

Appendix D: Terms

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the university.

Advisor: Complainants and respondents have the right to have an advisor of their choosing during the process of investigation and adjudication. Federal regulations stipulate that in the event the person is not able to find an advisor the University will provide one. The adviser's role is to provide cross examination during any hearing and to walk the journey with their advisee with regards to attending meetings and getting needs addressed.

Character Witness: Someone who provides a written witness to another person's character. Character witness statements are read after a hearing but prior to the issuing of sanctions. It should be noted that one's character cannot be considered evidence in the case as it does not speak to the substance of the investigation.

Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Complainant an individual who is alleged to be the victim of conduct that could constitute sexual harassment.'

Consent - This is the act of knowingly agreeing to engage in a sexual activity. Consent must be voluntary. An individual cannot consent who has been compelled by force, threat of force, coercion or deception; or who is unaware that the act is being committed; or who is incapacitated; or who is a minor by legal definition. Consent may be withdrawn at any time. Prior sexual activity or relationship does not, in and of itself, constitute consent. Consent is clear, and knowing, and voluntary, words or actions, that give permission for specific consensual activity. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as 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 considerations of) sexual activity. Consent can be withdrawn once given. The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party as it relates to the ability to give consent. There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

Deputy Coordinator: The role of a Deputy Title IX Coordinator is to provide intake services, support services and serve as a connection between the area in which you work and the Office of Title IX & Equity Investigation. Title IX Deputies are cross trained on investigating, decision making, appeals and serving as an advisor. Those serving as deputy have the authority to take on any of these roles in the event, they are called upon to do so by the Title IX Coordinator or Director of Compliance. Title IX deputies will remove themselves in any case where a conflict of interest or bias exists.

Decision Maker: Decision makers are trained staff volunteers who serve as members of the hearing board or appeal administrator for the adjudication of Title IX cases. These faculty and staff members review the investigative report along with the content provided in the hearing to determine responsibility or lack thereof or are responsible for the final decision in any request for appeal that meets the criteria for appeal.

Discrimination - defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender.

Education Program or Activity: Locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which sexual harassment occurs and includes any building owned or controlled by a student organization that is officially recognized by the University.

Fondling: Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity.

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

Formal Complaint or Formal Report is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that WSU investigate the allegation.

Formal Resolution The process and outcome of any case that has graduated to an end through the formal investigatory and adjudication process.

Harm- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). A demonstration of a person’s incapacity includes but is not limited to; sleeping, passed out, unconscious, involuntarily restrained, making irrational decisions, unable to speak or communicate clearly, unable to determine time or place, and/or under the influence of drugs commonly known as ‘date rape’ drugs. Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.¹ The presence of force is not demonstrated by the absence of resistance.

¹Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Informal Report a report made to the Title IX Coordinator or other mandatory reporter whereby the reporting party does not want the University to proceed to a resolution.

Informal Resolution the final outcome of a case whereby the complainant and respondent agree to a resolution without proceeding through to a Formal Resolution.

Inquiry: The Title IX office will seek additional information about a reported incident starting with the victim if known. This process is not an 'investigation' however the information gleaned could become part of an investigation. The purpose of an inquiry is to determine if an investigation needs to occur. The criteria for moving forward with a full investigation are;

- a) A complainant has filed a formal report that describes behavior that indicates sexual assault, quid-pro-quo or behavior that demonstrates serious, pervasive, and objectively offensive.
- b) A report is filed that is serious, pervasive and objectively offensive such that the campus community and educational opportunities are threatened regardless of the complainant's desire for the case to move forward to investigation.
- c) A report is received that indicates a serious violation of the sexual misconduct policy that could be revealed to include title IX related protections.

Investigation: An investigation involves interviewing witnesses, seeking and reviewing evidence, interviewing the complainant and the respondent at the start and again at the end of the information gathering phase and culminates in a written report. If a complainant withdraws a formal complaint prior to the end of an investigation the process concludes with no report.

Investigator: Investigators are charged with gathering evidence and creating an investigatory report that presents the evidence for consideration by a decision maker. Specifically, the investigator will interview the primary parties as well as witnesses, gather any referenced evidence such as photos or documents, and construct a summary report that allows for objective review of the information.

Preponderance of Evidence Standard: Is when the greater weight of the lies on one side or the other of a dispute. The preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence. Thus, one clearly knowledgeable witness may provide a preponderance of evidence over a dozen witnesses with hazy testimony. The preponderance of the evidence standard requires less than the clear and convincing standards used in criminal law.

Rape: Penetration, not matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of an individual, regardless of gender or gender expression.

Reporting Party is the person or persons who initiate the original report. This person can be but does is not required to be the complainant (person impacted) in the report.

make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

Respondent an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Responsible Employees: All university employees who are considered “Responsible Employees” are obligated to report. Responsible employees are not confidential resources. A responsible employee is a university employee who has the authority to address sexual misconduct, who has the duty to report incidents of sexual misconduct, or who is a member of the university community could reasonably believe has such authority or duty. A non-exhaustive list of responsible employees is contained in Appendix D that follows this policy. Generally, with the exception of the confidential resources discussed above, most employees to whom community members might reasonably report an incident of misconduct will be responsible employees. The University has identified and designated responsible employees to immediately report to the Title IX Coordinator any conduct that comes to the attention of the responsible employee that involves incidents of discrimination, harassment, sexual violence, interpersonal violence and stalking. This responsibility is critical because the University is obligated to address conduct about which a responsible employee knew. Employees with administrative or supervisory responsibilities on campus or who have been designated as Campus Security Authorities, are considered Responsible Employees.

Retaliation - No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX 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. 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, constitutes retaliation.

Stalking (Gender Based) - ongoing conduct that could cause a reasonable person to fear for the safety of themselves or others, or suffer emotional distress (e.g., following, monitoring, threatening, communicating to or about the victim, or interfering with a victim’s property)

Statutory Rape: Sexual intercourse with a person who is under the age of consent.

Supportive Services are resources, accommodations and assistance with managing University Life while also managing the impact of a possible policy violation. (See Appendix B for details on services)

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

Witness: Someone who has firsthand information about the facts of the incident or the time leading up to or just after the incident that provide substance to the investigation.