



Definitions: Common Title IX Terms You Need to Know

FOR DEPUTIES, INVESTIGATORS, ADVISORS, AND HEARING OFFICERS

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The New Rule, released 5/6/2020 changes some terminology for Title IX

- ▶ This presentation will help identify and define terms that are used frequently in applying Stetson's Gender-Based Misconduct Policy and Processes
- ▶ The Dept. of Education has identified the terminology they want us to use, as well as defining Sexual Harassment
- ▶ Some of these changes are simple terminology, others are more nuanced

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The big one = definition of Sexual Harassment....

- ▶ **Sexual Harassment:** includes conduct on the basis of sex or gender (or perceived sex or gender) that satisfies one of the following-
- ▶ An employee of Stetson conditions the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- ▶ Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Stetson programs and activities; or
- ▶ Sexual assault, dating violence, domestic violence, or stalking as defined below.

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Definitions from Clery, VAWA & FL law:

Domestic & Dating Violence:

- ▶ Defined as violence or abuse between those in an intimate interaction and/or relationship to each other.
- ▶ This can be between married individuals or non-married individuals who have a dating relationship or other intimate relationship.
- ▶ This includes physical assault, psychological abuse and manipulation, forcing a partner to use one type of birth control over another or none at all despite the stated desire of one partner.

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Definitions from Clery, VAWA & FL law:

Domestic & Dating Violence:

- ▶ Florida law defines domestic violence as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” F.S. 741.28
- ▶ b) Florida law defines dating violence as “violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.” F.S. 784.046

Definitions from Clery, VAWA & FL law:

Sexual Assault:

- ▶ is the of an unwanted sexual act, further defined as:
- ▶ a) non-consensual sexual contact: the deliberate touching a person's intimate parts (including genitalia, groin, breast, or buttocks), or clothing covering any of those area(s) or to cause a person to touch his or her own or another person's intimate parts; with any object, by a person upon another person, that is without consent, is coerced, under threat of use of force, and/or by force.
- ▶ b) non-consensual sexual intercourse: any penetration (anal, oral, or vaginal) by a penis, tongue, finger, or an inanimate object, by any person upon another person, that occurs without consent, is coerced, is under threat of use of force and/or by force.
- ▶ Sexual assault can occur either forcibly and/or against a person's will, or when a person is incapable of giving consent.
- ▶ Under federal and state law, sexual assault includes, but is not limited to, rape, forcible sodomy, forcible oral copulation, sexual assault with an object, sexual battery, forcible fondling (e.g. unwanted touching or kissing for purposes of sexual gratification), and threat of sexual assault. See F.S. 784.011 (assault); 784.046(c) (sexual violence); 794.011 (sexual battery)

Definitions from Clery, VAWA & FL law:

Stalking:

- ▶ A course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class, that is unwelcome AND that would cause a reasonable person to fear for their, or others' safety, or to suffer substantial emotional distress.
- ▶ A course of conduct includes a series of acts over any period of time which is repetitive and menacing; pursuit, following, harassing and/or interfering with the peace and/or safety of another. This can include cyberstalking, or other behavior or a course of conduct that causes substantial emotional distress to the person the conduct is directed at.

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Stalking, Cont.

- ▶ Stalking includes any credible threat to the victim that causes reasonable fear for the safety of the victim, the victim's family members, or others closely associated with the victim, regardless of whether the perpetrator actually intends to go through with the threats.
- ▶ Florida law defines stalking as “willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person. For purposes of clarity, “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.” F.S. 784.048

Sexual Violence:

- ▶ Includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.
- ▶ A number of different acts fall into this category, including but not limited to, acts of non-consensual sexual contact and non-consensual sexual intercourse such as rape, sexual assault, sexual battery, sexual coercion, forcible sodomy, forcible oral copulation, sexual assault with an object, forcible fondling, and threat of sexual assault.
- ▶ All such acts of sexual violence are forms of sexual harassment included under the protections of Title IX of the Educational Amendments of 1972.

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Sexual Exploitation:

Taking non-consensual or abusive sexual advantage of another person including but not limited to:

- ▶ causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person;
- ▶ causing the prostitution of another person;
- ▶ recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person;

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Sexual Exploitation, cont.:

- ▶ allowing third parties to observe private sexual acts;
- ▶ engaging in voyeurism (such as watching a person undress, shower or engage in sexual activity without the consent of the person being observed);
- ▶ knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV without informing the other person of the infection.

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Complainant

(formerly Reporting Party)

The person or party who is the recipient of unwanted behavior that may violate University policy, alleged to be the victim of conduct that could constitute sexual harassment.

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Respondent

The person or party responding to the complaint of unwanted behavior that may violate University policy, who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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Advisor

A person of the complainant or respondent's choosing who may accompany the complainant or respondent during meetings with University personnel. This person does not represent either party, may not speak on the party's behalf, and may not participate in any other role in the process, except during the formal hearing process where the advisor is responsible for conducting the cross examination of parties and witnesses.

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Hearing Officer

A staff and/or faculty member within Stetson University who acts as the school official designated to manage the hearing process, determine relevance of questions, and make the final decision on responsibility. In some cases, the University may hire a professional outside the institution to serve as a Hearing Officer.

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Appeals Officer:

A staff and/or faculty member within Stetson University who acts as the school official designated to make the final decision in regard to an appeal.

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Supportive Measures

includes non-disciplinary, non-punitive individualized services offered as appropriate, reasonably available, and without fee or charge to the complainant or the respondent before or after filing of a formal complaint or where no formal complaint has been filed.

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Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the University investigate the allegation of behavior defined by the Gender-Based Misconduct Policy.

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Consent

- ▶ Consent is clear, and knowing, and voluntary words or actions that give permission for specific sexual activity.
- ▶ Silence, in and of itself, cannot be interpreted as consent.
- ▶ Consent is not the lack of resistance: there is no duty to fight off a sexual aggressor or a requirement of resistance, but resistance is a clear demonstration of non-consent.
- ▶ Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- ▶ Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- ▶ Previous relationship or prior consent cannot imply consent to future sexual acts.
- ▶ Consent cannot be given by a person who is incapacitated.
- ▶ Consent can be withdrawn once given, as long as that withdrawal is clearly communicated, and once consent is withdrawn, sexual activity must stop.

Force & coercion:

- ▶ Physical violence and/or imposing on someone physically to gain sexual access.
- ▶ Force also includes threats, intimidation, use of weapons or threat of use of weapons, or coercion.
- ▶ Coercion is unreasonable pressure for sexual activity.
- ▶ Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another.
- ▶ When someone makes clear that they do not want to have sexual interaction, continued pressure or sexual contact beyond that point can be coercive.

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Retaliation

- ▶ Any adverse action taken against a person participating in a protected activity because of their participation in that protected activity.
- ▶ Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment, or members of the University community whose role includes administering any part of the Title IX process.
- ▶ Instances of retaliation will be treated as another possible instance of harassment or discrimination.
- ▶ Acts of retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated.
- ▶ The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. This includes any form of retaliation against students, student organizations, staff, or faculty.

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Mandatory Reporter:

- ▶ An individual employee of the University who is required to report a suspected incident of misconduct.
- ▶ ALL employees are required to report suspected incidents of sexual harassment covered by this policy

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Informal Process

- ▶ Requires an investigation
- ▶ Does not include a live hearing with cross-examination
- ▶ Requires agreement of complainant AND respondent
- ▶ Includes facilitated meetings, alternative processes, and other options

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Alternative Resolution

- ▶ At Stetson, this includes use of the following:
 - ▶ Mediated/Facilitated discussions between all parties involved
 - ▶ Circle processes
 - ▶ Relationship Consultation through Student Counseling Services
 - ▶ Interpersonal Process Groups

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Formal Process

- ▶ Requires investigation, live hearing with cross-examination, and determination by hearing officers of credibility, relevance, and responsibility.
- ▶ Required in any case where the respondent is a University employee.
- ▶ Is conducted through live video feed.

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Bias, Conflict of Interest, Prejudice, Prejudgement

- ▶ We have a separate training just on this topic!
- ▶ Know your own implicit biases (and explicit)
- ▶ Notify the TIX Coordinator if you think you cannot be fair & impartial
- ▶ If you have had a previous case with a respondent or complainant, you may need to recuse yourself
- ▶ We have a “checklist” available to help

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Maxient/Report-It/Ethicspoint:

- ▶ Maxient is our student conduct management system, entirely online
- ▶ ReportIt is the option available to anyone to make a report; the system routes it to the appropriate individuals
- ▶ Ethicspoint is best for incidents involving employees, and is used for several types of reports
- ▶ All reports can be anonymous, although that limits options

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For more information/questions

- ▶ Many definitions are also found in the Gender-Based Misconduct Policy
- ▶ Definitions may change per the Dept. of Education, changes in Federal and State law, or on the advice of counsel
- ▶ If you have questions, contact

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