



THE UNIVERSITY OF ARIZONA

Institutional Equity

Annual Title IX Training Definitions Supplement

Consent in the context of sexual activity means informed and freely given words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent may not be inferred from: 1) silence, passivity, or lack of resistance, 2) a current or previous dating or sexual relationship, 3) acceptance or provision of gifts, meals, drinks, or other items, or 4) previous consent to sexual activity. Consent may be withdrawn during sexual activity. Consent to one form of consensual sexual activity does not imply consent to any other form of sexual activity. Consent may not be obtained through physical force, violence, duress, intimidation, coercion, or an express or implied threat of injury. Consent may never be given by a person who is: incapacitated (by drugs, alcohol, or otherwise), unconscious, asleep, or otherwise physically or mentally unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain consent and does not excuse conduct. Consent cannot be given by someone who, by virtue of age, circumstances, or other factors, is deemed by law to be incapable of giving consent.

Discrimination occurs when an individual, or group of individuals, is treated adversely because they belong to a classification of individuals that is protected from discrimination by law or policy.

Retaliation occurs when an adverse action is taken against an individual for engaging in protected activity. Protected activity consists of (a) opposing conduct reasonably believed to constitute discrimination, including harassment, which violates a nondiscrimination statute or which University policy prohibits; (b) filing a complaint about such practice; or (c) testifying, assisting, or participating in any manner in an investigation or other proceeding related to a discrimination complaint. Adverse actions that are reasonably likely to deter a complaining individual or others from engaging in protected activity are prohibited.

Title IX Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, that is:

- (1) **Quid pro quo harassment.** An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- (2) **Hostile environment harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (*i.e.*, creates a hostile

environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- (i) The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- (ii) The type, frequency, and duration of the conduct;
- (iii) The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (iv) The location of the conduct and the context in which the conduct occurred; and
- (v) Other sex-based harassment in the recipient's education program or activity; or

(3) Specific offenses.

- (i) **Sexual assault** meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

These offenses include:

Rape defined as 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 that person.

Sodomy defined as oral or anal sexual intercourse with another person, without the consent of that person, including instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Sexual Assault with an Object means to use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Fondling defined as the touching of the private body parts of another person for the purpose of sexual gratification without the consent of that person, including in instances where that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacitation.

Incest defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape defined as non-forcible sexual intercourse with a person who is under the statutory age of consent as defined by law.

- (ii) **Dating violence** meaning 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:

- (1) The length of the relationship;
- (2) The type of relationship; and
- (3) The frequency of interaction between the persons involved in the relationship;

(iii) **Domestic violence** meaning felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or

(iv) **Stalking** meaning 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.

Title IX 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).

To read the full incorporation of Title IX definitions into relevant university policy and procedure visit equity.arizona.edu/policies-procedures.