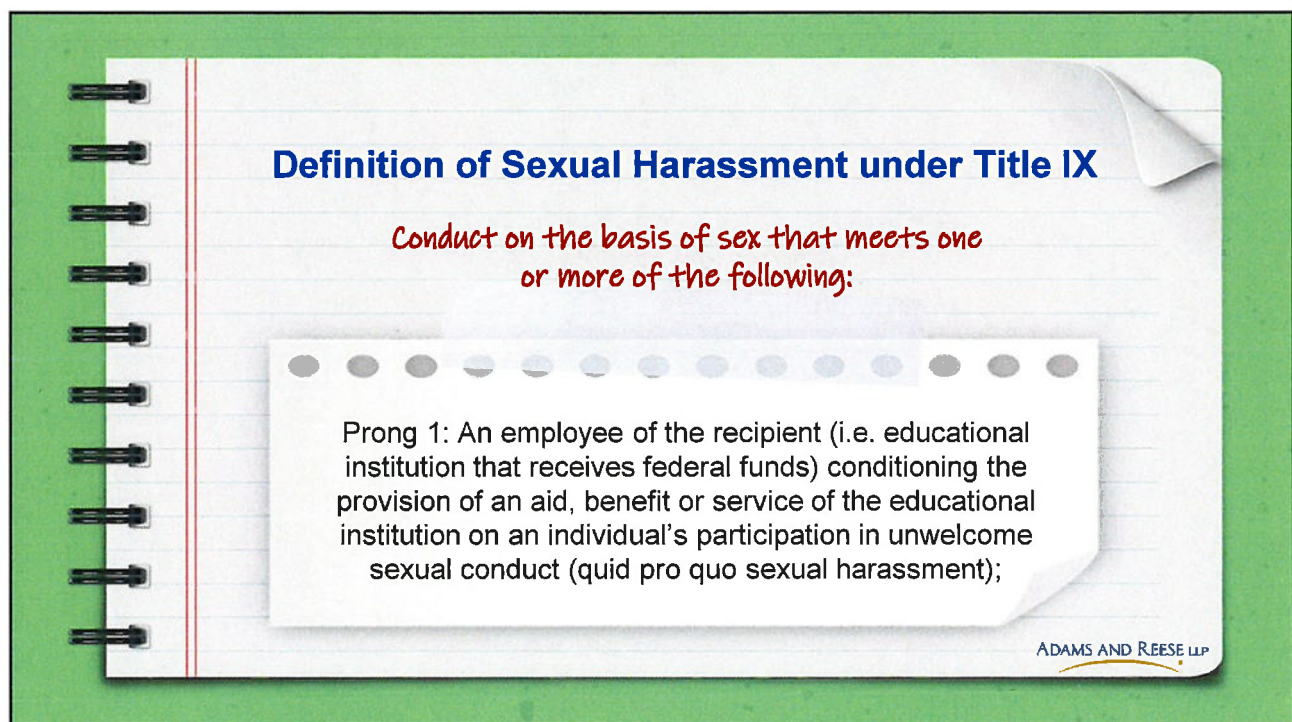


<b>Complainant</b>	<b>Respondent</b>
<p>The individual who is alleged to be the victim of conduct that could constitute sexual harassment.</p>	<p>The individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.</p>

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**Definition of Sexual Harassment under Title IX**

*Conduct on the basis of sex that meets one or more of the following:*

Prong 1: An employee of the recipient (i.e. educational institution that receives federal funds) conditioning the provision of an aid, benefit or service of the educational institution on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment);

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## Definition of Sexual Harassment under Title IX

*Conduct on the basis of sex that meets one or more of the following:*

Cont.

Prong 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 educational institution's education program or activity (hostile environment);

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## Definition of Sexual Harassment under Title IX

*Conduct on the basis of sex that meets one or more of the following:*

Cont.

Prong 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),  
"stalking" as defined in 34 U.S.C. 12291(a)(30), or  
"domestic violence" as defined in 34 U.S.C. 12291(a)(8)

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### Brief Detour: Title VII Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general and vice versa.

[EEOC.gov/sexual-harassment](https://www.eeoc.gov/sexual-harassment)

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### Brief Detour: Title VII Sexual Harassment (cont.)

Both the alleged victim and the alleged harasser can be either a woman or a man, and the alleged victim and alleged harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client, customer, or vendor.

[EEOC.gov/sexual-harassment](https://www.eeoc.gov/sexual-harassment)

Can the harasser be a student under Title VII? Can the person harassed be a student under Title VII?

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### What are some differences between Title IX sexual harassment and Title VII sexual harassment?

#### Title VII:

- Rights attach to Employees only
- Unwelcome conduct that is severe, pervasive OR objectively offensive
- Protects Employees in the workplace
- Administrative requirements (EEOC) before going to court

#### Title IX

- Students and Employees
- Unwelcome conduct that is severe, pervasive AND objectively offensive
- Applies to education program or activity in education institution
- Specific, internal due process procedures are required

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### Another Detour: HCC Policy 10.23 – Improper Sexual or Romantic Relationships Policy

Power imbalance makes voluntary consent difficult to establish  
Improper relationships can cloud judgment and create expectations

#### Prohibited Improper Sexual, Amorous or Romantic Relationships:

Between faculty and students

Between supervising administrators and employees they supervise

Between any other student/employee and an employee who acts in an advisory or supervising role with respect to students/other employees

Depending on the allegations, the conduct maybe subject to the Title IX sexual harassment grievance process.

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## Return from Detours and Back to Title IX: Education Program or Activity

Title IX previously defined as all the “operations of a [recipient]....”

However, in 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which the Recipient exercised substantial control over both the respondent and the context in which the harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

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## Training “officials w/ authority to act” on Actual Knowledge and Reporting

- “Actual knowledge” of sexual harassment is notice of sexual harassment to the TIX Coordinator or any employee employees, per HCC TIX policy)
- Activates response requirements for Title IX office

Easy call – Complainant reports it verbally or in writing

Anonymous reporting? Yes, also included

Includes third party reporting (parent, friend or community member) verbally or in writing

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## Which of the Below Examples are Considered Actual Knowledge?

Employee overhears a group of female students talking about a fellow male student who makes vulgar comments, follows them, and is "handsy"

A teacher co-worker tells you that the department head has rubbed his arm, grabbed his crotch, and asked what he was doing after work

A community member tells Employee 1 about a rumor that Student 1 and Employee 2 were arguing in the parking lot of the grocery store. Employee 2 grabbed Student 1 and tried to kiss Student 1. Student 1 was frantically trying to get away

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15

### JOBS (Responsibilities) in the Title IX Processes

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- Title IX Coordinator
- Dismissals
- Facilitator
- Investigator
- Advisor
- Initial decision maker (separate person(s))
- Appeal decision maker (separate person(s))

### Who can handle which Job?

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- ✓ Must have a Title IX Coordinator.
- ✓ Only overlap in duties can occur in Title IX coordinator, dismissals, facilitator, and investigator roles. (Best practice to separate some of these jobs.)

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## How Should the Title IX Coordinator Respond to Actual Knowledge/Report?

Must respond promptly to actual knowledge of sexual harassment in an education program or activity in a manner that is not deliberately indifferent

Recipient is deliberately indifferent if its response is clearly unreasonable in light of known circumstances

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MUST AVOID  
DELIBERATE  
INDIFFERENCE

## How Should the Title IX Coordinator Respond to Actual Knowledge?

Recipient must treat complainants and respondents equitably by

- 1) Offering supportive measures to a complainant and respondent, and
- 2) Following a grievance process BEFORE imposing any disciplinary sanctions on a respondent, and
- 3) Provide remedies to complainant AFTER determination of responsibility of respondent

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Cont.

## What are Supportive Measures?

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint or where a complaint has not been filed

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*counseling, course modifications, schedule changes, modify housing as needed, campus escorts, academic concerns (assignments, grades), etc.*

## What are Supportive Measures?

Supportive measures should be designed to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party

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**Cont.**

*For example, a supportive measure that completely removes the respondent from an activity could be considered punitive.*



## Report

TIXC meets with complainant, offers supportive measures (available whether or not files a formal complaint) and considers wishes of complainant as to supportive measures, explains how to file a formal complaint

A "report" of sexual harassment is different from a "formal complaint" and each requires different actions on the part of the Recipient.

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## Formal Complaint

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 allegations.

The formal complaint is what initiates the grievance process. Must give written notice prior to interview (specific components)

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## Confidentiality

HCC must keep confidential the identity of a person who complains of or reports sexual harassment, including parties and witnesses, except as permitted by law to carry out the purpose of the regulations with regard to conducting an investigation into the complaint.

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## Pregnancy and Title IX

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### **Discrimination on the Basis of Marital or Parental Status\***

- Marital/Parental Status – prohibits rules that concern student's actual or potential parental, family, or marital status which treat students differently on the basis of sex.

\* Similar provisions apply to employees/applicants

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### **Discrimination on the Basis of Marital or Parental Status (cont.)\***

- Pregnancy/Childbirth/False Pregnancy/Termination of Pregnancy or Recovery from the these Conditions
  - shall not discriminate against/exclude any student from any class or activity due to these conditions
  - shall treat these conditions as a justification for a leave of absence for any period deemed medically necessary by student's physician; Upon conclusion, student shall be reinstated to the status which she held when the leave began.

\* Similar provisions apply to employees/applicants

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## Report and Remedy

Impacted student/employee should report to the TIXC.

Investigation process is determined by the Recipient

After investigation, a determination is made as to whether the student/employee has been discriminated against and if so, what remedy is appropriate.

A "report" of pregnancy discrimination is not handled through the Title IX sexual harassment grievance process

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## Retaliation



Retaliation is prohibited against any person for the purpose of interfering with Title IX rights or because the person participated, or refused to participate, in any manner in a proceeding under Title IX regulations.

Complaints of retaliation may be reported and filed under the Title IX sex harassment grievance process or other Recipient processes.

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