

THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR



BAKERSFIELD

June 3, 2014

CHANNEL ISLANDS

CHICO

**MEMORANDUM**

DOMINGUEZ HILLS

**TO:** CSU Presidents

EAST BAY

**FROM:** Timothy P. White  
Chancellor

FRESNO

FULLERTON

**SUBJECT:** Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation — Executive Order 1095

HUMBOLDT

LONG BEACH

LOS ANGELES

Attached is a copy of Executive Order 1095 relating to implementation of Title IX, the Campus SaVE Act, and related legislation on sex discrimination, sexual harassment and sexual violence. Executive Order 1095 supersedes Executive Order 1072.

MARITIME ACADEMY

MONTEREY BAY

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

NORTHRIDGE

POMONA

If you have questions regarding this executive order, please call Equal Opportunity/Whistleblower Compliance at (562) 951-4400.

SACRAMENTO

SAN BERNARDINO

TPW/eb

SAN DIEGO

Attachment

SAN FRANCISCO

**c:** CSU Office of the Chancellor Leadership  
DHR Administrators  
Human Resources Officers  
Provosts  
Title IX Coordinators  
Vice Presidents, Administration and Finance  
Vice Presidents, Student Affairs

SAN JOSÉ

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

**THE CALIFORNIA STATE UNIVERSITY**  
**Office of the Chancellor**  
**401 Golden Shore**  
**Long Beach, California 90802-4210**  
**(562) 951-4400**

**Executive Order:** 1095

**Effective Date:** June 3, 2014

**Supersedes:** Executive Order 1072

**Title:** Implementation of Title IX, VAWA/Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation

This Executive Order provides direction on implementing Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) and related regulations (34 C.F.R. Part 106) (Title IX); the Violence Against Women Reauthorization Act of 2013 (which amends the Jeanne Clery Disclosure of Campus Security and Campus Crimes Statistics Act, commonly known as the Clery Act) (20 U.S.C. 1092(f)) (VAWA) under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act); Title IV of the 1964 Civil Rights Act (42 U.S.C. § 2000c *et seq.*); the California Equity in Higher Education Act (Cal. Educ. Code § 66250 *et seq.*); California Education Code §§ 67385.7 & 67390-91; and the Governor's *California Campus Blueprint to Address Sexual Assault*.

**Legislative Requirements**

Title IX is a federal law that applies to educational institutions receiving federal financial assistance and prohibits discrimination on the basis of sex in an educational institution's programs or activities, including employment, academic, educational, extracurricular and athletic activities (both on and off campus). Title IX protects all people regardless of their gender or gender identity from sex discrimination, including sexual harassment and sexual violence, which are forms of sex discrimination. Title IX requires institutions to take necessary steps to prevent sexual assault on their campuses, and to respond promptly and effectively when an assault is reported. The Clery Act requires colleges and universities to report annual statistics on crime, including sexual assault and rape, on or near their campuses, and to develop and disseminate prevention policies.

VAWA/Campus SaVE Act clarifies that “sexual violence” includes domestic violence,

dating violence and stalking, which must be included in campus Clery reports, and also requires that institutional policies address and prevent sexual violence through training, education, and certain discipline procedures.<sup>1</sup> The California Equity in Higher Education Act prohibits discrimination based on any protected status, including gender or sex, in all postsecondary institutions in the state. California Education Code § 67385.7 *et seq.* requires the CSU to provide educational and preventive information about sexual violence to students. The *California Campus Blueprint to Address Sexual Assault* provides guidance on steps that can be taken to improve individual campus responses to sexual assault.<sup>2</sup>

Together, these laws require CSU campuses to (1) publish and widely disseminate a notice of nondiscrimination on the basis of gender or sex; (2) designate one employee to coordinate Title IX compliance (including compliance with VAWA/Campus SaVE Act, and all other relevant sexual discrimination/harassment/violence legislation); (3) adopt appropriate complaint and investigation procedures; (4) implement education and prevention programs for students and employees, as well as victim resource programs for victims of sexual harassment or sexual violence; (5) provide written rights and options information to victims of sexual violence; (6) provide training to the campus community on how to prevent, identify and report sex discrimination (including sexual harassment and sexual violence); (7) provide training on how to conduct investigations to those employees who investigate allegations of sex discrimination (including sexual harassment and sexual violence); (8) provide training to student conduct hearing officers.

The University is committed to creating and sustaining an educational and working environment free of sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. The safety and well-being of the campus community is a priority for the University.

### **Definitions**

**Sex Discrimination** means an adverse action taken against an individual because of gender or sex (including sexual harassment, sexual violence, domestic violence, dating violence, and stalking) as prohibited by Title IX; Title IV; VAWA/Campus SaVE Act; California Education Code § 66250 *et seq.*; and/or California Government Code § 11135. *See also* Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act (Cal. Govt. Code § 12940 *et seq.*), and other applicable laws. Both men and women can be victims of Sex Discrimination.

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<sup>1</sup> Clery reporting and discipline procedures are addressed in other systemwide policy communications.

<sup>2</sup> Copies of the Blueprint may be obtained from <http://www.calcasa.org/wp-content/uploads/2012/06/OES-2004-CA-Campus-Blueprint.pdf>.

**Sexual Harassment**, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to Sexual Violence, sexual advances, requests for sexual favors, and indecent exposure, where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a student's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the University; *or*
- b. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the student, and is in fact considered by the student, as limiting the student's ability to participate in or benefit from the services, activities or opportunities offered by the University; *or*
- c. Submission to, or rejection of, the conduct by a University employee is explicitly or implicitly used as the basis for any decision affecting a term or condition of employment, or an employment decision or action; *or*
- d. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the University employee or third party, and is in fact considered by the University employee or third party, as intimidating, hostile or offensive.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**Sexual Violence** is a form of Sexual Harassment and means physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, Domestic Violence, Dating Violence, and Stalking (when based on gender or sex) perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or Disability.<sup>3</sup> Sexual Violence 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).

Men as well as women can be victims of these forms of Sexual Violence. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is

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<sup>3</sup> See definition of Consent below.

consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

**Sexual Assault** is a form of Sexual Violence and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.<sup>4</sup>

**Sexual Battery** is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.<sup>5</sup>

**Rape** is a form of Sexual Violence and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The accused's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.<sup>6</sup> (See complete definition of Consent below.)

**Acquaintance Rape** is a form of Sexual Violence committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. (See above for definition of Rape.)

**Consent** means an informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be **voluntary**, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will.
- Consent can be **withdrawn or revoked**. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must **always** be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The victim's request for the perpetrator

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<sup>4</sup> Cal. Penal Code § 240.

<sup>5</sup> Cal. Penal Code § 242.

<sup>6</sup> Cal. Penal Code §§ 261-263.

to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

- Consent cannot be given by a person who is **incapacitated**. For example, a person cannot give consent if s/he is unconscious or coming in and out of consciousness. A person is *incapacitated* if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an *intoxicated* person (as a result of using alcohol or other drugs) is *incapacitated* depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- Sexual intercourse with a minor is never consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

**Domestic Violence** is a form of Sexual Violence and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.<sup>7</sup>

**Dating Violence** is a form of Sexual Violence and is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the

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<sup>7</sup> Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

victim.<sup>8</sup> This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

**Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.<sup>9</sup>

**Confidentiality and Sexual Violence,**

**Dating Violence, Domestic Violence and Stalking**

The University encourages victims of Sexual Violence, Dating Violence, Domestic Violence, or Stalking (collectively Sexual Violence) to talk to someone about what happened – so they can get the support they need, and so the University can respond appropriately. Whether – and the extent to which – a University employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the employee's position and responsibilities at the University. The following information is intended to make victims aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn for help. The University strongly encourages victims to talk to someone identified in one or more of these groups.

Certain University employees, listed below, are required by law to maintain near or complete confidentiality; talking to them is sometimes called a “privileged communication.” University law enforcement employees may maintain the victim's identity as confidential, if requested by the victim, but will report the facts of the incident to the Title IX Coordinator, including the identity of the perpetrator. Most other University employees are required to report all details of a Sexual Violence incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator so the University can take immediate action to protect the victim, and take steps to correct and eliminate the cause of Sexual Violence.

University Police, the Title IX Coordinator, University-employed physicians, professional counselors, sexual assault and domestic violence counselors and advocates, and certain other University employees are required to explain to victims their rights and options with respect to confidentiality.

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<sup>8</sup> Cal. Penal Code § 13700(b).

<sup>9</sup> Cal. Penal Code § 646.9.

**Privileged and Confidential Communications**

*Physicians, Psychotherapists, Professional Counselors and Clergy*<sup>10</sup> – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus, and who provide medical or mental health treatment or counseling (including those who act in that role under their supervision) may not report any information about an incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without the victim's consent. A victim can seek assistance and support from physicians, psychotherapists, professional, licensed counselors, and clergy without triggering a University investigation that could reveal the victim's identity or the fact of the victim's disclosure. *However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health care practitioners should explain these limited exceptions to victims, if applicable.*

*Sexual Assault and Domestic Violence Counselors and Advocates*<sup>11</sup> – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual assault centers, victim advocacy offices, women's centers, and health centers (including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision) may talk to a victim without revealing any information about the victim and the incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without the victim's consent. A victim can seek assistance and support from these counselors and advocates without triggering a University investigation that could reveal his/her identity or that a victim disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to victims, if applicable.*

The University will be unable to conduct an investigation into a particular incident or pursue disciplinary action against a perpetrator if a victim chooses to (1) speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate; and (2) maintain complete confidentiality. Even so, these individuals will assist victims in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise victims regarding their right to file a Title IX complaint with the University and a separate complaint with local or University police. If a victim insists on confidentiality, such professionals, counselors and advocates will likely not be able to

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<sup>10</sup> Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

<sup>11</sup> Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*



assist the victim with: University academic support or accommodations; changes to University-based living or working schedules; or adjustments to course schedules. A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide victims with that assistance if requested by the victim. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

**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 he or she provides medical services for a **physical condition** to a patient/victim who he or she 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 a victim where the injury is the result of assaultive or abusive conduct (including Sexual Violence, Domestic Violence, and Dating Violence).<sup>12</sup> 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** professionals described above (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.<sup>13</sup> 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;<sup>14</sup> or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Violence incident.<sup>15</sup> If applicable, these professionals will explain this limited exception to victims.

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<sup>12</sup> Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including Sexual Battery, incest, Rape, spousal Rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. Cal. Penal Code §§ 11160-11163.2.

<sup>13</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>14</sup> Cal. Evid. Code § 1024.

<sup>15</sup> Cal. Evid. Code § 1035.4.

## Reporting to University or Local Police

If a victim reports to local or University Police about Sexual Violence, the police are required to notify victims that their names will become a matter of public record unless confidentiality is requested.<sup>16</sup> If a victim requests that his/her identity be kept confidential, his/her name will not become a matter of public record and the police will not report the victim's identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator victim names/identities or compromise their own criminal investigation. The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the type of incident in the annual crime statistics report known as the Annual Security Report, victim names/identities will not be revealed.

## Reporting to the Title IX Coordinator and Other University Employees

Most University employees have a duty to report Sexual Violence incidents when they are on notice of it. When a victim tells the Title IX Coordinator or another University employee about a Sexual Violence incident, the victim has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. ***In all cases, the University strongly encourages victims to report Sexual Violence directly to the campus Title IX Coordinator.***

As detailed above in the Privileged and Confidential Communications section of this policy, all University employees ***except*** physicians, licensed counselors, sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any Sexual Violence incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other University employees will be shared only with individuals responsible for handling the University's response to the incident. The University will protect the privacy of individuals involved in a Sexual Violence incident except as otherwise required by law or University policy. A Sexual Violence report may result in the gathering of extremely sensitive information about individuals in the campus community. While such

<sup>16</sup> Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual violence. In such cases, efforts will be made to redact the records, as appropriate, in order to protect the victim's identity and privacy and the privacy of other involved individuals. Except as detailed in the section on Privileged and Confidential Communications above, no University employee, including the Title IX Coordinator, should disclose the victim's identity to the police without the victim's consent or unless the victim has also reported the incident to the police.

If a victim requests of the Title IX Coordinator or another University employee that his/her identity remain completely confidential, the Title IX Coordinator will explain that the University cannot always honor that request and guarantee complete confidentiality. If a victim wishes to remain confidential or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, employees and third parties, including the victim. Under those circumstances, the Title IX Coordinator will determine whether the victim's request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about a victim's identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited.

The Title IX Coordinator will inform the victim of the initiation of an investigation prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response to the incident. The Title IX Coordinator will remain mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm, and work with the victim to create a safety plan. Retaliation against the victim, whether by students, employees or third parties, will not be tolerated. The University and Title IX Coordinator will also:

- Provide interim remedies requested by the victim, if they are reasonably available, regardless of whether the victim chooses to report Sexual Violence to campus or local police;
- Assist victims in accessing available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off campus;
- Provide security and support, which could include issuing a no-contact order, helping arrange a change of campus-based living or working arrangements or

course schedules (including for the perpetrator pending the outcome of the investigation) or adjustments for assignments, tests, or work duties; and

- Inform victims of their right to report a crime to University or local police – and provide victims with assistance if desired.

The University will not require a victim to participate in any investigation or disciplinary proceeding if the victim does not wish to participate.

The University will not generally notify parents or legal guardians of a Sexual Violence report unless the victim is under 18 years old or the victim provides the University with written permission to do so.<sup>17</sup>

Under California law, and pursuant to University policy, all University employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they are required to report the Sexual Violence incident to the police.<sup>18</sup> However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.<sup>19</sup>

Because the University is under a continuing legal obligation to address the issue of Sexual Violence campus-wide, Sexual Violence reports (including non-identifying reports) may also require the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported Sexual Violence occurred; increased education, training and prevention efforts, including to targeted population groups; climate assessments/victimization surveys; and/or revision of policies and practices.

The Office of the Ombuds, if available on a specific campus, provides confidential, neutral and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in Sexual Violence cases, California law mandates that the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed in the Privileged and Confidential Communications section of this policy above) report Sexual Violence incidents to the Title IX Coordinator.

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<sup>17</sup> If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

<sup>18</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>19</sup> Cal. Penal Code § 11167(d).

**NOTE:** If the University determines that the perpetrator poses a serious and immediate threat to the campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

**Notice of Nondiscrimination on the Basis of Gender or Sex**

Each CSU campus is required to post a ***Notice of Nondiscrimination on the Basis of Gender or Sex*** prominently on its website. The notice must also be posted at campus locations where other notices regarding campus policies are posted, as well as published in electronic and printed publications of general distribution that provide information to students and employees about the University's services and policies.

The notice must contain specific information, including contact information for the U.S. Department of Education, Office for Civil Rights, and the campus Title IX Coordinator, as well as any Deputy Title IX Coordinator(s). The notice should make clear what kind of conduct constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, that such conduct is prohibited Sex Discrimination, and what Consent means.

**Attachment A** is the form ***Notice of Nondiscrimination on the Basis of Gender or Sex*** campuses shall make available in the manner described above. Aside from inserting information regarding campus administrators and on and off campus/local resources where indicated on the form, campuses ***shall not*** make any other changes to the Notice. The notice must identify the campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on campus.<sup>20</sup>

**Notice of Rights and Options for Victims of Sexual Violence,  
Dating Violence, Domestic Violence and Stalking**

VAWA/Campus SaVE Act mandate that a ***written*** explanation of rights and options be provided to a student, employee or third party ***who complains to the University that he/she has been a victim*** of Sexual Violence, Domestic Violence, Dating Violence, or Stalking, whether the offense occurred on or off campus. It is the Title IX Coordinator's responsibility to ensure this written notice is provided to the complainant/victim(s).

**Attachment C** is the form written explanation of ***Rights and Options for Victims of Sexual Violence, Dating Violence, Domestic Violence, and Stalking*** campuses shall provide to complainants/victims. Aside from inserting information regarding campus

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<sup>20</sup> See also **Attachment B** discussed below, ***Myths and Facts about Sexual Violence***, which should be published alongside **Attachment A**, ***Notice of Nondiscrimination on the Basis of Gender or Sex***.

administrators or local resources where indicated on the form, campuses shall not make any other changes to the form. The form shall contain the following:

- Information regarding possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Violence, Rape, Acquaintance Rape, Domestic Violence, Dating Violence, Sexual Violence, or Stalking.<sup>21</sup>
- Information regarding procedures complainants should follow if Sexual Violence, Domestic Violence, Dating Violence, and Stalking has occurred, including *written* information about:
  - The importance of preserving evidence as may be necessary to prove Sexual Violence, Domestic Violence, Dating Violence, or Stalking, or to obtain a temporary restraining or other protective order;
  - The name and contact information of the University employee(s) to whom the alleged offense should be reported;
  - Reporting to law enforcement and campus authorities, including the victim's option to (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (c) decline to notify such authorities;
  - Where applicable, the rights of victims and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.
- Procedures for University disciplinary action for Sexual Violence, Domestic Violence, Dating Violence, and Stalking, including a clear statement that:
  - Such proceedings shall provide a prompt, fair, and impartial investigation and resolution;
  - Such proceedings shall be conducted by officials who receive annual training on issues related to these offenses, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

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<sup>21</sup> Provision of this information in no way limits already existing obligations to provide interim remedies as warranted.

- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- Both the accuser and the accused shall be simultaneously informed in writing of:
  - The outcome of any disciplinary proceedings that arises from an allegation of Sexual Violence, Domestic Violence, Dating Violence, or Stalking;
  - The University's procedures to appeal the results of the disciplinary proceeding;
  - Any change to the disciplinary results that occurs prior to the time such results become final; and
  - When disciplinary results become final.
- Information regarding how the University protects the confidentiality of victims in its annual Clery reports, including how publicly available recordkeeping is accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- Notification about counseling, medical/mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.
- Notification about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the incident to campus police or local law enforcement.

A statement that no officer, employee or agent of the University shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising his/her rights or responsibilities: *"CSU policy prohibits retaliation against a person who reports Sexual Violence, assists someone with a report of Sexual Violence, or participates in any manner in an investigation or resolution of a Sexual Violence complaint. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education."*

### **Complaint Procedures**

The CSU is required to adopt and publish complaint procedures that provide for prompt and equitable resolution of Sex Discrimination complaints, including Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.

***Complaints made by employees, former employees, and applicants for employment.***

Executive Order 1096, entitled “Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedure* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties” is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking made by employees and former employees against the CSU, another CSU employee, a CSU student or a third party. Employees covered by a collective bargaining agreement that provides a grievance procedure for raising allegations of Sex Discrimination or Sexual Harassment, including Sexual Violence, Domestic Violence, Dating Violence, and Stalking shall use the grievance procedure specified in their collective bargaining agreement.

***Complaints made by students.***<sup>22</sup> Executive Order 1097, entitled "Systemwide Policy Prohibiting Discrimination, Harassment, and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students" is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking made by CSU students against the CSU, a CSU employee, another CSU student, or a third party.

***Complaints made by student-employees.*** Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, including Sexual Harassment or Sexual Violence, made by student-employees where the alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking arose out of the person’s status as an employee and not his/her status as a student.

***Complaints made by third parties.*** Executive Order 1096 is the appropriate systemwide procedure for all complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking filed by third parties against the CSU, a CSU employee or a CSU student.

Regardless of whether an employee, a student or a third party ultimately files a complaint under the applicable complaint procedure, if a campus knows or has reason to know

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<sup>22</sup> For purposes of this Executive Order, the term "students" includes applicants for admission.



about possible Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, it must review the matter to determine if an investigation is warranted. When warranted, all such investigations must be prompt, thorough and impartial. The campus must then take appropriate steps to eliminate the Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, prevent its recurrence, and remedy its effects.

### **The Campus Title IX Coordinator**

Each campus is required to designate one Title IX Coordinator with primary responsibility to monitor and oversee overall campus-wide implementation of compliance with this Executive Order,<sup>23</sup> including coordination of training, education, communications, and administration of complaint procedures for faculty, staff, students and third parties in the areas of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. The Title IX Coordinator shall have authority across *all* campus-based divisions and programs (e.g., Human Resources, Academic Affairs, Student Affairs, Athletics, Housing, University Police, etc.) to oversee and ensure implementation of Title IX and this Executive Order in all areas, including the duties listed below. The Title IX Coordinator and any Deputy Title IX Coordinator(s) shall be Management Personnel Plan (MPP) employees. The designated coordinator should be someone without other institutional responsibilities that could create a conflict of interest (e.g., someone serving as University counsel or as a disciplinary decision maker).

Each campus may designate one or more Deputy Title IX Coordinators. The Title IX Coordinator may delegate training, education, communications, complaint procedure administration, investigations, and related Title IX duties to one or more Deputy Title IX Coordinators. However, all Deputy Title IX Coordinators must report to the Title IX Coordinator, and the Title IX Coordinator shall oversee and supervise all such delegated tasks.

The Title IX Coordinator and any Deputy Title IX Coordinators must have adequate training on what constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, as well as how to investigate such complaints. The Title IX Coordinator and any Deputy Title IX Coordinator(s) must also understand how campus and systemwide complaint procedures operate.

The Title IX Coordinator is responsible for ensuring the ***Notice of Non-Discrimination on the Basis of Gender or Sex (Attachment A)*** and the ***Myths and Facts About Sexual Violence (Attachment B)*** are widely published and disseminated as set forth above.

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<sup>23</sup> Again, this includes compliance with VAWA/Campus SaVE Act and other related sexual harassment/violence legislation referenced above.

Also, the notice must identify the campus Title IX Coordinator and any Deputy Title IX Coordinator(s), and their respective roles and responsibilities on campus. The Title IX Coordinator is also responsible for ensuring the written explanation of ***Rights and Options for Victims of Sexual Violence, Dating Violence, Domestic Violence, and Stalking (Attachment C)*** is provided to all Sexual Violence complainants/victims.

Title IX prohibits sex-based discrimination in ***all*** University programs and activities, including athletics. Title IX measures gender equity in athletics in three distinct areas: (1) participation; (2) scholarships; and (3) other benefits, including the provision of equipment and supplies, scheduling, travel, tutoring, coaching, locker rooms, facilities, medical and training facilities and services, publicity, recruiting, and support services. Because the Title IX requirements governing gender equity in athletics are complex and require coordination with NCAA and other rules, campuses may wish to consider designating a Deputy Title IX Coordinator to handle only gender equity in athletics issues under the supervision of the Title IX Coordinator, who remains ultimately responsible for campus-wide compliance.

In addition to coordinating training, education and preventive measures in the areas of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, the campus Title IX Coordinator's mandatory duties include:

- Ensuring Sexual Violence victims are notified of the right to file a criminal complaint;
- Providing the victim with reasonable interim remedies, if requested by the victim, regardless of whether the victim chooses to report the conduct to campus police or local law enforcement;
- Meeting with the victim on a regular basis to determine what steps (interim and ultimate) should be taken to protect him/her from any hostile or unsafe environment resulting from Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, and ensuring that such steps are taken;
- Working with appropriate campus divisions (e.g., University Police, Human Resources, Academic Affairs, and Student Affairs) to provide employees and students education programs and information, as required by Title IX, VAWA/Campus SaVE Act, and other applicable laws;
- Overseeing ***all*** complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, including related investigations, interim and/or ultimate remedies, resolution, and coordination with disciplinary decision-makers regarding any resulting discipline against the accused;

- Reviewing the outcome of employee and student disciplinary proceedings involving cases of alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking, to determine whether any additional remedies need to be provided to the victim;
- Creating a committee of employees, students and campus officials to identify strategies for ensuring that employees and students know how to identify and report Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and know what remedies are available to victims;
- Regularly assessing employee and student activities to ensure that no practices or behaviors violate policies against Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and using the results of such assessments to inform proactive remedial steps; and
- Identifying and addressing any systemic or other patterns of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and implementing corrective measures, as appropriate.

#### **Training, Education and Preventive Measures**

Each campus must implement preventive education programs to promote the awareness of CSU policies against Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and to make victim resources available, including comprehensive victim services. Information regarding these programs must be included in all (1) orientation programs for all **new** students<sup>24</sup> and employees; (2) training for students who serve as advisors in residence halls; and (3) training for student athletes and coaches. Ongoing prevention and awareness campaigns for **all** students and employees shall also be conducted. These programs shall include the following information:

- A statement that the CSU prohibits Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- What constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- The definition of Consent.
- A statement that Sexual Violence, Domestic Violence, Dating Violence, and Stalking violate University policy and criminal law.

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<sup>24</sup> This includes incoming transfer, graduate, online, and extended education students.

- Common facts and myths about the causes of Sexual Violence. (See **Attachment B, *Myths and Facts about Sexual Violence***, to be posted and published alongside **Attachment A, *Notice of Nondiscrimination on the Basis of Gender or Sex.***)
- Safe and positive options for bystander intervention that may be taken by an individual to prevent harm or intervene in risky situations involving these offenses.
- Methods of encouraging peer support for victims.
- A statement explaining that the University's primary concern is the safety of members of the campus community; that the use of alcohol or drugs never makes the victim at fault for Sexual Violence; that students or employees who are victims of Sexual Violence should not be deterred from reporting incidents of Sexual Violence out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies; and that except in extreme circumstances, students or employees who are victims of Sexual Violence shall not be subject to discipline.
- A statement that "CSU policy prohibits retaliation against a person who reports Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, assists someone with a report of such conduct, or participates in any manner in an investigation or resolution of a Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and/or Stalking complaint. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education."
- How to recognize warning signs of abusive behavior and how to avoid potential attacks.
- What someone should do if s/he has been the victim of, or witness to, Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- Individuals to whom incidents may be reported.
- The availability of, and contact information for, campus and community resources for victims of Sexual Violence.
- Campus and systemwide policies and disciplinary procedures available for addressing alleged violations and the consequences of violating these policies. Such proceedings shall:

- Provide a prompt, fair, and impartial investigation and resolution;
- Be conducted by officials who receive annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
- Both the accuser and the accused shall be simultaneously informed in writing of:
  - The outcome of any disciplinary proceedings that arises from an allegation of a Sexual Violence, Domestic Violence, Dating Violence, or Stalking;
  - The university's procedures for the accused to appeal the results of the disciplinary proceeding;
  - Any change to the disciplinary results that occurs prior to the time such results become final; and
  - When disciplinary results become final.
- Possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Violence, Domestic Violence, Dating Violence, or Stalking.
- How the University will protect the confidentiality of victims, including how publicly-available recordkeeping (e.g., campus Clery reports) will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- That persons who report being a victim of Sexual Violence, Domestic Violence, Dating Violence, or Stalking ***must receive written*** notification of:
  - Existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.
  - Options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

- Procedures complainants should follow if Sexual Violence, Domestic Violence, Dating Violence, or Stalking has occurred, as well as the fact that the following *written* information must be provided to victims:
  - The importance of preserving evidence as may be necessary to prove Sexual Violence, Domestic Violence, Dating Violence, or Stalking, or to obtain a temporary restraining or other protective order;
  - The name and contact information of the University employee(s) to whom the alleged offense should be reported;
  - Reporting to law enforcement and campus authorities, including the victim's option to (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (c) decline to notify such authorities;
  - Where applicable, the rights of victims and the university's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

The above information is also contained in the ***Notice of Nondiscrimination on the Basis of Gender or Sex (Attachment A)***. As previously stated, campuses shall post the notice on the campus website and include the notice in handbooks/policies applicable to employees, students, student athletes and members of student activity groups, along with ***Attachment B, Myths and Facts About Sexual Violence***.

All persons involved in implementing these procedures (e.g., the campus Title IX Coordinator and any Deputy Title IX Coordinators, investigators, and hearing officers presiding over student conduct hearings) shall have relevant annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. Such annual training shall include the CSU complaint processes, as well as the handling, investigation and analysis of complaints of Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking. The annual training shall also address applicable confidentiality issues, especially with respect to the campus's duty to weigh any victim's request for confidentiality against its duty to provide a safe and nondiscriminatory environment for all members of the campus community. For matters involving Sexual Violence, Domestic Violence, Dating Violence, and Stalking, the training shall include how to conduct an investigation and hearing process that protects the safety of the victim(s).

### **Remedies and Enforcement**

**Interim and Ultimate Remedies.** The University is required to provide the victim with reasonably available interim remedies, if requested by the victim, regardless of whether the victim chooses to report the conduct to campus police or local law enforcement. The victim should be notified of options for avoiding contact with the alleged perpetrator, including changes to the accused's or victim's employment, academic or living situations, as appropriate. For example, the campus may prohibit the parties from having any contact with each other pending the outcome of the campus investigation and any ensuing discipline proceeding. Campuses should minimize the burden on the alleged victim and should not, as a matter of course, remove alleged victims from work assignments, job sites, classes or housing while allowing the accused to maintain the status quo. Other possible interim (and ultimate) steps may include providing an escort between campus locations in extraordinary cases where safety may be endangered; changes to employee work areas, work assignments or reporting relationships; providing students with academic support services such as tutoring or allowing students to re-take a course or withdraw from a course without penalty and without adverse effect on their academic records; and reviewing any disciplinary actions proposed to be taken against the alleged victim to see if there is a causal connection between the alleged Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, or Stalking, and the misconduct that may have resulted in the victim facing potential discipline. The Title IX Coordinator shall assist and provide the victim with reasonable remedies as requested by the victim throughout the reporting, investigative, and disciplinary processes, and thereafter.

**Victim Rights and Resources.** Victims also should be made aware of their rights under Title IX, VAWA/Campus SaVE Act and related legislation, and any available resources, such as counseling, health, and mental health services, as well as the right to file a complaint with University and/or local law enforcement. Campuses must also ensure that victims know how to report any subsequent problems, and the campus Title IX Coordinator or other appropriate campus representatives should follow-up with victims to determine whether any retaliation or new incidents of Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, or Stalking have occurred.

When addressing Sexual Violence, campuses should consider both on and off campus resources, including local rape crisis centers, municipal law enforcement agencies, district attorneys' offices, and forensic medical examination sites. This allows campuses to draw upon the expertise and resources of a broader group of professionals, thereby marshalling and maximizing time-sensitive services and resources.

Both the victim and the accused shall be *simultaneously* informed in writing of the outcome of any University disciplinary proceedings that arise from an allegation of Sexual Violence, Domestic Violence, Dating Violence, or Stalking.

**Written Explanation of Victim Rights and Options.** VAWA/the Campus SaVE Act mandate that a *written* explanation of rights and options must be provided to a student, employee or third party *who complains to the University that he/she has been a victim* of Sexual Violence, Domestic Violence, Dating Violence, or Stalking, whether the offense occurred on or off campus. It is the Title IX Coordinator's responsibility to ensure this written notice is provided to the complainant/victim(s). (See Attachment C.)

### **Coordination with Sexual Violence Criminal Investigations and Proceedings**

A pending (campus or local) police investigation does not relieve a campus of its responsibility to resolve Sexual Violence complaints: a campus may not wait until the conclusion of a police investigation to commence its own investigation, and must take immediate steps to protect the complainant/victim(s). Although it may be necessary to temporarily delay the fact-finding portion of an investigation while the police are gathering evidence, once notified that the police have completed the fact gathering portion of their investigation, the campus must promptly resume and complete its own investigation. Subject to applicable law, the Title IX Coordinator should normally be given access to campus law enforcement investigation notes and findings as necessary for the investigation, so long as it does not compromise the criminal investigation.

All law enforcement agencies are required to notify victims that their name will become a matter of public record unless there is a request for confidentiality.<sup>25</sup> If a victim requests his/her identity be kept confidential, the victim's name will not become a matter of public record and will not be reported to anyone else at the University, including the Title IX Coordinator. University police will, however, report the incident itself to the Title IX Coordinator, being sure not to reveal to the Title IX Coordinator the victim's identity or compromise its investigation. Unless the victim has already notified and/or consented to the disclosure of his/her identity to the Title IX Coordinator, campus law enforcement shall redact all victim identity information before providing the Title IX Coordinator access to its investigation notes and findings.

Campus police should receive copies of, and training on, CSU Sexual Violence complaint procedures and any other procedures used for investigating reports of Sexual Violence. Campus police shall request the victim's consent to report incidents of Sexual Violence to the campus Title IX Coordinator; if the victim refuses to give consent, the campus police shall at a minimum encourage him/her to file a complaint with the Title IX Coordinator (in addition to filing a criminal complaint). Campus police shall also report the incident

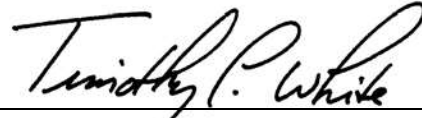
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<sup>25</sup> Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).



itself to the Title IX Coordinator while maintaining the confidentiality of the victim's identity.

If a campus has an MOU with local law enforcement, the MOU must allow the campus to meet its Title IX and VAWA/Campus SaVE Act obligations to resolve complaints promptly and equitably.

A handwritten signature in black ink that reads "Timothy P. White". The signature is written in a cursive style with a horizontal line underneath it.

Timothy P. White, Chancellor

Dated: June 3, 2014

## NOTICE OF NON-DISCRIMINATION ON THE BASIS OF SEX

The California State University does not discriminate on the basis of sex, gender, or sexual orientation in its education programs or activities. Title IX of the Education Amendments of 1972, and certain other federal and state laws,<sup>1</sup> prohibit discrimination on the basis of sex, gender, or sexual orientation in employment, as well as all education programs and activities operated by the University (both on and off campus), and protect all people regardless of their gender or gender identity from sex discrimination, which includes sexual harassment and sexual violence.

**Sex Discrimination** means an adverse action taken against an individual because of gender or sex (including sexual harassment, sexual violence, domestic violence, dating violence, and stalking) as prohibited by Title IX; Title IV; VAWA/Campus SaVE Act; California Education Code § 66250 *et seq.*; and/or California Government Code § 11135. *See also* Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act (Cal. Govt. Code § 12940 *et seq.*), and other applicable laws. Both men and women can be victims of Sex Discrimination.

**Sexual Harassment**, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to sexual violence, sexual advances, requests for sexual favors, and indecent exposure, where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a student's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the University; *or*
- b. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the student, and is in fact considered by the student, as limiting the student's ability to participate in or benefit from the services, activities or opportunities offered by the University; *or*
- c. Submission to, or rejection of, the conduct by a University employee is explicitly or implicitly used as the basis for any decision affecting a term or condition of employment, or an employment decision or action; *or*

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<sup>1</sup> Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106 ("Title IX"); the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f)) (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act); Title VII of the Civil Rights Act of 1964; the California Fair Employment and Housing Act (Cal. Govt. Code §12940 *et seq.*); the California Equity in Higher Education Act (Cal. Educ. Code §66250 *et seq.*); California Education Code §§ 67385.7, 67390-91; the Governor's *California Campus Blueprint to Address Sexual Assault*; and California Government Code §11135; among other applicable laws.

- d. Such conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the University employee or third party, and is in fact considered by the University employee or third party, as intimidating, hostile or offensive.

Sexual Harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

**Sexual Violence** is a form of Sexual Harassment and means physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, domestic violence, dating violence, and stalking (when based on gender or sex), perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or disability.<sup>2</sup> Sexual Violence 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).

Men as well as women can be victims of these forms of Sexual Violence. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

**Sexual Assault** is a form of Sexual Violence and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.<sup>3</sup>

**Sexual Battery** is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.<sup>4</sup>

**Rape** is a form of Sexual Violence, and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when the person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The accused's relationship to the person (such as family member,

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<sup>2</sup> See definition of Consent below.

<sup>3</sup> Cal. Penal Code § 240.

<sup>4</sup> Cal. Penal Code § 242.

spouse, friend, acquaintance or stranger) is irrelevant.<sup>5</sup> (See complete definition of Consent below.)

**Acquaintance Rape** is a form of Sexual Violence committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. (See above for definition of Rape.)

**Consent** means an informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be **voluntary**, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will.
- Consent can be **withdrawn or revoked**. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must **always** be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The victim's request for the perpetrator to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.
- Consent cannot be given by a person who is **incapacitated**. For example, a person cannot give consent if s/he is unconscious or coming in and out of consciousness. A person is **incapacitated** if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an **intoxicated** person (as a result of using alcohol or other drugs) is **incapacitated** depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- Sexual intercourse with a minor is never consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

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<sup>5</sup> Cal. Penal Code §§ 261-263.

**Domestic Violence** is a form of Sexual Violence and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.<sup>6</sup>

**Dating Violence** is a form of Sexual Violence, and is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.<sup>7</sup> This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

**Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.<sup>8</sup>

### Who to Contact If You Have Complaints, Questions or Concerns

***Call 9-1-1 if you are in the midst of any kind of emergency, immediate harm or threat of harm.***

The University has designated a Title IX Coordinator to monitor and oversee overall compliance with laws and policies related to nondiscrimination based on sex. The campus Title IX Coordinator is available to explain and discuss: Your right to file a criminal complaint (in cases of Sexual Violence); the University's relevant complaint process, and your right to receive assistance with that process, including the investigation process; how confidentiality is handled; available resources, both on and off campus; and other related matters.

If you have experienced Sexual Violence you are encouraged to ***seek immediate assistance from police and healthcare providers*** for your physical safety, emotional support and medical care. The campus Title IX Coordinator is available to assist you in notifying University police, if you wish. University police can escort you to a safe place and transport you to a hospital or a sexual assault response center for a medical examination, if needed. University police can also provide access to a confidential sexual assault advocate. If you would prefer not to notify University or local police, you are strongly encouraged to seek assistance from the campus Title IX Coordinator who can provide you with information on your options, rights and remedies.

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<sup>6</sup> Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

<sup>7</sup> Cal. Penal Code § 13700(b).

<sup>8</sup> Cal. Penal Code § 646.9.

**[Campus name] Title IX Coordinator and Deputy Coordinator(s) [If there is one or more Deputy Coordinator you must list each one, along with respective roles and responsibilities for each]:**

- Name
- Address (including email address)
- Phone
- Office hours

**University Police**

- Name
- Address (including email address)
- Phone

**Local Police**

- Name
- Address (including email address)
- Phone

**U.S. Department of Education, Office for Civil Rights:**

- (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov)
- If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**The White House Task Force to Protect Students from Sexual Assault**

- <https://www.notalone.gov/>

**Medical & Counseling Services**

**Campus Services**

[Insert campus health/counseling/women's center(s) name and contact info]

[ADD WEB LINK(S)]

**Off-Campus Services**

[Insert health/counseling/women's centers(s), community rape crisis centers name and contact info]

[ADD WEB LINK(S)]

## Your Reporting Options

*The University's primary concern is the safety of its campus community members.* The use of alcohol or drugs never makes the victim at fault for Sexual Violence. Moreover, victims should not be deterred from reporting incidents of Sexual Violence out of a concern that they might be disciplined for related violations of drug, alcohol or other University policies. Except in extreme circumstances, victims of Sexual Violence shall not be subject to discipline for related violations of University policy.

**Criminal:** Reporting to University police and/or local police is an option at any time following a Sexual Violence incident. If you choose not to report to the police immediately, you can still make the report at a later time. However, with the passage of time, the ability to gather evidence to assist with criminal prosecution may be limited. Depending on the circumstances, the police may be able to obtain a criminal restraining order on your behalf.

**Administrative:** You may report to the campus Title IX Coordinator any incident of Sex Discrimination, Sexual Harassment, or Sexual Violence (e.g., Rape, Acquaintance Rape, Dating Violence, Domestic Violence or Stalking). Contact information for the Title IX Coordinator is listed above. The Title IX Coordinator will provide you with written and verbal information regarding applicable University complaint procedures for investigating and addressing the incident.

The campus Title IX Coordinator will also discuss with you any reasonable interim remedies the University may offer prior to conclusion of an investigation or potential disciplinary action to reduce or eliminate negative impact on you and provide you with available assistance. Examples include: Adjustment to University work assignments, course schedules or supervisory reporting relationship; requiring the accused to move from University-owned or affiliated housing; immediately prohibiting the accused from coming to the University; or prohibiting the accused from contacting you. These options may be available to you whether or not you choose to report the Sexual Violence to campus police or law enforcement. The Title IX Coordinator remains available to assist you and provide you with reasonable remedies requested by you throughout the reporting, investigative, and disciplinary processes, and thereafter.

If it is determined that University policy<sup>9</sup> prohibiting Sexual Violence was violated, the perpetrator will be subject to discipline, up to and including dismissal from University employment or expulsion from the University. You are entitled to be accompanied to any related

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<sup>9</sup> Executive Order 1096 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students).

meeting or proceeding by an advisor of your choice. However, if you do not wish to participate in an investigation or hearing process, you have the right to decline to do so.

**Health/Counseling/Clergy:** You may choose to seek advice and assistance from physicians, psychotherapists, professional counselors, clergy, sexual assault and domestic violence counselors and advocates, including individuals who work or volunteer for them.

**Civil Lawsuit:** You may choose to file a civil lawsuit against the perpetrator, whether or not criminal charges have been filed. A civil lawsuit provides you the opportunity to recover actual damages, which may include compensation for medical expenses, lost wages, pain, suffering and emotional distress.

You may also choose to obtain a protective or restraining order (such as a domestic violence restraining order or a civil harassment restraining order). Restraining orders must be obtained from a court in the jurisdiction where the incident occurred. Restraining orders can protect victims who have experienced or are reasonably in fear of Sexual Violence, including Domestic Violence, Dating Violence and Stalking. Your campus Title IX Coordinator can offer assistance with obtaining a protective or restraining order.

**Non-reporting:** You are strongly encouraged to report any incident of Sexual Violence to the police and/or campus Title IX Coordinator so that steps may be taken to protect you and the rest of the campus community. However, non-reporting is also an option.

### **How to File a Complaint under University Complaint Procedures**

Federal and state laws require that the CSU adopt and publish complaint procedures that provide for prompt and equitable resolution of Sex Discrimination complaints, including Sexual Harassment and Sexual Violence.

CSU Executive Order 1096 sets forth the university's systemwide policy and complaint procedure for Discrimination, Harassment and Retaliation complaints ***made third parties and employees*** not eligible to file a complaint or grievance under a collective bargaining agreement or whose collective bargaining agreement incorporates the CSU systemwide complaint procedure.

CSU Executive Order 1097 is the systemwide policy and complaint procedure for all complaints of Discrimination, Harassment or Retaliation ***made by students*** against the CSU, a CSU employee, other CSU students or a third party.

The campus Title IX Coordinator is available to provide you with written and verbal information regarding the applicable University complaint procedure for investigating and addressing your reported incident. Contact information for the Title IX Coordinator is listed above.



## Sexual Violence and Confidentiality—Know Your Options

We encourage victims of Sexual Violence, Dating Violence, Domestic Violence, and Stalking (collectively Sexual Violence) to talk to someone about what happened – so you can get the support you need, and so the University can respond appropriately. Whether – and the extent to which – a University employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the employee’s position and responsibilities at the University. This information is intended to make you aware of the various reporting and confidential disclosure options available to you – so you can make informed choices about where to turn for help. The University encourages victims to talk to someone identified in one or more of these groups.

As explained below, some employees are required by law to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Other employees may talk to a victim in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Finally, some employees are required to report all details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator. A report to these employees constitutes a report to the University, and generally creates a legal obligation for the University to investigate the incident and take appropriate steps to address the situation.

### Privileged and Confidential Communications

*Physicians, Psychotherapists, Professional Counselors and Clergy*<sup>10</sup> – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus, and who provide medical or mental health treatment or counseling (including those who act in that role under their supervision) may **not** report **any** information about an incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from physicians, psychotherapists, professional, licensed counselors, and clergy without triggering a University investigation that could reveal your identity or the fact of your disclosure. *However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health care practitioners should explain these limited exceptions to , if applicable.*

Following is the contact information for professional counselors and physicians (if any) on campus:

**[INSERT LIST OF NAMES AND CONTACT INFO]**

*Sexual Assault and Domestic Violence Counselors and Advocates*<sup>11</sup> – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual

<sup>10</sup> Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

<sup>11</sup> Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

assault centers, victim advocacy offices, women's centers, and health centers (including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision) may talk to you without revealing any information about you or the incident of sexual violence to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from these counselors and advocates without triggering a University investigation that could reveal your identity or that you disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to you, if applicable.* Following is contact information for sexual assault and domestic violence counselors and advocates:

**[INSERT LIST OF NAMES AND CONTACT INFO]**

If you speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate, you must understand that the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the perpetrator, if you choose to maintain confidentiality.

Even so, these individuals will still assist you in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services. They may not, however, be able to assist you with University academic support or accommodations, or changes to University-based living or working schedules, or assist with adjustments to course schedules. Only the University and the Title IX Coordinator can assist with those matters (see below). A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide you with that assistance if you wish. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

**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 he or she provides medical services for a ***physical condition*** to a patient/victim who he or she 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 a victim where the injury is the result of assaultive or abusive conduct (including Sexual Violence,

Domestic Violence, and Dating Violence).<sup>12</sup> This exception does ***not*** apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to you, if applicable.

Additionally, under California law, ***all*** professionals described above (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.<sup>13</sup> These professionals will explain this limited exception to you, 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;<sup>14</sup> or (2) the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Violence incident.<sup>15</sup> If applicable, these professionals will explain this limited exception to you.

### **Reporting to University or Local Police**

If you report to local or University Police about Sexual Violence, the police are required to notify you that your name will become a matter of public record **unless confidentiality is requested.**<sup>16</sup> If you request that your identity be kept confidential, your name will not become a matter of public record and the police will not report your identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator your name/identity, or compromise their own criminal investigation.

The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the **type** of incident in the annual crime statistics report known as the Annual Security Report, your name/identity will not be revealed.

### **Reporting to the Title IX Coordinator and Other University Employees**

Most University employees have a duty to report incidents of Sexual Violence when they are on notice of it. When you tell the Title IX Coordinator or another University employee about a Sexual Violence incident, you have the right to expect the University to take immediate and

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<sup>12</sup> Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including Sexual Battery, incest, Rape, spousal Rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. Cal. Penal Code §§ 11160-11163.2.

<sup>13</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>14</sup> Cal. Evid. Code § 1024.

<sup>15</sup> Cal. Evid. Code § 1035.4.

<sup>16</sup> Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

appropriate steps to investigate what happened and to resolve the matter promptly and equitably. ***In all cases, the University strongly encourages victims to report Sexual Violence directly to the Title IX Coordinator.***

As detailed above in the Privileged and Confidential Communications section, all University employees *except* physicians, licensed counselors, and sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any Sexual Violence incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other University employees will be shared only with individuals responsible for handling the University's response to the incident. The University will protect the privacy of individuals involved in a Sexual Violence incident except as otherwise required by law or University policy. A Sexual Violence report may result in the gathering of extremely sensitive information about individuals in the campus community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of Sexual Violence. In such cases, efforts will be made to redact the records, as appropriate, in order to protect the victim's identity and privacy and the privacy of other involved individuals.

The Title IX Coordinator can be reached at:

**[INSERT CONTACT INFO FOR TITLE IX COORDINATOR]**

If you request of the Title IX Coordinator or another University employee that your identity remain completely confidential, the Title IX Coordinator will explain that the University cannot always honor that request and guarantee complete confidentiality. If you wish to remain confidential or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, employees and third parties, including you. Under those circumstances, the Title IX Coordinator will determine whether your request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about your identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited.

The Title IX Coordinator will inform you prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response. The Title IX Coordinator will remain mindful of your well-being, and will take ongoing steps to protect you from retaliation or harm, and work with you to create a safety plan. Retaliation against you, whether by students, or employees, will not be tolerated. The University and Title IX Coordinator will also:

- Provide interim remedies requested by you, if they are reasonably available, regardless of whether you choose to report Sexual Violence to campus or local police;
- Assist you in accessing other available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off campus;
- Provide other security and support, which could include issuing a no-contact order, helping arrange a change of campus-based living or working arrangements or course schedules (including for the perpetrator pending the outcome of the investigation) or adjustments for assignments, tests, or work duties; and
- Inform you of your right to report a crime to University or local police – and provide you with assistance if you wish to do so.

The University will not require you to participate in any investigation or disciplinary proceeding if you do not wish to participate.

The University will not generally notify parents or legal guardians of your report of Sexual Violence unless you are under the age of 18 or you provide the University with written permission to do so.<sup>17</sup>

Under California law, and pursuant to University policy, all University employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they are required to report the Sexual Violence incident to the police.<sup>18</sup> However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.<sup>19</sup>

Because the University is under a continuing legal obligation to address the issue of Sexual Violence campus-wide, reports of Sexual Violence (including non-identifying reports) may also prompt the University to consider broader remedial action – such as increased monitoring,

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<sup>17</sup> If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

<sup>18</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>19</sup> Cal. Penal Code § 11167(d).

supervision or security at locations where the reported incident occurred; increased education, training and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revision of policies and practices.

The Office of the Ombuds, if available on your specific campus, provides confidential, neutral and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in Sexual Violence cases, California law mandates that the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed in the Privileged and Confidential Communications section of this policy above) report Sexual Violence incidents to the Title IX Coordinator.

**NOTE:** If the University determines that the perpetrator poses a serious and immediate threat to the campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

### **Campus, Civil, and Criminal Consequences of Committing Acts of Sex Discrimination, Sexual Harassment, and Sexual Violence**

Individuals alleged to have committed Sexual Violence may face criminal prosecution by law enforcement and may incur penalties as a result of civil litigation. In addition, employees and students may face discipline/sanctions at the University. Employees may face sanctions up to and including dismissal from employment, per established CSU policies and provisions of applicable collective bargaining agreements. Students and employees charged with Sex Discrimination, Sexual Harassment or Sexual Violence will also be subject to discipline, pursuant University policies, and will be subject to appropriate sanctions.<sup>20</sup>

In addition, during any investigation, the University may implement interim measures in order to maintain a safe and non-discriminatory educational and working environment. Such measures may include immediate interim suspension of the accused from the University, a required move from University-owned or affiliated housing, an adjustment to work or course schedule, or prohibition from contact with parties involved in the alleged incident.

### **Additional Resources**

- U.S. Department of Education, regional office  
Office for Civil Rights

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<sup>20</sup> Executive Order 1096 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students).

50 Beale Street, Suite 7200  
San Francisco, CA 94105  
(415) 486-5555  
TDD (877) 521-2172

- U.S. Department of Education, national office  
Office for Civil Rights  
(800) 872-5327
- Know Your Rights about Title IX  
<http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.html>
- California Coalition Against Sexual Assault  
1215 K. Street, Suite 1850  
Sacramento, CA 95814  
(916) 446-2520  
<http://calcasa.org/>
- [Domestic and Family Violence](#)
- [National Institute of Justice: Intimate Partner Violence](#)
- [National Domestic Violence Hotline: 1-800-799-SAFE \(7233\)](#)
- [Office of Violence against Women](#)
- [Center for Disease Control and Prevention: Intimate Partner Violence](#)
- [Defending Childhood](#)
- **Local Community Resource Information:**
  - Name of Agency
  - Address
  - Phone
  - Office hours
  - Website

### Training, Education and Preventive Measures

Each campus must implement preventive education programs to promote the awareness of CSU policies against Sex Discrimination, Sexual Harassment and Sexual Violence (including Domestic Violence, Dating Violence, and Stalking) and to make victim resources available, including comprehensive victim services. Information regarding these programs must be included in (1) orientation programs for all **new** students<sup>21</sup> and employees; (2) training for students who serve as advisors in residence halls; and (3) training for student athletes and coaches. Ongoing prevention and awareness campaigns for **all** students and employees shall also be conducted. These programs shall include the following information:

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<sup>21</sup> This includes incoming transfer, graduate, online, and extended education students.

- A statement that the CSU prohibits Sex Discrimination, including Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- What constitutes Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- The definition of Consent.
- A statement that Sexual Violence (including Domestic Violence, Dating Violence, and Stalking) violate University policy and criminal law.
- Common facts and myths about the causes of Sexual Violence.
- Safe and positive options for bystander intervention that may be taken by an individual to prevent harm or intervene in risky situations involving these offenses.
- Methods of encouraging peer support for victims.
- A statement explaining that the University's primary concern is the safety of members of the campus community; that the use of alcohol or drugs never makes the victim at fault for Sexual Violence; that students or employees who are victims should not be deterred from reporting incidents out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies; and that except in extreme circumstances, students or employees who are victims shall not be subject to discipline.
- How to recognize warning signs of abusive behavior and how to avoid potential attacks.
- What someone should do if s/he has been the victim of, or witness to, Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking.
- Individuals to whom incidents may be reported.
- The availability of, and contact information for, campus and community resources for Sexual Violence victims.
- Campus and systemwide policies and disciplinary procedures available for addressing alleged violations and the consequences of violating these policies. Such proceedings shall:
  - Provide a prompt, fair, and impartial investigation and resolution;
  - Be conducted by officials who receive annual training on issues related to Sex Discrimination, Sexual Harassment, Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.
- The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice.
- Both the accuser and the accused shall be simultaneously informed in writing of:



- The outcome of any disciplinary proceedings that arises from an allegation of Sexual Violence, Domestic Violence, Dating Violence, and Stalking;
- The University's procedures for the accused to appeal the results of the disciplinary proceeding;
- Any change to the disciplinary results that occurs prior to the time such results become final; and
- When disciplinary results become final.
- Possible sanctions or protective measures the University may impose following the final determination of a University disciplinary procedure regarding Sexual Violence, Domestic Violence, Dating Violence, or Stalking.
- How the University will protect the confidentiality of victims, including how publicly-available recordkeeping (e.g., campus Clery reports) will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.
- That persons who report being a victim of Sexual Violence, Domestic Violence, Dating Violence, or Stalking must receive *written* notification about:
  - Existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims, both on campus and in the community.
  - Options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- Procedures complainants should follow if Sexual Violence, Domestic Violence, Dating Violence, and Stalking has occurred, as well as the fact that the following *written* information must be provided to victims:
  - The importance of preserving evidence as may be necessary to prove criminal Domestic Violence, Dating Violence, Sexual Assault, or Stalking, or to obtain a temporary restraining or other protective order;
  - The name and contact information of the University employee(s) to whom the alleged offense should be reported;
  - Reporting to law enforcement and campus authorities, including the victim's option to (a) notify law enforcement authorities, including on-campus and local police; (b) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (c) decline to notify such authorities;

- Where applicable, the rights of victims and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

## Myths and Facts about Sexual Violence

### What You Can Do To Help Stop Sexual Violence

- Sexual contact requires mutual consent. An incapacitated person (for example, a person who is intoxicated by drugs or alcohol) may be incapable of giving consent. Whether an *intoxicated* person (as a result of using alcohol or other drugs) is *incapacitated* depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments.
- No one deserves to be sexually assaulted, stalked or victimized in any way.
- Don't engage in any behavior that may be considered Sexual Violence, Domestic Violence, Dating Violence, Stalking or any other form of violence.
- Never use force, coercion, threats, alcohol or other drugs to engage in sexual activity.
- Take responsibility for your actions.
- Avoid alcohol and other drugs.
- Remember "no" means "No!" and "stop" means "Stop!"
- Report incidents of violence (including coercion) to law enforcement and campus authorities.
- Discuss Sexual Violence, Domestic Violence, Dating Violence, and Stalking with friends—speak out against violence and clear up misconceptions.
- Don't mistake submission or silence for consent.

### What You Can Do To Help Minimize Your Risk of Becoming a Victim

- Be aware. Does your partner: Threaten to hurt you or your children? Say it's your fault if he or she hits you and then promises it won't happen again (but it does)? Put you down in public? Force you to have sex when you don't want to? Follow you? Send you unwanted messages and gifts?
- Be assertive. Speak up.
- Stay sober and watch out for dates and/or anyone who tries to get you drunk or high.
- Clearly communicate limits to partners, friends, and acquaintances.
- Never leave a party with someone you don't know well and trust.
- Trust your feelings; if it feels wrong, it probably is.

- Learn all you can and talk with your friends. Help them stay safe.
- Report incidents of violence to law enforcement and campus authorities.

### What You Can Do If You Are a Victim, in General

- Go to a safe place as soon as possible.
- Preserve evidence.
- Report the incident to University Police or local law enforcement.
- Report the incident to your campus Title IX Coordinator.
- Call a Domestic Violence, Sexual Violence or Stalking hotline.
- Call a friend or family member for help.
- Know that you are not at fault. You did not cause the abuse to occur and you are not responsible for someone else's violent behavior.

### Common Myths and Facts about the Causes of Sexual Violence

- 1) **Myth**: Victims provoke sexual assaults when they dress provocatively or act in a promiscuous manner.

**Fact**: Rape and Sexual Violence are crimes of violence and control that stem from a person's determination to exercise power over another. Neither provocative dress nor promiscuous behaviors are invitations for unwanted sexual activity. Forcing someone to engage in non-consensual sexual activity is sexual assault, regardless of the way that person dresses or acts.

- 2) **Myth**: If a person goes to someone's room or house or goes to a bar, s/he assumes the risk of sexual assault. If something happens later, s/he can't claim that s/he was raped or sexually assaulted because s/he should have known not to go to those places.

**Fact**: This "assumption of risk" wrongfully places the responsibility of the offender's action with the victim. Even if a person went voluntarily to someone's home or room and consented to engage in some sexual activity, it does not serve as blanket consent for **all** sexual activity. When in doubt if the person is comfortable with an elevated level of sexual activity, stop and ask. When someone says "no" or "stop," that means "STOP!" Sexual activity forced upon another without valid consent is sexual assault.

- 3) **Myth**: It is not Sexual Violence if it happens after drinking or taking drugs.

**Fact:** Being under the influence of alcohol or drugs is not an invitation for sexual activity. A person under the influence does not cause others to assault her/him; others choose to take advantage of the situation and sexually assault her/him because s/he is in a vulnerable position. **A person who is incapacitated due to the influence of alcohol or drugs is not able to consent to sexual activity.**

- 4) **Myth:** Most sexual assaults are committed by strangers. It's not rape if the people involved know each other.

**Fact:** Most sexual assaults and rape are committed by someone the victim knows. A study of sexual victimization of college women showed that about 90% of victims knew the person who sexually victimized them. Most often, a boyfriend, ex-boyfriend, classmate, friend, acquaintance or co-worker sexually victimized the person. It is important to remember that Sexual Violence can occur in both heterosexual and same-gender relationships.

- 5) **Myth:** Rape can be avoided if women avoid dark alleys or other "dangerous" places where strangers might be hiding or lurking.

**Fact:** Rape and Sexual Violence can occur at any time, in many places, to anyone.

- 6) **Myth:** A person who has really been sexually assaulted will be hysterical.

**Fact:** Victims of Sexual Violence exhibit a spectrum of responses to the assault which can include: calm, hysteria, withdrawal, anxiety, anger, apathy, denial and shock. Being sexually assaulted is a very traumatic experience. Reaction to the assault and the length of time needed to process through the experience vary with each person. There is no "right way" to react to being sexually assaulted. Assumptions about the way a victim "should act" may be detrimental to the victim because each victim copes in different ways.

- 7) **Myth:** All Sexual Violence victims will report the crime immediately to the police. If they do not report it or delay in reporting it, then they must have changed their minds after it happened, wanted revenge or didn't want to look like they were sexually active.

**Fact:** There are many reasons why a Sexual Violence victim may not report the assault to the police or campus officials. It is not easy to talk about being sexually assaulted and can feel very shameful. The experience of retelling what happened may cause the person to relive the trauma. Another reason for delaying a report or not making a report is the fear of retaliation by the offender. There is also the fear of being blamed, not being believed and being required to go through judicial proceedings. Just because a person does not report the Sexual Violence does not mean it did not happen.

- 8) **Myth**: Only young, pretty women are assaulted.

**Fact**: The belief that only young, pretty women are sexually assaulted stems from the myth that Sexual Violence is based on sex and physical attraction. Sexual Violence is a crime of power and control. Offenders often choose people whom they perceive as most vulnerable to attack or over whom they believe they can assert power. Men and boys are also sexually assaulted, as well as persons with disabilities. Assumptions about the “typical” victim might lead others not to report the assault because they do not fit the stereotypical victim.

- 9) **Myth**: It’s only rape if the victim puts up a fight and resists.

**Fact**: Many states do not require the victim to resist in order to charge the offender with rape or sexual assault. Those who do not resist may feel if they do so, they will anger their attacker, resulting in more severe injury. Many assault experts say that victims should trust their instincts and intuition and do what they believe will most likely keep them alive. Not fighting or resisting an attack does not equal consent.

- 10) **Myth**: Someone can only be sexually assaulted if a weapon was involved.

**Fact**: In many cases of sexual assault, a weapon is not involved. The offender often uses physical strength, physical violence, intimidation, threats or a combination of these tactics to overpower the victim. Although the presence of a weapon while committing the assault may result in a higher penalty or criminal charge, the absence of a weapon does not mean that the offender cannot be held criminally responsible for a sexual assault.

### Sexual Violence - Risk Reduction Tips

**Sexual Violence** is a form of Sexual Harassment and means physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, domestic violence, dating violence and stalking (when based on gender or sex), perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or disability.<sup>1</sup> Sexual Violence 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).

Men as well as women can be victims of these forms of Sexual Violence. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is consensual when the

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<sup>1</sup> See definition of Consent below.

victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

***“What can I do in order to help reduce my risk of being a victim of Sexual Violence?”***

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame and with recognition that only those who commit Sexual Violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.
- ***In an emergency, call 9-1-1***

***“What can I do in order to help reduce my risk of being an initiator of Sexual Violence?”***

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk of being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent, about someone's sexual availability, about whether they are attracted to you, about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.

- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves. **Incapacitation means a person is unable to give valid consent.**
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### Rape, Acquaintance Rape, Sexual Assault, Sexual Battery and Consent

**Rape** is a form of Sexual Violence, and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The accused's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.<sup>2</sup> (See complete definition of Consent below.)

**Acquaintance Rape** is a form of Sexual Violence committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. See above for definition of Rape.

**Sexual Assault** is a form of Sexual Violence and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.<sup>3</sup>

**Sexual Battery** is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.<sup>4</sup>

**Consent** means an informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be **voluntary**, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will.

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<sup>2</sup> Cal. Penal Code §§ 261-263.

<sup>3</sup> Cal. Penal Code § 240.

<sup>4</sup> Cal. Penal Code § 242.



- Consent can be ***withdrawn or revoked***. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must ***always*** be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The victim's request for the perpetrator to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.
- Consent cannot be given by a person who is ***incapacitated***. For example, a person cannot give consent if s/he is unconscious or coming in and out of consciousness. A person is ***incapacitated*** if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an ***intoxicated*** person (as a result of using alcohol or other drugs) is ***incapacitated*** depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- Sexual intercourse with a minor is never consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

In order for a sexual act to be considered rape or sexual assault, the act must be non-consensual.

Crimes of a sexual nature may be reported to campus or local law enforcement in addition to being reported administratively on campus to the Title IX Coordinator. **Both men and women can be victims of rape or sexual assault.**

### What is Dating Violence or Domestic Violence?

**Domestic Violence** is a form of Sexual Violence, and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some

permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.<sup>5</sup>

**Dating Violence** is a form of Sexual Violence, and is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.<sup>6</sup> This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

### Types of Dating/Domestic Violence That Includes Sexual Misconduct

There usually is a pattern or a repeated cycle of Dating Violence, starting with the first instance of abuse.

#### *General Pattern of Behavior:*

- **Tension Building:** Relationship begins to get strained or tense between partners.
- **Explosion:** Outburst that includes verbal, emotional, or physical abuse.
- **Honeymoon:** Apologies where the abuser tries to re-connect with his/her partner by shifting the blame onto someone or something else.

### What Dating/Domestic Violence Looks Like

Any actions used for the intent of gaining power and control over a person:

- **Physical Abuse:** any use of physical force with the intent to cause injury (i.e. grabbing in a way to inflict pain, hitting, shoving, strangling, kicking)
- **Emotional Abuse:** non-physical behaviors such as threats, insults, constant monitoring, humiliation, intimidation, isolation, silent treatment, or stalking
- **Sexual Abuse:** any action that impacts the partner's ability to control his/her sexual activity or the circumstance in which sexual activity occurs, including rape, coercion or restricting access to birth control

### Warnings or Signs of Potential Dating/Domestic Violence

Ask yourself if your partner engages in one or any of the following activities:

- Checks my cell phone or email without my permission.

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<sup>5</sup> Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

<sup>6</sup> Cal. Penal Code § 13700(b).

- Monitors where I'm going, who I'm going with, what I'm doing.
- Repeatedly says or does things to make me feel inadequate or inferior to him/her.
- Extreme jealousy or insecurity.
- Isolates me from my friends and family.
- Explosive temper.
- Mood swings.
- Assumes control over my access to financial resources.
- Tells me what to do.
- Possessiveness.
- Physically hurts me in any way.

### Stalking

**Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.<sup>7</sup>

Stalking is a pattern of behavior that makes you feel afraid, nervous, harassed or in danger. It is when someone repeatedly contacts you, follows you, sends you things, talks to you when you don't want them to or threatens you. Stalking behaviors can include:

- Damaging your property.
- Knowing your schedule.
- Showing up at places you go.
- Sending mail, e-mail, texts and pictures.
- Creating a website about you.
- Sending gifts.
- Stealing things that belong to you.
- Calling you repeatedly.
- Any other actions that the stalker takes to contact, harass, track or frighten you.

You can be stalked by someone you know casually, a current boyfriend or girlfriend, someone you dated in the past or a stranger. Getting notes and gifts at your home, on your car or other

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<sup>7</sup> Cal. Penal Code § 646.9.

places might seem sweet and harmless to other people. But if you don't want the gifts, phone calls, messages, letters or e-mails, it doesn't feel sweet or harmless. It can be scary and frustrating.

Sometimes people stalk their boyfriends or girlfriends while they're dating. They check up on them, text or call them all the time, expect instant responses, follow them, use GPS to secretly monitor them and generally keep track of them, even when they haven't made plans to be together. These stalking behaviors can be part of an abusive relationship. If this is happening to you or someone you know, you should talk to a trusted person.

Stalking is a crime and can be dangerous. California Penal Code section 646.9, in part, states, "Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking...."

### How You Can Help Yourself

Think about ways you can be safer. This means thinking about what to do, where to go for help and who to call ahead of time:

- Where can you go for help?
- Who can you call?
- Who will help you?
- How will you escape a violent situation?

### Other Things You Can Do

- ***In an emergency, call 911*** or University Police or the local police department.
- Let friends or family members know when you are afraid or need help.
- Be aware of your surroundings. Knowing where you are and who is around you may help you find a way to get out of a bad situation.
- Avoid isolated areas.
- Avoid putting headphones in both ears so you can be more aware of your surroundings.
- Trust your instincts. If a situation or location feels unsafe or uncomfortable, remove yourself.
- Vary your routine, your driving routes and where you park your car.

- When you go out, tell someone where you are going and when you'll be back. Memorize the phone numbers of people to contact or places to go in an emergency.
- Don't load yourself down with packages or bags restricting your movement.
- Keep your cell phone handy; check to see that you have reception and that your cell phone is charged.
- Have money for a cab or other transportation.
- Save notes, letters or other items that the stalker sends to you. Keep a record of all contact that the stalker has with you; these items will be very useful in an investigation.

### **How You Can Help Someone Else**

If you know someone who is being stalked, you can:

- Encourage your friend to seek help.
- Be a good listener.
- Offer your support.
- Ask how you can help.
- Educate yourself about stalking.
- Avoid any confrontations with the stalker; this could be dangerous for you and your friend.

[campus logo]

## **RIGHTS AND OPTIONS FOR VICTIMS OF SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC VIOLENCE, AND STALKING<sup>1</sup>**

The University is committed to creating and sustaining an educational and working environment free of sexual violence, dating violence, domestic violence, and stalking. If you experience any of these forms of violence, you are strongly encouraged to utilize the various on and off campus resources described below. Your safety and well-being is the University's priority. This publication is intended to help you understand your rights and options, as well as provide you with information regarding support and assistance.

### **WHAT SHOULD I DO?**

***Call 9-1-1 if you are in the midst of any kind of emergency, immediate harm or threat of harm.***

If you have experienced sexual violence (e.g., rape, acquaintance rape, dating violence, domestic violence, or stalking), you are encouraged to ***seek immediate assistance from police and healthcare providers*** for your physical safety, emotional support and medical care.

University police can escort you to a safe place and transport you to a hospital or a sexual assault response center for a medical examination, if needed. University police can also provide access to a confidential sexual assault advocate. If you would prefer not to notify the police, you are strongly encouraged to seek assistance from the campus Title IX Coordinator who can provide you with information on your options, rights and remedies, and/or a sexual assault counselor or advocate. The campus Title IX Coordinator is available to assist you in notifying the police, if you wish. The sexual assault counselors and advocates listed below can also assist you in notifying the police and/or the campus Title IX Coordinator.

You have the right to decide who and when to tell about sexual violence. However, it is very important that you get confidential medical attention after being assaulted. Following the incident, you may be physically injured, there may be a chance you contracted a sexually transmitted disease, or that you may become pregnant.

### **WHO SHOULD I CONTACT?**

The University has designated a Title IX Coordinator to provide you with assistance and support, and to monitor and oversee overall compliance with laws and policies related to sexual violence.

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<sup>1</sup> As required by the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f))(VAWA), pursuant to its Campus Sexual Violence Elimination Act provision (Campus SaVE Act).

Your campus Title IX Coordinator is available to explain and discuss your right to file a criminal complaint; the University's relevant complaint process, and your right to receive assistance with that process, including the investigation process; how confidentiality is handled; available resources, both on and off campus; and other related matters.

**[Campus name] Title IX Coordinator and Deputy Coordinator(s) [If there is one or more Deputy Coordinator you must list each one, along with respective roles and responsibilities for each]:**

- Name
- Address (including email address)
- Phone
- Office hours

**University Police**

- Name
- Address (including email address)
- Phone

**Local Police**

- Name
- Address (including email address)
- Phone

**U.S. Department of Education, Office for Civil Rights:**

- (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov)
- If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**The White House Task Force to Protect Students From Sexual Assault**

- <https://www.notalone.gov/>

**Medical & Counseling Services**

**Campus Services**

[Insert campus health/counseling/women's center(s) name and contact info]

[ADD WEB LINK(S)]

**Off-Campus Services**

[Insert health/counseling/women's centers(s), community rape crisis centers name and contact info]

[ADD WEB LINK(S)]

## **THE IMPORTANCE OF PRESERVING EVIDENCE**

It is important that you take steps to preserve and collect evidence; doing so preserves the full range of options available to you, be it through the university's administrative complaint procedures or criminal prosecution. To preserve evidence: (1) do not wash your face or hands; (2) do not shower or bathe; (3) do not brush your teeth; (4) do not change clothes or straighten up the area where the assault took place; (5) do not dispose of clothes or other items that were present during the assault, or use the restroom; and (6) seek a medical exam immediately. If you already cleaned up from the assault, you can still report the crime, as well as seek medical or counseling treatment. You may consult with the campus Title IX Coordinator or a local sexual assault victim resource center (see contact information above) for assistance as well.

## **WHAT REPORTING OPTIONS DO I HAVE?**

*The University's primary concern is your safety and the safety of the campus community.* The use of alcohol or drugs never makes the victim at fault for sexual violence. If you have experienced sexual violence, you should not be deterred from reporting the incident out of a concern that you might be disciplined for related violations of drug, alcohol, or other University policies. Except in extreme circumstances, University students or employees who are victims of sexual violence will not be subject to discipline.

You have several reporting options, and you may pursue one or all of these options at any time. It is your right to have a friend, family member, sexual assault advocate, or other representative present with you while reporting the incident. You also have the right to have a sexual assault counselor and support person of your choice present with you during a rape examination.

The campus Title IX Coordinator can assist you in notifying the police if you choose:

**Criminal:** Reporting to University Police and/or local police is an option at any time. If you choose not to report to the police immediately following a sexual violence incident, you can still make the report at a later time. However, with the passage of time, the ability to gather evidence to assist with criminal prosecution may be limited. Depending on the circumstances, the police may be able to obtain a criminal restraining order on your behalf.

**Administrative:** You may report to the campus Title IX Coordinator, who will provide you with written and verbal information regarding applicable University complaint procedures for



investigating and addressing the incident. The Title IX Coordinator will also provide you with information regarding resources available to you, as well as information regarding your rights and options. Contact information for the Title IX Coordinator is listed above.

The campus Title IX Coordinator will also discuss with you any reasonable interim remedies the University may offer prior to conclusion of an investigation or potential disciplinary action to reduce or eliminate negative impact on you and provide you with available assistance. Examples include: adjustment to work assignments, course schedules or supervisory reporting relationship; requiring the accused to move from University-owned or affiliated housing; immediately prohibiting the accused from coming to the University; or prohibiting the accused from contacting the parties involved in the reported incident. These options may be available to you whether or not you choose to report the sexual violence to campus police or law enforcement. The Title IX Coordinator remains available to assist you and provide you with reasonable remedies requested by you throughout the reporting, investigative, and disciplinary processes, and thereafter.

If it is determined that University policy<sup>2</sup> prohibiting sexual violence was violated, the accused will be subject to discipline, up to and including dismissal from University employment or expulsion from the University. You are entitled to be accompanied to any related meeting or proceeding by an advisor of your choice. However, if you do not wish to participate in an investigation or hearing process, you have the right to decline to do so.

**Health/Counseling/Clergy:** You may choose to seek advice and assistance from physicians, psychotherapists, professional counselors, clergy, sexual assault and domestic violence counselors and advocates, including individuals who work or volunteer for them.

**Civil Lawsuit:** You may choose to file a civil lawsuit against the perpetrator, whether or not criminal charges have been filed. A civil lawsuit provides you the opportunity to recover actual damages, which may include compensation for medical expenses, lost wages, pain, suffering and emotional distress.

You may also choose to obtain a protective or restraining order (such as a domestic violence restraining order or a civil harassment restraining order). Restraining orders must be obtained from a court in the jurisdiction where the incident occurred. Restraining orders can protect victims who have experienced or are reasonably in fear of physical violence, sexual violence,

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<sup>2</sup> Executive Order 1096 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide Policy Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide Procedure for Handling Discrimination, Harassment and Retaliation Complaints by Students).

domestic violence, dating violence and stalking. Your campus Title IX Coordinator can offer assistance with obtaining a protective or restraining order.

**Non-reporting:** You are strongly encouraged to report any incident of sexual violence to the police and/or campus Title IX Coordinator so that steps may be taken to protect you and the rest of the campus community. However, non-reporting is also an option.

### **CONFIDENTIALITY – KNOW YOUR OPTIONS**

We encourage victims of sexual violence to talk to someone about what happened – so you can get the support you need, and so the University can respond appropriately. Whether – and the extent to which – a University employee may agree to maintain confidentiality (and not disclose information to the Title IX Coordinator) depends on the employee’s position and responsibilities at the University. This information is intended to make you aware of the various reporting and confidential disclosure options available to you – so you can make informed choices about where to turn for help. The University encourages victims to talk to someone identified in one or more of these groups.

As explained below, some employees are required by law to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Other employees may talk to a victim in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Thirdly, some employees are required to report all details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator. A report to these employees constitutes a report to the University, and generally creates a legal obligation for the University to investigate the incident and take appropriate steps to address the situation.

#### **Privileged and Confidential Communications**

*Physicians, Psychotherapists, Professional Counselors and Clergy*<sup>3</sup> – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus, and who provide medical or mental health treatment or counseling (including those who act in that role under their supervision) may **not** report **any** information about an incident of Sexual Violence to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from physicians; psychotherapists, professional, licensed counselors, and clergy without triggering a University investigation that could reveal your identity or the fact of your disclosure. *However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health*

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<sup>3</sup> Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

*care practitioners should explain these limited exceptions to you, if applicable.* Following is the contact information for professional counselors and physicians (if any) on campus:

**[INSERT LIST OF NAMES AND CONTACT INFO]**

*Sexual Assault and Domestic Violence Counselors and Advocates*<sup>4</sup> – Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual assault centers, victim advocacy offices, women’s centers, and health centers (including all individuals who work or volunteer in these centers and offices, as well as non-professional counselors or advocates, and those who act in that role under their supervision) may talk to you without revealing any information about you or the incident of sexual violence to anyone else at the University, including the Title IX Coordinator, without your consent. You can seek assistance and support from these counselors and advocates without triggering a University investigation that could reveal your identity or that you disclosed an incident to them. *However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to you, if applicable.* Following is contact information for sexual assault and domestic violence counselors and advocates:

**[INSERT LIST OF NAMES AND CONTACT INFO]**

If you speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate, you must understand that the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the perpetrator, if you choose to maintain confidentiality.

Even so, these individuals will still assist you in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services. They may not, however, be able to assist you with University academic support or accommodations, or changes to University-based living or working schedules, or assist with adjustments to course schedules. Only the University and the Title IX Coordinator can assist with those matters (see below). A victim who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide you with that assistance if you wish. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

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<sup>4</sup> Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

**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 he or she provides medical services for a **physical condition** to a patient/victim who he or she 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 a victim where the injury is the result of assaultive or abusive conduct (including Sexual Violence, Domestic Violence, and Dating Violence).<sup>5</sup> This exception does **not** apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to you, if applicable.

Additionally, under California law, **all** professionals described above (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.<sup>6</sup> These professionals will explain this limited exception to you, 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;<sup>7</sup> or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the Sexual Violence incident.<sup>8</sup> If applicable, these professionals will explain this limited exception to you.

### **Reporting to University or Local Police**

If you report to local or University Police about Sexual Violence, the police are required to notify you that your name will become a matter of public record **unless confidentiality is requested.**<sup>9</sup> If you request that your identity be kept confidential, your name will not become a matter of public record and the police will not report your identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator your name/identity, or compromise their own criminal investigation.

The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the University will report the **type** of

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<sup>5</sup> Assaultive or abusive conduct is defined to include a list of 24 criminal offenses, including Sexual Battery, incest, Rape, spousal Rape, abuse of a spouse or cohabitant, and any attempt to commit these crimes. Cal. Penal Code §§ 11160-11163.2.

<sup>6</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>7</sup> Cal. Evid. Code § 1024.

<sup>8</sup> Cal. Evid. Code § 1035.4.

<sup>9</sup> Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

incident in the annual crime statistics report known as the Annual Security Report, your name/identity will not be revealed.

### **Reporting to the Title IX Coordinator and Other University Employees**

Most University employees have a duty to report incidents of sexual violence when they are on notice of it. When you tell the Title IX Coordinator or another University employee about a sexual violence incident, you have the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. ***In all cases, we strongly encourage victims to report sexual violence directly to the Title IX Coordinator.***

As detailed above, all University employees *except* physicians, licensed counselors, sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any sexual violence incidents of which they become aware. The University will need to determine what happened – and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other University employee will be shared only with individuals responsible for handling the University's response to the incident. The University will protect the privacy of individuals involved in a sexual violence incident except as otherwise required by law or University policy. A sexual violence report may result in the gathering of extremely sensitive information about you and other individuals in the campus community. While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual violence. In such cases, efforts will be made to redact the records, as appropriate, in order to protect our identity and privacy and the privacy of other involved individuals.

The Title IX Coordinator can be reached at:

**[INSERT CONTACT INFO FOR TITLE IX COORDINATOR]**

If you request of the Title IX Coordinator or another University employee that your identity remain completely confidential, the Title IX Coordinator will explain that the University cannot always honor that request and guarantee complete confidentiality. If you wish to maintain confidentiality or request that no investigation be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-

discriminatory environment for all students, employees and third parties, including you. Under those circumstances, the Title IX Coordinator will determine whether your request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the University has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about your identity, the University's ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited.

The Title IX Coordinator will inform you prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response. The Title IX Coordinator will remain mindful of your well-being, and will take ongoing steps to protect you from retaliation or harm, and work with you to create a safety plan. Retaliation against you, whether by students or employees, will not be tolerated. The University and Title IX Coordinator will also:

- Provide interim remedies requested by you, if they are reasonably available, regardless of whether you choose to report sexual violence to campus or local police;
- Assist you in accessing other available victim advocacy, academic support, counseling, disability, medical/health or mental health services, and legal assistance both on and off campus;
- Provide other security and support, which could include issuing a no-contact order, helping arrange a change of campus-based living or working arrangements or course schedules (including for the perpetrator pending the outcome of the investigation) or adjustments for assignments, tests, or work duties; and
- Inform you of your right to report a crime to University or local police – and provide you with assistance if you wish to do so.

The University will not require you to participate in any investigation or disciplinary proceeding if you do not wish to participate.

The University will not generally notify parents or legal guardians of your report of sexual violence unless you are under the age of 18 or you provide the University with written permission to do so.<sup>10</sup>

Under California law, and pursuant to University policy, all University employees, including the Title IX Coordinator, are mandatory child abuse and neglect reporters and should explain to victims under 18 years of age that they are required to report the Sexual Violence incident to the

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<sup>10</sup> If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the victim's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).

police.<sup>11</sup> However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.<sup>12</sup>

Because the University is under a continuing legal obligation to address the issue of sexual violence campus-wide, reports of sexual violence (including non-identifying reports) may also prompt the University to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increased education, training and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revising its policies and practices.

The Office of the Ombuds, if available on your specific campus, provides confidential, neutral and informal dispute resolution services, provides information about University policies and procedures, and makes referrals. However, in sexual violence cases, California law mandates that the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed in the Privileged and Confidential Communications section of this policy above) report sexual violence incidents to the Title IX Coordinator.

**NOTE:** If the University determines that the perpetrator poses a serious and immediate threat to the campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.

### **AS A REPORTER, AM I PROTECTED FROM RETALIATION?**

Yes, University policies prohibit retaliation against a person who:

- Reports sexual violence;
- Assists someone with a sexual violence; or
- Participates in any manner in an investigation or resolution of a sexual violence complaint.

No officer, employee or agent of the University shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising his/her rights or responsibilities. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education. Retaliation, if proven, is a violation of University policies and may result in discipline, up to and including termination of employment or expulsion from the University.

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<sup>11</sup> Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

<sup>12</sup> Cal. Penal Code § 11167(d).

### **WHAT ELSE MIGHT HAPPEN IF I NOTIFY UNIVERSITY POLICE?**

Should you choose to notify University Police, you will be escorted to a safe place if necessary, and may be transported to a hospital or sexual response assault center for a medical exam. University police can also provide access to a confidential sexual assault advocate, if desired. First and foremost, the medical exam you receive from a hospital or sexual assault response center treats any physical injury or effect. The exam may include a vaginal and/or anal examination, testing, and prophylactic treatment for sexually transmitted infections and possible pregnancy.

Second, the medical exam properly collects and preserves evidence. Seeking a medical exam for treatment and evidence collection does not commit you to any particular course of action, and your medical records are confidential.

### **WHAT CSU PROCEDURES ARE AVAILABLE?**

The University has formal written procedures that provide for a campus investigation of reports of sexual violence, written findings sent to the accuser and the accused, and a review of the campus investigative findings by the CSU Chancellor's Office. The procedure for CSU employees and third parties is separate from, but similar to the procedure for CSU students.<sup>13</sup> Your campus Title IX Coordinator can explain these procedures in detail.

At the conclusion of the University's complaint procedure, any employee or student found to have violated University policy against sexual violence will be subject to discipline. Discipline would be administered consistent with applicable collective bargaining agreements (for employees), University policies and legal requirements. ***As the victim, you are not required to participate in any University disciplinary procedure and may choose not to be a part of it.*** Disciplinary procedures for sexual violence will:

- Provide a prompt, fair, and impartial process and resolution;
- Be conducted by officials who receive annual training on sexual violence and how to conduct a hearing process that protects the safety of victims and promotes accountability;

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<sup>13</sup> Executive Order 1096 (Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Employees and Third Parties and *Procedure* for Handling Discrimination, Harassment and Retaliation Allegations by Employees and Third Parties); Executive Order 1097 (Systemwide *Policy* Prohibiting Discrimination, Harassment and Retaliation Against Students and Systemwide *Procedure* for Handling Discrimination, Harassment and Retaliation Complaints by Students) Executive Order 1095 (Implementation of Title IX, the Campus SaVE Act, and Related Sex Discrimination, Sexual Harassment and Sexual Violence Legislation)



- Provide the accuser and the accused the same opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- Simultaneously inform the accuser and the accused in writing of:
  - o The outcome of the disciplinary proceeding;
  - o The University's procedures for the accused to appeal the results of the disciplinary proceeding;
  - o Any change to the disciplinary results that occurs prior to the time such results become final; and
  - o When disciplinary results become final.

### **WHAT ARE SEXUAL VIOLENCE, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING AND CONSENT?**

**Sexual Violence** is a form of Sexual Harassment and means physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, domestic violence, dating violence, and stalking (when based on gender or sex), perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or disability.<sup>14</sup> Sexual Violence 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).

Men as well as women can be victims of these forms of Sexual Violence. Unlawful sexual intercourse with a minor (statutory rape) occurs even if the intercourse is consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

**Sexual Assault** is a form of Sexual Violence and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.<sup>15</sup>

**Sexual Battery** is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.<sup>16</sup>

**Rape** is a form of Sexual Violence and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute

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<sup>14</sup> See definition of Consent below.

<sup>15</sup> Cal. Penal Code § 240.

<sup>16</sup> Cal. Penal Code § 242.

rape. Sexual acts including intercourse are considered non-consensual when the person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The accused's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.<sup>17</sup> (See complete definition of Consent below.)

**Acquaintance Rape** is a form of Sexual Violence committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. See above for definition of Rape.

**Consent** means an informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be **voluntary**, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will.
- Consent can be **withdrawn or revoked**. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must **always** be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The victim's request for the perpetrator to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.
- Consent cannot be given by a person who is **incapacitated**. For example, a person cannot give consent if s/he is unconscious or coming in and out of consciousness. A person is **incapacitated** if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an **intoxicated** person (as a result of using alcohol or other drugs) is **incapacitated** depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the

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<sup>17</sup> Cal. Penal Code §§ 261-263.

accused's position should have known, that the victim did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.

- Sexual intercourse with a minor is never consensual when the victim is under 18 years old, because the victim is considered incapable of giving legal consent due to age.

**Domestic Violence** is a form of Sexual Violence and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.<sup>18</sup>

**Dating Violence** is a form of Sexual Violence and is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.<sup>19</sup> This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website.

**Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or causes the victim to suffer substantial emotional distress.<sup>20</sup>

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<sup>18</sup> Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

<sup>19</sup> Cal. Penal Code § 13700(b).

<sup>20</sup> Cal. Penal Code § 646.9.