

Session 1: Conduct, Scope and Jurisdiction

Training for Title IX Coordinators, Investigators, Hearing
Coordinators, Appeals Managers and Student Conduct
Administrators

Systemwide Title IX Compliance
Office of the Chancellor
The California State University

CSU Policy Implementing the Regulations

EO 1096/1097: Single Investigator Model

For allegations of sexual harassment, DHR and sexual misconduct that do not fall under Addendum A or Addendum B, including:

- Student accused of sexual misconduct/DV but credibility not at issue
- Allegations do not involve sex or gender

Addendum “A”: State Mandated Hearing Model (*Allee/Boermeester*)

For allegations that a **student** has engaged in sexual misconduct or dating/domestic violence, credibility is an issue and a possible severe sanction (does **not** apply to employees)

Addendum “B”: Federal Mandated Hearing Model-For “formal complaints” of sexual harassment, sexual assault and other defined offenses (fondling, stalking) in an “education program or activity” (accused can be student **or employee**)

Using Conduct Definitions

Determine the applicability of Addendum B (Mandatory Dismissals)



Define investigative objectives



Identify material disputed and undisputed facts



Hearing decision findings

Prohibited Conduct

Sexual Harassment

1096/1097 Addendum A

- Quid pro quo sexual harassment
- Hostile Environment sexual harassment

Addendum B

- Quid pro quo sexual harassment
- Hostile environment sexual harassment
- Sexual assault
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Dating and Domestic Violence
- Stalking

Addendum B Prohibited Conduct

- Sexual Harassment
 - Quid pro quo
 - Hostile environment
- Sexual Assault
 - Rape
 - Fondling
 - Statutory Rape
 - Incest
- Dating and Domestic Violence
- Stalking

Elements of Addendum B Quid Pro Quo Sexual Harassment

1. Is the Respondent an **Employee** of the University?
2. Did the Respondent condition the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct?

Elements of Addendum B Hostile Environment Sexual Harassment

- Did the Respondent engage in the alleged conduct?
- Was the alleged conduct unwelcome?
- If there was unwelcome conduct, would a reasonable person find the conduct to be so severe, **and** pervasive, **and** objectively offensive that it effectively denied Complainant equal access to an Education Program or Activity?

Sexual Misconduct/Sexual Assault

1096/1097 Addendum A

- Sexual misconduct
 - Affirmative consent
 - Incapacitation

Addendum B

- Sexual assault
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
 - Affirmative consent
 - Incapacitation

Affirmative Consent for 1096/1097 and Addendum A and Addendum B

What is “Affirmative Consent”?

- Informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity
- Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration
- **Affirmative Consent can never be given by a person who is determined under CSU policy to be “Incapacitated”**

The Elements of Rape (Theory 1)

1. Did Respondent penetrate, or attempt to penetrate, no matter how slight, the vagina or anus with any body part or object, or oral penetration by a sex organ of the Complainant? **And**
2. Did the Respondent have Complainant's affirmative consent for the penetration or attempted penetration of Complainant?

The Elements of Rape (Theory 2)

1. Did Respondent attempt to penetrate, no matter how slight, the vagina or anus with any body part or object, or oral penetration by a sex organ of the Complainant? **And**
2. Did Respondent attempt to penetrate Complainant without affirmative consent? **And**
3. Did Respondent have the present ability and the intent to commit rape?

Elements of Fondling

1. Did Respondent touch the private body parts of Complainant? **And**
2. Was the touching for the purpose of sexual gratification? **And**
3. Was the touching without the affirmative consent of Complainant?

Elements of Statutory Rape

1. Did Respondent have sexual intercourse with Complainant? **And**
2. Was Complainant under the age of 18 years, when Respondent had sexual intercourse with Complainant?

Elements of Incest

1. Was there sexual intercourse between Complainant and Respondent? **And**
2. Are Complainant and Respondent related to each other within the degrees wherein marriage is prohibited by law?

Elements of Dating Violence

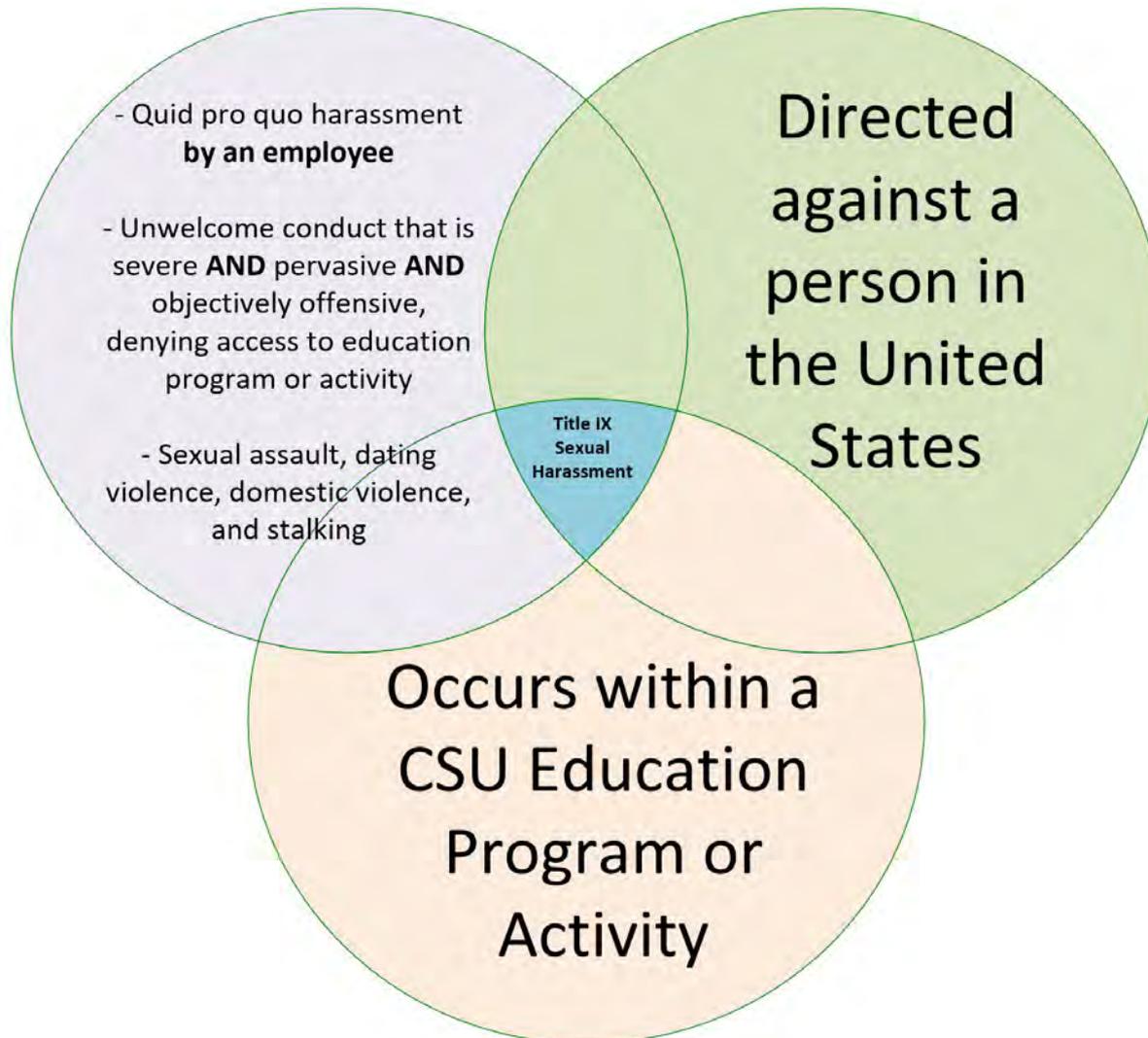
1. Did Respondent engage in physical violence or threat of physical violence against Complainant?
And
2. Are Complainant and Respondent or have been in a social relationship of a romantic or intimate nature? The existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

Domestic Violence

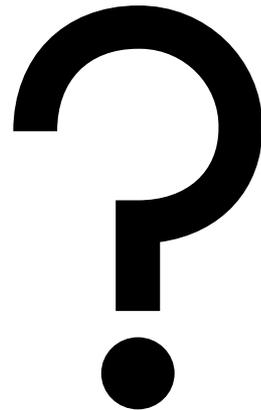
1. Did Respondent engage in physical violence or threat of physical violence against Complainant? **And**
2. Is Respondent a current or former spouse or intimate partner of the Complainant, or a person with whom the Complainant shares a child in common, or a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant?

Stalking Elements

1. Did Respondent engage in a course of conduct directed at Complainant? **And**
2. Would Respondent's alleged course of conduct cause a reasonable person to fear for their safety or the safety of others; **or** suffer substantial emotional distress?



**LET'S PAUSE
FOR QUESTIONS**



Scope and Jurisdiction

When did the alleged conduct occur?

On or after August 14, 2020?

“Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

OCR Blog – August 5, 2020

Scope and Jurisdiction Issues

- Sexual harassment for Title IX purposes is defined as:
 - Quid pro quo harassment (where respondent is an employee);
 - Unwelcome conduct determined “by a reasonable person to be so severe **and** pervasive, **and** objectively offensive” as to deny a person equal access to the institution’s education program or activity”; or
 - Sexual assault, dating violence, domestic violence and stalking as defined in the Clery Act and the Violence Against Woman Act (VAWA).

Scope and Jurisdiction Issues

- “Sexual harassment against a person in the United States”
- Education program or activity

Locations, events, or circumstances (operations) over which the institution exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

Includes any building owned or controlled by a student organization that is OFFICIALLY RECOGNIZED by the institution (for example, a fraternity or sorority house).

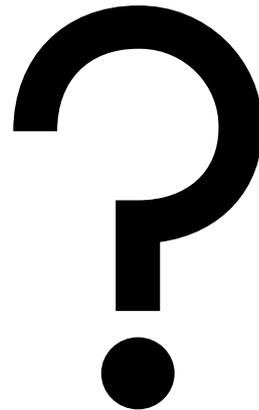
Scope and Jurisdiction Issues

- The Complainant must be participating in or attempting to participate in an education program or activity at the time the complaint is filed.
 - A recent graduate?
 - A student on a leave of absence?
 - A former employee?
 - An applicant for admission?
 - A student who graduated four years ago but wishes to participate in alumni activities?

What about cases that fall outside the scope of the Regulations?

- Supportive measures provided response to all reports.
- These matters will continue to be handled by campus Title IX Offices.
- Regulations: Codes of conduct may be used to address matters that fall outside the scope of the Regulations.
- In limited cases, we can continue to use our existing procedures under Executive Orders 1096 and 1097.

**LET'S PAUSE
FOR QUESTIONS**



Example 1:

A CSU student reports to the Title IX Coordinator that they were sexually assaulted by another CSU student while on a study-abroad program in Spain.

X This matter does not fall under the scope of the Title IX Regulations because the alleged incident was not against a person inside the U.S.

- The Formal Complaint process under Addendum B is therefore unavailable.
- Depending on the specifics of the case, it could either be addressed under Addendum A or the single investigator process under EO 1097.
- **Regardless of which process is used, the student will be offered supportive measures and information regarding resources.**

Example 2:

A CSU student reports to the Title IX Coordinator that their dating partner, who is also a CSU student, sometimes hits them. The student reports that this only ever happens in the off-campus apartment that they share.

X This matter does not fall under the scope of the Title IX Regulations because the alleged conduct did not occur in the context of a CSU education program or activity.

- The Formal Complaint process under Addendum B is therefore unavailable.
- The allegations could still be investigated under the single investigator process in EO 1097 OR Addendum A (depending on the circumstances).
- **Regardless of which process is used, the student complainant will be offered supportive measures and information regarding resources.**

Poll Question:



A student reports that the president of the student government organization of which they are a member has offered to assist them in getting onto the board if they engage in sexual activity with the president.

Would this conduct fall under Addendum B?

- Yes
- No

Poll Question:

A student reports that the president of the student government organization of which they are a member has offered to assist them in getting onto the board if they engage in sexual activity with the president.

- ✗ This matter does not fall under the scope of the Title IX Regulations because while this sounds like it could well be quid pro quo sexual harassment, it does not involve an employee respondent.
- The Formal Complaint process under Addendum B is therefore unavailable.
- The allegations could still be investigated under the single investigator process in EO 1097 (depending on the circumstances).
- **Regardless of which process is used, the student complainant will be offered supportive measures and information regarding resources.**

Poll Question:



A CSU faculty member attends an off-campus conference hosted by their campus. They report that during the conference, another faculty member touches their intimate body parts under the table.

Would this alleged conduct fall within the scope of Addendum B?

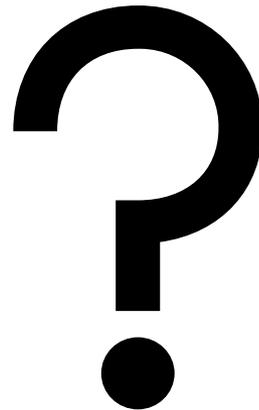
- Yes
- No

Poll Question:

A CSU faculty member attends an off-campus conference hosted by their campus. They report that during the conference, another faculty member touches their intimate body parts under the table.

- ✓ From a jurisdiction perspective, while this occurred off-campus, it likely still falls within an education program or activity. Note this is always going to be fact-specific.

ADDITIONAL QUESTIONS





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