

Chapter 3 - General Institution

AP 3540 Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking

References:

California Education Code Sections 67380, 67383, and 67385; 67386 (a)(1) - 67389(a)(1), 67395.7, and 76200 et seq.; California Evidence Code § 1024 and § 1035.4; California Government Code § 6254(f)(2) Sections 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, and 647.6; California Penal Code 11160, 11164-11174.3, and 111653.7 Sections 242, 243.4, 245, and 261 et seq., 289; 293 13700(b); 34 Code of Federal Regulations Section 668.46 (b)(11); Title IX of the Education Amendments of 1972; Violence Against Women Reauthorization Act of 2013; Board Policy 3435, 3540, 5500, 7360, 7365, 7700; Administrative Procedures 5500, 5520

I. Introduction:

These written procedures and protocols are designed to ensure that individuals who experience Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking receive treatment and information. All students, employees, or third parties who allege that they have been subjected to Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking shall be provided with information regarding options and assistance available to them. Information shall be available at Human Resources, Police and Campus Safety, Student Health Services, and Student Life.

II. Jurisdiction:

Any Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking, as defined by BP 3540, whether committed by an employee or student, occurring on- or off-campus, is a violation of College Policy and applicable law. The College may resolve incidents of Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking through informal or formal procedures, as applicable.

This jurisdiction includes, but is not limited to, the College's main campus, any other property used by the College, and off-campus conduct and/or actions, including, but not limited to, electronic activity (such as e-mail, texting, telephone contact, social media), when the Title IX Coordinator, or designee, determines that the off-campus conduct affects, disrupts, interferes, or otherwise has the potential to have a continued adverse effect on students, employees, or third parties on campus.¹

¹ See Cal. Ed. Code 67383, 76033, 76034; 34 C.F.R. § 668.46

III. Duty to Report:

An employee designated as a Responsible Employee, except as provided below, who knows or has reason to know of allegations or acts that violate BP 3540 shall promptly inform the Title IX Coordinator. Responsible Employees are required to disclose all information, including the names of the parties, even where the person has requested anonymity.²

The Title IX Coordinator will determine whether such confidentiality is appropriate given the circumstances of each such incident.

Employees Who Do Not Have A Duty to Report (Confidential Reporting)³:

- A. The following employees are not required to report any information about an incident of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking to the Title IX Coordinator:
1. Physicians; psychotherapists; professional licensed counselors; licensed clinical social workers; interpreters; and clergy who work on- or off-campus, acting solely in those roles or capacities as part of their employment, in the provision of medical or mental health treatment, or medical or mental health counseling (and those who act under their supervision, including all individuals who work or volunteer in these centers and offices);
 2. Sexual assault and domestic violence counselors and advocates who work or volunteer on- or off-campus and who are acting solely in that role (including those who act in that role under their supervision, along with non-professional sexual assault and domestic violence counselors or advocates); and/or
 3. A College employee/union representative is not required to report possible Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking if the information is provided to the union representative, acting in that role, in a confidential setting by a union member seeking advice about a possible violation or representation in a matter within the scope of representation. However, College employee/union representatives are strongly encouraged to report the information to the Title IX Coordinator.
- B. Sworn peace officers are not required to report any personally-identifiable information about a victim of certain sex offenses if the victim requests confidentiality of identity, but must report all known facts of the incident, including the identity of the Respondent (if known), to the Title IX Coordinator.

EXCEPTIONS: Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if medical services are provided for a physical condition to a patient/victim who the practitioner knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury inflicted upon

² See Cal. Code Regs., tit. 5, § 59324; 34 C.F.R. § 106.8;

³ See Cal. Penal Code § 293; 11160-11163.2, 11164-11174.3; Cal. Gov. Code § 6254(f)(2) Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.3, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, and/or 647. Cal. Evid. Code § 1024, 1035.4

a victim where the injury is the result of assaultive or abusive conduct. This exception does not apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to victims, if applicable.

Additionally, under California law, all physicians, psychotherapists, professional counselors, clergy, and sexual assault and domestic violence counselors and advocates are mandatory child abuse and neglect reporters, and are required to report incidents involving victims under 18 years of age to local law enforcement. These professionals will explain this limited exception to victims, if applicable.

Finally, some or all of these professionals may also have reporting obligations under California law to: (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger; or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking incident. If applicable, these professionals will explain this limited exception to victims.

Reporting to Campus or Local Law Enforcement Agencies:

Any report of violent crime or sexual assault committed on- or off-campus and made for the purpose of notifying the institution or law enforcement shall be forwarded to the appropriate campus or local law enforcement agency without identifying the victim, unless the victim consents to being identified after the victim has been informed of their right to have their personally identifying information withheld.⁴

IV. Title IX Coordinator:

The Title IX Coordinator is the College official responsible for oversight and implementation of Title IX compliance and management of all Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking complaints.⁵

V. Confidentiality:

Information regarding the complaint may be shared on a “need to know” basis with other College employees and with law enforcement, except for some limited exceptions. The Title IX Coordinator shall endeavor to honor any request for confidentiality; however, the Title IX Coordinator shall also weigh requests for confidentiality against the College’s duty to provide a safe and nondiscriminatory environment for all members of the campus community. Confidentiality, therefore, cannot be ensured. The Title IX Coordinator, or designee, receives all complainant requests for confidentiality involving cases of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking, and determines if the request can be honored under the facts and circumstances of the particular case.⁶

⁴ See Cal. Ed. Code 67383

⁵ See Cal. Code Regs., tit. 5, § 59324; Title IX of the Education Amendments of 1972

⁶ See Cal. Const. Art. I, § 1; Civil Code § 47; Ed. Code, §76234 and 87740; *Silberg v. Anderson* (1990) 50 Cal.3d. 205; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001

VI. Administrative Process⁷:

A. **Notice:**

Once notice of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking has been received by the Title IX Coordinator, or designee, complainant will be contacted to schedule a meeting with the Title IX Coordinator, or designee, and provided the following:

1. A copy of the College's Board Policies and Administrative Procedures regarding Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking.
2. A list of campus and local support services and resources available to complainant, including confidential and health services.
3. A formal written complaint form and notification of the right to file a complaint.
4. The option to notify proper law enforcement authorities, including on-campus and local law enforcement.

B. **Interim Remedies:**

The complainant will be given the opportunity to identify and discuss reasonable interim remedies for the purpose of protecting the complainant, as appropriate.

The College will work with students and employees to ensure their safety and promote their well-being. Sometimes this assistance will take the form of immediate interim actions or remedies to support and protect the involved students or employees in the immediate aftermath of an incident or while an investigation or disciplinary action is pending.

The Title IX Coordinator may determine remedies, such as, but not limited to, remedies relating to adjusting academic schedules, Campus Safety escort services, restrictions on the respondent pending investigation, and other remedies to promote the well-being, safety, and restoration of the campus community. Complainant shall be notified of any interim remedies.⁸

C. **Informal Resolution**⁹:

The complainant may seek informal resolution to a complaint. Efforts at informal resolution need not include any investigation unless the Title IX Coordinator, or designee, determines that an investigation is warranted by the seriousness of the charges.

If informal resolution is determined to be appropriate, the Title IX Coordinator, or designee, will undertake efforts to informally resolve the charges, including, but not limited to, rearrangement of work/academic schedules, obtaining apologies, providing informal counseling and/or training. The Title IX Coordinator, or designee, will also:

⁷ See Cal. Code Regs., tit. 5, § 59300 et. seq.

⁸ *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001

⁹ See Cal Code Regs. tit. 5, § 59327

1. Advise the complainant that he or she need not participate in informal resolution;
2. Notify the person bringing the charges of their right to file a formal complaint and explain the procedure for doing so;
3. Assure the complainant that they will not be required to confront or work out problems with the person accused of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking;
4. Advise the complainant that they may file a non-employment-based complaint with the Office for Civil Rights of the U.S. Department of Education (OCR), U.S. Equal Employment Opportunity Commission (EEOC), and/or the California Department of Fair Employment and Housing (DFEH) where such a complaint is within that agency's jurisdiction.

Selecting an informal resolution does not extend the time limitations for filing a formal complaint. Efforts at informal resolution may continue after the filing of a formal written complaint, but after a complaint is filed an investigation is required to be conducted pursuant AP 3435, and will be completed unless the matter is informally resolved and the complainant dismisses the complaint. Even if the complainant does dismiss the complaint, the Title IX Coordinator, or designee, may require the investigation to continue if he or she determines that the allegations are serious enough to warrant an investigation.

D. Formal Resolution and Investigation¹⁰:

Where informal resolution is inappropriate or not sought by complainant, or the complainant submits a formal written complaint, the Title IX Coordinator, or assigned investigator, shall conduct an investigation in accordance with AP 3435 - Discrimination and Harassment Investigations.

The standard of evidence applied to investigations of allegations of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking is the Preponderance of the Evidence, that is, the greater weight of the evidence. In applying this standard, the investigator will consider whether the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side.

E. Communication:

Complainants shall be kept informed of any ongoing investigation by the Title IX Coordinator, or the assigned investigator. Information shall include the status of any student or employee disciplinary proceedings or appeal.

All inquiries from reporters or other media representatives about alleged Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking shall be referred to the College's Public Information Officer, who shall work with College officials to assure that all confidentiality rights are maintained.

Police and Campus Safety will be responsible for maintaining the College's Annual Security Report which include a statement regarding the College's programs to prevent sex offenses and procedures that should be followed after a sex offense occurs. The

¹⁰ See Cal Code Regs. tit. 5, § 59328-59334

Annual Security Report does not include any personally identifying information, but does include statistics of reported crimes, including, but not limited to Rape, Fondling, Incest, Statutory Rape, Dating Violence, Domestic Violence, and Stalking.

The College will disclose any report of sexual assault made by a complainant or employee to Police and Campus Safety without identifying the victim, unless the victim consents to being identified after the complainant has been informed of their right to have their personally identifying information withheld. If the complainant does not consent to being identified, the alleged assailant shall not be identified in the information disclosed to Campus Safety.¹¹

VII. Advisors:

Both the complainant and the respondent may elect to be accompanied by an advisor, including a collective bargaining representative, as permitted by existing bargaining agreements, to any meeting(s) or interview(s). The advisor's role is limited to observing and consulting with and providing support to the complainant or respondent. An advisor may not participate in the investigation on the behalf of the complainant or respondent.¹²

VIII. Concurrent Proceedings:

College administrative proceedings are independent from criminal court, civil court, or other administrative proceedings. Discipline may be instituted against an individual also charged in civil or criminal courts based on the same facts that constitutes the alleged violation of applicable Board Policy. The College may proceed before, concurrently with, or after any judicial, criminal, or administrative proceedings. In cases of Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking, the College shall proceed with investigation without undue delay, in accordance with federal and state law requirements, and College Policies and Procedures.¹³

IX. Retaliation:

Any form of Retaliation against anyone who has complained of or formally reported Sexual Misconduct, Dating Violence, Domestic Violence, or Stalking or has participated in an investigation of such a complaint, regardless of whether the complaint is substantiated, will not be tolerated and violates Board Policy 7700, this procedure, and applicable law.¹⁴

X. Amnesty:

To remove barriers toward reporting of incidents of Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking, individuals who report or participate as witnesses or complainants in investigations will not be held accountable for alcohol or drug violations that may have occurred at the time of or as a result of the incident in question (for example, being under the influence of alcohol, marijuana, or other controlled substances), unless the College

¹¹ See Cal Ed. Code 67383, 76234; 34 C.F.R. § 668.46

¹² *NLRB v. Weingarten, Inc.* (1975) 420 U.S. 251

¹³ See Cal Code Regs. tit. 5, § 59336-59342

¹⁴ Cal. Code Regs., tit. 5, § 59300 et seq.; 20 U.S.C. § 1681 et seq.; 34 C.F.R. § 106; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001

determines that the violation was egregious. Egregious violations include, but are not limited to, actions that place the health or safety of another other person at risk or involve academic dishonesty.¹⁵

XI. Education and Prevention:

The Title IX Coordinator, in partnership with Human Resources, Police and Campus Safety, Student Health Services, and Student Life will develop, as part of the College's established on-campus orientation program, education and prevention information about Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations. Information regarding violence prevention and education information will be posted on the College's internet website.¹⁶

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¹⁵ Cal. Ed. Code 67385.7; *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, Title IX*, Office for Civil Rights, January 19, 2001

¹⁶ Ed. Code, § 66281.5; Cal. Code Regs., tit. 5, §§ 59324 and 59326; 34 C.F.R. § 106.8(b)