

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 MiraCosta College (“the 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. (See also AP 3433 Prohibition of Sexual Harassment under Title IX, AP 3434 Responding to Harassment Based on Sex under Title IX, AP 5500 Standards of Student Conduct, and AP 5520 Student Conduct Procedures).

Sexual assault, dating violence, domestic violence, and stalking are defined in Administrative Procedure 3434 – Responding to Harassment Based on Sex under Title IX.

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 affirmative, conscious, and voluntary agreement to engage in sexual activity.

These written procedures and protocols are designed to ensure that all students and employees who report they have been impacted by domestic violence, dating violence, sexual assault, or stalking receive treatment and information as appropriate to the circumstances. (For physical assaults/violence, see also Administrative Procedures 3500, 3510, and 3515).

All students and employees who report that they have been impacted by domestic violence, dating violence, sexual assault, or stalking on district property shall be provided with information regarding options and assistance available to them from the Title IX

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20 United States Code §1092(f)  
34 Code of Federal Regulations §668.46(b)(11)  
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coordinator, deputy Title IX coordinators, dean of student affairs, directors of student services, or College Police, as appropriate, who shall maintain the identity and other information about the alleged sexual assault survivor as confidential unless and until the Title IX coordinator is authorized to release such information, or as required by law.

The Title IX coordinator or designee official shall provide all alleged survivors of domestic violence, dating violence, sexual assault, or stalking with the following:

- A. A copy of the district's policy and procedure regarding domestic violence, dating violence, sexual assault, or stalking.
- B. A list of personnel on campus who should be notified of the assault and procedures for such notification, if the complainant consents.
- C. Information about the importance of preserving evidence and the identification and location of witnesses.
- D. A description of available services and the persons on campus available to provide those services if requested. Services and those responsible for providing or arranging them include:
  1. Transportation to a hospital, if necessary (College Police).
  2. Counseling by health services, or referral to a counseling center.
  3. Notice to the local police department, if desired (College Police).
  4. A list of other available campus resources or appropriate off-campus resources.
- E. The complainant's options 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 complainant so chooses.
  3. Decline to notify such authorities.
- F. Information about the participation of victim advocates and other supporting people.
- G. The rights of the complainant and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court.
- H. Information about how the district will protect the confidentiality of the complainant.
- I. Written notification about options for, and available assistance in, changing academic, transportation, and working situations, if requested, and if such accommodations are reasonably available, regardless of whether the

complainant chooses to report the crime to College Police or local law enforcement.

J. A description of each of the following options:

1. counselors and support services for survivors;
2. criminal prosecution (College Police);
3. civil prosecution (College Police);
4. District disciplinary procedures, both student and employee (Title IX Coordinator, Deputy Title IX Coordinators, Dean of Student Affairs, directors of student services, or designee);
5. modification of class schedules (Title IX Coordinator, Dean of Student Affairs, Directors of Student Services, or designee);
6. tutoring (Title IX coordinator, deputy Title IX Coordinators, Dean of Student Affairs, Directors of Student Services, or designee);
7. alternative dispute resolution or other accountability processes (Title IX Coordinator, Deputy Title IX Coordinators, Dean of Student Affairs, directors of student services, or designee); and
8. academic assistance alternatives (Title IX Coordinator, Deputy Title IX Coordinators, Dean of Student Affairs, directors of student services, or designee).

The Title IX coordinator or designee should be available to provide assistance to district law enforcement unit employees 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 Administrative Procedure 3434: Responding to Harassment Based on Sex under Title IX, regardless of whether a complaint is filed with local law enforcement.

The complainant shall be kept informed through the Title IX Coordinator, Dean of Student Affairs, directors of student services, or College Police staff, as appropriate, of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; the complainant is required to maintain any such information in confidence, unless the respondent 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 outcomes/resolutions for a violation of the district's student conduct procedures 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 respondent believed that the complainant 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 complainant affirmatively consented.

In the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the respondent believed that the complainant affirmatively consented to the sexual activity if the respondent 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 the complainant, witness, or third-party reporter of domestic violence, dating violence, sexual assault or stalking on district property, as defined above, in confidence consistent with state and federal law, unless the complainant, 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 director of public and governmental relations, marketing and communications, who shall work with the Title IX Coordinator and/or College Police to assure that all confidentiality rights are maintained consistent with state and federal law.

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. 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.
- B. 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.
- C. 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.
- D. Information about how the district will protect confidentiality.

- E. Information for students about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance, or other student services for individuals impacted by domestic violence, dating violence, sexual assault, and stalking.
- F. Written notification about options for protective measures, and available assistance in, changing academic, transportation, and working situations (if an employee of the District), if requested, and if such accommodations are reasonably available, regardless of whether the complainant chooses to report the crime to College Police or local law enforcement.
- G. Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking, including a clear statement that:
  - 1. Such proceedings shall provide a prompt, fair, and impartial resolution.
  - 2. 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 complainant and promotes accountability.
  - 3. The complainant and the respondent are entitled to the same opportunities to have an advisor present during a disciplinary proceeding.
  - 4. Both the complainant and the respondent must be informed of the outcome of any institutional disciplinary proceeding resulting from alleged domestic violence, dating violence, sexual assault, or stalking, the procedures for the complainant and respondent 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 respondent.
- H. A description of the sanctions the college 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.

### **Sexual Assault and Domestic Violence Counselors**

Sexual assault and domestic violence counselors shall be independent from the Title IX office, and shall, at a minimum, meet the qualifications defined in Sections 1035.2 and 1037.1 of the Evidence Code, respectively.

Services provided by sexual assault and domestic violence counselors, including, but not limited to, securing alternative housing, academic assistance alternatives or accommodations, shall not be contingent on a victim's decision to report to the Title IX office or law enforcement.

A sexual assault or domestic violence counselor shall obtain specific permission from the survivor before disclosing the identity of the survivor, or any information that could reasonably be expected to reveal the identity of the survivor, to the district or any other authority, including law enforcement, unless otherwise required to do so by applicable state or federal law.

### **Education and Prevention Information**

The Title IX coordinator or designee shall:

- A. Provide, as part of each campus's established on-campus orientation program, education, prevention, and outreach 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.

The outreach programming included as part of an incoming student's orientation must include, at a minimum, all of the following:

- The warning signs of intimate partner and dating violence.
  - District policies and resources relating to intimate partner and dating violence.
  - Off-campus resources and centers relating to intimate partner and dating violence.
  - A focus on prevention and bystander intervention training as it relates to intimate partner and dating violence.
- B. Post sexual violence prevention and education information on the campus website regarding domestic violence, dating violence, sexual assault, and stalking.