



AP 3540

SEXUAL AND OTHER ASSAULTS ON CAMPUS

References:

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

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 any of 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, is a violation of District policies and procedures, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (Also see AP 5500 Standards of Student Conduct, AP 5520 Student Discipline Procedures, AP 5530 Student Rights and Grievances), BP 3433 Prohibition of Sexual Harassment Under Title IX, AP 3433 Prohibition of Sexual Harassment Under Title IX: Definitions, AP 3434 Responding to Harassment Based on Sex Under Title IX.

Definitions

"Sexual assault," "dating violence," "domestic violence," and "stalking" are defined in Administrative Procedure 3434 - Responding to Harassment Based on Sex under Title IX.

Affirmative Consent

"Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in sexual activity to ensure that they have 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.



Procedures

These written procedures are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, see also AP 3500 Campus Safety, AP 3510 Workplace Violence, and AP 3515 Required Reporting of Crimes, BP 3433 Prohibition of Sexual Harassment Under Title IX, AP 3433 Prohibition of Sexual Harassment Under Title IX: Definitions, AP 3434 Responding to Harassment Based on Sex Under Title IX.)

All students and employees who allege they are the victims of domestic violence, dating violence, sexual assault, or stalking on District property are to report such incidents to the Director of Security. These individuals shall be provided with information regarding assistance available to them. Campus Security has a mandatory duty to report all domestic violence, dating violence, sexual assault, and stalking cases involving all students to the Title IX Coordinator. Campus Security shall otherwise maintain the confidentiality of the identity and other information about alleged sexual assault victims unless and until they are authorized to release such information. The District will not report the case to law enforcement unless the victim/survivor authorizes this or they are a minor.

Upon request, the Director of Security shall provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with the following:

- The name and contact information for the Title IX Coordinator.
- A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual assault, or stalking;
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents, to include the Chief Student Services Officer or designee and Chief Human Resources Officer;
- A description of available services and the persons on campus available to provide those services if requested. Services and those responsible for providing or arranging them include:
 - transportation to a hospital, if necessary (Campus Security);
 - counseling by Student Health Services, or referral to a counseling center (Chief Student Services Officer or designee or Chief Human Resources Officer);



- notice to the police, if desired (Campus Security); and
- a list of other available campus resources or appropriate off-campus resources (Director of Student Health Services or designee, Chief Student Services Officer or designee, Chief Human Resources Officer).
- A description of each of the following procedures:
 - criminal prosecution;
 - civil prosecution (i.e., lawsuit);
 - District disciplinary procedures (student and/or employee);
 - modification of class schedules;
 - tutoring, if necessary.

The Director of Security shall be available to provide assistance to Campus Security employees regarding how to respond appropriately to reports of sexual violence.

The District will initially investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3434 Responding to Harassment Based on Sex 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 shall be kept informed, through Campus Security and/or Title IX Coordinator, or designee, of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeals. 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 involves plagiarism, cheating, or academic honesty.

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 or witness of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim or witness 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 Public Information Office, which shall work with the President's Office, Human Resources Department, and Campus Security to assure that all confidentiality rights are maintained.

Annual Security Report (Clery Act)

The Annual Security Report shall 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:

- 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, 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 Campus Security and local law enforcement, and a statement that employees will assist the student in notifying these authorities if the student so requests;
- Information for students about existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;
- Notice to students that the District will change a victim's academic situation after an alleged domestic violence, dating violence, sex offense, or stalking and of the options for those changes if those changes are requested by the victim and are reasonably available;
- Procedures for District disciplinary action in cases of alleged domestic violence, dating violence, sex offense, or stalking including a clear statement that:
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
 - 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. 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 District disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking.

Education and Prevention Information

The Chief Student Services Officer (or designee) shall:

- Provide, as part of the District-established orientation program, education and prevention information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with District-based and community-based victim advocacy organizations.
- Post sexual violence prevention and education information on the District's website regarding domestic violence, dating violence, sexual assault, and stalking.



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