

General Institution

AP 3540 SEXUAL AND OTHER ASSAULTS ON CAMPUS AND IN CAMPUS PROGRAMS

References:

Education Code, Sections 67385, 67385.7, and 67386;
20 U.S. Code, Section 1092(f);
34 Code of Federal Regulations, Section 668.46(b)(11)

For additional information and resources on sexual assault, domestic violence, dating violence, and stalking in the educational/campus environment, the Department of Justice has established a clearinghouse of resources geared towards colleges and universities, which can be accessed at the California Attorney General's website.

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, or at a District-sponsored activity on non-District property is a violation of District policies and regulations and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (Also see AP 3433 Prohibition of Sexual Harassment under Title IX, AP 3434 Responding to Sexual Harassment under Title IX, AP 3435 Discrimination and Harassment Investigations, BP 5500 titled Standards of Student Conduct, and AP 5520 titled Student Discipline Procedures.)

"Sexual assault," "dating violence," "domestic violence," and "stalking" are defined in AP 3434 Responding to Sexual Harassment Based under Title IX.

It is the responsibility of each person involved in sexual activity to ensure that he/she/they has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

"Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity.

These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, also see AP 3500 titled Campus Safety; AP 3510 titled Workplace Violence; and AP 3515 titled Reporting of Crimes)

Reporting and Confidentiality Responsibilities of Personnel Providing Sexual-assault Related Services to Students Reporting Having Experienced Sexual Violence

The college is committed to protecting the safety of people on campus, responding to students in crisis or potential crisis, and preventing sexual misconduct.

These categories of District employees, deemed confidential resource employees, are not required to report, without the student's consent, incidents of sexual violence experienced and reported by a student: mental health counselors, pastoral counselors (as defined in official federal Title IX and/or Clery Act documents), social workers, psychologists assigned to provide mental health services, health center employees, or any person with a professional license requiring confidentiality, or any person who is supervised by such a person. Additionally, individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, men's centers, or health centers including front desk staff and students in such locations, are not responsible for reporting to the District incidents of sexual violence reported to them by students.

If a student reports an incident of sexual misconduct to an employee or individual deemed a confidential resource employee identified above, the employee or individual shall:

1. Keep a student's report of sexual violence confidential;
2. Inform the student of campus resources for counseling, medical, and academic support;
3. Inform the student of their right to file a separate Title IX complaint with the College's Title IX Coordinator; and of their right to file a separate complaint of sexual violence with Campus Police; and that they are available to assist the student in filing such complaints;
4. Explain that Title IX includes protections against retaliation, and that District officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs;
5. Inform the student of the option to make a confidential report to ensure the safety of the student and others. With the student's permission, the employee or individual can report the nature, date, time, general location, and assailant description to the College without identifying the reporting student to allow the College to issue timely warnings such as text and email alerts to the campus community; and
6. Note and later provide to the Title IX Coordinator general information for the College's reported aggregated data: the nature, date, time, and general location of the incident. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

All students, faculty members, or staff members who allege they are the victims of domestic violence, dating violence, sexual assault, or stalking on District property, on an off-campus site, facility maintained by the District, on grounds or facilities maintained by a student organization, or at a District-sponsored activity on non-District property shall

82 be provided with information regarding options and assistance available to them.
83 Information shall be available from the Campus Police Department, which shall maintain
84 the identity and other information about alleged sexual assault victims as confidential
85 unless and until the Chief of Campus Police or designee is authorized to release such
86 information.

87 The Campus Police Department, after being informed (refer also to section herein, "The
88 victim's option to:"), shall provide all alleged victims of domestic violence, dating
89 violence, sexual assault, or stalking with the following:

- 90 • A copy of the Board Policy and Administrative Procedure regarding domestic
91 violence, dating violence, sexual assault, or stalking;
- 92 • A list of personnel on campus who should be notified and procedures for such
93 notification, if the alleged victim consents, including the
94 President/Superintendent; Vice President of Student Services; Dean of Student
95 Services; Vice President of Human Resources or designee; and/or the Associate
96 Dean of Student Health and Wellness Services.
- 97 • Information about the importance of preserving evidence and the identification
98 and location of witnesses;
- 99 • A description of available services and the persons on campus available to
100 provide those services if requested. Services and those responsible for providing
101 or arranging them include:
 - 102 o transportation to a hospital, if necessary (Campus Police);
 - 103 o counseling by a mental health professional in Student Health Services or
104 referral to a counseling center (Student Health Services, Campus Police);
 - 105 o notice to the local police, if desired (Campus Police); and
 - 106 o a list of other available campus resources or appropriate off-campus
107 resources (Student Health Services, Campus Police).
- 108 • The victim's option to:
 - 109 o notify proper law enforcement authorities, including on-campus and local
110 police;
 - 111 o be assisted by campus authorities in notifying law enforcement authorities
112 if the victim so chooses; and
 - 113 o decline to notify such authorities;
- 114 • Information about the participation of victim advocates and other supporting
115 people;
- 116 • The rights of victims and the institution's responsibilities regarding orders of
117 protection, no contact orders, or similar lawful orders issued by a court;
- 118 • Information about how the district will protect the confidentiality of victims;
- 119 • Written notification of victims about options for, and available assistance in,
120 changing academic, living, transportation, and working situations, if requested
121 and if such accommodations are reasonably available, regardless of whether the
122 victim chooses to report the crime to campus police or local law enforcement;
123 and

- A description of each of the following options:
 - o Counselors and support services for victims;
 - o criminal prosecution;
 - o civil prosecution (i.e., lawsuit);
 - o District disciplinary procedures for students and employees, as applicable;
 - o modification of a student's individual class schedule;
 - o tutoring, if necessary.
 - o alternative dispute resolution or other accountability processes;
 - o alternative housing assignments; and
 - o academic assistance alternatives.

The Vice President of Human Resources or designee should be available to provide assistance to District law enforcement unit employees regarding how to respond appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3434 titled Responding to Sexual Harassment Based under Title IX, regardless of whether a complaint is filed with local law enforcement.

All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property or on an off-campus site or facility maintained by the District or on grounds or facilities maintained by a student organization or at a District-sponsored activity on non-District property shall be kept informed through the Campus Police Department of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality consistent with state and federal law.

A Complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or an action that involves academic dishonesty, including but not limited to, plagiarism or cheating.

In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.

- The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the Complainant affirmatively consented.

In the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused believed that the Complainant affirmatively consented to the sexual activity if the accused knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

The District shall maintain the identity of any alleged victim, witness, or third-party reporter of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence consistent with state and federal law, unless the alleged victim, witness, or third-party reporter specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's President/Superintendent or designee, who shall work with the Chief of Campus Police to ensure that all confidentiality rights are maintained consistent with state and federal law.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sexual assault, domestic violence, dating violence, and stalking, and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during and in any district proceeding arising from such a report. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking;
- Procedures to follow if domestic violence, dating violence, a sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported;
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities;
- Information about how the district will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law;

- Information for students about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance, or other student services for victims of sex offenses;
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
 - o Such proceedings shall provide a prompt, fair, and impartial resolution;
 - o Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - o The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
 - o Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault, or stalking, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any changes to the results that occurs prior to the time that such results become final, and when such results become final. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act (FERPA). For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking.

Sexual Assault and Domestic Violence Counselors

Sexual assault and domestic violence counselors shall be independent from the Title IX office, and shall, at a minimum, meet the qualifications defined in Sections 1035.2 and 1037.1 of the Evidence Code, respectively.

Services provided by sexual assault and domestic violence counselors, including, but not limited to, securing alternative housing assignments and academic assistance alternatives, shall not be contingent on a victim's decision to report to the Title IX office or law enforcement.

A sexual assault or domestic violence counselor shall obtain specific permission from the victim before disclosing the identity of the victim, or any information that could

reasonably be expected to reveal the identity of the victim, to the university or any other authority, including law enforcement, unless otherwise required to do so by applicable state or federal law.

Education and Prevention Information

The Campus Police Department, in coordination with the Counseling Services Division, shall:

- Provide, as part of on-campus orientation programs, education, prevention, and outreach information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations, and shall include the District's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.

The outreach programming included as part of an incoming student's orientation must include, at minimum, all of the following:

- o The warning signs of intimate partner and dating violence.
- o Campus policies and resources relating to intimate partner and dating violence.
- o Off-campus resources and centers relating to intimate partner and dating violence.
- o A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault, and stalking.

Office of Primary Responsibility: Vice President, Business Services
Vice President, Human Resources

See also:

AP 3435 Discrimination and Harassment Investigations
AP 3500 Campus Safety
AP 3510 Workplace Violence
AP 3515 Reporting of Crimes
AP 3520 Local Law Enforcement
BP 3540 Sexual and Other Assaults on Campus
BP 5500 Standards of Student Conduct
AP 5520 Student Discipline Procedures

Date Approved: November 26, 2007

Dates Revised: October 1, 2012; November 18, 2013; September 22, 2014;
December 1, 2014; November 30, 2015; April 23, 2018;
November 4, 2024

Date Reviewed: January 16, 2019