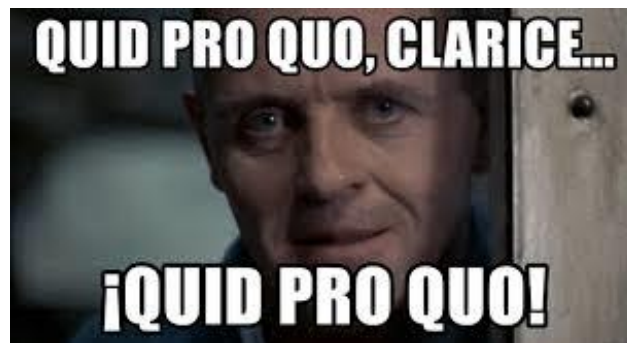


DEFINITION OF SEXUAL HARASSMENT

- "*Quid Pro Quo*" harassment by a school employee.
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity.
- "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under other Federal laws called the Cleary Act and the Violence Against Women Act.



SEXUAL HARASSMENT – WHAT CHANGED?

OLD DEFINITION (OCR Guidance)

- Unwelcome conduct
- Determined by a reasonable person
- To be severe, pervasive, or persistent, and to interfere with or limit a student's ability to participate in or benefit from school services, activities or opportunities

NEW DEFINITION (Final Rule)

- Unwelcome conduct
- Determined by a reasonable person
- To be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the recipient's education program or activity

IS IT SEXUAL HARASSMENT?

- **SEVERE:**
 - *Causing discomfort or hardship*
 - *Very painful or harmful*
 - *Requiring great effort or a great degree*
- **PERVASIVE:**
 - *Existing in or spreading through every part of something*
 - *Systemic*
- **OFFENSIVE:**
 - *Giving painful or unpleasant sensations*
 - *Causing displeasure or resentment*



IS IT SEXUAL HARASSMENT?

- **Going to require individual case-by-case analysis by frontline Administrators first.**
 - Single, isolated, events = unlikely, but could occur (e.g. rape)
 - Butt smack in hallway
 - Single inappropriate text/photo (isolated vs. systemic disclosure?)
 - Verbal sexual remarks only = grey area
 - MUTUAL sexual conduct/communication (consent)
 - Severe, pervasive **AND** objectively offensive
 - Effectively **denies** equal access to education
 - Drop out/withdrawal from program or activity
 - Increased absences
 - Decline in grades

IF NOT, WHAT IS IT?

- **Bullying/Cyberbullying?**
- **Other discrimination/harassment?**
- **Student Code of Conduct Offenses?**
 - Inappropriate Displays of Affection
 - Undesirable Physical Conduct
 - Sexual Misconduct
 - Profanity/Obscenity
 - Inappropriate conduct/communication (Teasing/Disorderly conduct)
 - Acceptable use violation/Technology Abuse
- **What is your duty to investigate? Who is your investigator?**



VAWA “BIG FOUR” (3RD PRONG OF DEFINITION)

- **Sexual Assault**

20 U.S.C. 1092(f)(6)(A)(v)

- The term “[sexual assault](#)” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- **Domestic Violence**

34 U.S.C. 12291(a)(8)

- The term “[domestic violence](#)” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, 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 or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 jurisdiction.

VAWA “BIG FOUR” (3RD PRONG OF DEFINITION)

- **Dating Violence**

34 U.S.C. 12291(a)(10)

- The term “[dating violence](#)” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- **Stalking**

34 U.S.C. 12291(a)(30)

- The term “[stalking](#)” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.