



**ATIXA  
HEARING OFFICER & DECISION-MAKER TRAINING AND CERTIFICATION COURSE  
LEARNING OUTCOME ATTAINMENT TEST ANSWERS**

**SEXUAL HARASSMENT/QUID PRO QUO**

1. What elements do you consider to determine whether Dr. McDreamy is or is not in a position of power or authority over Kristen?
  - a. Dr. McDreamy is the professor of record for Kristen’s class and determines her grade in the course. It appears his grading contains some level of subjectivity, empowering the professor and placing him in a strong position of authority.
2. What facts do you consider when assessing whether this was welcomed or unwelcomed conduct?
  - a. Kristen signed up for the course because she found Dr. McDreamy attractive. When he touched her shoulder in class, she didn’t mind. After Dr. McDreamy proposed non-traditional extra credit, she continued to talk with him in a flirty manner. They undressed each other and engaged in intercourse voluntarily. She tells her friend that she went on a “date” with him. There is no evidence here to indicate that this was unwelcome conduct.
3. For purposes of this question, assume the conduct was unwelcome. What additional information could help inform whether Dr. McDreamy’s statement about “non-traditional extra credit” implicates either an explicit or implicit condition for her grade?
  - a. More facts here could clarify what was meant by “non-traditional extra credit.” The hearing officer should evaluate the timeline of when he said this versus when he initiated sexual contact. Were there other statements that created context to this being an implicit term or condition for her grade?
4. Has Dr. McDreamy violated the Sexual Harassment/Quid Pro Quo Policy?
  - a. While this may be a violation of other policies, it appears that this behavior does not violate the Sexual Harassment policy. Quid Pro Quo harassment requires the conduct to be “unwelcome” and nothing here indicates this was unwelcome sexual conduct. An element of the relevant policy cannot be overlooked in assessing the conduct at issue.

Policy

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient's education program or activity.

## UNWELCOME KISSING

1. Did Anisha sexually assault Jane? What additional information would assist in this analysis?
  - a. One unwelcome kiss is generally not sufficient to constitute sexual assault. While the kiss was unwelcome, an analysis should be conducted to determine whether the kiss was, in fact, sexual or sex-based. Even accepting for the sake of argument that it was, the forcible fondling definition below does not include “mouth” as an articulated private body-part. Kisses are regularly used to convey affection that is not necessarily meant as sexual in nature.
2. Does the behavior constitute sexual harassment? If so, does it rise to a level of sexual harassment that warrants discipline?
  - a. Although a kiss may, depending on the circumstances (see above) constitute unwelcome sexual/sex-based physical conduct, one kiss does not rise to the level of a hostile environment. Anisha immediately stopped and left when Jane pushed her away. Nothing in these facts indicates the behavior was persistent (there was only one incident) or pervasive. The kiss also does not seem objectively offensive and is unlikely to deny Jane’s access to educational opportunities.
3. Did Anisha engage in force? What evidence do you consider?
  - a. While Jane characterized Anisha’s action as “pinning her down,” which could indicate force in certain circumstances, Jane acknowledged Anisha did not tackle her with the intent to kiss her. Nothing in these facts indicates that force was used to obtain sexual access.

### Policy

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

#### 1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual’s participation in unwelcome sexual conduct; and/or

#### 2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient’s education program or activity; and/or

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- i) Any sexual act directed against another person,
- ii) without the consent of the Complainant,
- iii) including instances in which the Complainant is incapable of giving consent.

b) Forcible Rape:

- i) Penetration,
- ii) no matter how slight,
- iii) of the vagina or anus with any body part or object, or
- iv) oral penetration by a sex organ of another person,
- v) without the consent of the Complainant.

c) Forcible Sodomy:

- i) Oral or anal sexual intercourse with another person,
- ii) forcibly,
- iii) and/or against that person's will (non-consensually), or
- iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d) Sexual Assault with an Object:

- i) The use of an object or instrument to penetrate,
- ii) however slightly,
- iii) the genital or anal opening of the body of another person,
- iv) forcibly,
- v) and/or against that person's will (non-consensually),
- vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

e) Forcible Fondling:

- i) The touching of the private body parts of another person (buttocks, groin, breasts),
- ii) for the purpose of sexual gratification,
- iii) forcibly,
- iv) and/or against that person's will (non-consensually),
- v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

## SEXUAL HARASSMENT/HOSTILE ENVIRONMENT

1. Does Title IX obligate a response to the incidents between Travis and Justin?
  - a. Yes. Title IX covers sex-based discrimination, including same-sex sex discrimination.
2. At what point in this scenario are policies implicated?
  - a. A hearing administrator (decision-maker) should begin to take note of when Justin kisses Travis at the apartment and regarding the locker room incident. Before the apartment incident, Justin had inquired about Travis's interest and Travis conveyed he was not interested. This behavior is common and within the bounds of acceptable interpersonal interaction.
3. Does Justin's behavior create a hostile environment? What information would assist in your determination?
  - a. Justin's behavior appears to be escalating and is repeated. More facts should be collected to determine the circumstances of the kiss at the apartment. Was Travis cornered and unable to move away? If so, it could weigh toward being more severe. The locker room incident is likely severe. Justin cornered Travis and attempted to grab his buttocks. The incident occurring in a locker room shower, a place of vulnerability, weighs in favor of severity and objective offensiveness. Justin's behavior likely has created a hostile environment because of the repetition and inclusion of a physical assault, but it's probably an example of the most minimal conduct that could satisfy the standard.
4. Has Justin interfered, denied, or limited Travis' benefit of/access to educational programming?
  - a. Justin likely has impacted Travis's access to the lacrosse team. A decision-maker should evaluate why Travis left the team; however, Justin's repeated and increasingly severe behavior, coupled with Travis's decision to leave them team, supports a determination that as a result of Justin's conduct, Travis was denied access to playing lacrosse, an educational program.

### Policy

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,

- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient's education program or activity; and/or

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- i) Any sexual act directed against another person,
- ii) without the consent of the Complainant,
- iii) including instances in which the Complainant is incapable of giving consent.

b) Forcible Rape:

- i) Penetration,
- ii) no matter how slight,
- iii) of the vagina or anus with any body part or object, or
- iv) oral penetration by a sex organ of another person,
- v) without the consent of the Complainant.

c) Forcible Sodomy:

- i) Oral or anal sexual intercourse with another person,
- ii) forcibly,
- iii) and/or against that person's will (non-consensually), or
- iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d) Sexual Assault with an Object:

- i) The use of an object or instrument to penetrate,
- ii) however slightly,
- iii) the genital or anal opening of the body of another person,
- iv) forcibly,
- v) and/or against that person's will (non-consensually),
- vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

e) Forcible Fondling:

- i) The touching of the private body parts of another person (buttocks, groin, breasts),
- ii) for the purpose of sexual gratification,
- iii) forcibly,
- iv) and/or against that person's will (non-consensually),

v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

---

Discriminatory harassment constitutes a form of discrimination that is prohibited by Recipient policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Recipient does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Recipient will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

## SEXUAL VIOLENCE

1. Did Alex engage in dating violence and/or domestic violence? What do you assess in determining this?
  - a. Likely not. Alex and Diane are in an intimate relationship, as they are romantic and have a sexual history. They also live together as romantic partners. It does not appear that Alex has engaged in abuse. Although physically restraining someone could certainly constitute violence and/or abuse, the fact pattern notes that they sometimes had sex with Alex holding Diane's hands above her head. Considering the conduct in the context of the relationship and the facts as presented here, there likely is not a preponderance of evidence to support a determination that dating or domestic violence occurred from the physical restraint. However, because the dating violence definition includes sexual abuse, the dating violence policy would be violated if there is a determination that Alex is responsible for sexual assault.
2. What about forcible fondling? What do you assess to determine this?
  - a. Although Diane told Alex that she didn't feel well, the facts support a finding that Diane consented to some of the sexual activity. She told him, "Let's just touch each other," and the facts support the idea that she was actively engaged in touching Alex's genitals during the interaction. However, for the reasons included below, the intercourse was not consensual, and because intercourse includes contact, there is a preponderance of the evidence to show that the forcible fondling provision was violated, based on the definition and the fact that this type of activity is normally done for the purpose of sexual gratification. No other purpose for the action was provided.
3. What evidence do you consider in assessing whether the conduct constituted forcible rape?
  - a. Consider Diane's communications to Alex. In this interaction, Diane articulated a limit of activity, suggested an alternative, never communicated permission for intercourse, and immediately objected. Her sounds are irrelevant because they were not mutually understandable permission.
4. Was Diane able to consent to sexual activity?
  - a. Likely yes. Diane was intoxicated; however, individuals who are intoxicated can consent to sexual activity. The question is whether Diane was incapacitated. Did she understand the who, what, when, where, why, and how of the situation? Although Diane told Alex she was feeling ill, and the facts indicate that she was feeling dizzy and nauseous, the details indicate that Diane was coherent and able to understand the situation. She was capable of making rational, reasonable decisions. This is clearly shown by her imposition on a limit of what they would do, and a suggestion to engage in alternate conduct that was acceptable to her. There is no indication that Diane was not able to understand the implications of the situation or could not remember what happened. The preponderance of evidence does not support a determination that she was incapacitated.



## Policy

Sexual assault, defined as:

- a) Sex Offenses, Forcible:
  - i) Any sexual act directed against another person,
  - ii) without the consent of the Complainant,
  - iii) including instances in which the Complainant is incapable of giving consent.
  
- b) Forcible Rape:
  - i) Penetration,
  - ii) no matter how slight,
  - iii) of the vagina or anus with any body part or object, or
  - iv) oral penetration by a sex organ of another person,
  - v) without the consent of the Complainant.
  
- c) Forcible Sodomy:
  - i) Oral or anal sexual intercourse with another person,
  - ii) forcibly,
  - iii) and/or against that person's will (non-consensually), or
  - iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
- d) Sexual Assault with an Object:
  - i) The use of an object or instrument to penetrate,
  - ii) however slightly,
  - iii) the genital or anal opening of the body of another person,
  - iv) forcibly,
  - v) and/or against that person's will (non-consensually),
  - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
- e) Forcible Fondling:
  - i) The touching of the private body parts of another person (buttocks, groin, breasts),
  - ii) for the purpose of sexual gratification,
  - iii) forcibly,
  - iv) and/or against that person's will (non-consensually),
  - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here], or
- g. 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 [insert your state here].

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the Recipient to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the Recipient’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## PREPONDERANCE

1. If Omar doesn't remember the specifics of what happened, can he be held responsible?
  - a. Yes. Failing to remember the details of reported misconduct does not negate potential responsibility. He engaged in a sexual assault (forcible fondling) without Devya's consent. That's a policy violation.
2. What are some considerations for interviewing Devya's friend who approached her at the party?
  - a. What exactly did she see occur between Devya and Omar?
  - b. What did she mean when she said, "It didn't look good?"
  - c. What did she and Devya talk about the day after the party?
3. How do the facts that Omar is gay and thought they were having a good time affect your assessment of whether a policy violation occurred?
  - a. Although motive and intent may be relevant in considering the entirety of the circumstances, sexual assault can occur when one party believes the conduct is welcomed and it can also occur regardless of the parties' sexual orientations.

### Policy

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient's education program or activity; and/or

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- i) Any sexual act directed against another person,
- ii) without the consent of the Complainant,
- iii) including instances in which the Complainant is incapable of giving consent.

- b) Forcible Rape:
  - i) Penetration,
  - ii) no matter how slight,
  - iii) of the vagina or anus with any body part or object, or
  - iv) oral penetration by a sex organ of another person,
  - v) without the consent of the Complainant.
  
- c) Forcible Sodomy:
  - i) Oral or anal sexual intercourse with another person,
  - ii) forcibly,
  - iii) and/or against that person's will (non-consensually), or
  - iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
- d) Sexual Assault with an Object:
  - i) The use of an object or instrument to penetrate,
  - ii) however slightly,
  - iii) the genital or anal opening of the body of another person,
  - iv) forcibly,
  - v) and/or against that person's will (non-consensually),
  - vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  
- e) Forcible Fondling:
  - i) The touching of the private body parts of another (buttocks, groin, breasts),
  - ii) for the purpose of sexual gratification,
  - iii) forcibly,
  - iv) and/or against that person's will (non-consensually),
  - v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

---

Discriminatory harassment constitutes a form of discrimination that is prohibited by policy and defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Recipient will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

## RETALIATION

1. Must Richard be the recipient of the original sex discrimination for Title IX to apply?
  - a. No. Retaliation itself is a discriminatory act that is prohibited under Title IX. When an institution retaliates against a person because they complain of sex discrimination, or participate in an investigation of discrimination, it is considered intentional discrimination on the basis of sex and Title IX applies.
2. What other conduct could constitute protected activities in the context of a Title IX retaliation claim?
  - a. Protected activity includes reporting an incident that may implicate Title IX, participating in a resolution process, supporting a Complainant or Respondent, or assisting in providing information relevant to an investigation.
3. What pieces of information would assist in assessing whether the actions taken against Richard constitute retaliation?
  - a. Did Coach Roop know that Richard participated in the investigation into Davina's Title IX complaint? Did the Athletic Director's comments lead Coach Roop to take adverse action against Richard? Is the "violation of social media policy" just a pretext for the retaliatory conduct? Had the Athletic Director ever directed Coach Roop to take adverse action against another individual who had posted and violated the social media policy? Typically, this would be found to be a violation because the proffered legitimate non-retaliatory reason isn't credible, it's pretextual (because the policy was not enforced in other situations), and because the adverse act is close in time to the protected activity, raising an inference of retaliatory motive.

### Policy

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy. To take or attempt to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 under this policy and procedure.

## DATING VIOLENCE

1. Assume Brooke is the Complainant. Should Robert be held responsible for violating the dating violence policy?
  - a. Likely yes. Brooke and Robert are in an intimate relationship. They have been dating on-and-off for two years. Robert pushed Brooke and she fell over the couch hitting her head. Although the fact that she hit her head seemed to be an accident, there are sufficient facts to support by a preponderance of the evidence that Robert engaged in violent conduct by pushing Brooke.
2. What if Robert makes a report about Brooke? What are the relevant considerations?
  - a. A decision-maker's role is to consider all evidence in a non-biased, fair, and impartial manner. The decision-maker must evaluate all evidence and determine whether the policy has been violated. If Robert makes a report, the institution and decision-maker need to consider the validity of the report and whether there is a preponderance of evidence to support his account. Here, Brooke may argue that she was acting in self-defense, and the outcome may depend on whether institutional policy treats self-defense as an excuse for violence or as a mitigating factor affecting sanctions. The decision-maker will want to evaluate how that claim and these specific facts implicate the relevant policy prohibitions.

### Policy

#### 4) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.



## STALKING

1. Does Mel's behavior constitute stalking? What facts do you consider to assess this?
  - a. Likely not. While Mel's behavior is repetitive, and there is some evidence that Mel was interfering with Lee's peace/safety (see below), there is no evidence from the fact pattern that supports the determination that this was conduct that would cause a reasonable person to feel fear or substantial emotional distress. There were no threats, express or implied, only the possibility that Mel knew Lee's habits of going out, which could be known from social media, normal observation, third-party accounts, etc.
2. What analysis needs to be conducted to apply the sexual harassment policy to the facts to assess whether Mel's behavior constitutes sexual harassment?
  - a. Is there a denial of Lee's ability to access the institution's education program?
  - b. Is this behavior:
    - i. Unwelcome
    - ii. Sex/gender-based or of a sexual nature. While Mel was interested in Lee, it seems the context of the texts are much more about understanding why Lee refuses to talk to Mel.
  - c. Does Mel's behavior meet an severe, pervasive, objectively offensive standard? It is not severe, pervasive, or objectively offensive.
3. If a policy violation is not found, how else might the institution respond and proceed in this situation?
  - a. At Lee's request, the institution may communicate to Mel clear messaging to stay away from Lee. If Mel continues to communicate with Lee or otherwise interfere with Lee's peace/safety after such a directive, these may be additional facts to support a finding of stalking. In addition, Mel would be violating the directive of an institutional official, which is often an element of each institution's student conduct code.

### Policy

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

(i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

(iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

---

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient's education program or activity; and/or

## SEXUAL HARASSMENT

1. Can Deb file a Title IX Complaint for sexual harassment?
  - a. Yes. Although Deb herself was not the subject of the behavior, she witnessed the behavior and thought it was inappropriate.
2. Does Paulie's joke rise to the level of creating a hostile environment?
  - a. No. Paulie's joke is not pervasive or severe.
3. If Amaya found out about the joke, could she bring a Title IX claim and would that change the analysis of the conduct?
  - a. The analysis of whether Paulie's behavior violated policy would be the same. While pregnancy status is included in Title IX, it does not follow that every off-color joke about pregnancy or breasts qualifies as sexual harassment.
4. Has Deb's access to education or employment programs been limited by Paulie's joke?
  - a. There do not appear to be facts, aside from Deb feeling uncomfortable, to indicate she has been denied access to education or employment programs. Being uncomfortable does not equate to being denied access to the educational/employment program.

### Policy

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the recipient,
- c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the Recipient's education program or activity; and/or

---

Discriminatory harassment constitutes a form of discrimination that is prohibited by Recipient policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Recipient does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Recipient will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.” A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

## DISCRIMINATORY HARASSMENT

1. Have Jamal's written statements created a hostile environment for Samantha?
  - a. Although Samantha – and others – may feel and believe otherwise, nothing in the facts presented indicate that Jamal has created a hostile environment. While Jamal's views may be inflammatory to some students and make them uncomfortable, that alone does not create a hostile environment as articulated in the discriminatory harassment policy.
2. What are the policy elements that you need to apply to the facts at hand?
  - a. Denial/limitation of someone's ability to participate in/benefit from educational program
  - b. Conduct that is (all of the below)
    - i. Unwelcome, and
    - ii. Based on actual or perceived membership in a protected class, and
    - iii. Severe *or* pervasive, and
    - iv. Objectively offensive
3. What elements are most in dispute by the facts presented?
  - a. Objectively offensive
  - b. Severe or pervasive
4. What about Jamal's verbal statements directed at Samantha?
  - a. Nothing in his statements to Samantha changes the analysis. While off-putting, sexist, and possibly inflammatory, his comments still need to be assessed through the lens of the relevant policy elements (above) and do not constitute a hostile environment.
5. Should the institution consider Samantha's request for an extension on her assignment?
  - a. Yes. While Jamal's behavior does not rise to the level of a policy violation, the institution can and should consider and provide reasonable support to Complainants if administrators conclude that an allegation is made in good faith.

### Policy

Discriminatory harassment constitutes a form of discrimination that is prohibited by Recipient policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Recipient does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Recipient will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.