

**ADMINISTRATIVE PROCEDURE 3540 SEXUAL AND OTHER ASSAULTS ON CAMPUS**

- A. Peralta Safety and Security Services shall make available sexual assault awareness information to students and employees.
- B. Any sexual assault or physical abuse, including, but not limited to, rape, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures.
- C. "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.
- D. "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.
- E. "Domestic violence" includes felony or misdemeanor crimes of violence committed by:
- (1) a current or former spouse of the victim;
  - (2) a person with whom the victim shares a child in common;
  - (3) a person who is cohabitating with or has cohabitated with the victim as a spouse;
  - (4) a person similarly situated to a spouse of the victim under California law; or
  - (5) any other person against an adult or youth victim who is protected from that person's acts under California law.
- F. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress.
- G. It is the responsibility of each person involved in sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.
- "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity.
- H. These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, see also AP 3500, 3510, and 3515.)
- I. All students, faculty members or staff members who allege they are the victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be provided with information regarding options and assistance available to them. Information shall be available from the Peralta Police Services, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until Peralta Police Services is authorized to release such information.

- J. Peralta Safety and Security Services shall provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with a copy of the District's policy and administrative procedure regarding domestic violence, dating violence, sexual assault, or stalking upon request, and the importance of preserving evidence and the identification and location of witnesses.
- K. Victims will be provided the option to:
- (1) notify proper law enforcement authorities, including on-campus and local police;
  - (2) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
  - (3) decline to notify such authorities;
  - (4) information about the participation of victim advocates and other supporting people;
  - (5) the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;
  - (6) information about how the district will protect the confidentiality of victims, and
  - (7) 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 Peralta Police Services or local law enforcement.
- L. The victim will be provided a description of the following procedures:
- (1) criminal prosecution;
  - (2) civil prosecution (i.e., lawsuit);
  - (3) District disciplinary procedures, both student and employee;
  - (4) modification of class schedules; and
  - (5) tutoring, if necessary.
- M. The District will investigate all complaints alleging sexual assault regardless of whether a complaint is filed with local law enforcement. All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through Peralta Safety and Security Services, of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence unless the alleged assailant has waived rights of confidentiality.
- N. A complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student conduct policy at or near the time of the incident, unless the District determines that the violation was egregious, including but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.
- O. 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:
- (1) The accused's belief in affirmative consent arose from the intoxication or recklessness of the accused.
  - (2) The accused did not take reasonable steps in the circumstances known to the accused at the time, to ascertain whether the complainant affirmatively consented.
- P. In the evaluation of the 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:
- (1) The complainant was asleep or unconscious.
  - (2) The complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that

the complainant was unable to communicate due to a mental or physical condition.

(3) The complainant was unable to communicate due to a mental or physical condition.

- Q. The District shall maintain the identity of any alleged victim or witness of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim or witness specifically waives the right to confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Public Information Office, which shall work with Peralta Police Services to assure that all confidentiality rights are maintained.
- R. 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, and stalking has been reported, including a statement of the standard of evidence (preponderance of evidence) that will be used during any district proceeding arising from such a report. The statement must include the following:
- (1) 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;
  - (2) Procedures to follow if a domestic violence, dating violence, sex offense or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported.
  - (3) Responses to stranger and non-stranger sexual assault;
  - (4) The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive follow-up victim interview, as appropriate;
  - (5) Contacting and interviewing the accused;
  - (6) Seeking the identification and location of witnesses;
  - (7) Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities;
  - (8) Written information and notification for students about existing on- and off- campus counseling, mental health, victim advocacy, legal assistance, or other services for victims and contact information;
  - (9) Participation of victim advocates and other supporting people;
  - (10) Investigating allegations that alcohol or drugs were involved in the incident;
  - (11) The role of the institutional staff supervision;
  - (12) A comprehensive trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases;
  - (13) 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 Peralta Safety and Security Services or local law enforcement.
  - (14) Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking, including a clear statement that:
    - a. Such proceedings shall provide a prompt, fair, and impartial resolution;
    - b. 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 the victim and promotes accountability;
    - c. The accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault or stalking, 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 paragraph does not violate the Family Educational Rights and Privacy Act. For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.

- (15) A description of the sanction the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, date rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence or stalking.

### **Education and Prevention Information**

Peralta Safety and Security Services shall:

- A. Provide, as part of each campus' established on-campus orientation program, education and prevention information about domestic violence, dating violence, sexual assault, and stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations, and shall include the District's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- B. Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.
- C. The outreach programming included as part of an incoming student's orientation must include, at a minimum, all of the following:
- a. The warning signs of intimate partner and dating violence.
  - b. Campus policies and resources relating to intimate partner and dating violence.
  - c. Off-campus resources and centers relating to intimate partner and dating violence.
  - d. A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.

Please note:

For additional information and resources on sexual assault, domestic violence, dating violence, and stalking in the educational/campus environment, the Department of Justice has established a clearinghouse of resources geared towards colleges and universities, which can be accessed at the California Attorney General's website.

NOTE: Beginning January 1, 2020, Districts must annually review and update procedures and protocols adopted pursuant to Education Code Section 67385 in collaboration with sexual assault counselors and student, faculty, and staff representatives.

References:

- Education Code Sections 67385, 67385.7 and 67386
- 20 U.S. Code Section 1092 (f)
- 34 Code of Federal Regulations Section 668.48 (b) (11)

Approved by the Chancellor: January 30, 2013  
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