

AP 3540 Sexual Assaults and Other Sexual Misconduct

Reference:

Education Code Section 67385 and 67836;
20 U.S.C. Section 1092(f)
34 Code of Federal Regulations Section 668.46 (b) (11)

- 1.0 Alleged victims of sexual assault, including but not limited to rape, domestic violence, dating violence, or stalking, as defined by California Law, shall be referred to local community treatment centers if appropriate on-campus treatment facilities are not available.
 - 1.1 “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - 1.2 “Domestic violence” includes felony or misdemeanor crimes of violence committed by:
 - 1.2.1 A current or former spouse of the victim.
 - 1.2.2 By a person with whom the victim shares a child in common.
 - 1.2.3 By a person who is cohabitating with or has cohabitated with the victim as a spouse.
 - 1.2.4 By a person similarly situated to a spouse of the victim under California law.
 - 1.2.5 By any other person against an adult or youth victim who is protected from that person’s acts under California law.
 - 1.3 “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress.
 - 1.4 An affirmative consent standard is the determination of whether consent was given by both parties to sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she 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 the 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.
 - 1.5 “Affirmative consent” means affirmative, conscious and voluntary agreement to engage in sexual activity.

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- 2.0 All students, faculty members or staff members who allege they are victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be provided with information regarding options and assistance available to them. This information shall be provided by the Title IX Coordinators to provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with the following:
- 2.1 The District policy and procedure regarding sexual assaults on campus.
- 2.2 Information regarding the personnel on campus who should be notified of the assault, if the alleged victim consents, and procedures for such notification. The following positions are the designated Title IX Coordinators for the District:
- 2.2.1 District Services:
- Title IX Coordinator, District Director, Human Resources (714) 808-4816
- 2.2.2 Cypress College:
- Campus Title IX Coordinator, Executive Vice President, Educational Programs and Support Services (714) 484-7330
 - Director of Campus Public Safety (714) 484-7387
 - Director of College Health Services (714) 484-7045
- 2.2.3 Fullerton College:
- Campus Title IX Coordinator, Vice President of Student Services (714) 992-7074
 - Director of Campus Public Safety (714) 992-7777
 - Director of College Health Services (714) 992-7094
- 2.2.4 Anaheim Campus:
- Campus Title IX Coordinator, Office of the Provost of the North Orange Continuing Education (714) 808-4670
 - Campus Public Safety (714) 808-4111
 - Dean, Instruction and Student Services, North Orange Continuing Education (714) 808-4660
- 2.3 Legal reporting requirements and procedures.
- 2.4 Information regarding services available to victims and the personnel responsible for providing or arranging these services, including the following:
- 2.4.1 Transportation to a hospital, which must be provided by authorized community emergency personnel.
- 2.4.2 Referral to a counseling center.
- 2.4.3 Notice to the police, with the consent of the victim.
- 2.4.4 A description of available campus resources or appropriate off-campus services.

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- 2.5 Information regarding the existence of the following procedures:
 - 2.5.1 Criminal prosecution.
 - 2.5.2 Civil prosecutions.
 - 2.5.3 Disciplinary procedures applicable to students and employees.
 - 2.5.4 Procedures for case management, including the procedures for keeping the victim informed of the status of any student disciplinary proceedings in connection with the sexual assault and the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties that may arise because of the victimization and its impact.
 - 2.5.5 The availability of mediation.
 - 2.5.6 Academic assistance alternatives, including modification of class schedules and tutoring, if necessary.
- 2.6 Information about the importance of preserving evidence and the identification and location of witnesses.
- 3.0 Investigation and information to alleged victims during investigation and/or discipline procedures
 - 3.1 The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigation described in Administrative Procedure (AP) 3410 Unlawful Discrimination regardless of whether a complaint is filed with law enforcement.
 - 3.2 All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through the District's Department of Human Resources, 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.
 - 3.3. An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to , an action that places the health or safety of any other persona at risk or involves plagiarism, cheating or academic dishonesty.
 - 3.4 The standard used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

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- 3.5 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:
- 3.5.1 The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
 - 3.5.2 The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.
- 3.6 In the evaluation of complaints in any 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.
- 3.6.1 The complainant was asleep or unconscious.
 - 3.6.2 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.
 - 3.6.3 The complainant was unable to communicate due to a mental or physical condition.
- 4.0 Confidentiality
- 4.1 Except as may otherwise be required by law, the District shall maintain in confidence the identity of an alleged victim of domestic violence, dating violence, sexual assault, or stalking on District property (as defined in Sections 1.1, 1.2, and 1.3), unless the alleged victim specifically waives that right to confidentiality.
 - 4.2 Except as may otherwise be required by law, where the victim does not waive their right to confidentiality, the identity of an alleged accused of domestic violence, dating violence, sexual assault or stalking will not be disclosed.
 - 4.3 Except as may otherwise be required by law, the District shall maintain in confidence the identity of a witness to domestic violence, dating violence, sexual assault, or stalking on District property, unless the witness specifically waives the right to confidentiality.
 - 4.4 Except as may otherwise be required by law, the District shall maintain in confidence the identity of a third-party reporter of domestic violence, dating violence, sexual assault, or stalking on District property, unless the third-party reporter specifically waives the right to confidentiality.

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- 4.5 Inquiries from the press or other media representatives regarding alleged domestic violence, dating violence, sexual assault or stalking on District property shall be referred to the Office of Campus Communications, which shall coordinate with the appropriate Title IX Coordinator(s) to assure that all confidentiality rights are maintained.
- 5.0 The Annual Security Report for each college will include a statement regarding the District's programs to prevent sex offenses and procedures that should be followed after a sex offense occurs. The statement must include the following:
- 5.1 A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses.
- 5.2 Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported.
- 5.3 Information on a student's option 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.
- 5.4 Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses.
- 5.5 Notice to students that the campus will change a victim's academic situation after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.
- 5.6 Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that:
- 5.6.1 The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
- 5.6.2 Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged sex offense. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act. (20 USC § 1232g) For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged sex offense and any sanction that is imposed against the accused.
- 5.7 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 nonforcible sex offenses.
- 6.0 **Education and Prevention Information:** The Title IX Coordinators (as defined in Section 2.2) shall:

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- 6.1 Provide a comprehensive prevention and outreach program about domestic violence, dating violence, sexual assault, and stalking. Such outreach programming shall be included as part of every incoming student's orientation. The information presented in such programs shall be developed in collaboration with campus-based and community-based victim advocacy organizations.
- 6.2 The comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander prevention and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.
- 6.3 Post sexual violence prevention and education information on the campus internet web site.
- 7.0 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 assault/violence information, see AP 3510 Workplace Violence and AP 3515 Reporting of Crimes.

Date of Adoption: March 23, 2004

Date of Last Revision: September 25, 2017 District Consultation Council
October 26, 2015 District Consultation Council
August 26, 2013 District Consultation Council
July 25, 2006
April 12, 2005