



Association of
Title IX Administrators

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“Fondling” Definition Shifts to “Criminal Sexual Contact”

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Out with Fondling. In with Criminal Sexual Contact?

- Earlier this year, the FBI updated the standard for crime reporting statistics that includes a major shift in how crimes involving non-consensual sexual contact are reported
 - Today's webinar will explain why this has created ripple effects that necessitate updates for school/district and institutional Title IX policies
- This shift will likely increase the number of Title IX reports that fall under the jurisdiction of your Policy and Procedures
- We also will provide best practice recommendations based on these changes

Fondling Under the 2020 Regs

- Prior to 2020, many campuses prohibited “Nonconsensual Sexual Contact”
 - Post-regs, this changed to the prescribed “Fondling” offense
- The regulations themselves did not specifically define “Fondling”
 - Instead, the regulations cross-referenced the Clery Act’s definition of “Sexual Assault” from the Clery Act
 - This definition refers to the FBI’s “Uniform Crime Reporting System”
- In 2021, the FBI UCR shifted from the Summary Reporting System (“SRS”) to the National Incident-Based Reporting System (“NIBRS”)

OLD Definition

NIBRS Definition Pre-2025:

▪ **Forcible Fondling**

- The touching of the private body parts of another person
 - for the purpose of sexual gratification
 - without the consent of the victim
 - including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
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- Institutions had latitude to define “private body parts” although this was generally considered to be, at minimum
 - Buttocks, breast, groin, and genitals

Challenges

- The Fondling definition was already challenging for many institutions
 - “For the purpose of sexual gratification” may have been the most misunderstood provision of the regulations
- The “Fondling” term caused confusion because the term itself does not suggest that the policy only prohibited “Non-Consensual Fondling”
- The definition also presented some ambiguity when a Complainant was touched by a Respondent’s private body parts, or compelled to touch a Respondent’s private body parts

Fondling → Criminal Sexual Contact

- In 2023, the Criminal Justice Information Service (“CJIS”) Advisory Board voted to replace “Fondling” as a term with “Criminal Sexual Contact” for purposes of NIBRS
 - While this was captioned as a change in “verbiage” the definition for Criminal Sexual Contact was also significantly broadened
 - There was no public guidance about when these changes would take effect
- In June 2025, FBI updated the NIBRS User Manual and replaced “Fondling” with “Criminal Sexual Contact” and updated the definition, making the change effective upon publication
 - The definition of “Rape” was also updated in a way that more closely aligned with the old (better) SRS definition and re-classified Sodomy and Sexual Assault with an Object as “Rape”

NEW Definition

NIBRS Criminal Sexual Contact:

- The intentional touching of the clothed or unclothed body parts OR
- The forced touching by the victim of the actor's clothed or unclothed body parts
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation
- Without consent of the victim
- Including instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication

Major Changes

- NEW:
 - “clothed or unclothed”
 - “sexual degradation” & “sexual humiliation” (sexual gratification remains)
 - Applies to both touching of the Complainant and forced touching by Complainant of Respondent
 - This adopts a longstanding ATIXA recommendation/addition
- ADJUSTED
 - “private body parts” → “body parts”

ATIXA's Recommendation

- Institutions should look to make changes to Policy as soon as possible
 - Changes should not be retroactive, but Policy needs to be updated now because the new definition already applies
- ATIXA has updated our Model Policy and our recommendations accordingly
 - ATIXA kept “Fondling” as the name of the offense
 - This was done in recognition that it is problematic to find someone responsible for “criminal” behavior in an administrative procedure
 - We adopted the NIBRS definition, but made some modifications to make the definition work in the educational civil rights context

ATIXA Model Definition

ATIXA Model Definition:

▪ **Fondling (actual or attempted)**

- The intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent
 - Without the consent of the Complainant
 - For the purpose of sexual degradation, sexual gratification, or sexual humiliation
- Or the intentional touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts
 - Without consent of the Complainant
 - For the purpose of sexual degradation, sexual gratification, or sexual humiliation

Examples

- New behaviors that may be reportable as “fondling”
 - Kissing
 - Shoulder rubbing
 - Hugging
 - Thigh touching
 - Picking a piece of lint off someone’s shoulder
- These behaviors would still need to be both non-consensual and for the purpose of sexual gratification, humiliation, or degradation

For the Purpose of Sexual Gratification, Humiliation, and Degradation

- ATIXA has previously written about the “for the purpose of sexual gratification” element of fondling
 - This element is present in both the old definition and the new definition
 - The 2020 Regulations Preamble provides guidance on how to interpret this element
 - The regulations interpret this as an “intent” requirement, not an arousal requirement
 - Generally, intentional touching of private parts = for the purpose of sexual gratification unless certain factors are present to mitigate that conclusion
- We have less guidance on how federal agencies and the courts will interpret “sexual humiliation” and “sexual degradation” but believe that most situations will meet the existing parameters for sexual gratification because the term is understood to be broader than it means

Intent Rubric

- When dealing with touching of private parts, it will generally be “for the purpose of sexual gratification” UNLESS
 - The contact can be proven to be inadvertent;
 - The contact is for a legitimate medical (or other privileged) purpose (and thus is conduct for which consent should have been sought and obtained);
 - The contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual);
 - The contact involves a Respondent who cannot developmentally understand sexual contact, or that their contact is sexual (this will often involve a manifestation analysis in K-12);
 - The contact is something like butt-slapping between members of a team and is both minimal and unlikely to have a sexual motivation or purpose (as shown by the context of the acts).

Other Body Parts

- For the touching of non-private parts, the decisional rubric is different
 - Title IX Coordinators, Investigators, and Decision-makers should look for more evidence as to how the touching of the parts was sexual, because the parts are not inherently private
 - Case-by-case review of the totality of the circumstances



Other Takeaways

- No longer have to analyze touching of non-private parts as Severe, Pervasive, and Objectively Offensive (“SPOO”)
 - Many instances of “Rape” should continue to also add a charge of “Fondling”
- Institutions should not just ignore the change or think it is merely a “verbiage” change
- This will likely lead to an increased number of reports falling under Title IX jurisdiction
 - Especially in K-12 settings



Questions?



Thank you!

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