

AP 3540 Sexual and Other Assaults Occurring on District Property

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

Date Issued: December 18, 2007 Updated: November 17, 2015

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. Individuals who are not students or employees (e.g., guests, visitors, etc.) of the District may not be entitled to the same procedures as those who are members of the District community. Students, faculty, and staff who may be victims of (Claimants) or may be accused of (Respondents) of sexual and other assaults shall be treated with dignity and provided appropriate assistance. (See also BP/AP 5500 Standards of Student Conduct).

"Sexual assault" includes any sexually related offenses, including Non-consensual Sexual Contact and Non-consensual Sexual Intercourse.

Non-Consensual Sexual Contact is defined as:

Intentional sexual touching, however slight, with any object, by a person upon another person, without consent.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

Style Definition: List Bullet 2

Commented [WL1]: Consider making a statement that individuals not under the jurisdiction (visitors, guests, etc.) of the District are not entitled to the same procedures as students or employees.

Commented [WL2]: This is very broad as a stand-alone statement, so I added some clarifications as an example. There can be an advantage to being very broad, but it can have some cons too. For discussion.

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Non-Consensual Sexual Intercourse is defined as:

- any sexual penetration or intercourse (anal, oral or vaginal),
- however slight,
- with any object,
- by a person upon another person,
- without consent.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

“Intimate Partner Violence” (Also known as “Dating Violence”) is defined as a single act or a pattern of abusive behavior in a sexual, dating, domestic, or other intimate relationship that is used by one partner to gain or maintain power and control over another intimate partner. Intimate partner violence can occur in a dating or domestic relationship. Intimate partner violence can be physical, sexual, emotional (when severe and repeated), economic, or psychological (when severe and repeated), actions or threats of actions that influence another person. This includes any repeated behaviors that severely intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

The existence of an intimate relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

“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:

- Current or former spouse of the victim;
- Person with whom the victim shares a child in common;
- Person who is cohabitating with or has cohabitated with the victim as a spouse;

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- Person similarly situated to a spouse of the victim under California law; or
- Any other person against an adult or youth victim who is protected from that person’s acts under California law.

“Stalking” is a pattern of repeated and unwanted attention, harassment, contact, or any other course of unwelcome conduct directed at a specific person that would cause a reasonable person to feel fear of his or her safety or the safety of others or suffer substantial emotional distress.

- “Course of conduct” means two or more acts that can include, but is not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment or professional counseling.
- “Reasonable person” is a legal term that the courts have generally defined as a prudent, hypothetical person with ordinary sensitivities who embodies a community ideal of reasonable behavior.

This policy prohibits all stalking, not just stalking that occurs within the context of a relationship or stalking that is discriminatory.

Affirmative Consent

It is the responsibility of each person involved in sexual or intimate activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual or intimate activity. Lack of protest or resistance does not mean consent, nor does silence or lack of active participation indicate consent. Affirmative consent must be ongoing throughout any sexual or intimate activity and can be ~~revoked~~ withdrawn at any time.

The existence of a dating or intimate relationship between the persons involved, or the fact of any 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 or intimate activity.

Someone who is incapacitated cannot consent. Incapacitation is defined as the inability, temporarily or permanently, to give consent because the person is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. If there is any doubt as to the level or extent of the other person’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Commented [WL7]: I moved stalking to keep IPV and DV together for continuity.

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Commented [WL9]: Consider this statement to broaden it beyond Title IX

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Commented [WL10]: Additional considerations for Consent:
 •Consent can be given by words or actions, but non-verbal consent is not as clear as verbal consent.

•Consent to one form of sexual or intimate activity cannot be automatically taken as consent to another form of sexual or intimate activity.

•Under this policy, “No” always means “No,” and anything but a clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

•Silence, without actions demonstrating permission, cannot be assumed to show consent.

•If physical force is used to obtain consent or intimate access, there can be no consent.

•If threat or intimidation under reasonable belief that the threat will be carried out is used to obtain consent, then there can be no consent.

•If consent is obtained by coercion, there is no consent. There is a difference between seduction and coercion. Coercion occurs when someone is unreasonably pressured for sexual or intimate activity. Coercing someone into sexual or intimate activity violates this policy in the same way as physically forcing someone into sex.

Commented [WL11]: Consider Incapacity as well:

Someone who is incapacitated cannot consent. Incapacitation is defined as the inability, temporarily or permanently, to give consent because the person is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Being under the influence of drugs or alcohol does not necessarily indicate incapacity though incapacitation may result from the use of alcohol or other drugs that produces a state beyond drunkenness or intoxication. An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual or intimate activity.

Evaluating incapacitation requires an assessment of whether a respondent knew or should have been aware of the Claimant’s incapacitation based upon objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent’s position.

In general, engaging in sexual activity while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication. If there is any doubt as to the level or extent of the other person’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

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These written procedures and protocols are designed to ensure ~~victims-Claimant~~ of sexual ~~assault-misconduct~~ receive treatment and information. (For physical assaults/violence, see also AP 3500, 3510, and 3515).

Commented [WL12]: Id.

All students, ~~faculty members, staff membersemployees~~, or visitors who allege they are the victims of ~~a sexual assault violations of any of the above policies on District property~~ shall be provided with information regarding options and assistance available to them. Those ~~see~~ accused (~~Respondents~~) of ~~such-these~~ offenses should refer to either: the Collective Bargaining Agreement (employees), Student Code of Conduct (students), and other District Governing Board Policies ~~for~~ (community members). ~~Individuals who are not students or employees will be referred to local law enforcement.~~ Information shall be available for students in the College Student Affairs Office, and for ~~staff employees~~ 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 individuals who allege that they have been the victims are Claimants of violations of any of the above policies~~ with the following information upon request:

- A copy of the District's policy and procedure regarding ~~sexual-assaultthe policies alleged to have been violated~~
- A list of personnel on campus who should ~~/will~~ be notified of the ~~assaultalleged violations~~, 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 ~~and off~~ 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-Claimant'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-Claimant~~ consents—~~the District Public Safety Department (619) 644-7654-local law enforcement via 911 or the non-emergency number at 858-565-5200.~~
 - A packet of available campus resources and off-campus services—District Public Safety Department or College Student Affairs ~~Office~~
- The ~~victim's-Claimants~~ option to:

Commented [WL13]: Consider changing all "victim" to "Claimant" or "Reporting Party" - Item for discussion as to why

Commented [WL14]: Title IX Office? BIT?

- o Notify proper law enforcement authorities, including on-campus and local police
- o Be assisted by campus authorities in notifying law enforcement authorities if the ~~victim~~ Claimant so chooses
- o Decline to notify such authorities
- o ~~The rights of Claimants victims and the institution's responsibilities regarding~~ Have information regarding orders of protection, no contact orders, or similar lawful orders issued by a court
- o Information about how the District will protect the confidentiality of ~~Claimants victims and reporters~~ Claimants
- o Written notification ~~to Claimants 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 ~~Claimant victim~~ chooses to report the crime to ~~campus police or~~ local law enforcement
- A description of each of the following procedures:
 - o Criminal prosecution
 - o Civil prosecution (i.e., lawsuit)
 - o District disciplinary procedures, ~~both student and employee~~
 - o Modification of class ~~or other~~ 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 ~~Claimants and Respondents in allegations~~ ~~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~~ ~~Claimants and Respondents in cases of allegations of~~ ~~of~~ domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through the 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 domestic violence, dating~~

Commented [WL15]: This term has fallen out of favor (rightfully so). Consider: any person reporting that they have been the subject of a sexual assault or any of the behaviors listed in this policy (hereinafter "Claimants"...

Commented [WL16]: Or the TIX-Coordinator? When the Reporting Party is NOT a student or employee. Or we can leave it to be Respondent Dependent.

Commented [WL17]: See above

Commented [WL18]: We can not require this.

Commented [WL19]: IPV

Commented [WL20]: id

~~violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.~~

Commented [WL21]: We cannot do this.

A ~~complainant-Claimant~~ or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for ~~minora~~ violations of ~~the District's student conduct policies~~ 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 ~~dis~~honesty.

Commented [NC22]: Please see Q2 in email regarding combining these paragraphs.

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

Commented [WL23]: This is a very broad amnesty provision. I inserted language.

- The ~~accused's-Respondent's~~ belief ~~in that affirmative consent arose from the intoxication or recklessness of the accused they were too intoxicated or impaired to be aware of the Claimant's inability or lack of consent.~~
- The ~~accused-Respondent~~ did not take reasonable steps, in the circumstances known to the ~~Respondent accused~~ at the time, to ascertain whether the ~~Claimant complainant~~ affirmatively consented

Commented [WL24]: I am not sure this fits here.

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

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

Commented [WL25]: Claimant has been replaced by "Claimant" or "Reporting Party"

Commented [WL26]: You may not need this qualifying phrase - it can be limiting.

Commented [NC27]: Please see Q3: Do we need this section or should we expand the definition of consent on page 3? This seems very repetitive, especially the two paragraphs.

The District shall maintain the identity of any ~~Claimant-alleged-victim~~, witness, or third-party reporter of sexual assault on District property, as defined above, in confidence ~~(in terms of reporting this information to 3rd parties)~~ unless the ~~Claimant-alleged-victim~~, witness, or third-party reporter specifically waives that right to confidentiality. ~~However, in almost all cases, the Respondent will be made aware of the identity of the Claimant and the witnesses.~~ All inquiries from reporters or other media representatives about ~~allegations of violations-violations of these policies ed 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.

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Additionally, [per the Clery Act](#), the [Annual Security Report](#) prepared by the District Public Safety Office ([also available on the District website](#)) includes a statement regarding the District's programs to prevent sexual assault, domestic violence, [dating violence/intimate partner 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 any District proceeding arising from such a report. The statement must include the following:

Commented [WL28]: IPV

- A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible 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/Claimant](#)'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/Claimant](#) so requests and the right to decline to notify these authorities
- Information about how the District will protect the confidentiality of [victim/Claimants](#), including how publicly available recordkeeping will be accomplished without the inclusion of identifying information about the [victim/Claimant](#), to the extent permissible by law
- Information for [complainant/Claimants](#) about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance or other services for victims
- Written notification of [victim/Claimants](#) 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/victim](#) chooses to report the crime to [campus police or](#) local law enforcement
- Procedures for campus disciplinary action in cases of an alleged sexual assault, including a clear statement that:
 - Such proceedings shall provide a prompt, fair, and impartial resolution
 - 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
 - The [Claimant/accuser](#) and the [accused/Respondent](#) are entitled to the same opportunities to have others present during a disciplinary proceeding
 - Both the [Claimant/accuser](#) and the [Respondent/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 ~~Respondent accused~~ and ~~victim~~ Claimant to appeal the results of the disciplinary proceeding, of any changes to the results that occur 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. 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 ~~Respondent 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~~ strategies including empowerment and violence prevention programming ~~of victim prevention~~, awareness raising ~~campaigns~~ campaigns, primary prevention, bystander intervention, and risk reduction
- Publish sexual violence prevention and education information on the District websites