

MODELS OF PROOF

Creating a “model of proof” is simply the process of taking a policy definition and breaking it down into its constituent elements – those components that must be present and supported by credible evidence in order to determine that policy has been violated. The “checklist” of elements should serve as a guide to help Decision-makers during the hearing, by zeroing in on what information is needed in order to make a policy violation determination, and at the analysis or deliberation stage, to ensure that the assessment of the facts tracks precisely with the requirements of institutional policy.

Sexual Harassment:

Quid Pro Quo:

- ☐ an employee of the recipient
- ☐ conditions (directly or indirectly) the provision of:
 - an aid, **OR**
 - benefit, **OR**
 - service of the recipient
- ☐ on an individual’s participation in unwelcome sexual conduct

Hostile Environment:

- ☐ unwelcome conduct
- ☐ on the basis of sex (or that is sexual)
- ☐ determined by a reasonable person (a person who sits in the shoes of the Complainant and shares an objective perspective)
- ☐ to be severe, **AND**
- ☐ pervasive, **AND**
- ☐ objectively offensive (that effectively denies a person equal access to the Recipient’s education program or activity)

Sexual Assault:

- ☐ Any sexual act
- ☐ directed against another person (i.e., the Complainant)¹
- ☐ without the consent² of the Complainant
 - including instances in which the Complainant is incapable of giving consent

¹ This would include having another person touch you sexually, forcibly, and/or without their consent.

² This would then invoke a model of proof for whatever your institutional definition of consent is. For more on consent, please refer to the *ATIXA Playbook* in the ATIXA Member Library. Here is an example. Consent is:

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

Forcible Rape:

- ☐ The carnal knowledge of a person (penetration of the Complainant)
- ☐ forcibly **AND/OR**
- ☐ against that person's will (non-consensually) **OR**
- ☐ not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of temporary or permanent mental or physical incapacity

Forcible Sodomy:

- ☐ Oral or anal sexual intercourse with another person (the Complainant)
- ☐ forcibly **AND/OR**
- ☐ against that person's will (non-consensually) **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 Assault with an Object:

- ☐ The use of an object or instrument to penetrate
- ☐ however slightly
- ☐ the genital or anal opening of the body of another person (the Complainant)
- ☐ forcibly **AND/OR**
- ☐ against that person's will (non-consensually) **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

Forcible Fondling:

- ☐ The touching of the private body parts of another person (buttocks, groin, breasts of the Complainant)
- ☐ for the purpose of sexual gratification
- ☐ forcibly **AND/OR**
- ☐ against that person's will (non-consensually) **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

Incest:

- ☐ Non-forcible sexual intercourse
- ☐ between persons who are related to each other
- ☐ within the degrees wherein marriage is prohibited by [insert state] law

Statutory Rape:

- ☐ Non-forcible sexual intercourse
- ☐ with a person (the Complainant) who is under the statutory age of consent of [insert age in your state]

Dating Violence:

- ☐ Violence (including, but is not limited to, sexual or physical abuse or the threat of such abuse),
- ☐ on the basis of sex,
- ☐ committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant, **WHERE**
- ☐ the definition of domestic violence does not also apply.

Domestic Violence:

- ☐ violence
- ☐ on the basis of sex
- ☐ committed by a current or former spouse or intimate partner of the Complainant who are more than two people just living together as roommates **OR**
- ☐ 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 a spouse or intimate partner **OR**
- ☐ by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of [insert your state here] **OR**
- ☐ 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]

Stalking:

- ☐ engaging in a course of conduct
- ☐ on the basis of sex
- ☐ directed at a specific person (the Complainant), that
 - would cause a reasonable person to fear for the person's safety **OR**
 - the safety of others **OR**
 - Suffer substantial emotional distress

For the purposes of this definition—

- *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.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
- *Substantial emotional distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.