

2.15

PREVENTION OF AND RESPONSE TO SEXUAL ASSAULT, SEXUAL HARASSMENT, DOMESTIC
VIOLENCE, DATING VIOLENCE AND STALKING
ADOPT: July 14, 2015
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668.46(b) 11
TITLE IX, at 34 C.F.R. §106.31(a) & 668.46(a)
Labor Code § 230.1
CAMPUS SAVE ACT
JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS
ACT
VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION OF 2013
FAMILY CODE 6211
PENAL CODE 261 261.5 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286,
288, 288a, 288.5, 289, 311.4& 646.9
DISTRICT POLICY AND PROCEDURE 2.6.1, 2.7, 2.7P, 8.2.8, 8.2.8P

The Sonoma County Junior College District is committed to creating and maintaining a community where all individuals who participate in District programs, services and activities can work and learn together in an atmosphere free of violence, harassment, exploitation, or intimidation. The District will respond promptly and effectively to reports of such behavior, and will take appropriate action to prevent, correct, address the effects, and when necessary, discipline behavior that violates this Policy and/or District Policy 2.7 on Unlawful Discrimination and Sexual Harassment.

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of gender in the District's educational programs and activities, including all District classes and services and in its residence program. The Superintendent/President delegates general authority for compliance with Title IX to the Vice President of Human Resources who shall act as the District Title IX Coordinator. The District Title IX Coordinator is responsible for managing the District's Title IX compliance program, including coordinating the investigation of allegations of gender discrimination and addressing problems revealed by such allegations or investigations. Questions and complaints regarding gender discrimination may be directed to the Title IX Coordinator/ Vice President of Human Resources. The Superintendent/President delegates general authority for compliance with all mandated crime reporting to the Chief of Police for the Sonoma County Junior College District.

This Policy applies to all District employees and students at all District locations and all District related activities regardless of location. This Policy may apply to other locations not associated with the District based on the relationship between the affected party and accused. A person who engages in conduct prohibited under this Policy is subject to all applicable punishment within the jurisdiction of the District, including employee or student discipline procedures. Employees may be disciplined up to and including termination from District employment and students may be disciplined up to and including expulsion from the District. Such conduct may also lead to civil and/or criminal prosecution.

Students and employees affected by gender discrimination, including sexual misconduct (the "Affected Party") shall be treated with dignity and provided support and assistance.

A. DEFINITIONS

Sexual Harassment. Unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal, nonverbal, written, visual or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

1. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
2. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decision affecting the individual.
3. The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment.
4. Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

Sexual harassment is sexual in nature or based on sex, gender, gender identity, gender expression, or sex- or gender-stereotyping. Sexual harassment is conduct that explicitly or implicitly affects a person's employment or education or interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, or offensive. Sexual harassment includes sexual assault.

Sexual harassment may include incidents between any members of the District community, including faculty, staff, managers, student employees, students, coaches, interns, and non-student or non-employee participants in District activities (e.g., vendors, contractors and visitors). Sexual harassment may occur in hierarchical relationships, between peers, or between individuals of the same sex or opposite sex. To determine whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

Affirmative Consent. The District shall apply this affirmative consent standard in any determination of whether consent was given by both parties to sexual activity.

Affirmative Consent is consent that is informed, clearly affirmative, unambiguous, and a conscious decision by each participant to engage in mutually agreed-upon sexual activity. Silence or a lack of protest or resistance does not mean consent.

Consent is *voluntary*. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

Consent is *revocable*. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to one act by itself does not constitute consent to another act. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutual consent to engage in sexual activity.

Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

Consent cannot be given when a person is *incapacitated*. A person cannot consent if s/he is unconscious or coming in and out of consciousness. A person cannot consent if s/he is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if his/her understanding of the act is affected by a physical or mental impairment.

If the Affected Party states affirmative consent was not given, it shall not be a valid excuse that the accused believed consent was given to sexual activity under either of the following circumstances: (1) belief the consent arose from the intoxication or recklessness of the Affected Party or (2) the accused did not take reasonable steps at the time of the alleged incident, to determine if the Affected Party affirmatively consented.

Similarly, it shall not be a valid excuse that the accused believed the Affected Party affirmatively consented to sexual activity if the accused knew or should have known that the affirmative consent could not be given because the Affected Party (1) was asleep or unconscious, (2) was incapacitated due to the influence of drugs, alcohol, or medication or could not understand the nature, or extent of the sexual activity, or (3) was unable to communicate due to a mental or physical condition.

For purposes of this *Policy*, the age of consent is consistent with current California Penal Code.

Dating Violence. Abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Domestic Violence. A felony or misdemeanor crime of violence committed by a spouse or former spouse, cohabitant or former cohabitant of the victim, or someone with whom the accused has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship, or abuse perpetrated against any persons described in Family Code section 6211.

Incapacitation. Physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. One person or more than one person being intoxicated by drugs or alcohol does not diminish one's responsibility to obtain consent for any sexual activity. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the Affected Party was incapacitated.

Sexual Assault. Sexual activity without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication). Sexual assault includes, but is not limited to, fondling, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, incest, statutory rape, or threat of sexual assault.

Sexual Misconduct. Sexual misconduct includes discrimination based on gender, sexual harassment, dating violence, domestic violence, sexual assault, stalking, sexual violence, sexual coercion, and hate crimes based on gender.

Stalking. A course of conduct in which a person repeatedly engages in actions directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others or causes substantial emotional distress. A course of conduct means two or more acts, including, but not limited to acts in which the stalker directly, indirectly, or through third parties by any method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about a victim, or interferes with the property of the victim.

B. PROHIBITED ACTS

This *Policy* prohibits sexual misconduct. Sexual misconduct by an employee is considered to be outside the course and scope of employment and shall be investigated and considered for discipline under applicable District Policy and Procedure. Sexual misconduct by a student is considered a violation of the Student Conduct Code and shall be investigated and considered for discipline under applicable District Policy and Procedure.

C. CONSENSUAL RELATIONSHIPS

This *Policy* covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the District community are subject to applicable District Policy.

While romantic relationships between members of the District community may begin as consensual, they may evolve into situations that lead to charges of sexual misconduct.

D. RETALIATION

This *Policy* prohibits retaliation against a person who reports sexual harassment, domestic or dating violence, or stalking. Retaliation is prohibited against any person who assists someone with a report of this type of misconduct, or participates in any manner in an investigation or resolution of the misconduct report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

E. PREVENTION PROGRAMMING, TRAINING AND DISSEMINATION OF POLICY INFORMATION

The District's commitment to providing a working and learning environment free from sexual misconduct includes a multi-faceted approach to preventive education and programming for administrators, faculty, staff and students. This includes the dissemination of information on the dynamics of sexual violence, access to care, victim response, District procedures, and federal/state laws. Educational programming provided includes information on risk reduction, teaches bystander intervention techniques, and addresses the role of consent in sexual relationships. Prevention education and information on this *Policy* shall be disseminated widely to the District community through publications, websites, new employee orientations, student orientations, and other appropriate channels of communication. In addition, the District will provide annual training to investigators and hearing officers.

F. FREE SPEECH AND ACADEMIC FREEDOM

As participants in a public community college, the faculty and other academic appointees, staff, and students of Sonoma County Junior College District enjoy free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This *Policy* is intended to protect members of the District community from discrimination, not to regulate protected speech. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

G. ENFORCEMENT INFORMATION

Allegations of gender discrimination or sexual misconduct may be filed with the District's Title IX Coordinator. The Office of the Title IX Coordinator is located at 1988 Armory Drive, Santa Rosa, CA 95401 and can be contacted by telephone at (707) 527-4954. The mailing address is 1501 Mendocino Avenue, Santa Rosa, CA 95401.

Student allegations of gender discrimination may also be filed with the U.S. Department of Education, Office for Civil Rights (OCR) 50 Beale Street, Suite 7200, San Francisco, CA 94105, (415) 486-5555, (www2.ed.gov/ocr) or with the Chancellor of the California Community Colleges at www.cccco.edu or Chancellor's Office, California Community Colleges, 1102 Q Street, Suite 4554, Sacramento, CA 95811-6549, Attention: Legal Affairs Division.

Employee allegations of gender discrimination may also be filed with the Equal Employment Opportunities Commission, 350 The Embarcadero, Suite 500, San Francisco, CA 94105 (www.eeoc.gov) or with the California Department of Fair Employment and Housing (www.dfeh.gov).



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The intention of the Prevention and Response to Sexual Assault, Sexual Harassment, Domestic Violence, Dating Violence and Stalking Procedure is to investigate and resolve alleged violations of these offenses.

A. INTRODUCTION

The Sonoma County Junior College District is committed to creating and maintaining an educational community where all individuals who participate in District programs and activities can work and learn together in an atmosphere free of unlawful discrimination, harassment, exploitation, or intimidation. Board Policy 2.15 prohibits sexual assault, sexual harassment, domestic violence, dating violence, and stalking (collectively referred to herein as “sexual misconduct”). Board Policy 2.7 (Unlawful Discrimination and Sexual Harassment) and Procedure 2.7P (Unlawful Discrimination and Sexual Harassment Complaint Procedures) prohibit unlawful discrimination and sexual harassment. Board Policy and Procedure 8.2.8 and 8.2.8P (Student Conduct and Discipline Due Process) prohibit student conduct that constitutes gender discrimination, sexual harassment, sexual assault and sexual misconduct as defined in Board Policy 2.15.

The District is committed to preventing sexual misconduct from occurring or recurring; to responding to reports or complaints about prohibited sexual misconduct by taking prompt and effective steps to end sexual misconduct; to eliminating hostile educational environments; and to providing remedies if improper conduct is found to have occurred.

B. REPORTING SEXUAL ASSAULT, SEXUAL HARASSMENT, DOMESTIC AND DATING VIOLENCE, AND STALKING

Any member of the District community may report conduct that may constitute sexual misconduct to any supervisor, manager, or directly to the Title IX Coordinator, or designee. Supervisors and managers are required to promptly forward such reports to the Title IX Coordinator/Vice President of Human Resources or designee. Any manager or supervisor who knew about the incident and failed to report the prohibited act may be subject to disciplinary action. All employees who learn of incidents of sexual misconduct or concerns of sexual misconduct should refer the issue to the Title IX Coordinator and encourage direct reporting to the Title IX Coordinator as well.

C. CONFIDENTIALITY

Requests regarding the confidentiality of reports of sexual misconduct to non-confidential District resources will be considered in determining an appropriate response. The District preserves individual privacy and the confidentiality of sensitive information to the extent reasonable and appropriate, recognizing that it cannot ensure that reported information can be completely protected from disclosure. If a student or employee affected by sexual misconduct (the "Affected Party") requests that his/her allegations of sexual misconduct be confidential, the District may be limited in its ability to respond to such allegations. In such cases, the District's ability to investigate, to take remedial actions, or to take disciplinary action against an accused student or employee may be impeded. Although the District seriously considers requests for confidentiality, it must consider such requests in light of its obligations to provide a nondiscriminatory environment and District safety concerns.

The Title IX Coordinator, or designee, shall advise Affected Parties about requesting confidentiality from the District and evaluate such requests. The Title IX Coordinator shall ensure that employees who are required to report sexual misconduct are trained in advising Affected Parties about confidential reporting.

The District has identified the confidential resources with which Affected Parties or members of the District community can consult for advice and information regarding making a report of sexual misconduct. These are the professional staff operating under licensure in Student Health Services and Student Psychological Services or other community agencies that have the specialized skills and training to provide resources such as rape crisis centers.

D. ENCOURAGEMENT OF REPORTING

Students and employees are encouraged to report conduct that they, in good faith, believe constitutes sexual misconduct. To encourage reporting, an Affected Party or witness to alleged sexual misconduct shall not be disciplined for student conduct violations, such as drugs and alcohol, which occurred at or around the time of the reported incidents, unless the District finds the violations 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 dishonesty.

E. RESPONSE TO REPORTS OF SEXUAL ASSAULT, SEXUAL HARASSMENT, DOMESTIC AND DATING VIOLENCE, AND STALKING

The District shall provide prompt and effective response to reports of sexual misconduct which may include early resolution, formal investigation, interim or permanent remedies and/or targeted prevention training or educational programs. The District's response process is intended to provide prompt and equitable means to respond to allegations of unlawful gender discrimination, sexual harassment and assault, and sexual misconduct in accordance with federal and state due process requirements. All procedures, from initial investigation to a final disciplinary result, are intended to be prompt, fair, and impartial.

Allegations of student sexual misconduct are subject to the applicable Student Conduct procedure. Allegations of employee sexual misconduct are subject to the procedure set forth in District Policy, the Education Code, and/or collective bargaining agreements. Allegations or complaints may be filed by the Affected Party or by others on the Affected Party's behalf. If the District receives a credible report of sexual misconduct against a student(s) or employee(s), it will investigate even in the absence of an allegation or complaint from an individual.

Alleged sexual misconduct will be evaluated from the perspective of a reasonable person in the Affected Party's position, considering all the circumstances.

These procedures are not intended to substitute for criminal or civil complaints that may be initiated simultaneously.

When an individual reports to the District that he or she has been a victim of sexual misconduct, he or she shall be provided with a written explanation of his or her rights, options, and resources whether the offense occurred on or off District property.

The District shall investigate reports of sexual misconduct utilizing investigators trained in civil rights/sexual misconduct investigation. The investigation and adjudication process shall conclude within 60 calendar days unless reasonable delays beyond the control of the District occur. The investigation, fact finding, and the employee and student conduct processes shall use a "preponderance of evidence" standard to draw findings or conclusions, meaning the act was more likely than not to have occurred.

The District shall maintain memoranda of understanding (i.e., MOU's) with local law enforcement agencies for the sharing of information from incidents reported to law enforcement with the intent of relieving the Affected Party from unnecessary repetition of information that may be traumatic.

Both during an investigation and upon a finding of sexual misconduct, the District may offer remedies to the individual or individuals harmed by the misconduct consistent with applicable complaint resolution and grievance procedures. Remedies may include counseling, an opportunity to repeat course work without penalty, change in class section, District-initiated employee transfer, or other appropriate interventions.

Any employee of the District who is found to have engaged in sexual assault, sexual harassment, domestic violence, dating violence, or stalking is subject to disciplinary action up to and including dismissal in accordance with the applicable District disciplinary procedures, and collective bargaining agreement.

Any student of the District who is found to have engaged in sexual assault, sexual harassment, domestic violence, dating violence, or stalking is subject to disciplinary action up to and including expulsion in accordance with the applicable Student Conduct and Discipline Due Process policy and procedure.