

AP 3540 Sexual and Other Assaults Occurring on District Property

Reference: ***Education Code Sections 67385 and 67386; 20 U.S. Code Section 1092(f) (Clery Act); and 34 Code of Federal Regulations Section 668.46(b)(11)***

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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 Grossmont-Cuyamaca Community College District (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, is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See also BP/AP 5500 Standards of Student Conduct).

"Sexual assault" includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

"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.

"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.

"Domestic violence" includes felony or misdemeanor crimes of violence committed by:

- a current or former spouse of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with or has cohabitated with the victim as a spouse;
- by a person similarly situated to a spouse of the victim under California law; or
- by any other person against an adult or youth victim who is protected from that person's acts under California law.

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 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 sexual assault receive treatment and information. (For physical assaults/violence, see also AP 3500, 3510, and 3515).

All students, faculty members, staff members, or visitors who allege they are the victims of a sexual assault on District property shall be provided with information regarding options and assistance available to them. The accused of such offenses should refer to either: the Collective Bargaining Agreement (employees), Student Code of Conduct (students), and other District Governing Board Policies for community members. Information shall be available for students in the College Student Affairs Office, and for staff in the District Human Resources Office. The appropriate office shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the office is authorized to release such information.

The College Student Affairs Office or District Human Resources Office shall provide all alleged victims of sexual assault with the following, upon request:

- A copy of the District's policy and procedure regarding sexual assault
- A list of personnel on campus who should be notified of the assault, and procedures for such notification, if the alleged victim consents
- Information about the importance of preserving evidence and the identification and location of witnesses;
- 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—paramedics, local law enforcement, and/or victim's designee(s)
 - Counseling or referral to a counseling center—the College Student Affairs Office or the District Human Resources Office
 - Notice of the assault; if the victim consents—the District Public Safety Department
 - A packet of available campus resources and off-campus services—District Public Safety Department or college Student Affairs Office
- A description of each of the following procedures:
 - Criminal prosecution
 - Civil prosecution (i.e., lawsuit)
 - District disciplinary procedures, both student and employee
 - Modification of class schedules

The Title IX Coordinator 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, regardless of whether a complaint is filed with local law enforcement. All alleged victims of sexual assault on District property shall be kept informed through the college Student Affairs Office or District Human Resources Office, of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of sexual assault are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through the [designate office] 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.

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, or third-party reporter of sexual assault on District property, as defined above, in confidence unless the alleged victim, ~~or~~ witness, or third-party reporter specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged sexual assaults on District property shall be referred to the Communications and Public Information Office, which shall work with the college Student Affairs Office or District Human Resources Office to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report prepared by the District Public Safety Office (available on the District website) includes 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, and other forcible and nonforcible sex offenses
- Procedures to follow if a sex offense 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 complainant'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.

- Information for complainant about existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses
- Notice to students that the campus will change a victim's academic situation after an alleged sex offense and offer options for those changes, if those changes are requested by the victim and are reasonably available
- Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that:
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding
 - 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 sex offense 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 nonforcible sex offenses

Education and Prevention Information

The college Student Affairs Office or District Human Resources Office shall:

- Provide education and prevention information about sexual assault. 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 of victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- Publish sexual violence prevention and education information on the District websites.