

Coast Community College District ADMINISTRATIVE PROCEDURE

Chapter 3 General Institution

AP 3540 Sexual and Other Assaults on District Property

References:

Education Code Sections 67382, 67385, 67385.7, and 67386;
20 U.S. Code Section 1092(f) (The Clery Act);
34 Code of Federal Regulations Section 668.46(b)(11)

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assaults, or stalking, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, is a violation of state law, Board Policies and Administrative Procedures, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (Also see AP 5500 titled Standards of Student Conduct)

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

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of a romantic or intimate relationship will be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

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

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

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

It is the responsibility of each person involved in sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

“Affirmative consent” means unambiguous, affirmative, conscious, and voluntary agreement to engage in sexual activity.

These procedures and protocols are designed to ensure that victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information.

Any student or employee who alleges that they are a victim of domestic violence, dating violence, sexual assault, or stalking shall be provided with information regarding options and assistance available. Information shall be available from the College Public Safety Department, the Health Services Offices at each College, and if they are an employee, through the Human Resources Department, if desired. The identity and other information about alleged sexual assault victims shall remain confidential unless and until the release of such information is authorized by the victim and/or required by law.

The College Public Safety Departments, Health Services Offices at each College, and if employees, the Human Resources Department, shall provide victims of domestic violence, dating violence, sexual assault, or stalking with the following, upon request:

- A copy of the BP 3540 titled Sexual and Other Assaults on Campus and this Administrative Procedure regarding domestic violence, dating violence, sexual assault, and stalking;
- A list of College or District personnel who should be notified and procedures for such notification, if the alleged victim consents;
- A description of available services, and the persons available to provide those services if requested. Services and those responsible for provided or arranging them include:
 - Transportation to a hospital, if necessary;
 - Counseling by College Health Center, or a referral to a counseling center;
 - Notice to local law enforcement, if desired;
- A list of other available College resources or appropriate off-campus resources. The victim's option to:
 - notify proper law enforcement authorities, including local police;
 - be assisted by College authorities in notifying law enforcement authorities if the victim so chooses; and
 - decline to notify such authorities.
- Information about the participation of victim advocates and other supporting people;
- The rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;

- Information about how the District will protect the confidentiality of victims; and
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to local law enforcement.
- A description of each of the following procedures:
 - Criminal prosecution;
 - Civil prosecution (i.e., lawsuit);
 - District disciplinary procedures, both student and employee;
 - Modification of class schedules;
 - Tutoring, if necessary;
 - Alternative dispute resolution or other accountability processes;
 - Academic assistance alternatives.

District Risk Services and the College Health Centers shall provide assistance to College Public Safety Department employees to assist them in responding appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for investigations described in AP 5910 and AP 7910, regardless of whether a complaint is filed with local law enforcement.

All alleged victims of rape, domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through the College Public Safety Department of any ongoing investigation. Information shall include the a general status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality consistent with state and federal law.

A Complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the Board Policy 5500 and Administrative Procedure 5500 Student Code of Conduct at or near the time of the incident, unless the District determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.

In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to allege lack of affirmative consent that the accused believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.

- The accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain whether the Complainant affirmatively consented.

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

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

The District shall maintain the identity of any alleged victim, witness, and third-party reporter of rape, domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence consistent with state and federal law, unless the alleged victim, witness, or third-party reporter specifically waives that right to confidentiality.

All inquiries from reporters or other media representatives about alleged rape, domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Public Affairs/Information Office, which shall work with the College to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sexual assault, domestic violence, dating violence, and stalking and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any district proceeding arising from such a report. The statement **must include** the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking;
- Procedures to follow if a rape, domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported;
- Information on a student's right to notify appropriate law enforcement authorities, including local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests;
- Information about how the District will protect the confidentiality of victims;
- Information for students about existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

- Notice to the victim that the college may consider changing a victim's academic status after an alleged rape, domestic violence, dating violence, sex offense, or stalking, and of the options for those changes, if such changes are requested by the victim and are reasonably available;
- Procedures for College disciplinary action in cases of an alleged rape, domestic violence, dating violence, sex offense, or stalking sex offense, including clear statements that:
 - Such proceedings shall provide a prompt, fair, and impartial resolution;
 - Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding;
 - The accuser shall not be required to be present during any disciplinary action or proceeding in which the accused is present.
 - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged sex offense, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any changes to the results that occur prior to the time that such results become final, and when such results become final.

Compliance with this procedure shall not violate the Family Educational Rights and Privacy Act. The outcome of a disciplinary proceeding means the final determination with respect to the alleged rape, domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.

A description of the sanctions the District may impose following a final determination by a College disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking, are published in BP/AP 5500 Standards of Student Conduct.

Education and Prevention Information

Each College shall:

- Make available information, including education and prevention information about rape, domestic violence, dating violence, sexual assault, or stalking, to the college community. This information may be developed in collaboration with campus-based and community-based victim advocacy organizations.
- Post sexual violence prevention and education information on the College website regarding rape, domestic violence, dating violence, sexual assault, and stalking.

Also see AP 3500 to Campus Safety, AP 3510 titled Workplace Violence Plan, and AP 3515 titled Reporting of Crimes

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