

WAC 478-121-605 Department of Education federal regulations prohibited conduct (sexual harassment). Department of Education federal regulations (EDFR) define "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following, which are referred to collectively under this code as "EDFR prohibited conduct":

(1) EDFR hostile environment sexual harassment. EDFR hostile environment sexual harassment is 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 university's education program or activity.

(2) EDFR sexual assault. EDFR sexual assault includes a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, EDFR sexual assault means one or more of the following:

(a) The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.

(b) The oral or anal sexual intercourse with a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(c) The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of a complainant, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(d) The touching of the private body parts of a complainant (e.g., buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

(e) Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Washington law.

(f) Sexual intercourse with a person who is under the statutory age of consent of Washington.

(3) EDFR dating violence. EDFR dating violence is an act or acts of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the length and type of relationship as well as the frequency of interaction between the individuals involved in the relationship.

(4) EDFR domestic violence. EDFR domestic violence is an act or acts of violence committed by a current or former intimate partner of the complainant, by a person with whom the complainant shares a child in common, or by a person who is cohabitating with or has cohabitated with the complainant as an intimate partner.

(5) EDFR stalking. EDFR stalking is engaging in a course of conduct directed at a complainant that would cause a reasonable person to fear for the complainant's safety or the safety of others, including the safety of the respondent, or would cause a reasonable person to suffer substantial emotional distress.

(a) For the purposes of this section, "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. Stalking also includes cyberstalking such as through electronic media, the internet, social networks, blogs, cell phones, or text messages.

(b) For the purposes of this section, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

[Statutory Authority: RCW 28B.20.130 and 34 C.F.R. Part 106. WSR 21-07-047, § 478-121-605, filed 3/11/21, effective 4/11/21.]