

The FBI's New Definition Expands Title IX Coverage

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[Warning: The following Client News Brief contains graphic and explicit language.]

A recent change to the definition of “sexual assault” has significant impacts regarding what conduct local educational agencies (LEA) must investigate under Title IX of the Education Amendments of 1972 (Title IX) and the 2020 Title IX Regulations. In particular, the definition of “Forcible Fondling” has been replaced by “Criminal Sexual Contact,” which accounts for a significantly broader range of conduct.

How has the law changed?

The 2020 Title IX Regulations define “sexual assault” as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI) or the National Incident-Based Reporting System (NIBRS). Up until June 2025, the NIBRS User Manual included the following categories of conduct that constituted sexual assault: “Forcible Rape,” “Forcible Sodomy,” “Sexual Assault with an Object,” “Forcible Fondling,” “Incest,” and “Statutory Rape.” “Forcible Fondling” was defined as “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 their age or because of their temporary or permanent mental incapacity.”

In June 2025, the NIBRS User Manual replaced Forcible Fondling with Criminal Sexual Contact, which is defined as:

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

This offense includes 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 for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

While these two definitions certainly overlap, Criminal Sexual Contact encompasses far more types of contact than Forcible Fondling did. The new definition includes instances where the perpetrator forces the victim to touch the perpetrator. It replaces “private parts” with “clothed or unclothed body parts.” While Forcible Fondling only applied where the contact was for the purpose of sexual gratification, Criminal Sexual Contact also includes conduct that is for the purpose of sexual degradation and sexual humiliation.

Another change that came about with the update to the NIBRS is the reclassification of Sodomy and Sexual Assault with an Object, as now included under the broader category of Rape, and a change to the definition of Rape. Rape is now defined as:

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, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

How will this impact LEA Title IX investigations?

Title IX protects students and employees from sexual harassment, including sexual assault. By expanding the definition of fondling/sexual contact under “sexual assault,” Title IX now applies to a broader range of conduct.

Examples of conduct that may fall under Title IX as Criminal Sexual Contact include:

- One student pantsing another student.
- One student kissing another student on the cheek or mouth.
- A student hugging another student.
- A student forcing or coercing another student to touch their private body part.
- A teacher giving a student a shoulder massage.

This update may not have as significant an impact on cases involving perpetrators who are younger children. Just as the conduct of young children is less likely to be “for the purpose of sexual gratification” under the prior Forcible Fondling definition, young children will be less likely to engage in contact that is “for the purpose of sexual degradation, sexual gratification, or sexual humiliation.” However, a full analysis must be conducted in each situation. Additionally, Title IX will still apply to cases involving penetration, regardless of age.

It is also worth noting that “Criminal Sexual Contact” can be a confusing term given that LEAs do not criminally prosecute sexual assault under Title IX. For the purpose of revising policies, procedures and regulations, simplifying the term to just “sexual contact” could be more precise and less confusing.

Takeaways

At this time, neither the United States Department of Education nor the California Department of Education have issued guidance explaining how the new definition of Criminal Sexual Contact applies to Title IX. Until such guidance is provided, LEAs should consult their legal counsel regarding updating their policies and procedures in compliance with the new definitions.

If you have any questions about the updated definitions provided in the NIBRS User Manual, or Title IX in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#), or download our [mobile app](#).

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