be imposed unless a result of the grievance process.

Triggers Title IX

Probably doesn't trigger Title IX

Harassment in the school building or on school property

House party on the weekend

Harassment in school or extracurricular activities

International field trip or study abroad

Teacher visiting student's home to deliver book and engaging in sexual harassment while there

Prom in a rented ballroom

Student using personal cell phone to perpetuate online harassment during class time

Student using personal cell phone to perpetuate online harassment at home on weekend

For colleges: Greek houses or off-campus housing owned or controlled by student organization

Harassment committed by a student or staff from a different school (i.e., harassment happened at "away" volleyball game)