

Part Four

Overview of Laws & Assessment of Complaints

Sexual Harassment Under Title IX and Other Laws: Side-By-Side

	Title IX	Title VII/State Law
Quid Pro Quo	By an employee against employee or student – conditioning school aid, benefit or service on individual’s participation in unwelcome sexual conduct.	By an employee or student – Submission to unwelcome sexual conduct is made explicitly or implicitly a term or condition of education/employment benefits or is used as a basis for decisions on education/employment benefits.
Hostile Environment	Unwelcome conduct based on sex that a reasonable person would find so severe, pervasive AND objectively offensive that it effectively denies equal access to education program/activities.	Conduct on the basis of sex that has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile OR offensive school/work environment.
Other Conduct Covered	Sexual assault, dating violence, domestic violence, stalking, retaliation.	Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature [can include conduct defined under Title IX], and retaliation.
Scope	Conduct that takes place within education programs and activities in the United States.	Impact on alleged victim at school/work.



Title IX Complaint Procedure



Discrimination/Harassment Complaint Procedure

Bullying

- RSA 193-F: NH Bullying Law
- Scope of Conduct: Bullying; cyberbullying; harassment and sexual harassment covered under ACAA; retaliation; making knowingly false accusations of bullying behavior.
- "Bullying" means a single significant incident or a pattern of incidents involving a written, verbal, or electronic communication, or a physical act or gesture, or any combination thereof, directed at another pupil which:
 - (1) Physically harms a pupil or damages the pupil's property;
 - (2) Causes emotional distress to a pupil;
 - (3) Interferes with a pupil's educational opportunities;
 - (4) Creates a hostile educational environment; or
 - (5) Substantially disrupts the orderly operation of the school.
- "Bullying" shall include actions motivated by an imbalance of power based on a pupil's actual or perceived personal characteristics, behaviors, or beliefs, or motivated by the pupil's association with another person and based on the other person's characteristics, behaviors, or beliefs.
- "Cyberbullying" means conduct defined in paragraph I of this section undertaken through the use of electronic devices. "Electronic devices" include, but are not limited to, telephones, cellular phones, computers, pagers, electronic mail, instant messaging, text messaging, and websites.

Hazing

- RSA 631:7
- "Student hazing" means any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when:
 - (1) Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and
 - (2) Such act is a condition of initiation into, admission into, continued membership in or association with any organization.

Other Relevant Laws

- **Americans with Disabilities Act**
 - Protects qualified individuals with disabilities in their places of work/education
- **NH Human Rights Act, RSA 354-A**
 - Prohibits discrimination against employees and students based on age, sex, sexual orientation, gender identity, race, color, marital status, familial status (students only), physical or mental disability, religious creed, or national origin.
- **Section 504 of the Rehabilitation Act of 1973**
 - Prohibits discrimination against employees and students with disabilities
- **Title VI of the Civil Rights Act of 1964**
 - Prohibits discrimination based on race, color or national origin.

Hypothetical:

Katherine is beginning her sophomore year at the high school and plays in the school band. Early in the school year, her best friend Sallie meets with the school social worker and relays the following: Eric, a popular student in the high school's senior class and also a member of the school band, has been interested in dating Katherine. He asked Katherine out back in June and told her she was "really hot" (or something similar) a few times. Katherine didn't think much about the attention at the time and told Eric that her parents do not let her date. Then, after a pre-season band practice in mid-August, Sallie and Katherine went to a beach party and Eric was there. At some point, Katherine took a walk along the beach with Eric. The next day, Katherine called Sallie crying and explained that she and Eric began kissing while on their walk, but that Eric "took it way too far" by forcing his hands under her shirt and attempting to unbutton her pants. Katherine ran back to the party and got a ride home from another student since Sallie had already left. Sallie added that Katherine is "really upset and embarrassed" by the whole thing.

Suppose Eric had been pursuing Katherine throughout her freshman year by regularly texting her about her attractiveness and stating, on multiple occasions, that he will not stop asking her out until she goes on at least one date with him?

What if the sexual encounter took place at the hotel where the band was staying during a regional high school band competition?

Investigation | HYPOTHETICAL

Katherine is beginning her sophomore year at the high school and plays in the school band. Early in the school year, her best friend Sallie meets with the school counselor and reports the following:

Eric, a popular student in the high school's senior class, who is also a member of the school band, has been interested in dating Katherine. In fact, he "pursued" Katherine during most of her freshman year by regularly texting her about how attractive he thinks she is – he would tell her she was "really hot" (or something similar) on many occasions. He also told that he would not stop asking her out until she goes on at least one date with him. Katherine didn't say much about the attention for most of the year and told Eric repeatedly that her parents do not let her date. Just recently, Katherine told Sallie that "things changed with Eric" in June during a band trip to Massachusetts for a regional competition.

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During the trip, the high school band stayed in a local hotel. The girls' rooms were located on one floor and the boys were on a separate floor. Some of the older students, including Eric, found a way to get around the chaperones and they hosted a small party in someone's room, which Katherine attended. There was alcohol at the party. At some point, Katherine and Eric left the group and went to Eric's room. Katherine, who had been drinking at the party, told Sallie she got lightheaded and lay down on Eric's bed for a few minutes. Eric's roommate, Frank, was still at the party. She said she remembered kissing Eric for a little while, but that Eric "took it way too far." He forced his hands under her shirt and then unbuttoned her pants and touched her. Katherine said she pushed him off and ran out of Eric's room, and went back to her room. Her roommates, Lisa and Justine, were getting ready for bed. Katherine said she didn't say anything to them about what happened and just went to sleep. Katherine told Sallie she basically ignored Eric for the rest of the trip. Katherine didn't tell anyone what happened, until she told Sallie when they first saw each other at the beginning of the year (Sallie had been away at camp all summer).

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Katherine told Sallie she is “really upset and embarrassed” by the whole thing and she thinks Eric is disgusting. She said Sallie could tell the school counselor about what happened, but that she didn’t want to make a “big deal” of the situation because her parents “are super strict” and will never let her out of the house if they find out about this. Sallie also reports that Eric’s buddy, Elijah, texted Sallie over the summer asking if Katherine was “still into Eric.” Sallie didn’t know why he was asking that weird question at the time, but now that she knows what happened, she thinks Eric must have told his friends what happened with Katherine.

Additional information to consider in making conclusion:

- Katherine said she deleted all the text messages from Eric over the summer.
- After his interview, Eric gave the investigator two text strings:
 - First string, before band trip:
 - Katherine: Can't wait to hang out during the trip
 - Eric: Yeah, we'll have a blast
 - Katherine: It's good my parents won't know what I'm up to, they're so f'n strict
 - Second string, after band trip:
 - Eric: I don't get why you're ignoring me. You seemed really into hooking up
 - Katherine: I'm sorry, I'm just really confused about stuff right now
- The investigator interviewed three senior students who were at the hotel party, who all said Eric and Katherine were drinking like everyone else, and they were all over each other, then left. Eric came back to the party later, but Katherine didn't.

- The investigator interviewed Lisa and Justine, Katherine’s roommates at the hotel.
 - Lisa said Katherine didn’t say much when she got back to the room. Lisa asked if she got to hang out with Eric like she hoped to, and Katherine smiled and said something like, “sort of” and that they “kind of hooked up” but didn’t give any details and wanted to go to sleep.
 - Justine said Katherine seemed like she was kind of drunk, but also seemed “fine.” She didn’t hear the conversation between Lisa and Katherine. She said she was surprised and kind of scared to get the request to meet with the investigator. She said she hadn’t remembered it until now, but she remembers that Katherine seemed to be sniffing and maybe crying under her covers at the hotel, but Justine assumed it was just because she was drunk.

- The investigator interviewed Elijah, who sent the text message about Katherine and Eric to Sallie over the summer.
 - Elijah is a senior and good friends with Eric.
 - Eric told him that he had hooked up with Katherine at the hotel, and she had great body.
 - Eric said he and Katherine were dating, but had to be secret because her parents were so strict.
 - Later in the summer Elijah asked Eric about Katherine because he never saw them together, and Eric said they broke up because she was “uptight about sex” and there was a senior girl he wanted to date.