



# Title IX vs. Sexual Misconduct

Gehring Academy | Sexual Misconduct Track | July 19-23, 2021  
 Association for Student Conduct Administration  
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## Learning Outcomes

- ▶ Describe what behavior constitutes sexual harassment under Title IX, the policy provisions which govern Title IX, and the processes by which complaints of Title IX will be resolved.
- ▶ Describe what behavior constitutes sexual misconduct, the policy provisions which govern sexual misconduct, and the processes by which complaints of sexual misconduct may be resolved.
- ▶ Identify how to determine the appropriate resolution process.

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## Behavior Under Title IX

Under new federal regulations, Title IX processes must be applied to incidents of "sexual harassment" defined as 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)" (34 CFR §106.30(a)).

Recipients must dismiss any complaint that falls outside of this definition under Title IX, however a recipient may engage in other processes to address sex and gender-based conduct not designated as a Title IX offense (i.e. sexual misconduct).

Recipients must clearly describe what behavior constitutes sexual misconduct, the policy provisions which govern sexual misconduct, and the processes by which complaints of sexual misconduct will be resolved.

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**Behavior that may be considered Sexual Misconduct:**

- Sex and/or gender discrimination
- Quid pro quo
- Creating a hostile environment
- Sex- based comments /jokes
- Inappropriate sexual touching/contact (fondling, groping, flashing)
- Sexual coercion
- Sexual exploitation
- Unwelcomed sexual and/or romantic attention
- Unwelcomed sexual advances
- Unwelcomed exposure to sexual material

Off-campus conduct of the above, as well as those matters that are also defined as sexual harassment under Title IX.

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**Determining the Appropriate Adjudication Process**

Each institution determines the adjudication model to be utilized to address complaints which fall under Title IX sexual harassment or sexual misconduct that does not meet the regulatory definitions.

- Title IX sexual harassment for allegations against a student may be resolved through an informal resolution or a formal hearing.
- Non-Title IX sexual harassment and misconduct may be addressed through the model determined by the institution.

Note: On Day 3, Adjudication Models will be discussed in more detail.

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**Requirements**

All complaints must be investigated. Once the investigation is complete the recipient may make determinations based on the factual findings outlined in the investigation. The recipient may:

1. Determine the alleged behavior falls within Title IX, and begins the prescribed Title IX processes.
1. Determine the alleged behavior falls outside of Title IX, and dismisses the complainant without further action.
1. Determine the alleged behavior falls outside of Title IX, but may constitute policy violations regarding sexual misconduct. Allegations of sexual misconduct are then adjudicated via available student conduct processes.

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**State and Federal Law Considerations**

Institutions must take into consideration compliance with other federal and state laws that also may apply to their process.

- VAWA
- Clery
- State Laws
  - May differ in definitions of sexual harassment, sexual violence and sexual misconduct
  - May impact reporting requirements for employees
  - May include provisions of specific information to be provided to a complainant, respondent or other involved parties
  - May define amnesty

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**Questions?**

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