

RIGHTS AND OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT, DATING AND DOMESTIC VIOLENCE, AND STALKING¹

The University is committed to creating and sustaining an educational and working environment free of sexual misconduct, dating and domestic violence, and stalking. If you experience any of these forms of misconduct, 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.²

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 misconduct (e.g., rape, acquaintance rape, or sexual battery), dating or 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 Victim's 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 the Campus Sexual Assault Victim's Advocate. The campus Title IX Coordinator is available to assist you in notifying the police, if you wish. The Sexual Assault Victim's Advocate listed below can also assist you in notifying the police and/or the campus Title IX Coordinator.

You have the right to decide whom and when to tell about what happened. However, it is very important that you get confidential medical attention after being assaulted. Following the

¹ 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) and related laws and regulations.

² Terms contained within this Notice are intended to be gender neutral.

incident, you may be physically injured, there may be a chance you contracted a sexually transmitted disease or that you may become pregnant.

WHOM 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 misconduct, dating and domestic violence, and stalking. 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.

CSUEB Title IX Coordinator

Terri La Beaux
25800 Carlos Bee Blvd. SA 1600
Hayward, CA 94542 **510-885-4918** title9@csueastbay.edu
Monday – Friday
8:30am – 5:00pm

Nyassa Love Johnson Risk Management and Internal Control
25800 Carlos Bee Blvd. SA1600
Hayward, CA 94542
510-885-2743
Monday – Friday
8:30am – 5:00pm

CSUEB Deputy Title IX Coordinators for academic year 2019-20

- James A. Carroll, Director of Student Conduct, James.carroll@csueastbay.edu
- Bethany Hobbs-Helmus, Assistant Athletics Director, Bethany.helmus@csueastbay.edu
- Dr. My-Lan Huynh, Associate Director of Housing, My-lan.huynh@csueastbay.edu
- Jill Millican, Director of Community Welfare and Coverage, Jill.millican@csueastbay.edu
- Ed Park, Human Resource Manager, Ed.park@csueastbay.edu
- Jennifer Toor, Director of Fiscal Services, Jennifer.toor@csueastbay.edu
- Rosalina Johnson, Discrimination, Harassment & Retaliation Administrator, Rosalina.johnson@csueastbay.edu

University Police

Lieutenant Omar Miakhail
25800 Carlos Bee Blvd.
Hayward, CA 94542
510-885-3791
Anonymous Phone Line:
510-885-2444

Hayward Police Department Special Victims Unit 300 W. Winton Ave.
Hayward, CA
(510) 293-7034 Non-emergency:
(510) 293-7000

Concord Police Department Non-emergency: (925) 671-3220
Emergency: **(925) 671-3333** from cell phone

Local Police

Oakland Police Department Non-emergency:
(510) 777-3333
Emergency: **(510) 777-3211** from cell phone

BART Police Nonemergency:
1-877-679-7000 Alameda County Sheriff (510) 667-7721

Emergency Services Dispatch:

East Bay Regional Parks Police Department Non-emergency, 24-hour:
(510) 881-1833
Emergency: **(510) 881-1121** from cell phone

Campus Sexual Assault Victim's Advocate

Lorraine Holmes Campus Confidential Advocate 510-885-3700
advocate@csueastbay.edu ItsOnUs@csueastbay.edu

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

- (800) 421-3481 or 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.go>

Medical & Counseling Services

On-Campus Services

Student Health and Counseling Services
25800 Carlos Bee Blvd. SHCS
1209,
Hayward, CA 94542
510-885-3735 shcs@csueastbay.edu
Monday – Friday
8:30am – 5:30pm

Off-Campus Services

BAWAR – Bay Area Women against Rape
470 27th Street, Oakland, CA 94612

24-hour hotline: 510-845-7273

bawar@bawar.org

www.bawar.org

SFWAR – San Francisco Women Against Rape San Francisco, CA 94110

24-hour crisis line: 415-647-7273

info@sffwar.org www.sffwar.org

The Men's Center for counseling

2925 Shattuck Avenue

Berkeley, CA 94705 510-644-8262 jsaah@igc.org

<http://www.psychotherapist.com/menscenter>

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 Sexual Assault Victim's Advocate (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 misconduct. If you have experienced sexual misconduct, dating or domestic violence, or stalking 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 egregious circumstances, University students or employees who are victims of sexual misconduct will not be subject to discipline.

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

The Campus Title IX Coordinator or Sexual Assault Victim's Advocate 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 an 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 Respondent to move from University-owned or affiliated housing; immediately prohibiting the Respondent from coming to the University; or prohibiting the Respondent from contacting the parties involved in the reported incident. These options may be available to you whether or not you choose to report the incident 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 policy³ was violated, the Respondent 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, including a Sexual Assault Victim's Advocate or domestic violence counselor. 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.

³ Executive Order 1096 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students).

Civil Lawsuit: You may choose to file a civil lawsuit against the Respondent, 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 misconduct, dating or domestic violence, or stalking. University Police and your Campus Title IX Coordinator can offer assistance with obtaining a protective or restraining order.

Non-reporting: You are strongly encouraged to report any incidents 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 misconduct, dating or domestic violence, or stalking 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. 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*⁴ – Physicians, psychotherapists, professional, licensed counselors, and clergy who work or volunteer on or off campus acting solely in those roles or capacity, in the provision of medical or mental health treatment or counseling (*including those who work or volunteer in those offices*) may **not** report **any** information about an incident of sexual misconduct 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 you, if applicable.* Following is the contact information for professional counselors and physicians (if any) on campus:

Lorraine Holmes 510-885-3700

CSU East Bay Confidential Advocate advocate@csuesastbay.edu

*Sexual Assault and Domestic Violence Counselors and Advocates*⁵ – 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 misconduct 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:

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.

⁴ See Cal. Evid. Code § 990 *et seq.*, § 1010 *et seq.*, and § 1030 *et seq.*

⁵ See Cal. Evid. Code § 1035 *et seq.* and § 1037 *et seq.*

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 misconduct and dating and domestic violence).⁶ This exception does *not* apply to sexual assault and domestic violence counselors and advocates. Health care practitioners will 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

⁶ 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. See Cal. Penal Code §§ 11160-11163.2.

report incidents involving victims under 18 years of age to local law enforcement.⁷ 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;⁸ or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the incident.⁹ If applicable, these professionals will explain this limited exception to you.

Reporting to University or Local Police

If you report certain sex offenses to local or University Police, the police are required to notify you that your name will become a matter of public record *unless confidentiality is requested*.¹⁰ 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 misconduct, dating and domestic violence, and stalking when they are on notice of it. When you tell the Title IX Coordinator or another University employee about an 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 misconduct, dating and domestic violence, and stalking directly to the Title IX Coordinator.*

⁷ See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order.

⁸ See Cal. Evid. Code § 1024.

⁹ See Cal. Evid. Code § 1035.4.

¹⁰ See Cal. Penal Code § 293; Cal. Gov. Code § 6254(f).

As detailed above, all University employees *except* physicians, licensed counselors, sexual assault victim's advocates must report to the Title IX Coordinator all relevant details about 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 except as otherwise required by law or University policy. A 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 reported incident. In such cases, efforts will be made to redact the records, as appropriate, in order to protect your identity and privacy and the privacy of other involved individuals.

Terri La Beaux,
Title IX Coordinator
510-885-4918 title9@csueastbay.edu

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 cannot 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, nondiscriminatory 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 misconduct, dating or domestic violence, or stalking 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 Respondent 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 unless you are under the age of 18 or you provide the University with written permission to do so.¹¹

Under California law, and pursuant to University policy, certain 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 incident to the police.¹²

However, the identity of the person who reports and the report itself are confidential and disclosed only among appropriate agencies.¹³

¹¹ 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).

¹² See Cal. Penal Code §§ 11164-11174.3; see also CSU Executive Order 1083 or any superseding executive order. ¹³ See Cal. Penal Code § 11167(d).

Because the University is under a continuing legal obligation to address the issue of sexual misconduct, dating and domestic violence, and stalking campus-wide, any such reports (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 incident 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 misconduct, dating and domestic violence, and stalking cases, the Ombuds as well as all other University employees (except for physicians, licensed counselors, sexual assault counselors and advocates as discussed above) must report 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 misconduct, dating or domestic violence, or stalking;
- Assists someone with such a report; or
- Participates in any manner in any related investigation or resolution.

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.

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 Victim's 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 misconduct, dating and domestic violence, and stalking, written findings sent to the Complainant and the Respondent, 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.¹⁴ 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 will be subject to discipline. Discipline would be administered consistent with applicable collective bargaining agreements and MPP/confidential personnel plans (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 misconduct, dating and domestic violence, and stalking will:

- Provide a prompt, fair, and impartial process and resolution;
- Be conducted by officials who receive annual training on sexual misconduct, dating and domestic violence, and stalking, including how to conduct a process that protects the safety of victims and promotes accountability;
- Provide the Complainant and the Respondent the same opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
- Simultaneously inform the Complainant and the Respondent in writing of:
- The outcome of the disciplinary proceeding;
- The procedures available 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.

WHAT ARE SEXUAL MISCONDUCT, DATING AND DOMESTIC VIOLENCE, STALKING, AND AFFIRMATIVE CONSENT?

Sexual Misconduct: All sexual activity between members of the CSU community must be based on affirmative consent. Engaging in any sexual activity without first obtaining affirmative consent to the specific activity is sexual misconduct, whether or not the conduct violates any civil or criminal law.

¹⁴ Executive Order 1096 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties); Executive Order 1097 (Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students); Executive Order 1095 (Systemwide Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating and Domestic Violence, and Stalking Policy.)

Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, and dating violence. When it is based on gender, domestic violence and stalking also constitute sexual misconduct. Sexual misconduct 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 misconduct. Sexual activity with a minor is never consensual when the Complainant is under 18 years old, because the minor is considered incapable of giving legal consent due to age.

- a. Sexual Assault is a form of sexual misconduct 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.
- b. Sexual Battery is a form of sexual misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.
- c. Rape is a form of sexual misconduct 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 a person incapable of giving consent. The Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant. (See complete definition of affirmative consent below.)
- d. Acquaintance Rape is a form of sexual misconduct 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.)

Dating Violence 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. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Domestic Violence 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. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Stalking means engaging in a repeated course of conduct directed at a specific person that would cause a reasonable person to fear for his/her or others’ safety or to suffer substantial emotional distress. For purposes of this definition:

Course of Conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;

Reasonable Person means a reasonable person under similar circumstances and with the same protected statuses as the Complainant;

Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the

sexual activity to ensure that he or she has the affirmative consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean affirmative consent, nor does silence mean affirmative consent. Affirmative consent must be voluntary, and given without coercion, force, threats, or intimidation.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of affirmative consent. A request for someone to use a condom or birth control does not, in and of itself, constitute affirmative consent.

Affirmative 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 given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and affirmative consent to engage in sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once affirmative consent is withdrawn or revoked, the sexual activity must stop immediately.

Affirmative consent cannot be given by a person who is incapacitated. A person is unable to consent when s/he is asleep, unconscious, or is incapacitated due to the influence of drugs, alcohol or medication so that s/he could not understand the fact, nature, or extent of the sexual activity. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational decisions.

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 ability, awareness of consequences, and ability to make informed judgments. Intoxication or incapacitation from drugs or alcohol does not diminish a person's responsibility to obtain affirmative consent before engaging in sexual activity.

A person with a medical or mental disability may also lack the capacity to give consent.

Sexual activity with a minor (a person under 18 years old) is never consensual, because a minor is considered incapable of giving consent due to age.

It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:

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

It shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent;
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.