

**AP 3540 SEXUAL AND OTHER ASSAULTS****References:**

Education Code Section 67385 and 67386;  
20 U.S. Code Section 1092(f);  
34 Code of Federal Regulations Section 668.46(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 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. (Also see AP 5500 titled 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.

"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.

"Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others, or to suffer substantial emotional distress.

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

All students, faculty members or staff members who allege they are the 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. Information shall be available from the District Human Resources Office, the District Police Department, and/or Health Services on each campus, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Associate Vice Chancellor of Human Resources is authorized to release such information.

The Associate Vice Chancellor of Human Resources shall provide all alleged victims of domestic violence, dating violence, sexual assault or stalking with the following:

- 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; The District Police Department, the Associate Vice Chancellor of Human Resources (employees), and the Vice President of Student Services (students);
- 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, if necessary (Student Services, Human Resources or the Police Department);
  - Counseling by Health Services or referral to a counseling Center (Student Services, Human Resources or the Police Department);
  - Notice to the police, if desired (Student Services or Human Resources);
  - A list of other available campus resources or appropriate off-

campus resources (Student Services, Human Resources or the Police Department);

- 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;
  - tutoring, if necessary.

The Associate Vice Chancellor of Human Resources should be available to provide assistance to District law enforcement to 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 described in AP 3435, 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 the Human Resources Department (employees), and/or Vice President of Student Services (students) 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 domestic violence, dating violence, sexual assault or stalking 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 domestic violence, dating violence, sexual assaults or stalking on District property shall be referred to the Associate Vice Chancellor, who shall work with the Vice President of Student Services appropriate campus officials to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report 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:

- 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 a 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 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;
- 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 campus 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 campus disciplinary action in cases of an 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 campus 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 Health Services Program shall:

- Provide, as part of each campus' established on-campus orientation program, education and prevention information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with District Police Department, and campus-based and community-based victim advocacy organizations, and shall include the District's sexual assault policy and prevention strategies, including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.

---

**Date Approved: January 18, 2012**

**Date Revised: April 11, 2016**

*(This is new procedural language recommended by the Policy and Procedure Service)*