

GENERAL INSTITUTION

AP 3540 SEXUAL AND OTHER ASSAULTS ON CAMPUS

References:

- Education Code Sections 67385 and 67386;
- 20 U.S. Code Section 1092(f);
- 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 assault, 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 District policies and 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;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with or has cohabitated with the victim as a spouse;
- by a person similarly situated to a spouse of the victim under California law; or
- by any other person against an adult or youth victim who is protected from that person’s acts California law.

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their 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.

Date Approved: 12/15/09; Revised: 5/7/13; 10/21/14; 10/16/18; 9/17/19; Revised 3/11/22
(Replaces all previous versions of AP 3540.)

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.

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, also see AP 3500 titled Campus Safety, AP 3510 titled Workplace Violence Plan, and AP 3515 titled Reporting of Crimes).

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 Palomar College Police Department, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Palomar College Police Department is authorized to release such information.

The Palomar College Police Department shall provide all alleged victims of domestic violence, dating violence, sexual assault, or stalking with the following:

- A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual assault, or stalking
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents. The Chief of Police or designee shall notify the following individuals, as applicable:
 - Superintendent/President
 - Assistant Superintendent/Vice President of Student Services
 - Assistant Superintendent/Vice President, Human Resources Services
 - Director of Student Affairs
 - Director, Communications, Marketing & Public Affairs
- Information about the importance of preserving evidence and the identification and location of witnesses

Services:

- Facilitate transportation to a hospital, if necessary
- Referral to a counseling center
- Notification to appropriate police authorities, if desired
- A list of other available campus resources or appropriate off-campus resources
- A description of available services and the persons on campus available to provide those services if requested. The departments responsible for providing or arranging them include:
 - Palomar College Police Department
 - Health Services
 - Office of Student Affairs
 - Counseling Department
 - Human Resource Services
- The victim's option to:
 - notify proper law enforcement authorities, including on-campus and local police;
 - be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - decline to notify such authorities;
- 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 to 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 campus police or 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

The Vice President for Human Resource Services or designee is available to provide assistance to District Police regarding how to respond appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435 Discrimination &

Harassment: Complaints, Investigations, and Awareness Training, 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 the Palomar College Police Department 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 to confidentiality.

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.

In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged 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, or third-party reporter of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence 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 domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Communications, Marketing, & Public Affairs Office, which shall work with the Palomar College Police Department 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 in 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, and other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking
- 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
- 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
- Information about how the District will protect the confidentiality of victims
- Information for students about existing on and off-campus counseling, mental health, victim advocacy, legal assistance, or other student services for victims
- Written notification to 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 campus police or local law enforcement
- Notice to students that the campus will change a victim's academic situation after an alleged domestic violence, dating violence, sexual assault, or stalking and of the options for those changes, if those changes are requested by the victim and are reasonably available
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking, including a clear statement 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 and
 - Both 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 chances to the results that occurs 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
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking

Education and Prevention Information

The Palomar College Police Department shall:

- Provide, as part of the District's 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 District-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.
- Post sexual violence prevention and education information on the campus internet website regarding domestic violence, dating violence, sexual assault and stalking.

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.

Also see BP/AP 3430 titled Prohibition of Harassment and AP 3435 titled Discrimination & Harassment: Complaints, Investigations, and Awareness Training.

Office of Primary Responsibility: Student Services