

Policy Change	<input checked="" type="checkbox"/>	Subject Matter Area Review	<input checked="" type="checkbox"/>
Procedure Change	<input checked="" type="checkbox"/>	Constituency Group Review	<input checked="" type="checkbox"/>
New Policy	<input type="checkbox"/>	District Council	<input type="checkbox"/>
New Procedure	<input type="checkbox"/>	Board 1 st Reading	<input type="checkbox"/>
		Board 2 nd Reading	<input type="checkbox"/>

KEY:
BOLD= new language
~~strikethrough=~~ delete language

Comments:
 Recommended revisions provided from Compliance, per ATIXA recommendations.

Referred to:

Edited:
 11/18/15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33



Policy

3540 Sexual/Gender Harassment, Discrimination and Sexual Misconduct ~~Other Assaults on Campus~~

Members of the Yosemite Community College District community (to include Modesto Junior College and Columbia College), guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The District believes in zero tolerance for sex/gender misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated related District policy. District policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and the associated procedures to establish a mechanism for determining when those expectations have been violated.

The District’s sex/gender harassment, discrimination and sexual misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom (see YCCD Policy 4030).

The District uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but the District never assumes a responding party is in violation of District policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

This policy applies to behaviors that take place on the campus, at District-sponsored events and may also apply off-campus and to actions online when the Title IX Administrator or Campus Coordinator

1 **determines that the off-campus conduct affects a substantial District interest. A substantial District**
2 **interest is defined to include:**

- 3 **A. Any action that constitutes criminal offense as defined by federal or California state law. This**
4 **includes, but is not limited to, single or repeat violations of any local, state or federal law**
5 **committed in the municipality where the District facility is located;**
- 6 **B. Any situation where it appears that the accused individual may present a danger or threat to**
7 **the health or safety of self or others;**
- 8 **C. Any situation that significantly impinges upon the rights, property or achievements of self or**
9 **others or significantly breaches the peace and/or causes social disorder; and/or**
- 10 **D. Any situation that is detrimental to the educational interests of the District.**

11
12 **Any online postings or other electronic communication by students, including cyber-bullying, cyber-**
13 **stalking, cyber-harassment, etc. occurring completely outside of the District’s control (e.g. not on**
14 **District networks, websites or between District email accounts) will only be subject to this policy when**
15 **those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such**
16 **communications are considered speech protected by the 1st Amendment.**

17
18 **Off-campus discriminatory or harassing speech by employees may be regulated by the District only**
19 **when such speech is made in an employee’s official or work-related capacity.**

20
21 **Any sexual/gender harassment, discrimination or sexual misconduct assault or physical abuse, including,**
22 **but not limited to rape as defined by California law, whether committed by an employee, student or**
23 **member of the public, that occurs under the District’s obligation to act on District property, is a violation**
24 **of District policies and procedures, and is subject to all applicable punishment, potentially including**
25 **criminal procedures and employee or student discipline procedures. Students, faculty, and staff who may**
26 **be victims of sexual/gender harassment, discrimination or sexual misconduct and other assaults shall be**
27 **treated with dignity and provided comprehensive assistance.**

28
29 The Chancellor shall establish administrative procedures that ensure that students, faculty, and staff who
30 are victims of sexual/gender harassment, discrimination or sexual misconduct and other assaults receive
31 appropriate information and treatment, and that educational information about preventing
32 sexual/gender harassment, discrimination and sexual misconduct violence is provided and publicized as
33 required by law.

34
35 The procedures shall meet the criteria contained in Education Code Sections 67385, 67385.7, and 67386,
36 and 34 Code of Federal Regulations **Part 106 &** Section 668.46.

37
38 **The District’s Title IX Administrator oversees compliance with all aspects of the sex/gender harassment,**
39 **discrimination and misconduct policy. The Administrator reports directly to the District Vice Chancellor**
40 **of Human Resources, and is housed at the District office. Questions about this policy should be directed**
41 **to the Title IX Administrator. Anyone wishing to make a report relating to discrimination or harassment**
42 **may do so by reporting the concern to the District Title IX Administrator or the college’s Title IX Campus**
43 **Coordinator:**

44
45 **District Title IX Administrator**
46 **Yosemite Community College District**
47 **2201 Blue Gum Ave., Modesto, CA 95358**
48 **(209) 575-6710**

1 TitleIXCoordinator@yosemite.edu

2
3 Vice President of Student Services/Title IX Campus Coordinator

4 Modesto Junior College

5 435 College Ave., Modesto, CA 95350

6 (209) 575-6789

7 TitleIXCoordinator@yosemite.edu

8
9 Vice President of Student Services/Title IX Campus Coordinator

10 Columbia College

11 11600 Columbia College Dr., Sonoma, CA 95370

12 (209) 588-5132

13 TitleIXCoordinator@yosemite.edu

14
15 Additionally, reports can be made by victims and/or third parties using the online reporting form posted
16 at www.yosemite.edu/titleix, or the reporting hotline at (209) 575-6710, or via the reporting email
17 address of TitleIXCoordinator@yosemite.edu. Note that these reports may prompt a need for the
18 institution to investigate.

19
20 Individuals experiencing harassment or discrimination also always have the right to file a formal
21 grievance with government authorities:

22
23 San Francisco Office

24 Office for Civil Rights (OCR)

25 U.S. Department of Education

26 50 Beale Street, Suite 7200

27 San Francisco, CA 94105-1813

28 Telephone: 415-486-5555

29 FAX: 415-486-5570; TDD: 800-877-8339

30 Email: ocr.sanfrancisco@ed.gov

31 Web: <http://www.ed.gov/ocr>

32
33 U.S. Department of Justice Civil Rights Division

34 950 Pennsylvania Avenue, N.W.

35 Educational Opportunities Section, PHB

36 Washington, D.C. 20530

37 By e-mail to education@usdoj.gov

38 By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)

39 By facsimile at (202) 514-8337

40
41 In the event that an incident involves alleged misconduct by the Title IX Administrator, reports should
42 be made directly to the Office of the Chancellor:

43 Yosemite Community College District

44 2201 Blue Gum Ave., Modesto, CA 95358

45 (209) 575-6509

46
47 Cross References (see also):

48 YCCD Policy 4030 – Academic Freedom – Faculty

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53

References:

Education Code Sections [67382](#), [67385](#), and [67386](#); [20 U.S. Code Section 1092\(f\)](#); [20 U.S. Code Section 1681](#); [34 Code of Federal Regulations Section 668.46\(b\)\(11\)](#); [34 Code of Federal Regulations Part 106](#)

Adopted: June 10, 2015

Last Reviewed:

Administrative Procedure

3540 Sexual/Gender Harassment, Discrimination and Sexual Misconduct Other Assaults on Campus

The Yosemite Community College District (to include Modesto Junior College and Columbia College) does not permit discrimination or harassment in its programs and activities on the basis of sex, gender identity, gender expression, sexual orientation, pregnancy status or any other characteristic protected by District policy or state, local, or federal law. Anyone who believes they have been subjected to discrimination or harassment in violation of District policy should follow the procedure outlined in this document to report these concerns.

This procedure involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the sex/gender harassment, discrimination and sexual misconduct policy has been violated. If so, the District will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the District’s policy has been violated. If so, the District will promptly implement an effective remedy designed to end the discrimination or harassment, prevent its recurrence and address its effects.

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be affirmative, conscious and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don’t. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity, without actions demonstrating permission, cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy, or of the faculty/staff handbooks. The District does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the District. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

1 Consensual romantic or sexual relationships in which one party maintains a direct supervisory or
2 evaluative role over the other party are unethical. Therefore, persons with direct supervisory or
3 evaluative responsibilities who are involved in such relationships must bring those relationships to the
4 timely attention of their supervisor, and will likely result in the necessity to remove the employee from
5 the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated
6 by someone with whom they have established a consensual relationship. While no relationships are
7 prohibited by this policy, failure to self-report such relationships to a supervisor as required can result
8 in disciplinary action for an employee.

9
10 Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely
11 to raise such questions. When alcohol or other drugs are being used, a person will be considered unable
12 to give valid consent if they cannot fully understand the details of a sexual interaction (who, what,
13 when, where, why, or how) because they lack the capacity to reasonably understand the situation.
14 Individuals who consent to sex must be able to understand what they are doing. Under district policy,
15 “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and
16 voluntary consent to any sexual activity is equivalent to a “no.”

17
18 Sexual misconduct offenses include, but are not limited to:

- 19 • Sexual harassment. See Section I.
- 20 • Non-consensual sexual contact (or attempts to commit same). See Section II.
- 21 • Non-consensual sexual intercourse (or attempts to commit same). See Section III.
- 22 • Sexual exploitation. See Section IV.

23
24 I. Sexual harassment is:

- 25 A. unwelcome,
- 26 B. sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

27
28 Anyone experiencing sexual harassment in any District program is encouraged to report it immediately
29 to the Title IX Administrator, Title IX Campus Coordinator, or a Deputy Coordinator. Remedies,
30 education and/or training will be provided in response.

31
32 Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory
33 harassment and/or creates a hostile environment.

34
35 A hostile environment is created when sexual harassment is:

- 36 A. sufficiently severe, or
- 37 B. persistent or pervasive, and
- 38 C. objectively offensive that it:
 - 39 1. unreasonably interferes with, denies or limits someone’s ability to participate in or benefit
 - 40 from the District’s educational, employment, social access and/or residential programs.

41
42 Quid Pro Quo harassment is:

- 43 A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct
- 44 of a sexual nature,
- 45 B. by a person having power or authority over another constitutes sexual harassment when,
- 46 C. submission to such sexual conduct is made either explicitly or implicitly a term or condition of
- 47 rating or evaluating an individual’s educational or employment progress, development, or
- 48 performance.

1 D. This includes when submission to such conduct would be a condition for access to receiving the
2 benefits of any educational or employment program.

3 Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly
4 subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual
5 based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate
6 partner violence, stalking; gender-based bullying.

7
8 Retaliation harassment is:

9 A. Any adverse action taken against a person participating in a protected activity because of their
10 participation in that protected activity. Retaliation against an individual for an allegation, for
11 supporting a reporting party or for assisting in providing information relevant to an allegation
12 of sex/gender harassment, discrimination or misconduct is a serious violation of District policy
13 and may be treated as another instance of harassment or discrimination. The District is
14 prepared to take appropriate steps to protect individuals who fear that they may be subjected
15 to retaliation.

16
17 II. Non-consensual sexual contact is:

- 18 A. any intentional sexual touching,
- 19 B. however slight,
- 20 C. with any object,
- 21 D. by a person upon another person,
- 22 E. that is without consent and/or by force.

23
24 Sexual contact includes:

- 25 A. Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any
26 of these body parts, or making another touch you or themselves with or on any of these body
27 parts; or
- 28 B. Any other intentional bodily contact in a sexual manner.

29
30 III. Non-consensual sexual intercourse is:

- 31 A. any sexual intercourse
- 32 B. however slight,
- 33 C. with any object,
- 34 D. by a person upon another person,
- 35 E. that is without consent and/or by force.

36
37 Intercourse includes:

- 38 A. vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to
39 genital contact), no matter how slight the penetration or contact.

40
41 IV. Sexual exploitation:

42 Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own
43 advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that
44 behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of
45 sexual exploitation include, but are not limited to:

- 46 A. Invasion of sexual privacy;
- 47 B. Prostituting another person;
- 48 C. Non-consensual digital, video or audio recording of nudity or sexual activity;

- D. Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- E. Engaging in voyeurism;
- F. Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- G. Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- H. Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- I. Sexually-based stalking and/or bullying may also be forms of sexual exploitation

V. Additional applicable definitions:

A. Consent:

1. Consent is
 - a) clear, and
 - b) knowing, and
 - c) affirmative, conscious and voluntary,
 - d) words or actions,
 - e) that give permission for specific sexual activity.
2. Consent is active, not passive.
3. Silence, in and of itself, cannot be interpreted as consent.
4. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
5. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
6. Previous relationships or prior consent cannot imply consent to future sexual acts.
7. Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
8. In order to give consent, one must be of legal age.
9. Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of District policy.
 - a) Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.
 - b) The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - c) Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).
 - d) This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of District policy.

B. Force:

1. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that

1 overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit
2 you. Okay, don’t hit me, I’ll do what you want.”).

3 a) Coercion is unreasonable pressure for sexual activity. When someone makes clear to
4 you that they do not want sex, that they want to stop, or that they do not want to go
5 past a certain point of sexual interaction, continued pressure beyond that point can be
6 coercive.

7 b) NOTE: There is no requirement for a party to resist the sexual advance or request, but
8 resistance is a clear demonstration of non-consent. The presence of force is not
9 demonstrated by the absence of resistance. Sexual activity that is forced is by definition
10 non-consensual, but non-consensual sexual activity is not by definition forced.

11
12 Use of alcohol or other drugs will never function to excuse any behavior that violates District policy.
13 This procedure and corresponding policy are applicable regardless of the sexual orientation and/or
14 gender identity of individuals engaging in sexual activity.

15
16 **VI. Other misconduct offenses that will fall under Title IX when sex or gender based:**

17 **A. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens
18 or endangers the health or safety of any person;**

19 **B. Discrimination, defined as actions that deprive other members of the community of educational
20 or employment access, benefits or opportunities on the basis of sex or gender;**

21 **C. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in
22 another;**

23 **D. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any
24 person within the District community, when related to the admission, initiation, joining, or any
25 other group-affiliation activity;**

26 **E. Bullying, defined as**

27 1. Repeated and/or severe,

28 2. aggressive behavior,

29 3. likely to intimidate or intentionally hurt, control or diminish another person, physically or
30 mentally,

31 4. that is not speech or conduct otherwise protected by the 1st Amendment;

32 **F. Intimate Partner Violence (to include domestic violence and dating violence), defined as
33 violence or abuse between those currently, or previously, in an intimate relationship to each
34 other, or who have previously or are currently cohabitating;**

35 **G. Stalking**

36 1. Stalking 1:

37 a) A course of conduct,

38 b) directed at a specific person,

39 c) on the basis of actual or perceived membership in a protected class,

40 d) that is unwelcome, AND

41 e) would cause a reasonable person to feel fear.

42 2. Stalking 2:

43 a) Repetitive and menacing,

44 b) pursuit, following, harassing and/or interfering with the peace and/or safety of
45 another.

46 **H. Any other District policies may fall within this section when a violation is motivated by the
47 actual or perceived membership of the reporting party’s sex or gender.**

48

VII. All District employees (faculty, staff, and administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected discrimination or harassment to appropriate District officials, thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options for the District:

A. Confidential Reporting:

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

1. On-campus licensed professional counselors and staff
2. On-campus health service providers and staff (Note that health services employees are mandated by California law to report to local law enforcement if they treat any physical condition that is the result of abusive or assaultive behavior, this includes any type of sexual assault. Therefore, they may keep the information confidential from the campus community but cannot guarantee complete confidentiality.)
3. On-campus individuals designated by the District to provide confidential counseling
4. Off-campus:
 - a) Licensed professional counselors
 - b) Local rape crisis counselors
 - c) Domestic violence resources
 - d) Local or state assistance agencies
 - e) Clergy/Chaplains

All of the above employees will maintain confidentiality except as previously noted and in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit timely, anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, or patient.

B. Formal Reporting Options:

All District employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Administrator and/or Campus Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Administrator by employees. Remedial actions may result without formal District action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Administrator or Campus Coordinators, who will evaluate that request in light of

1 the duty to ensure the safety of the campus and comply with federal law. In cases indicating
2 pattern, predation, threat, weapons and/or violence, the District will likely be unable to honor
3 a request for confidentiality. In cases where the victim requests confidentiality and the
4 circumstances allow the District to honor that request, the District will offer interim supports
5 and remedies to the victim and the community, but will not otherwise pursue formal action. A
6 reporting party has the right, and can expect, to have reports taken seriously by the District
7 when formally reported, and to have those incidents investigated and properly resolved
8 through these procedures.

9
10 Formal reporting still affords privacy to the reporter, and only a small group of officials who
11 need to know will be told, including but not limited to: the Division of Student Services, Campus
12 Safety, and the Behavioral Intervention Team. Information will be shared as necessary with
13 investigators, witnesses and the responding party. The circle of people with this knowledge will
14 be kept as tight as possible to preserve a reporting party's rights and privacy.

15
16 However, California law requires campus security authorities to immediately, or as soon as
17 practicably possible, disclose to local law enforcement any report of a Part 1 violent crime, hate
18 crime, or sexual assault, whether committed on or off campus. This includes reports victims
19 make directly to campus security authorities as well as reports victims make to other campus
20 employees that are then conveyed to campus security authorities.

21
22 While the reporting disclosure of the act of violence itself is mandated, a victim's identity may
23 not be disclosed to local law enforcement unless the victim consents to being identified after
24 being informed of his or her right to have identifying information withheld. If a victim does not
25 consent to disclosing his or her identity, the responding party's identity may not be disclosed
26 either.

27
28 Regardless of whether a victim consents to the disclosure of his or her identifying information,
29 under state and federal law, a victim has: (1) the right to a Sexual Assault Forensic Medical
30 Examination at no cost to the victim/patient and (2) the right to participate or not participate
31 with the local law enforcement agency or the criminal justice system, either prior to the
32 examination, or at any other time. Additionally, a victim may agree to engage with local law
33 enforcement and participate in the investigation and prosecution using a pseudonym (i.e. Jane
34 or John Doe) instead of his or her true name.

35
36 Failure of a non-confidential employee, as described in this section, to report an incident or
37 incidents of sex or gender harassment or discrimination of which they become aware, is a
38 violation of District policy and can be subject to disciplinary action for failure to comply with
39 District policies.

40
41 Certain campus officials – those deemed Campus Security Authorities - have a duty to report
42 sexual assault, domestic violence, dating violence and stalking for federal statistical reporting
43 purposes (Clery Act). All personally identifiable information is kept confidential, but statistical
44 information must be passed along to local law enforcement regarding the type of incident and
45 its general location (on or off-campus, in the surrounding area, but no addresses are given) for
46 publication in the Annual Security Report. This report helps to provide the community with a
47 clear picture of the extent and nature of campus crime, to ensure greater community safety.
48 Mandated federal reporters include: student/conduct affairs, campus safety, local police,

1 coaches, athletic directors, student activities staff, human resources staff, advisors to student
 2 organizations and any other official with significant responsibility for student and campus
 3 activities. The information to be shared includes the date, the location of the incident (using
 4 Clery location categories) and the Clery crime category. This reporting protects the identity of
 5 the victim and may be done anonymously.
 6

7 Victims of sexual misconduct should also be aware that District administrators must issue
 8 immediate timely warnings for incidents reported to them that are confirmed to pose a
 9 substantial threat of bodily harm or danger to members of the campus community. The District
 10 will ensure that a victim's name and other identifying information is not disclosed, while still
 11 providing enough information for community members to make safety decisions in light of the
 12 danger.
 13

14 **VIII. Investigation and Resolution Process:**

- 15 A. Reporting Party: In this process, the person alleging a violation of policy is referred to as the
 16 reporting party.
- 17 B. Responding Party: In this process, the person who is alleged to have violated campus policy is
 18 referred to as the responding party.
 19

20 The District aims to bring all allegations to a resolution within a sixty (60) business day time period,
 21 which can be extended as necessary for appropriate cause by the Title IX Administrator with notice to
 22 the parties. In overview, the timeline for resolution begins with notice to a mandated reporter. The
 23 Coordinator then engages in a preliminary inquiry that is typically 1-3 days in duration. From there, the
 24 allegation can lead to a formal investigation, which usually starts within days of the preliminary
 25 inquiry's conclusion. Investigations range from days to weeks, depending on the nature and complexity
 26 of allegations, with the District commonly aiming for a 10-14 window to completion. The parties are
 27 regularly apprised of the status of the investigation as it unfolds. The process may then end or continue.
 28 If it continues, barring necessary extensions, the investigation leads to formal and informal resolution
 29 options, which the District aims to complete in 10-14 days from the end of the investigation. A failed
 30 informal resolution which triggers a formal resolution may require the District to extend this timeline
 31 accordingly. From there, appeals may be requested, with a three-day window to file appeal requests
 32 once a formal determination is reached, a three-day window to grant or deny the appeal request, and
 33 another 7-10 days for a final resolution to be reached. In rare cases where a remanded decision results
 34 in a new hearing, the results of that hearing can be appealed once, which would typically add another
 35 10-14 days to final results.
 36

37 Details regarding the investigative process and procedures used in sex/gender harassment,
 38 discrimination and sexual misconduct inquiries can be found in AP 3435.
 39

40 **IX. Interim Remedies/Actions:**

41 The Title IX Administrator, or Campus Coordinator (or designee) may provide interim remedies intended
 42 to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm
 43 to the alleged victim and the community and to prevent further violations. The District will keep interim
 44 remedies and actions as private as possible. These remedies may include, but are not limited to:

- 45 A. Referral to counseling and health services
- 46 B. Referral to the Employee Assistance Program
- 47 C. Education to the community

- D. Altering the housing situation of the responding party (resident student (or the alleged victim, if desired))
- E. Altering work arrangements for employees
- F. Providing campus escorts,
- G. Providing transportation accommodations
- H. Implementing contact limitations between the parties
- I. Offering adjustments to academic deadlines, course schedules, etc.

The District may interim suspend a student, employee or organization pending the completion of the investigation and resolution, particularly in when in the judgment of the Title IX Administrator or Campus Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party whose behavior is in question. In all cases in which an interim suspension is imposed, the student or employee will be given the opportunity to meet with the Title IX Administrator or Campus Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Administrator or Campus Coordinator has sole discretion to implement or stay an interim suspension under the policy on sex/gender harassment, discrimination and sexual misconduct and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to District housing and/or the District campuses/facilities/events. As determined by the Title IX Administrator or Campus Coordinator or designee, this restriction can include classes and/or all other District activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Administrator or Campus Coordinator or designee, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The District will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the institution’s ability to provide the accommodations or protective measures.

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in YCCD Policy 5500 – Standards of Student Conduct; YCCD Policy 7365 – Discipline and Dismissals – Classified Employees; YCCD Leadership Team Handbook; CSEA and YFA collective bargaining agreements. The following are the typical sanctions that may be imposed upon students or employees singly or in combination:

- A. Student sanctions (listed below and defined in YCCD Policy 5500)
 - 1. Warning – Written or Verbal
 - 2. Probation
 - 3. Suspension
 - 4. Expulsion
 - 5. Withholding Diploma
 - 6. Revocation of Degree
 - 7. Transcript Notation
 - 8. Other Actions

B. Employee sanctions (listed below and defined in YCCD Policy 7365; YCCD Leadership Team Handbook; CSEA and YFA collective bargaining agreements)

1. Warning – Written or Verbal
2. Performance Improvement Plan
3. Required Counseling
4. Required Training or Education
5. Demotion
6. Loss of Annual Pay Increase
7. Suspension without Pay
8. Suspension with Pay
9. Revocation of Tenure
10. Termination

C. Sanctioning for sexual misconduct:

1. Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
2. Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*
3. Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officer(s) nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so. (Details regarding the disciplinary hearing and sanctioning procedures can be found in the documents listed above.)

D. Additional provisions:

1. Attempted violations

In most circumstances, the District will treat attempts to commit any of the violations listed in the Sex/Gender Harassment, Discrimination and Sexual Misconduct policy as if those attempts had been completed.

2. False Reports

The District will not tolerate intentional false reporting of incidents. It is a violation of the Standards of Student Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

3. Amnesty for Victims and Witnesses

The District community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to District officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best

1 interests of this community that as many victims as possible choose to report to District
2 officials, and that witnesses come forward to share what they know. To encourage
3 reporting, the District pursues a policy of offering victims of misconduct and witnesses
4 amnesty from minor policy violations related to the incident.

5
6 Sometimes, students are hesitant to offer assistance to others for fear that they may get
7 themselves in trouble (for example, as student who has been drinking underage might
8 hesitate to help take a sexual misconduct victim to the Campus Safety). The District pursues
9 a policy of amnesty for students who offer help to others in need. While policy violations
10 cannot be overlooked, the District will provide educational options, rather than
11 punishment, to those who offer their assistance to others in need.

12
13 **4. Parental Notification**

14 The District reserves the right to notify parents/guardians of dependent students regarding
15 any health or safety risk, change in student status or conduct situation, particularly alcohol
16 and other drug violations. The District may also notify parents/guardians of non-dependent
17 students who are under age 21 of alcohol and/or drug policy violations. Where a student is
18 non-dependent, the District will contact parents/guardians to inform them of situations in
19 which there is a significant and articulable health and/or safety risk. The District also
20 reserves the right to designate which District officials have a need to know about individual
21 conduct reports pursuant to the Family Educational Rights and Privacy Act.

22
23 **X. District students and employees are responsible for knowing the information, policies and
24 procedures outlined in this document.**

25
26 The District reserves the right to make changes to this document as necessary and once those changes
27 are posted online, they are in effect. Students and employees are encouraged to check online
28 www.yosemite.edu/Trustees/boardpolicy.htm for the updated versions of all policies and procedures.
29 If government regulations change in a way that impacts this document, this document will be construed
30 to comply with government regulations in their most recent form. Reports of misconduct made after
31 the fact may raise issues of policy and procedure application, if policies and procedures have changed.
32 Unless the parties accept current policies, all reports are governed by the policies that were in place at
33 the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time
34 of resolution.

35
36 Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating
37 violence, sexual assault, or stalking, as defined by California law, whether committed by an employee,
38 student, or member of the public, occurring on District property, in connection with all the academic,
39 educational, extracurricular, athletic, and other programs of the District, whether those programs take
40 place in the District's facilities or at another location, or on an off-campus site or facility maintained by
41 the District, or on grounds or facilities maintained by a student organization, is a violation of District
42 policies and regulations, and is subject to all applicable punishment, including criminal procedures and
43 employee or student discipline procedures.

44
45 "Sexual assault" includes but is not limited to, rape, forced sodomy, forced oral copulation, rape by a
46 foreign object, sexual battery, or threat of sexual assault.

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

5
6 "Domestic violence" includes felony or misdemeanor crimes of violence committed by:

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

13
14 "Stalking" means engaging in a course of conduct directed at a specific person that would cause a
15 reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional
16 distress.

17
18 It is the responsibility of each person involved in sexual activity to ensure that he or she has the affirmative
19 consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not
20 mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual
21 activity and can be revoked at any time. The existence of a dating relationship between the persons
22 involved, or the fact of past sexual relations between them, should never by itself be assumed to be an
23 indicator of consent.

24
25 "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity.

26
27 These written procedures and protocols are designed to ensure victims of domestic violence, dating
28 violence, sexual assault or stalking receive treatment and information.

29
30 All students and employees, who allege they are the victims of domestic violence, dating violence, sexual
31 assault or stalking on District property shall be provided with information regarding options and assistance
32 available to them. Information shall be available for students from the college's Title IX Coordinator and
33 for employees from the Vice Chancellor of Human Resources, which shall maintain the identity and other
34 information about alleged sexual assault victims as confidential unless and until the Title IX Coordinator
35 or the Vice Chancellor of Human Resources, respectively, are authorized to release such information.

36
37 All alleged victims of domestic violence, dating violence, sexual assault, or stalking shall be provided with
38 the following:

- 39 • A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual
40 assault or stalking;
- 41 • A list of personnel on campus who should be notified and procedures for such notification, if the
42 alleged victim consents;
- 43 • Information about the importance of preserving evidence and the identification and location of
44 witnesses;
- 45 • A description of available services, and the persons on campus available to provide those services
46 if requested. Services include:
 - 47 ○ transportation to a hospital, if necessary;
 - 48 ○ counseling, or referral to a counseling center;

- notice to the police, if desired;
- a list of other available campus resources or appropriate off-campus resources.
- 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 Title IX Coordinator should be available to provide assistance to District safety/security employees regarding how to respond appropriately to reports of sexual violence in reference to students. The Vice Chancellor of Human Resources should be available to provide assistance to District safety/security employees regarding how to respond appropriately to reports of sexual violence in reference to employees.

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 Director of Public Affairs, which shall work with the college's Title IX Coordinator for students and the Vice Chancellor of Human Resources for employees to assure that all confidentiality rights are maintained.

The District will investigate all complaints alleging sexual assault, regardless of whether a complaint is filed with local law enforcement. However, California law requires campus security authorities to immediately, or as soon as practicably possible, disclose to local law enforcement any report of a Part 1 violent crime, hate crime, or sexual assault, whether committed on or off campus. This includes reports victims make directly to campus security authorities as well as reports victims make to other campus employees that are then conveyed to campus security authorities.

While the reporting disclosure of the act of violence itself is mandated, a victim's identity may not be disclosed to local law enforcement unless the victim consents to being identified after being informed of his or her right to have identifying information withheld. If a victim does not consent to disclosing his or her identity, the alleged perpetrator's identity may not be disclosed either.

Regardless of whether a victim consents to the disclosure of his or her identifying information, under state and federal law, a victim has: (1) the right to a Sexual Assault Forensic Medical Examination at no cost to the victim/patient and (2) the right to participate or not participate with the local law enforcement agency or the criminal justice system, either prior to the examination, or at any other time. Additionally, a victim may agree to engage with local law enforcement and participate in the investigation and prosecution using a pseudonym (i.e. Jane or John Doe) instead of his or her true name.

All alleged victims of domestic violence, dating violence, sexual assault or stalking on District property shall be kept informed of any ongoing investigation, for students, from the college's Title IX Coordinator and, for employees, from the Vice Chancellor of Human Resources. 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.

1
2 A complainant or witness who participates in an investigation of sexual assault, domestic violence, dating
3 violence, or stalking will not be subject to disciplinary sanctions for a violation of the District's student
4 conduct policy at or near the time of the incident, unless the District determines that the violation was
5 egregious, including but not limited to, an action that places the health or safety of any other person at
6 risk or involves plagiarism, cheating, or academic honesty.

7
8 In the evaluation of complaints in any disciplinary process, it shall not be a valid excuse to alleged lack of
9 affirmative consent that the accused believed that the complainant consented to the sexual activity under
10 either of the following circumstances:

- 11 ● The accused's belief in affirmative consent arose from the intoxication or recklessness of the
12 accused
- 13 ● The accused did not take reasonable steps, in the circumstances known to the accused at the
14 time, to ascertain whether the complainant affirmatively consented.

15
16
17 In the evaluation of complaints in the disciplinary process, it shall not be a valid excuse that the accused
18 believed that the complainant affirmatively consented to the sexual activity if the accused knew or
19 reasonably should have known that the complainant was unable to consent to the sexual activity under
20 any of the following circumstances:

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

25
26
27 Additionally, the Annual Security Report will include a statement regarding the District's programs to
28 prevent sex offenses and procedures that should be followed after a sex offense occurs. The statement
29 must include the following:

- 30 ● A description of educational programs to promote the awareness of rape, acquaintance rape,
31 other forcible and non-forcible sex offenses, domestic violence, dating violence, or stalking;
- 32 ● Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs,
33 including who should be contacted, the importance of preserving evidence to prove a criminal
34 offense, and to whom the alleged offense should be reported;
- 35 ● Information on a student's right to notify appropriate law enforcement authorities, including on-
36 campus and local police, and a statement that campus personnel will assist the student in
37 notifying these authorities, if the student so requests;
- 38 ● Information for students about existing on- and off-campus counseling, mental health, or other
39 student services for victims of sex offenses;
- 40 ● Notice to students that the campus will change a victim's academic situation after an alleged
41 domestic violence, dating violence, sex offense, or stalking and of the options for those changes,
42 if those changes are requested by the victim and are reasonably available;
- 43 ● Procedures for campus disciplinary action in cases of an alleged domestic violence, dating
44 violence, sex offense, or stalking including a clear statement that:
 - 45 ○ The accuser and the accused are entitled to the same opportunities to have others present
46 during a disciplinary proceeding; and
 - 47 ○ Both the accuser and the accused must be informed of the outcome of any institutional
48 disciplinary proceeding resulting from an alleged sex offense. Compliance with this paragraph

1 does not violate the Family Educational Rights and Privacy Act. For the purposes of this
2 paragraph, the outcome of a disciplinary proceeding means the final determination with
3 respect to the alleged domestic violence, dating violence, sex offense, or stalking and any
4 sanction that is imposed against the accused.

- 5 • A description of the sanctions the campus may impose following a final determination by a
6 campus disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-
7 forcible sex offenses, domestic violence, dating violence, or stalking.

8 9 Education and Prevention Information

10
11 The college's Title IX Coordinator or designee shall:

- 12 • Provide, as part of each campus' established on-campus orientation program, education and
13 prevention information about domestic violence, dating violence, sexual assault, and stalking. The
14 information shall be developed in collaboration with campus-based and community-based victim
15 advocacy organizations, and shall include the District's sexual assault policy and prevention
16 strategies including empowerment programming for victim prevention, awareness raising
17 campaigns, primary prevention, bystander intervention, and risk reduction.
- 18 • Post sexual violence prevention and education information on the campus internet website
19 regarding domestic violence, dating violence, sexual assault and stalking.

20 21 References:

22 Education Code Sections [67380](#), [67385](#), [67385.7](#), and [67386](#); [20 U.S. Code Section 1092\(f\)](#); [34 Code of](#)
23 [Federal Regulations Section 668.46\(b\)\(11\)](#); [Penal Code Sections 243.4, 261-269, 314, 11160, and 13700](#)

24
25 **Procedure Last Revised:** June 10, 2015

26 **Last Reviewed:**