



BIG FIVE DEFINITION SET FOR 2020 TITLE IX REGULATIONS:
SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING

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

- 1) Quid Pro Quo:
 - a. an employee of the recipient,
 - b. conditions¹ the provision of an aid, benefit, or service of the recipient,
 - c. on an individual's participation in unwelcome sexual conduct; and/or

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the Recipient's education program or activity.²

- 3) Sexual assault, defined as:
 - a) Sex Offenses, Forcible:
 - i) Any sexual act directed against another person,
 - ii) without the consent of the Complainant,
 - iii) including instances in which the Complainant is incapable of giving consent.³
 - b) Forcible Rape:
 - i) Penetration,
 - ii) no matter how slight,
 - iii) of the vagina or anus with any body part or object, or
 - iv) oral penetration by a sex organ of another person,
 - v) without the consent of the Complainant.
 - c) Forcible Sodomy:
 - i) Oral or anal sexual intercourse with another person,
 - ii) forcibly,
 - iii) and/or against that person's will (non-consensually), or

¹ Implicitly or explicitly.

² Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

³ This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that the Recipient interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

- iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age⁴ or because of temporary or permanent mental or physical incapacity.
 - d) Sexual Assault with an Object:
 - i) The use of an object or instrument to penetrate,
 - ii) however slightly,
 - iii) the genital or anal opening of the body of another person,
 - iv) forcibly,
 - v) and/or against that person's will (non-consensually),
 - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e) Forcible Fondling:
 - i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii) for the purpose of sexual gratification,
 - iii) forcibly,
 - iv) and/or against that person's will (non-consensually),
 - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f) Sex Offenses, Non-forcible:
 - i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by [insert state] law.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of [insert age in your state].
- 4) Dating Violence, defined as:
- a. Violence
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to (emotional, psychological), sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

⁴ Per state law.

- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here], or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of [insert your state here].

*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.