

WAC 495A-300-025 Definitions. For purposes of this chapter, Title IX grievance procedures, the following terms are defined as follows:

(1) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(2) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) "Formal complaint" means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that Bates Technical College conduct an investigation.

(5) "Education program or activity" includes locations, events, or circumstances over which Bates Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by Bates Technical College.

(6) "Grievance procedure" is the process Bates Technical College uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(7) "Supportive measures" are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to Bates Technical College's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the college's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to:

(a) Counseling and other medical assistance;

(b) Extensions of deadlines or other course-related adjustments;

(c) Modifications of work or class schedules;

(d) Leaves of absence;

(e) Increased security or monitoring of certain areas of campus;

and

(f) Imposition of orders prohibiting the parties from contacting one another in housing or work situations.

Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(8) "Summary suspension" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 495A-121-062.

(9) "Sexual harassment," for purposes of this chapter, Title IX grievance procedures, occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

(a) Quid pro quo harassment. A Bates Technical College employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Bates Technical College's educational programs or activities or Bates Technical College employment.

(c) Sexual assault. Sexual assault includes the following conduct:

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;
(II) The type of relationship; and
(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) Fear for their safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(10) "Title IX administrators" are the Title IX coordinator, Title IX investigators, the student conduct officer, student/faculty disciplinary committee members, human resources disciplinary officer, hearing panel and/or neutral decision maker, and Bates Technical College-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(11) "Title IX coordinator" is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the claim to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all claims, reports, and referrals, and retaining investigation files, claims, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Conducting investigations or assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); and 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-01-196, § 495A-300-025, filed 12/22/20, effective 1/22/21.]