



Nicholls State University

OFFICE OF TITLE IX & CIVIL RIGHTS COMPLIANCE

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Title IX Terminology and Definitions

- **Complainant:** Individual who is reported to have experienced prohibited conduct, regardless of whether the individual makes a report or seeks disciplinary action.
- **Respondent:** Individual who has been accused of prohibited conduct.
- **Third party:** Individual who is not a University student, faculty member, or staff member (e.g., vendors, alumni/ae, or visitors).
- **Party or parties:** may also be used to refer to a complainant or respondent participating in a resolution process.
- **Witness:** Individual who may have information relevant to a report of prohibited conduct.

Nicholls State University's Sexual and Interpersonal Misconduct Policy contains two subsets of Prohibited Conduct, Title IX Sexual Harassment and Non-Title IX Misconduct. Title IX Sexual Harassment is Prohibited Conduct of the following types committed by or against Students and/or Employees in an education program or activity of the University, in the United States. Prohibited Conduct that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of the University in the United States is considered Non-Title IX Misconduct.

Title IX Sexual Harassment

- **Title IX Quid Pro Quo Sexual Harassment** – Conduct on the basis of sex by which an employee of the University conditions the provision of an aid, benefit, or service of the University on a student's or employee's participation in unwelcome sexual conduct.
- **Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment** – Conduct on the basis of sex that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the University's education program or activity.
- **Title IX Sexual Assault** – Includes rape, fondling without consent, incest, or statutory rape. Any act of vaginal or anal penetration, however slight, with any body part or object, or oral genital contact of another person, without consent. Touching of the private body parts of another person for the purpose of sexual gratification, without consent.
- **Title IX Domestic Violence** – Conduct that constitutes a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child in common; by a person who is/was cohabitating with the complainant; by a person similarly

situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or 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 the jurisdiction in which the crime of violence occurred.

- **Title IX Dating Violence** – Conduct that constitutes violence committed by a person who was/is involved in a sexual, dating, spousal, domestic, or other intimate relationship with the Complainant.
- **Title IX Stalking** – Conduct on the basis of sex that constitutes a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Non-Title IX Misconduct

- **Non-Title IX Sexual Assault** – As defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the University in the United States.
- **Non-Consensual Sexual Contact** – Any intentional touching of a person's breasts, buttocks, groin, genitals, or other intimate parts without consent. Touching may be over or under clothing and may include the respondent touching the complainant, the respondent making the complainant touch the respondent or another person, or the respondent making the complainant touch the complainant's own body.
- **Sexual and Gender-Based Harassment**
 - **Sexual Harassment** - Sexual harassment is any unwelcome sexual advance, requests for sexual favor, and/or other verbal or physical conduct of a sexual nature when one of the conditions outlined in (1), (2), or (3), below, is present.
 - **Gender-Based Harassment** - Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the conditions outlined in (1), (2), or (3), below, is present.
 1. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit, but which does not fit within the definition of Title IX Quid Pro Quo.
 2. Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, in circumstances that do not fit within the definition of Title IX Quid Pro Quo.

3. Such conduct creates a hostile environment. A hostile environment exists:
 - a. in the employment context, when it unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - b. in the education context, when it is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.
- **Sexual Exploitation** - Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another, but that does not fall within the definition of Title IX Sexual Harassment. Sexual exploitation may include:
 - surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
 - recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved;
 - providing alcohol or drugs to a complainant with the intent to facilitate Prohibited Conduct;
 - exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances; or
 - knowingly exposing someone to or transmitting an STI or HIV.
 - **Non-Title IX Domestic Violence** - Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the University in the United States.
 - **Non-Title IX Dating Violence** - Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the University in the United States.
 - **Non-Title IX Stalking** - Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the University in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the alleged victim on the basis of sex.
 - **Retaliation** - Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege

secured by Title IX or its implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Misconduct). Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation, as does any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy.

- **Complicity** - Any act that knowingly aids, facilitates, promotes, or encourages the commission of prohibited conduct by another person.

Consent: The voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, threats, or coercion; whether the complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular act.

Coercion: The use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not wish to participate in a particular activity or communicates by words or actions a decision to stop or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (1) the frequency of the application of the pressure, (2) the intensity of the pressure, (3) the degree of isolation of the person being pressured, and (4) the duration of the pressure.

Incapacitation: Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act.

The definitions of sexual harassment, sexual assault, domestic violence, dating violence, and stalking provided in Nicholls State University's Sexual and Interpersonal Misconduct Policy ("the Policy") are intended to reflect that the University prohibits those forms of misconduct

and/ or crime as, where applicable, they are defined in the federal Clery Act, as amended by the Violence Against Women Amendments Act of 2014 (“VAWA”), and the Department of Education regulations issued in 2020 to implement Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. The University also prohibits other forms of related misconduct and/or crime, and prohibits gender-based harassment, sexual exploitation, retaliation, and complicity, as reflected in the Policy. For greater detail regarding the definitions, please see the Policy, which is available at: nicholls.edu/titleix.