

# STUDENT SAFETY, JUSTICE, AND SUPPORT

Policy Guidelines for California  
Campuses Addressing Sexual  
Assault, Dating/Domestic  
Violence and Stalking



**CALCASA**  
CALIFORNIA COALITION  
AGAINST SEXUAL ASSAULT

# ACKNOWLEDGEMENTS



## ENVISIONING A WORLD FREE FROM SEXUAL VIOLENCE

The mission of the California Coalition Against Sexual Assault (CALCASA) is to provide leadership, vision and resources to rape crisis centers, individuals, and other entities committed to ending sexual violence.

CALCASA wishes to acknowledge the assistance of Deputy Attorney General Janet Neeley in drafting these Guidelines, and to note that any opinions or legal interpretations discussed herein are those of CALCASA and do not necessarily represent the view of the Attorney General of California. CALCASA also acknowledges Emily Austin's contributions in reviewing and developing this document.

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# EXECUTIVE SUMMARY

**The Policy Guidelines for California Campuses Addressing Sexual Assault, Dating/Domestic Violence and Stalking (hereinafter “Guidelines”) is a document and resource for colleges looking to comply with California law and improve their response to and prevention of sexual assault and other crimes. California Coalition Against Sexual Assault (CALCASA), in conversations among California prosecutors, rape crisis centers (RCC)<sup>1</sup>, college/university administrators, and student activists, has developed these Guidelines to provide practical guidance and examples of the best practices at work on different campuses across the country.**

In 2014, several new federal and California laws were passed that require colleges and universities to comply with new standards, develop more detailed protocols, codify partnerships, and provide comprehensive prevention education and outreach. In particular, sections of California's Education Code §§ 67386, 67383, 67380 were added or amended to ensure more coordinated, transparent, and comprehensive policies and protocols that protect survivors, encourage on and off-campus collaborations, and guide comprehensive prevention strategies. This document will provide an overview and

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<sup>1</sup>Rape crisis centers for the purpose of this document are defined according to Cal. Penal Code § 13837 and Cal. Evidence Code § 1035.2.

examples of how schools can best comply with the new regulations and requirements.

The Guidelines are based on the various regulations and laws that impact California colleges/universities and focus on providing a trauma-informed perspective that honors the survivor's voice and promotes justice and transparency in the college/university processes. It also details prevention strategies for schools to adopt. The central theme of the Guidelines is to adjust and develop policies that encourage partnerships while informing survivors of their rights and options to the fullest extent possible.

California colleges/universities are now tasked with developing updated protocols, policies and education programs by July 2015. The path forward is through collaboration and partnership among all agencies that have a stake in protecting survivors, pursuing justice, and making campuses safer. These collaborations include college/university administrators and staff, students, RCCs, law enforcement agencies, and other community and college-based organizations. Through recognizing the unique perspectives and responsibilities of all partners, schools can craft best practices policies while considering the needs of their students, campuses and communities. Campuses should consult with their legal counsel in the creation of policies and interpretation of law.

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These guidelines discuss and provide examples of campus compliance in the following areas:

## CONFIDENTIALITY

Protecting survivors' confidentiality and privileged communications is paramount to a survivor-centered approach and trauma-informed practice in campus response to sexual assault. Within the larger context of general confidentiality, there are legally protected communications under RCC sexual assault counselor privilege, domestic violence counselor privilege and other protected communications (for example, psychotherapist-client privilege, pastoral counselor privilege). In particular, the RCC sexual assault counselor privilege provides a high level of confidentiality protections for survivor communications. The survivor holds the privilege, and the survivor must authorize disclosure. A court may compel disclosure via court order, in certain circumstances where the judge weighs the probative value of the information against the impact of disclosure on the survivor.

**RCC sexual assault counselors employed by or volunteering for an RCC meet the definition of a "sexual assault counselor" under the Cal. Evidence Code § 1035.2 and provide privileged and confidential services to survivors. Campus representatives provide survivors with support**

**services, information and accommodations on-campus. In this document, campus representatives include peer counselors, campus advocates, Title IX coordinators, and campus support persons, as distinguished from RCC sexual assault counselors. Campuses should consult their legal counsel to interpret confidentiality limitations for campus representatives.** Campuses should clearly articulate and notify survivors of confidentiality limitations, prior to the survivor making information disclosures. Campuses should also follow best practices in partnering with independent RCCs, which can guarantee privileged communications protections apply in the situation.

When confidentiality cannot be assured, survivors should be immediately notified and made aware of the limitations, prior to disclosure. Limitations on confidentiality protections should be communicated to survivors when they first come into contact with campus representatives, law enforcement officers, and/or rape crisis centers. Examples of situations where confidentiality protections are limited include: reports to certain individuals who have a duty to maintain campus safety, reports at health centers/hospitals, reports to campus law enforcement, limited information from disciplinary proceedings, and Family Educational Rights and Privacy Act (FERPA) student record requests.

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## OPTIONS FOR SURVIVORS

Survivors should be informed about their options—which include the criminal justice system, civil remedies and protections, and campus-based investigations/disciplinary complaint processes. Access to information on these processes should be intuitive and easy to discover through campus websites and other spaces for campus information. Resources should be tailored with both a student and staff/faculty audience in mind, because not only students, but staff and other members of the campus community will be accessing this information. There should be easy and obvious links on campus websites for access to emergency information and how to get help. Also, the limits of confidentiality should be stated so that survivors, support persons, and others have a clear understanding of what the expectation of privacy will be in each of the different areas of reporting and seeking services.<sup>2</sup>

## TRAUMA-INFORMED INTERVIEWING AND SERVICES

Among the most important shift in response to sexual assault, domestic/dating violence and stalking on campuses is an increased focus on the provision of trauma-informed services and trauma-informed interviewing practices. This

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<sup>2</sup> Campuses should consult their legal counsel in interpreting these confidentiality limitations.

means the focus of services and reporting should not be to force a survivor to take a certain pathway, but instead explain the options and impacts of different ways of proceeding. Trauma-informed practices see the survivor as a critical expert in their own safety and healing, and the role of advocates is to explain the options and connect the survivor to resources. This should include written notice of the options available, as well as information about the collection of evidence and identification of witnesses.

Providing trauma-informed services also involves reducing the number of times a survivor must undergo interviewing for various agencies (for example, campus police, school disciplinary officials, campus health center). Safe interviewing spaces and techniques must not blame the survivor and must provide survivors with access to an advocate/support person.

Survivors should be made aware of the option to get support during the reporting process, as well as their right to have a sexual assault forensic medical exam, report to law enforcement agencies, get help in making the report, and understand the consequences of making a report to law enforcement. Survivors must also be informed of: the options of the people they can report to, both without and within the campus systems; the availability of Campus Community Response Teams; and any specialized options for

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historically marginalized groups, such as LGBTQ, disability, veterans, and cultural and ethnic groups programs and communities.

## CAMPUS DISCIPLINARY PROCEEDINGS

Campuses are working to uphold student codes of conduct, and survivors have the right to have a campus disciplinary proceeding to investigate and provide campus-based remedies for sexual assault, domestic/dating abuse, and stalking. Response by campus officials must be swift. The person reporting the incident (the complainant) must also be informed of the final decision in the case, as well as the principles of trauma-informed due process. Basic protections for the complainant and the accused should be upheld, even though the campus disciplinary proceedings differ from criminal or civil court proceedings. Disciplinary officials should have a basic understanding of the rules of evidence. Also, they should understand trauma-informed interviewing strategies such as avoiding repeated interviews and using a trained and skilled interviewer.

Several additional items should be thoroughly explained to complainants. The school's amnesty clause (protecting those who report from facing disciplinary sanctions for violations of the code of conduct, such as the use of drugs/alcohol) should be explained and enforced. The level of

confidentiality within the disciplinary proceeding should be explained, as well as the consequences for retaliation or coercion. It should be clear what conduct violates Title IX and that mediation/arbitration is never appropriate in sexual assault cases.

## COORDINATED RESPONSE AND REVIEW OF CAMPUS POLICY

Campuses should have a multi-disciplinary team that meets monthly to review the policy and protocols, review cases, and analyze data. These reviews are also required under Title IX and Clery Act regulations and should serve as both a source of quality control in the response to sexual assault, domestic/dating violence and stalking, as well as an opportunity to assess campus climate. Information about adjudicated sexual offenders should be shared to the extent permitted by state and federal law.

## DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

Campuses must provide comprehensive prevention and outreach programs for students and staff. This outreach and education programming must be part of every incoming student's orientation, and should be ongoing and layered throughout a student's time on campus. At a minimum, the program plan must include

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information about the process for contacting and informing students, campus organizations, athletic programs, and student groups about the campus sexual assault policy, the affirmative consent standard, and the rights and responsibilities of students.

Furthermore, campus administrators, law enforcement officers, and staff must be trained on the campus protocol and how to provide trauma-informed services to survivors. Campuses should partner with RCCs to help provide this professional development.

Campuses should provide prevention and outreach that is tailored to the school and diverse communities within the school. The most impactful efforts are ongoing, use multiple prevention strategies, and target high-risk populations at the appropriate times.

Comprehensive prevention entails more than one approach. Promising practices include the use of multi-media, bystander intervention training, empowerment-based programming,

personalized campus-specific trainings that tailor the information for individual campuses, gender equity approaches, and inclusion in other drug and alcohol abuse prevention programming without victim-blaming or excusing violent behavior. More prevention strategies include trauma-informed trainings, education about affirmative consent, peer education and ambassador programs. It is ideal for campuses to establish ongoing and meaningful partnerships with RCCs, to create truly diverse and comprehensive programming.

It is the hope of the sexual assault, domestic/dating violence and stalking fields that these Guidelines will help campuses realize improvements in the response to and prevention of these forms of violence, build the campus-community partnerships that continue to provide resources and support to survivors, and cultivate campus safety and health for all persons on campus.



# INTRODUCTION

## POLICY GUIDELINES FOR CALIFORNIA CAMPUSES ADDRESSING SEXUAL ASSAULT, DATING/DOMESTIC VIOLENCE AND STALKING

California law<sup>3</sup> now requires all community colleges, the California State University, the University of California, and independent postsecondary institutions to adopt policies that implement a best practices model and are survivor-centered.<sup>4</sup> The policy must address sexual assault, domestic violence (DV), dating violence and stalking, and include incidents that occur on or off campus. Campuses should consult with their legal counsel in the creation of policies and interpretation of law.

These guidelines will identify key elements of a best practices protocol that comply with the new California laws and existing federal law, are trauma-informed and survivor-focused, and include examples of how to implement these laws.<sup>5</sup> These guidelines recognize the need for campuses to be impartial; accordingly, the term

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<sup>3</sup> Ed. Code, § 67386(a)-(c).

<sup>4</sup> See [Attachment 1: State and Federal Laws Governing Mandatory Campus Sexual Assault Protocols and Procedures](#).

<sup>5</sup> Components of an effective policy include definitions of sexual misconduct, intimate partner violence, stalking and consent; examples of acts and behaviors; use of technology in harassment/stalking; on and off-campus resources; survivor accommodations, disciplinary consequences; formal and informal grievance policies; prohibition on retaliation; and prevention education. (See <http://www.calcasa.org/wp-content/uploads/2010/02/Campus-TA-Fact-sheet-extended-FINAL.pdf>)

“survivor-centered”, as used in these guidelines, relates to ensuring that the process is trauma-informed and is not meant to indicate that the campus process will not be fair to all parties.

A survivor-centered policy respects the survivor's right to make decisions, for example, whether to report a sexual assault, or whether to renew contact with a perpetrator of intimate partner violence; considers the survivor's family and social environment when providing safety responses and health or other services; provides education about resources and prevention for the entire campus community; and provides for the immediate needs of and longer term socio-economic support for survivors.<sup>6</sup>

In order to receive state funds for student financial assistance in California, institutions of higher learning must also enter into memoranda of understanding or collaborative partnerships with existing on-campus and community-based organizations including RCCs, to refer students to resources for assistance.<sup>7</sup> The model Memorandum of Understanding (MOU) is intended only as guidance and is not required to replace adequate and existing agreements.

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<sup>6</sup> <http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-Student-Summit-National-Web.pdf>.

<sup>7</sup> Cal. Ed. Code, § 67386(c); See Attachment 2: Model Memorandum of Understanding and Guidance Document, California Attorney General's office.

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While federal laws partly define requirements for campus policies,<sup>8</sup> California has its own laws regarding confidentiality, privilege, and use of evidence in sexual assault and domestic violence cases. In order to provide the appropriate level of confidentiality for and information to victims who initially choose to disclose their situation, whether disclosure is made in order to seek help and support, or to make a report for purposes of prosecution or campus disciplinary proceedings, campuses must be aware of those legal requirements unique to California.

Survivors have the same rights when a sexual assault or domestic violence incident occurs on or near campus that they have when such a crime occurs anywhere in California.<sup>9</sup>



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<sup>8</sup> See Attachment 1 for more details on federal laws.

<sup>9</sup> See Attachment 3 for a list of survivors' rights under California law.

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**For many survivors of sexual assault or domestic violence, it is a difficult decision to choose whether or not to report what happened to them. Campuses have an interest in knowing about violence affecting their students in order to safeguard public safety and may be concerned about liability issues (such as being responsible for a hostile or dangerous environment). Police departments and the prosecuting agencies (for example, City Attorney or District Attorney's offices) have an interest in prosecuting crimes in order to uphold the law. However, the majority of survivors will not make an initial report unless they are assured that their information remains confidential.**

It is important that survivors know of the limits of confidentiality from their first contact with campus representatives, RCC sexual assault counselors, college staff, and law enforcement officers. California law now requires that, in order to receive state funds for student financial assistance, the community college districts, trustees of the California State University, Regents of the University of California, and governing boards of independent postsecondary institutions must adopt policies and protocols consistent with best practices regarding sexual assault, domestic violence, dating violence and stalking.<sup>10</sup> The institution of higher education must have a policy statement on how it will provide appropriate

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<sup>10</sup> Cal. Ed. Code, § 67386(b)

protections for privacy and confidentiality.<sup>11</sup> It must also have procedures for confidential reporting by victims and third parties.<sup>12</sup> **RCC sexual assault counselors employed by or volunteering for an RCC,<sup>13</sup> meet the definition of a "sexual assault counselor" under California Evidence Code and provide privileged and confidential services to survivors. Campus representatives provide survivors with support services, information and accommodations on-campus. In this document, campus representatives include the peer counselors, campus advocates, Title IX Coordinators, and campus support persons, as distinguished from RCC sexual assault counselors. Campuses should consult their legal counsel to interpret confidentiality limitations for campus representatives.**

Campuses have competing responsibilities; they are responsible for reporting statistics on campus sexual assault<sup>14</sup> and they are charged with ensuring the safety of all students. They are required to balance a victim's request for confidentiality with considerations relating to the need to investigate or do a public announcement about a sexual assault and to

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<sup>11</sup> Cal. Ed. Code, § 67386(b)(1)

<sup>12</sup> Cal. Ed. Code, § 67386(b)(13)

<sup>13</sup> Rape crisis centers for the purpose of this document are defined according to Cal. Penal Code § 13837 and Cal. Evidence Code § 1035.2.

<sup>14</sup> See [Attachment 1, Clery Act](#).

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ensure the safety of others.<sup>15</sup> Under Title IX, they are charged with preventing sexual harassment and discrimination based on gender.

Additionally, they must ensure that campus judicial proceedings are fair and unbiased.

If a survivor were to file a lawsuit against the school, a Title IX complaint, or initiate campus judicial proceedings, the campus might not be able or willing to honor an initial request of complete confidentiality and may not be able to assert privileged communications protections to the survivor—the campus could decide that the interest of protecting the school is more important than the survivor's confidentiality. A campus representative, who is not employed by a California RCC at the time of the disclosure, may not be able to claim the evidentiary privilege afforded only to sexual assault counselors affiliated with a RCC (RCC sexual assault counselors). This means that campus representatives may be more easily compelled

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<sup>15</sup> See [Attachment 1, Title IX](#). Campus and local law enforcement agencies are also restricted from disclosing information about most sexual assaults, if the survivor requests anonymity. (Pen. Code, § 293.) Under California law, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved, **must not be disclosed** when the victim of most types of sexual assault requests confidentiality. (Govt. Code, §6254, subd. (f)(2).)

to disclose confidential information, while independent RCC sexual assault counselors have to protect the confidential information until directly ordered by the court. Independent RCC sexual assault counselors are prepared to protect these privileged communications in the face of subpoenas and other forceful requests for disclosure.

Only a court may compel disclosure of information received by a RCC sexual assault counselor, who is an employee or volunteer of a California rape crisis center, because the survivor's statement in that context is privileged under California law. The court can compel disclosure only if the survivor made a complaint of sexual assault, the information received by the counselor is relevant to that criminal proceeding, and the court finds the probative value of the information outweighs the potential effect of disclosure on the victim, the treatment relationship, and the treatment services.<sup>17</sup> The required court order for disclosure requires more than a subpoena to appear or produce documents.

Reports to campus representatives may not be privileged unless those representatives are also RCC sexual assault counselors who are employed by a rape crisis center, or are domestic violence counselors, as defined by

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<sup>17</sup> Cal. Evid. Code, § 1035.4.

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California law.<sup>18</sup> Further, the counselor must have been acting in that capacity (as an employee or volunteer with a RCC) at the time of the communication in order for it to be protected under the Evidence Code for all purposes. **A RCC sexual assault or domestic violence counselor must have met statutory training and supervision requirements for counseling sexual assault and domestic violence survivors from a California rape crisis center or domestic violence victim service organization.**<sup>19</sup>

Even more importantly, a RCC sexual assault counselor is someone employed by a California rape crisis center.<sup>20</sup> A RCC sexual assault counselor employed by a rape crisis center holds a **legal privilege** and cannot be compelled to disclose a statement made by a survivor, except by a court or if there is a reasonable suspicion of child abuse or if the survivor is a danger to her/himself or others.<sup>21</sup> In contrast, a domestic violence counselor who meets the training requirements could work for a campus program with a primary mission to provide services to victims of domestic violence.<sup>22</sup> But a RCC sexual assault counselor must be employed by the rape crisis center in order to hold the evidentiary privilege.<sup>23</sup>

Although a therapist who is not a RCC sexual assault counselor may assert the psychotherapist-patient privilege, that privilege is qualified and only partial under California law.<sup>24</sup> There is no privilege under section 1026 if the psychotherapist or patient is required to report the information to a public employee and the information will be in a public record that is open to public inspection.<sup>25</sup> Also, since the therapist is a mandated child abuse reporter, if the survivor is under age 18, the information is not completely confidential because the therapist must report it under the California Child Abuse and Neglect Reporting Act.<sup>26</sup>

It is possible that reporting requirements under Title IX could be construed to require the therapist to report information disclosed by a survivor. Title IX does not require a mental health counselor to report incidents of sexual violence to the school **“in a way that identifies the student”**, without that student’s consent.<sup>27</sup>

Professional counselors **“whose official responsibilities include providing mental-health counseling to members of the school**

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<sup>24</sup> Cal. Evid. Code, § 1026

<sup>25</sup> *Lemelle v. Superior Court* (1978) 77 Cal.App.3d 148. It is unclear whether a final written decision following disciplinary proceedings, which must under Title IX be provided to both the survivor and the accused, is a report that will be open to public inspection.

<sup>26</sup> Cal. Pen. Code, § 11164, et seq.

<sup>27</sup> Office of Civil Rights, Questions and Answers on Title IX and Sexual Violence, at E-3 (OCR Q & As). See [Attachment 1](#).

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<sup>18</sup> Cal. Evid. Code, §§ 1035.2, 1035.4, 1037.1.

<sup>19</sup> Cal. Evid. Code, § 1035.2, 1037.1.

<sup>20</sup> Cal. Pen. Code § 13837, Cal. Evid. Code, § 1035.2, subd. (a.)

<sup>21</sup> Cal. Evid. Code, § 1035.4.

<sup>22</sup> Cal. Evid. Code, § 1037.1.

<sup>23</sup> Cal. Evid. Code, § 1035.2.

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**community**” are not required by Title IX to report any information to the Title IX coordinator or their designee.<sup>28</sup> It is unclear whether a campus representative, working with a survivor to make an initial report of sexual assault, is exempt from reporting any information unless authorized by the survivor.

The campus protocol must clearly explain the reporting options. If the campus representative is not a RCC sexual assault counselor employed by a California rape crisis center, or a domestic violence counselor, the protocol must note that a report to that representative, as well as to other campus staff or faculty, may not be completely protected from disclosure under state law, because a survivor's statements to the campus representative may not be held by a court to be privileged under Evidence Code section 1035.4.

In addition, designated campus faculty and staff who are not licensed counselors are regarded as **“campus security authorities (CSA)”** for purposes of the Clery Act and under California law.<sup>29</sup> Campus security authorities must report any offense that is reported to them to the campus' Clery coordinator.<sup>30</sup>

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<sup>28</sup> OCR Q & As at E-3.

<sup>29</sup> See [Attachment 1](#).

<sup>30</sup> A CSA is defined as: (1) an institution's campus police or campus security department, (2) an individual who has responsibility for campus security, (3) an individual specified in an institution's statement of campus security policy to receive reports of criminal offenses, or (4) an institution's official who has significant responsibility for

The survivor should know that the campus is required by federal law to balance a survivor's request for confidentiality with other considerations relating to campus safety and to fairness in related proceedings (unless the advocate is a licensed professional whose official campus duties include mental health counseling, in which case there is no duty to report to the Title IX officer without the consent of the survivor).

In order to ensure access to the highest standard of confidentiality (privileged communications), as well as create a robust and holistic response and prevention plan, a model trauma-informed and survivor-centered protocol in California should establish a partnership between the campus and an independent, local rape crisis center.

A partnership with a domestic violence organization, if the campus advocate were not a domestic violence counselor, may also be necessary in order to ensure privileged communications and best practices for domestic violence prevention and response.<sup>31</sup>

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student and campus activities (for example, student housing, discipline). 34 C.F.R. § 668.46(a); *see also* Cal. Educ. Code § 67380 (incorporating the federal law definition of CSAs).

<sup>31</sup> Some independent advocacy agencies are “dual agencies” providing both sexual assault and domestic violence advocacy services.

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Such partnerships would provide survivors with a confidential, 24/7 reporting option to a RCC sexual assault counselor and/or domestic violence counselor, in which confidential communications are certain to be held privileged under California law. One option is for the campus representative to be an employee of a rape crisis center or domestic violence program and also have an office on the campus that can be used when needed. These models of co-located services are working well in law enforcement advocate partnerships (Sexual Assault Response Team and Domestic Abuse Response Team) and other places throughout the state and nation. A campus representative can be a domestic violence counselor employed by the campus if the representative has obtained the required state certification.<sup>33</sup>



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<sup>33</sup> Cal. Evid. Code, § 1037.1.

# CONFIDENTIALITY

## CONTRACT/MEMORANDUM OF UNDERSTANDING WITH LOCAL RAPE CRISIS CENTER

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The campus can enter into a contract or MOU with the local RCC and/or DV program to have a RCC sexual assault or domestic violence counselor on call for the campus. In this model, survivors can choose whether to meet the counselor at an office on campus, or at the rape crisis center or domestic violence program, instead. Campuses where this model is in use have found that survivors often opt for the off-campus meeting. This option opens up 24-hour services through a rape crisis center or domestic violence program and shelter.

### EXAMPLE

The Notalone.gov website offers a sample MOU, which can be used by a campus entering into such an agreement with a rape crisis center.

<https://www.notalone.gov/assets/mou-rape-crisis-centers.pdf>



**Not Alone**  
TOGETHER AGAINST SEXUAL ASSAULT

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UC Merced and Humboldt State University currently use this option. Some campuses have a RCC sexual assault counselor, who works for a RCC, on campus one or two days a week as well.

A survivor's communications with a RCC sexual assault counselor or a domestic violence counselor are more confidential and protected because they are certain to be held privileged under state law (confidential and privileged communications). In these cases, the campus can legally state that the campus representative at the campus sexual assault and prevention program (for example, a UC CARE center) **and** the local rape crisis center both offer free and confidential support, and should list the contact numbers for each.

## EXAMPLE

Humboldt State University and UC Merced's webpages explain "**Options if You've Been Sexually Assaulted**" and the coordinated approach using RCC sexual assault/domestic violence counselors on campus.

### **Humboldt State:**

[http://www2.humboldt.edu/stoprape/options\\_sexually\\_assaulted.html](http://www2.humboldt.edu/stoprape/options_sexually_assaulted.html)

<http://prevent-violence.ucmerced.edu/violence-prevention-resources>

### **UC Merced:**

<http://prevent-violence.ucmerced.edu>

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Many campuses have a central office that deals with reports of sexual assault, dating/domestic violence, and stalking.<sup>34</sup> (A CARE (campus assault resources and education) center is a program, under the University of California, that provides information, resources, and training to survivors, students, faculty, and staff. Other campuses have different names for their advocacy centers.

A campus sexual assault and prevention program can be affiliated with a rape crisis center, but cannot become one itself. A campus that partners with a local rape crisis center has ensured that a survivor's statement carries a legal privilege against future disclosure in a California court.

## EXAMPLE

Rape Treatment Center at Santa Monica – UCLA Medical Center and Strength United of California State University, Northridge are rape crisis centers affiliated with California campuses.

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<sup>34</sup> See description of CARE Center services at UC Merced: <http://prevent-violence.ucmerced.edu/about>; at UC Irvine: <http://www.care.uci.edu/General/About-CARE.aspx>.

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The possible limits of confidentiality at a campus sexual assault and prevention program, which does not have an agreement with the local rape crisis center or domestic violence organization (or whose representative is not a domestic violence counselor) to provide services, should be explained up front. The campus sexual assault and prevention program staff can still go over the survivor's options to obtain support or make a report, including the option of making a report at the local rape crisis center or domestic violence organization, which will be a privileged communication under state law. Campus information should contain easy-to-understand terms.



## EXAMPLE

### Include Information in FAQ's

**Q:** Can I come in to talk to someone even if I don't want to press charges or leave my relationship?

**A:** Absolutely. We (campus program) can provide you with information and resources so that you can make a decision that is right for you.

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## WHEN CONFIDENTIALITY CANNOT BE ASSURED

A campus protocol should let survivors know the situations in which confidentiality cannot be assured.

The campus can display a chart on the sexual assault prevention website that shows the level of confidentiality afforded to disclosures. For example, at Yale University, survivors can see what level of confidentiality is afforded to a statement they make to campus and non-campus persons or entities by hovering over the statement **“Strictly confidential,” “Mostly confidential,”** or **“Confidential according to state law”** for an explanation of the limits on confidentiality in each situation<sup>36</sup>.

## CAMPUS SAFETY

When a survivor reports an occasion of sexual violence or a Title IX incident, the campus must, under federal law, weigh its duty to ensure campus safety as a whole with the survivor’s request for confidentiality. The school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence.

## EXAMPLE

A survivor initiating a judicial complaint at UC Merced is told that a written report is required, which must include the name of the accused (if known) and identifying information; the nature of the suspected violation; a description of the circumstances; including the date of the incident; names of witnesses; copies of supporting documents; and how to reach the reporting party.

<http://studentlife.ucmerced.edu/content/disciplinary-process#report>.

<sup>36</sup> <http://smr.yale.edu/>

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## HEALTH CENTER/HOSPITAL

The student health center or local hospital practitioners may be required to report the name(s) of those reporting a sexual assault or domestic violence incident, the location of the incident, as well as the perpetrator's name, if known.

## CAMPUS LAW ENFORCEMENT

A report made to campus law enforcement or security authorities (including a campus official with significant responsibility for student and campus activities), by law, must be immediately disclosed to local law enforcement.<sup>37</sup> However, the survivor must consent to having their identity disclosed and must be informed that if they do not consent to disclosing identity, the alleged perpetrator's identity cannot be disclosed either. The survivor should also be told of the option of reporting under a pseudonym (“Jane Doe”).<sup>38</sup> The survivor should always be told that one option is not to make a report to law enforcement.

## EXAMPLE

### UC Davis – Counseling Center:

“Mental health providers at SHCS are confidential victim resources and are NOT mandated reporters. However, ALL medical providers in California, including nurses and physicians at SHCS, are mandated reporters for Domestic Violence and Sexual Assault. For same day access to a confidential mental health provider, please call (530) 752-2349 to talk with an Advice Nurse and ask to speak with a psychologist. If you wish to keep the sexual assault private, you may tell the nurse that you need to discuss a serious emotional concern that is highly personal and you wish to discuss your concerns more fully with a mental health professional ONLY.”

### UC Irvine:

The UC Irvine sexual assault response protocol explains that if the student survivor does not want law enforcement contacted, he/she should ask for a gynecological exam at the campus clinic with full STD screening, but should not disclose that he or she was sexually assaulted.

<http://www.care.uci.edu/files/UCISexualAssaultProtocol1.pdf>

<sup>37</sup> See Attachment 4, Attorney General Information Bulletin on Campus Safety Laws

<sup>38</sup> Cal. Pen. Code, § 293.5.

# CONFIDENTIALITY

## DISCIPLINARY PROCEEDINGS



Another example of reporting in which confidentiality under state law cannot be assured is communication with a campus employee about the incident for purposes of a campus disciplinary proceeding. The campus reporting options should explain the limits of confidentiality in disciplinary proceedings. A campus representative may offer the survivor the option to speak about the situation hypothetically, in order to learn what would be involved if a complaint were to be filed for purposes of initiating a disciplinary proceeding. The survivor should also be told that, in the event of future legal proceedings (criminal or civil), information obtained from a disciplinary proceeding might be admitted into evidence.

## FERPA REQUEST FOR RECORDS



Accused perpetrators have the right to request to inspect and review information about the allegations, if the information directly relates to the alleged student perpetrator and is maintained by the school, as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that is about the alleged perpetrator. The campus should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality. Those who file the complaint should be informed that, although personally identifying information will be redacted, the accused perpetrators may still be able to identify the person who filed the complaint through references to date, time and location of the incident.

# OPTIONS FOR SURVIVORS

Survivors should have the option of sharing their experience of violence or harassment without fear of reprisal or retaliation by the perpetrator, his or her friends, or the judicial or campus systems. They must understand their options, including the choice of filing an official report or not, and who should be allowed to hear their personal story. The point is for survivors to feel a renewed sense of autonomy and trust that they may have lost during the assault, and understand that they are not alone.<sup>43</sup> To that end, it is also critical that survivors understand the limits of confidentiality before telling their stories.



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<sup>43</sup> <http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-Student-Summit-National-Web.pdf>.

# OPTIONS FOR SURVIVORS

## MAKE IT EASY TO FIND OPTIONS

Various state and federal laws define the extent of confidentiality of a survivor's report. Some campuses try and explain all these laws before the survivor even gets to the part of the website that explains how to get immediate help. Lengthy explanations of law, definitions and policy should not be the first thing that a survivor has to wade through to find out their options. The protocol or website should use immediately understandable language, for example, say **"Report Sexual Discrimination/Harassment"**, not **"Report a Title IX Violation"**.

The home page for the campus sexual assault and prevention program should not be **"About Our Policy"**, neither should it be a mission statement or list of legal definitions. The home page should explain, in simple terms, the person's options. Terms such as **"Support"** or **"Know Your Options"** or **"Get Help"** should be used. Put the campus' official statement about its commitment to nondiscrimination and non-harassment and the legal description of prohibited conduct on a separate page that comes *after* the pages on how to get help/support, the options for survivors, and reporting. Additionally, the home page of the campus website should have a button or link that is easily found that leads from the home page to the information on sexual and gender-based violence.

## EXAMPLES

### University of North Carolina, Chapel Hill:

Six boxes appear on the home page of the website, SAFE@UNC.

<http://safe.unc.edu>.



### Skidmore College:

Clicking a link about sexual and gender-based violence on the Skidmore College website leads to a page with a big red box that says, "Click here for emergency information".

<http://www.skidmore.edu/sexualmiscconduct/index.php>

# OPTIONS FOR SURVIVORS

One option is to include a link on the home page of the campus website that says **“Can’t Find Something?”** or **“Need More Help?”** Clicking on that link would take the visitor to information about the campus sexual assault and prevention program, along with other types of emergency information. Another possibility is to include an **“In Case of Emergency”** button right on the campus home page that leads to links to various emergency resources for the campus. From that page, the link to the pages for the campus sexual assault and prevention program should be prominent and clearly defined. Once the visitor finds the home page for the program, the first thing they should see is the options for survivors.

Do not label the link about resources under the term **“Students.”** Campus employees, faculty, and off-campus guests assaulted on campus or in the community by a student or staff of the campus, may utilize the site. A neutral term, such as **“Get Help”** or **“Know Your Options”** should be used instead.

## EXAMPLE

The first thing on the home page for Humboldt State University's Rape and Sexual Assault Prevention and Response page says:

**“If you are a survivor who needs immediate help, several options are available for you.”**

The viewer need only click on the first hyperlink on the Humboldt website's page to find the options for support and possible reporting.

The federal Not Alone ([www.notalone.gov](http://www.notalone.gov)) website's model protocol has a link called **“What do I do if I have been sexually assaulted?”**

The link leads to a page explaining what to do immediately, days after an assault, or months afterward.

# OPTIONS FOR SURVIVORS

It is impossible to navigate from most campus home pages to the information on sexual assault, domestic violence, dating violence and stalking. On most campus websites, the survivor is forced to guess at the correct search term in the search field in order to find these resources. The search field should link to the campus sexual assault and prevention program's webpage from a variety of search terms, including rape, sexual assault, and emergency. The first thing that comes up when a survivor enters the search term **"rape"** or **"sexual assault"** should not be a series of academic articles on the subject, neither should the survivor have to guess the name of the program on a particular campus in order to access information online.

## EXAMPLE

### UC Irvine

When you enter the search term **"rape"** on the University of California at Irvine website, the first search result is **"Campus Assault Resources and Education (CARE)"**.

### UC Berkeley

When you enter the search term **"rape"** on the University of California at Berkeley's website, you see links to the following: Sexual Harassment & Violence Support and Education; Gender Equity Resource Center; LGBT Resources.



# OPTIONS FOR SURVIVORS

## CLEAR AND ACCESSIBLE CAMPUS PROTOCOLS

Campus protocol should be readily available and accessible for students, their parents, staff, and other members of the campus community.<sup>44</sup> California law provides a high level of confidentiality, which includes an evidentiary privilege of nondisclosure unless court-ordered, when the survivor talks to a RCC sexual assault counselor who is an employee of a rape crisis center, a domestic violence counselor or a mental health professional. However, if the survivor is under 18, the mental health professional cannot promise confidentiality because he or she is a mandated reporter of child abuse, including sexual abuse. Additionally, disclosures to a mental health professional employed by the campus could create a conflict of interest between the campus and the survivor in some situations, such as when a civil lawsuit is filed. The facts about these limits to confidentiality have to be clear and listed immediately under the options presented on the campus website and materials. The campus advocate must first specifically explain the legal limits of confidentiality before any counseling can take place.

If the survivor wants information shared with the campus, the campus police department, or local law enforcement, the RCC sexual assault/domestic violence counselor should obtain informed consent for release of information. For purposes of Clery compliance, the rape crisis center can provide the campus with aggregate data about reportable

### EXAMPLE

On **every page** of the UC Merced's CARE office website, there is a column on the right that says: "**Free and Confidential Help**". It then lists the name and telephone number of the campus advocate, **who is also a RCC sexual assault counselor and domestic violence counselor**, and the 24-hour hotline number for the local rape crisis center.

<http://prevent-violence.ucmerced.edu/>

<sup>44</sup> See Confidentiality Chapter above (beginning on page 11)

# OPTIONS FOR SURVIVORS

offenses, without providing personally identifying information. The counselor should consult with the survivor regarding what information needs to be withheld to protect their identity.

## TRAUMA-INFORMED INTERVIEWING AND SERVICES<sup>45</sup>

California law now requires a **"trauma-informed training program for campus officials (including law enforcement) involved in investigating and adjudicating sexual assault, domestic violence, dating violence and stalking cases"**.<sup>46</sup> These officials should also be trained in the dynamics of sexual assault, rape trauma syndrome, and PTSD resulting from intimate partner violence.

### EXAMPLE

Jane came to the police department to make a report after a terrible night at the hospital where she underwent a painful sexual assault forensic medical exam. She was placed in an interview room with a straight chair that had handcuffs dangling from it and left alone for quite a while. In the hall, she heard one officer telling another that because Jane had called an attorney to meet her there, she must somehow bear some blame for what happened.

This agency needs training on trauma-informed interviewing, as well as the dynamics of sexual assault and why a survivor might expect that she would not be believed.

<sup>45</sup> Trauma-informed services are provided in the spirit of giving options and information to the survivor with the understanding that trauma does not occur in a vacuum and that it is often interrelated and connected to other experiences of trauma throughout the life span.

<sup>46</sup> Cal. Ed. Code, § 67386(b)(12)

# OPTIONS FOR SURVIVORS

RCC sexual assault and domestic violence counselors, campus representatives, law enforcement, and others likely to listen to an initial disclosure by a survivor, should not make statements or act in a manner that directly or indirectly discourages or encourages the person in regard to pursuing criminal charges. Instead, the response should be trauma-informed and focused on empowering the survivor and offering the survivor an array of options, rather than attempting to influence the selection of an option.<sup>47</sup> The survivor should be encouraged not to make immediate decisions with respect to investigation or prosecution, and a survivor who decides, at that time, not to participate in an investigation or prosecution should not be required to sign a waiver form. Such a decision should be documented only in police reports or case files.

A survivor who declines to participate in the justice process at an initial interview should be informed that the case could be reopened at their request. A written pamphlet or brochure should be provided at the time of the initial disclosure with information on available services, options for pursuing investigation or prosecution, campus disciplinary procedure, and a statement about the extent to which and with whom information provided by the survivor will be shared.

## EXAMPLE

The You Have Options program can provide trauma-informed training to campus law enforcement.

[www.reportingoptions.org](http://www.reportingoptions.org)



<sup>47</sup> See, e.g., Kristiansson, V. & Whitman Barr, C., *Integrating a Trauma-Informed Response In Violence Against Women and Human Trafficking Prosecutions*, 13 Strategies, The Prosecutors' Newsletter on Violence Against Women (Feb. 2015) Aequitas, online at <http://www.aequitasresource.org/Integrating-A-Trauma-Informed-Response-In-VAW-and-HT-Strategies.pdf>.

# OPTIONS FOR SURVIVORS

## EXPLAINING THE OPTIONS



### SUPPORT OPTIONS

California law requires that survivors be clearly told their options, including the availability of on and off-campus resources and services.<sup>48</sup> It should be clear that the options are broader than just reporting an incident of sexual assault or violence, and a campus website should explain the resources for help and emotional support first.

The Get Help, Support or Know Your Options page should come first on the campus website and explain the options available for help, starting with how to get immediate or emergency help (911/campus police numbers). Other links should be for the local rape crisis center and domestic violence organization; medical care options (links and addresses of campus and local medical centers); reporting to law enforcement (links and numbers for campus and local police departments); reporting to the campus (link should explain limits of confidentiality if the campus representative or Title IX coordinator is not a RCC sexual assault or domestic violence counselor); and options on how to get emotional support (links to CARE Center, sexual assault and prevention program, counseling center, women's center, and other resources, with explanation on limits of confidentiality).

### EXAMPLE

Pomona College lists under **“Who Can I Talk to at Pomona”** the list of contacts for **“Confidential Support”** before listing the contacts for **“Reporting.”** The list of Confidential Support resources includes the local rape crisis center. Under Reporting, the website clearly notes the legal limits on confidentiality: **“Please note, the on-call dean and many of the other College contacts are required to report incidents to the Title IX coordinator, who will initiate the investigative process”**.

<http://www.pomona.edu/administrati on/dean-of-students/sexual-assault/>

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<sup>48</sup> Cal. Ed. Code, § 67386(b)(7).

# OPTIONS FOR SURVIVORS

In addition to **“Help for Yourself”**, the campus sexual assault and prevention program’s home page should also list how to get **“Help for a Friend”**; **“Help for Your Student”**; **“Help for Campus Employees”**.

Many survivors may disclose to a friend, residence advisor, staff or faculty member before going to the campus sexual assault and prevention program’s offices. There should be a link on the campus sexual assault and prevention program’s home page to a Q&A about What to Say/Do if a Survivor Discloses Assault to You.

Support options should inform survivors about on-campus accommodations, including the options of making changes to their academic and exam schedule, housing, and accessing other campus assistance **even if no formal report is made to campus authorities or law enforcement.**<sup>49</sup> The protocol must explain that the campus will help the survivor with reasonable changes to housing, class or sports schedules, campus jobs, extracurricular activities and clubs when necessary.<sup>50</sup> The protocol should also explain that a student has these options regardless of whether an assault occurred on or off campus.

The campus protocol is also required to explain that the survivor has the option of obtaining a restraining order in court, and that the campus, RCC, or domestic violence program can assist with that

## EXAMPLE

### UNC Chapel Hill:

Use clear links: **“Get Help”**, **“Get Info”**, **“Get Involved”**, and **“Resources”** are the four main links on the University of North Carolina, Chapel Hill’s website.

<http://safe.unc.edu/get-help/>

### UC Berkeley:

The home page on UC Berkeley’s website has boxes called **“Get Help”**, **“Report”**, **“Support A Survivor”**, and **“Learn More”**.

<http://survivorsupport.berkeley.edu/>

<sup>49</sup> See [Attachment 1, Clery](#).

<sup>50</sup> See [Attachment 1, Title IX](#).

# OPTIONS FOR SURVIVORS

option.<sup>51</sup> The campus protocol should also make clear that the campus would enforce and recognize the terms of the restraining order on campus-controlled spaces and facilities.

## MEDICAL CARE/SEXUAL ASSAULT FORENSIC EXAMINATION

California law requires the campus policy to state who is responsible for transporting a survivor to the hospital.<sup>52</sup> A medical examination should be encouraged even if the survivor is unaware of an existing physical injury. An emergency resource often overlooked is emergency contraception, antibiotics and post-exposure HIV prophylaxis. Information on this topic should be clearly listed and should explain that these options are free and confidential.

The link to resources for medical care should explain what may constitute evidence, how to preserve evidence, and what will happen if the survivor chooses to have a sexual assault examination. It should also note that the survivor has a right to a sexual assault forensic exam at no cost, regardless of the wish to participate in the criminal justice system.<sup>53</sup> But, as noted in the Section on Confidentiality, a survivor choosing to

### EXAMPLE

Humboldt State University's list of options begins with a link for "[Medical Care & Emergency Contraception](#)".

<sup>51</sup> See [Attachment 1, Title IX](#).

<sup>52</sup> Cal. Ed. Code, § 67385(b)(4)

<sup>53</sup> Cal. Pen. Code, § 1823.95.

# OPTIONS FOR SURVIVORS

report a sexual assault to medical personnel and have a forensic examination should be informed that when sexual assault is reported, or injury from sexual assault is suspected, medical personnel must make a report to law enforcement authorities.<sup>54</sup>

## REPORT OPTIONS: WHEN A SURVIVOR CHOOSES TO MAKE A REPORT

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The resources on the campus website and in the written materials should include an option about reporting, for example, a link called If You Choose to Make A Report. This link would identify the option of a report to the campus police department, local police department, campus Student Conduct/Judicial Affairs office, or Title IX officer, and would explain what each option entails, along with the limits of confidentiality. Survivors can be offered the option of discussing the hypothetical possibility of making a report, without first having made a decision to report.

Paradoxically, campus police departments have found that survivors who have the ramifications of a report explained to them first are more likely to want to make an official report of the incident. Survivors should understand that, unless they make a report to police, evidence cannot be seized,

## EXAMPLE

Before a report is made, the campus police department explains the process that follows a report of sexual assault. This informs the survivor on the impact of reporting before any initial disclosure. Under no circumstances should the survivor be pressured to formally file a report.

The image shows a sample 'POLICE REPORT' form. At the top, it says 'Police Report Template' and 'POLICE REPORT' in large, bold letters. Below the title, there are several fields: 'Case No.', 'Date', 'Reporting Officer', and 'Prepared By'. There is also a line for 'Incident:'. Below these fields, there are three main sections: 'Detail of Event:', 'Actions Taken:', and 'Summary:'. Each section contains several lines of text, which appear to be placeholder text or a very faint, illegible report. The form is tilted slightly to the right.

<sup>54</sup> Cal. Pen. Code, § 13823.11.

# OPTIONS FOR SURVIVORS

and time is of the essence in collecting evidence at the scene, as well as posts to social media and witnesses' cell phones. Even if a survivor makes a report, they should understand they don't have to follow through with criminal prosecution later. The survivor retains the option to decide not to participate in the criminal justice process.

## REPORTING TO CAMPUS OR LOCAL LAW ENFORCEMENT

Participating law enforcement agencies that have personnel designated as responsible persons in relation to Title IX (most often campus law enforcement agencies) should make reasonable efforts to inform survivors considering reporting a Title IX violation that this report to the campus may limit their ability to remain completely confidential within the campus administrative process, even though identifying details are supposed to be removed from such a report, upon request of the survivor. Even if an assault is disclosed to the campus under Title IX, a sexual assault survivor can still refuse to have their identity disclosed in the criminal justice process. Campus sworn law enforcement should, when legally able to do so, only initiate processes that maintain the victim's requested level of confidentiality during the criminal process.

## ASSISTANCE IN MAKING A REPORT

California and federal law requires that the campus publish a sexual assault protocol stating that the school will assist the survivor in notifying local or campus police, if desired.<sup>55</sup>

## CONSEQUENCES OF REPORTING

California law generally prohibits imposing disciplinary sanctions on a person who makes a report or is a witness in an investigation of sexual assault, domestic violence, dating violence or stalking.<sup>56</sup> Information about making a report should be clear that, unless a violation of the student conduct policy was egregious (for example, placing health and safety of others at risk or involving cheating), the fact that alcohol or drugs was involved in the incident will not be used against the person reporting. Amnesty for survivors is required under both the Clery Act and Title IX.<sup>57</sup>

A survivor has the right to have a RCC sexual assault counselor and support person present during a medical examination, interview by a law enforcement agency, and attorney interviews.<sup>58</sup> Notification of this right must be made in writing to the survivor prior to the interview. An initial

<sup>55</sup> See Cal. Ed. Code, § 67385, subd. (b)(4); [Attachment 1, Clery](#).

<sup>56</sup> Cal. Ed. Code, § 67386.

<sup>57</sup> See [Attachment 1](#).

<sup>58</sup> Cal. Pen. Code, §§ 264.2, 679.04.

# OPTIONS FOR SURVIVORS

interview by the campus or local police department to determine whether a crime occurred, however, does not trigger this requirement.<sup>59</sup>

To the extent consistent with the wishes of the survivor, different systems should work to avoid repetition in interviews by sharing information. Since it is unavoidable that memories may change and every recounting of an incident will involve disclosure of different facts, the potential for repeated interviews to be used as impeachment evidence against a survivor during a trial or campus disciplinary proceeding exists. It is also re-traumatizing for the survivor, as each re-telling can trigger flashbacks and trauma responses.

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<sup>59</sup> Cal. Pen. Code, § 679.04.

# OPTIONS FOR SURVIVORS

## REPORTING TO THE CAMPUS

It should be clear that reporting to the campus is different than asking for support or reporting to law enforcement. The campus must offer the option of an anonymous report to the college or university<sup>60</sup>, as well as inform the survivor about the local rape crisis center hotline.

Title IX limits the ability of the campus to ensure complete confidentiality of reports made to the college or university.<sup>61</sup> Survivors should understand the extent to which reporting to the campus for the purpose of initiating a student conduct/disciplinary proceeding may require disclosure of personally identifying information and statements made about the incident, including to a campus representative. The difference between confidentiality, in this context, and the evidentiary privilege under California law against compelling disclosure of statements made to RCC sexual assault counselors or domestic violence counselors, should be explained.

### EXAMPLE

The University of North Carolina at Chapel Hill includes an on-line form a student can fill out to make an anonymous report.

<http://safe.unc.edu/get-help/reporting-to-unc/>

The logo for SAFE AT UNC. The word "SAFE" is in large, bold, blue capital letters. Below it, the word "AT" is in smaller, blue capital letters, positioned between two vertical green bars. To the right of "AT" is the word "UNC" in large, blue capital letters.

<sup>60</sup> Cal. Ed. Code, § 67385, subd. (b)(5), 67386(b)(1), (13)

<sup>61</sup> See [Attachment 1, Title IX](#).

# OPTIONS FOR SURVIVORS

## CAMPUS-COMMUNITY RESPONSE TEAMS

The Campus-Community (or Coordinated Community) Response Teams (CCRT) is a multi-disciplinary team that meets regularly to plan programs, training and curricula; sponsor events; and discuss policies critical to successfully coordinating campus-community responses to sexual, domestic, dating and stalking violence.<sup>62</sup> The CCRT should meet regularly on campus to discuss policies and prevention efforts, review cases to discuss ways to improve handling reports of sexual violence, and recommend improvements and system changes.<sup>63</sup> California law requires participation of survivor advocates and other supporting people in developing and implementing campus policies on sexual assault.<sup>64</sup> CCRTs should help develop and refine the memorandum of understanding now required by California law<sup>65</sup> among on-campus and community-based organizations.

## OPTIONS FOR MARGINALIZED GROUPS

Colleges should partner with community and campus-based programs serving historically marginalized groups (for example, LGBTQ organizations, disability programs, veterans programs, cultural and ethnic organizations) in developing policy and training curricula, and involve them in the CCRT meetings.

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<sup>62</sup> [http://www.calcasa.org/wp-content/uploads/2010/02/Campus-TA-Fact-sheet-extendedf\\_FINAL.pdf](http://www.calcasa.org/wp-content/uploads/2010/02/Campus-TA-Fact-sheet-extendedf_FINAL.pdf).

<sup>63</sup> [http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-Student-Summit-Nationalf\\_Web.pdf](http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-Student-Summit-Nationalf_Web.pdf)

<sup>64</sup> Cal. Ed. Code, § 67386(b)(8)

<sup>65</sup> See [Attachment 1](#).

# CAMPUS DISCIPLINARY PROCEEDINGS

The purpose of having a code of student conduct is to promote an atmosphere of dignity and respect on campus that is conducive to learning.<sup>66</sup> In this process, it is important to remember that the survivor is just as important as the accused—a welcome change from the criminal justice system where the defendant is often afforded more rights than the victim. It is not appropriate to try and duplicate the rights afforded to a defendant in a criminal trial during a campus disciplinary proceeding. Instead, the focus should be on allowing both parties to tell their stories in a setting that is supportive of the complainant and fair to both sides. It is essential to identify and maintain the distinction between a criminal proceeding and the campus disciplinary process.



<sup>66</sup> See, generally, Edward N. Stoner II, *Reviewing Your Student Discipline Policy: A Project Worth The Investment* (2000), available at: <http://www.eric.ed.gov/PDFS/ED444074.pdf>.

## SURVIVORS' RIGHTS IN CAMPUS DISCIPLINARY PROCEEDINGS<sup>67</sup>

California and federal laws must now inform the campus of the disciplinary process.<sup>68</sup> Campuses can face significant liability if they respond to a report of sexual violence in a way that is not protective of survivors, or worse, if they fail to respond at all. Thus, sexual assault protocols, which are formulated to provide significant and immediate action in response to a report of sexual violence, are likely to benefit both survivors and the campus. The institutional response to a report of harassment or violence prohibited by Title IX should be aimed at avoiding further occurrence of such incidents. A key component of ensuring that the campus complies with state and federal law relating to disciplinary proceedings is proper training for adjudicators.<sup>69</sup>

Once a survivor makes a campus aware of the incident, the campus response should be swift,

<sup>67</sup> In this section, the term “complainant” is used to describe or represent a “survivor” of sexual assault, domestic violence, stalking or harassment and/or the person making the complaint; similarly, the term “accused” is used to refer to the “perpetrator”. Our use of this terminology is limited to the discussion of the campus adjudication proceedings; our preferred use of the term “survivor” throughout the document highlights our preference for a survivorf centered lens.

<sup>68</sup> Cal. Ed. Code, § 67386, subd. (a); see [Attachment 1, Clery and Title IX](#).

<sup>69</sup> See, for example, Curriculum for Adjudicators of Sexual Violence Cases, developed pursuant to a grant from the U.S. DOJ Office of Civil Rights: <http://www.usc.edu/dept/education/vawc/forms-downloads/Adjudication-Feb-09.pdf>.

# CAMPUS DISCIPLINARY PROCEEDINGS

for example, moving an accused student out of housing or classes to prevent proximity to the survivor, pending the Title IX investigation and possible disciplinary hearing. **Title IX investigations should not be delayed due to police investigations, nor should they be delayed for final criminal justice determinations.** Not all grievances need result in a formal hearing. The survivor should have a choice between a formal and informal grievance process.

Federal law requires notice to students and employees of the campus about how to file a complaint alleging sexual violence by employees, other students or third parties, including where complaints may be filed.<sup>70</sup> Campuses must have reliable and impartial investigation of complaints, including the opportunity for both the complainant and the accused to present witnesses and evidence. Even if an incident of sexual violence occurred off campus, a school must process a complaint to determine whether the conduct occurred in the context of an education program or activity.

The campus cannot require the survivor to be present at the hearing as a prerequisite to proceed with a disciplinary hearing, if the hearing is part of the school's Title IX investigation process. However, a hearing is not necessarily required in every instance where a Title IX complaint is filed. The school should ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

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<sup>70</sup> Legal requirements are outlined in more detail in the attached document, *State and Federal Laws Governing Mandatory Campus Sexual Assault Protocols and Procedures*, and in the *Questions and Answers on Title IX and Sexual Violence*, Office for Civil Rights, U.S. Dep't of Educ., a significant guidance document. (72 Fed. Reg. 3432 (Jan. 25, 2007), available at [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).)

# CAMPUS DISCIPLINARY PROCEEDINGS

Survivors must be informed about interim measures to protect them on campus during the pendency of a disciplinary proceeding. After the campus becomes aware (even if no disciplinary or criminal investigation or report has been initiated) of an alleged incident of sexual violence or prohibited conduct under Title IX, the burden on the survivor should be minimized.



## EXAMPLE

If the complainant and accused share a class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the accused to remain without carefully considering the facts of the case. Such one-sided accommodations may be construed as retaliation against the complainant.

# CAMPUS DISCIPLINARY PROCEEDINGS

Survivors must also be told of their right to file both a criminal complaint and a request for a disciplinary proceeding simultaneously. The campus must provide the same rights to the complainant during the campus disciplinary process as they provide to the accused. Both parties are permitted a representative to be present at a hearing and any campus-imposed restrictions on the ability of lawyers or other representatives to participate in the proceedings must apply equally. The role of attorneys/consultants in the disciplinary process should be spelled out.

The standard for adjudication of a campus disciplinary proceeding is preponderance of the evidence. (This is a lesser standard than that required in a criminal trial, which requires proof of guilt beyond a reasonable doubt.) It should be clear that the burden of proof does not lie with the complainant/survivor.

Campuses do not have to allow a complainant to be present for the entire disciplinary hearing, but if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the accused do not have to be present in the same room at the same time. Closed circuit television or other means can be used to accomplish this goal.

## EXAMPLE

UC Irvine has a link on its website that explains the role of an attorney and FAQs about attorney participation in disciplinary proceedings.

<http://dos.uci.edu/conduct/advisor-and-attorney/advisor-guidelines.php>

FAQ

# CAMPUS DISCIPLINARY PROCEEDINGS

The U.S. Department of Justice Office for Civil Rights discourages schools from allowing students to serve on hearing boards in cases involving sexual violence. Campuses are strongly discouraged from allowing the parties to personally question or cross-examine each other during a hearing on sexual violence, as this may be traumatic or intimidating and perpetuate a hostile environment. Instead, questions should be submitted to a trained third party who can screen the questions in advance and ask only those deemed appropriate and relevant.

Questions about the complainant's sexual history with anyone other than the alleged perpetrator are not permitted. Hearing boards should receive yearly training and part of that training should inform them that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. In one survey, less than 1/3 of campus sexual assault policies reviewed provided that the survivor's dress and past sexual history (other than with the accused) could not be discussed during campus disciplinary proceedings.<sup>71</sup>

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<sup>71</sup> VDay & SAFER, *Making the Grade? Findings From the Campus Accountability Project on Sexual Assault Policies* (2012).

# CAMPUS DISCIPLINARY PROCEEDINGS

The campus disciplinary proceeding must specify “reasonably prompt” time frames for the major stages of the complaint process. At the conclusion of the process, there must be written notice to the complainant and accused of the outcome of the complaint. If the accused is found responsible, the campus must take steps to separate the survivor and perpetrator and protect the survivor.

The campus must inform the complainant of the decision of the disciplinary board, including any individual remedies offered or provided to the complainant or any sanctions imposed on the accused that directly relate to the complainant.<sup>72</sup> The campus must also inform the complainant of other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The campus should NOT notify the accused about any individual remedies offered or provided to the complainant.

## EXAMPLE

Both the complainant and accused are in a major with a limited number of required class sections. The campus may allow the complainant to continue in the regular sections of the courses while arranging for the accused to take the same courses online or through independent study.

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<sup>72</sup> In addition to Title IX, the Clery Act requires such notification about the outcome of the institution’s final determination in a disciplinary proceeding involving sexual violence or other conduct prohibited under Title IX, and FERPA permits postsecondary institutions to inform the complainant about the outcome as well as any disciplinary sanctions imposed in sexual violence cases, but not in other cases involving harassment and other types of misconduct under Title IX.

# CAMPUS DISCIPLINARY PROCEEDINGS

Appeals of disciplinary determinations are not mandated, but are recommended when a procedural error or other previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is disproportionate to the findings. Appeals, if provided, must apply to both parties.

## DUE PROCESS IN CAMPUS DISCIPLINARY PROCEEDINGS

→ The school should ensure that hearings are conducted in a manner that follows basic protections of due process and does not inflict additional trauma on the complainant.<sup>73</sup> Fairness requires procedural, as well as substantive, due process principles to be observed in campus disciplinary proceedings.

Procedural due process means both parties are afforded equal rights to notice of a hearing, to be heard, and to be informed of the outcome. It also means both are allowed the same rights at the hearing itself, for example, to speak (if permitted as part of the process), present evidence, and have a support person present. However, Title IX permits some differences. For example, the perpetrator must NOT be notified of individual remedies offered or provided to the complainant.

<sup>73</sup> See [Attachment 1](#). OCR Questions and Answers on Title IX and Sexual Violence, Ff 7.

Due process in college disciplinary proceedings in which expulsion would be the remedy<sup>74</sup> require:

- **A statement of specific charges/grounds that would justify expulsion**
- **A hearing in which the college disciplinary board hears both sides in considerable detail**

However, especially in a hearing in which a short suspension is the likely outcome, due process does not require:

- **The accused to be allowed to confront or cross-examine witnesses**
- **Any right of a perpetrator to call witnesses to verify his or her version of an incident<sup>75</sup>**

<sup>74</sup> See *Dixon v. Alabama* (5<sup>th</sup> Cir. 1961) 294 F.2d 150. Note that due process protections are more stringent at public institutions than private ones, but even private colleges must abide by what they have promised students in the school's own policies and procedures. Private schools must follow the minimal requirements set in *Goss v. Lopez* (1975) 419 U.S. 565 and in *Dixon v. Alabama, supra fn. 3*, as well as their own policies.

<sup>75</sup> *Goss v. Lopez* (1975) 419 U.S. 565.

# CAMPUS DISCIPLINARY PROCEEDINGS

If a student's presence on campus poses a continuing danger to persons or property or an ongoing threat to disrupting the academic process, that person may be immediately removed from the campus. In such cases, the necessary notice and hearing can follow as soon as practicable.<sup>76</sup> In most cases the hearing board should be empowered to impose a range of graduated sanctions, but these cannot be imposed arbitrarily or change depending on the status or connections of the accused.

## EXAMPLE

Joe College is the star quarterback on the football team. Sanctions for a rape at a party sponsored by a campus organization, during which both Joe and the survivor were intoxicated, must be the same as imposed in a similar incident involving a perpetrator who was a dorm resident unaffiliated with any campus organization.



<sup>76</sup> Clery Act (20 U.S.C. section 1092(f), timely warning procedures; OCR Q&As at pp. 2f 3, Af 5.

# CAMPUS DISCIPLINARY PROCEEDINGS

Hearing boards should be familiar with basic rules of evidence, even though the rules that apply in trials are not mandatory. Fairness will still require the board to consider only relevant evidence, and to exclude evidence that violates rape shield laws. Boards should receive annual training about rape trauma syndrome, myths and facts about sexual assault, how to do trauma-informed interviewing, procedural due process, sex offender risk assessment, liability issues, and graduated sanctions. For example, adjudicators should know that the mere fact of a previous consensual sexual relationship does not itself imply consent or preclude a finding of sexual violence.

The campus should work with an attorney and subject matter expert to train this board. To avoid the appearance of impropriety, hearing board members should include both men and women. For efficiency, hearing boards should be kept small, preferably with either three or five members (majority decision required). Large public universities should consider whether to create a specialized board to deal with complaints of sexual violence or Title IX misconduct. Campuses should have a process of reviewing board members to uncover any bias they may hold in cases of sexual assault.

Campus police departments and/or local law enforcement agencies should have investigators

## EXAMPLES

After the Office of Civil Rights issued its Dear Colleague letter in 2011, the University of Pennsylvania developed a training guide about sexual assault for campus disciplinary boards, which can be adapted by individual campuses.

[www.campus.calcasa.org/17-tips-for-student-discipline-adjudicators](http://www.campus.calcasa.org/17-tips-for-student-discipline-adjudicators)

In 2009, a consortium of California schools, led by a team at the University of Southern California, developed an adjudicators training guide for institutions of higher education.

<http://www.usc.edu/dept/education/vawc/forms-downloads/Adjudication-Feb-09.pdf>

# CAMPUS DISCIPLINARY PROCEEDINGS

trained in the dynamics of sexual assault, domestic violence, stalking, harassment, and trauma-informed interviewing. When an officer in the local area has that training and experience, the campus should ask to utilize that person as an expert witness in a campus disciplinary hearing involving sexual assault, to speak generally about rape trauma syndrome. Outside experts may also be hired to explain rape trauma syndrome during a disciplinary proceeding, without having the expert draw any conclusions about guilt or review the actual case being adjudicated.

## BEST PRACTICES FOR CAMPUS DISCIPLINARY INVESTIGATIONS AND PROCEEDINGS

### AVOID REPEATED INTERVIEWS

There are a number of steps that campuses can take to minimize added trauma to survivors of sexual assault, domestic violence, stalking, or harassment. One is to avoid, whenever possible, making survivors repeat their story. For multiple reasons, the best practice is to avoid multiple interviews of the survivor by sharing the results of an interview, whether the interview is done by the campus/local police department or by someone on campus trained in trauma-informed interviewing (for example, the Title IX coordinator). The police report will be confidential but a report to a campus representative may not have as many protections, so a law enforcement interviewer is

preferable. Survivors should be informed of interview sharing at the start of the process and such practices should be explained on websites and other informational sources.

Campus and local police departments are not required by law to disclose details in police reports of sexual assaults and must honor any victim requests for confidentiality.<sup>77</sup> However, there is nothing that *prohibits* law enforcement agencies from sharing a report made by a survivor, with the survivor's permission, with the campus. Alternately, the agency may choose to share only a redacted report, with the survivor's permission. However, a law enforcement agency should not share the analysis or conclusions of the investigating officer with the campus.

Another option, with the survivor's consent, is to have both a campus representative and police officer present at the interview. A recording of the interview can be provided to both, but only one trained interviewer should ask questions. This has two purposes: it avoids re-traumatizing the survivor and it minimizes the existence of conflicting statements that can be used later for impeachment in either a student conduct hearing or criminal trial. It is a myth that survivors who are telling the truth always tell their story in a linear, chronological fashion with the same

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<sup>77</sup> See Govt. Code, § 6254, subd. (f); Pen. Code, § 293.

# CAMPUS DISCIPLINARY PROCEEDINGS

details each time. The truth about memory, especially memory impacted by trauma, is that different things may occur to the survivor each time she/he thinks about a past incident<sup>78</sup>.

The concern of law enforcement about sharing even redacted reports with the campus for purposes of use in campus disciplinary proceedings is that the campus proceeding is likely to happen long before any criminal trial. Use of details gathered in a law enforcement investigation during a campus disciplinary proceeding that occurs long before the trial is, by its very nature, likely to aid the defense in a future criminal trial. **This is a valid concern.**

There should be a formal written agreement with the campus that, to the extent law enforcement shares with the survivor's permission his or her statement with the campus, the campus will **not disclose that statement** to the accused as part of the campus disciplinary proceedings.

Campuses are encouraged under federal law to complete the investigation of a complaint that may result in disciplinary proceedings within 60 days, whenever practicable. Thus, it is virtually impossible to avoid disclosure of the survivor's statement pretrial, when the survivor also elects

to file a complaint through the campus disciplinary process. **A joint interview in which questions are posed by only one interviewer, from which both the campus and the police department receive the same statement, is often the best option when the survivor has elected to pursue both a remedy on campus and a criminal justice complaint. With the survivor's permission, the Title IX officer can be called to sit in on the law enforcement interview.**

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<sup>78</sup>

<http://www.mncasa.org/assets/PDFs/Forensic%20Trauma%20Interviewing%20Techniques-%20Russell%20Strand.pdf>

# CAMPUS DISCIPLINARY PROCEEDINGS

## USE A SKILLED AND TRAINED INTERVIEWER



A skilled interviewer will be sensitive to the survivor's fear that she or he may not be believed or receive justice and will tailor the interview accordingly. There are serious consequences to a survivor telling only part of a story because they think other parts will undercut the truth about what happened. An interview that is not properly conducted may end up frustrating justice in the end. A trained interviewer can convey the reason why the truth is imperative in ways that are sensitive to the legitimate fears of the survivor.

Furthermore, the truth about trauma is that it may diminish ability to immediately recall details that are remembered later. Multiple interviews will undoubtedly result in differing accounts, which may be misinterpreted by an uneducated trier of fact to indicate falsehood or deception. Whenever practicable, one comprehensive interview should be done near the time of the incident, but not so close to the offense that the survivor is still dealing with medical examinations and the immediate aftermath of reporting.

### EXAMPLE

The survivor said that several days earlier she had been at a party, passed out even though she had not had too much to drink, and woke to find herself being assaulted by someone she could identify, but had only met that night. Investigation disclosed that the accused was likely a serial rapist who used date rape drugs to facilitate his offenses, and he had known the victim for some time. There was no way to prove the victim was drugged, in this case, due to the delay in reporting. When she did report, the victim was afraid to disclose the prior acquaintance for fear she would not be believed. The criminal charges in the case were dropped due to credibility issues.

# CAMPUS DISCIPLINARY PROCEEDINGS

## AMNESTY CLAUSE

Survivors should not have to worry about being disciplined for violations of the student conduct code as a result of reporting sexual assault or harassment. When a sexual assault involves illegal alcohol or drug use by the survivor, California law requires the campus to have an amnesty clause<sup>79</sup> that states there will be no repercussions, except in egregious circumstances, to the survivor, even if the he or she violated the school's student conduct policy at the time of the incident. This should be explained in campus policies, websites, and other informational sources.

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<sup>79</sup> California law requires the campus policy to provide that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution 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 dishonesty. (Educ. Code, § 67386(b)(10).)

## CONFIDENTIALITY OF DISCIPLINARY PROCESS

Everything about the disciplinary process, including the identity of the complainant, should be kept confidential, except the outcome. Campus guidelines should note that witnesses should be cautioned not to discuss their testimony outside the hearing. The written decision after a hearing should also be confidential, to the extent allowed by law. One exception to this confidentiality is that the outcome must be shared with both parties, with the exception of accommodations offered to the complainant.<sup>80</sup>

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<sup>80</sup> Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal, preferably concurrently. For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. "In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant." (See Attachment 1, OCR Q&As, p. 37, H-3.)

# CAMPUS DISCIPLINARY PROCEEDINGS

## RETALIATION OR COERCION

Federal law requires that the campus policy must state that the college will not expressly or impliedly retaliate against a person reporting a sexual assault, urge a complainant not to file charges, nor threaten a complainant's academic standing or ability to graduate.<sup>81</sup>

### EXAMPLE

The University of Colorado, Boulder has a policy that prohibits **retaliation** against any employee or student who reports an incident of alleged sexual harassment or sexual violence or any employee or student who testifies, assists or participates in a proceeding, investigation or hearing relating to these allegations. Respondents are informed of this provision and told that any retaliation should be reported immediately to the appropriate Title IX officer.

### EXAMPLE

The University of California at Berkeley posts the following policy:

**“Special Grounds for Discipline; retaliation and intimidation. The campus does not permit retaliation against any person for bringing a Sexual Misconduct Complaint. Students may be disciplined for retaliating in any fashion against any person who makes a Sexual Misconduct Complaint. Retaliation includes, but is not limited to, harassment, threats, intimidation, reprisals, and/or adverse actions committed or instigated by the person who is the subject of the complaint or persons acting on behalf of that person directed toward the Complainant or anyone providing emotional or material support to the Complainant. Any student who participates in retaliation may be subject to the disciplinary process as outlined in the Code of Student Conduct. Students may be subject to the disciplinary process as outlined in the Code for Student Conduct for any attempt to intimidate any witness or otherwise attempt to prevent the testimony of any witness who has information relevant to a student conduct proceeding.”**

<http://sa.berkeley.edu/conduct/sexual-misconduct-policy>

<sup>81</sup> Resources for survivors and support persons to be free of retaliation, limit disclosures, and request reasonable accommodations, are described at:

[http://oag.ca.gov/victimservices/content/bill\\_of\\_rights](http://oag.ca.gov/victimservices/content/bill_of_rights); see also

<http://ag.ca.gov/victimservices/pdf/penalcode680.pdf>;

<http://clerycenter.org/federal-campus-sexual-assault-victims%E2%80%99-bill-rights>;

<http://www.care.uci.edu/General/Sexual-Assault-Victim-Rights--Reporting.aspx>;

<http://www.victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/bulletins-for-teens/sexual-assault#victim>.

# CAMPUS DISCIPLINARY PROCEEDINGS

## EXPLAINING THE CAMPUS DISCIPLINARY PROCESS

The home page of the campus student conduct/judicial proceedings office or center on the campus website should be clear about the process pertaining to sexual violence and harassment proceedings. Most campus websites do not have anything dealing with sexual assault or violence posted on the campus home page, but those topics should be prominently featured on the webpage for Campus Judicial Affairs or Student Conduct.



## EXAMPLE

The University of Colorado, Boulder's Office of Institutional Equity and Compliance website includes a link for **Sexual Misconduct: Reporting Options and Assistance**.

There are also links to FAQs, what to expect, and a form for authorizing release of confidential information.

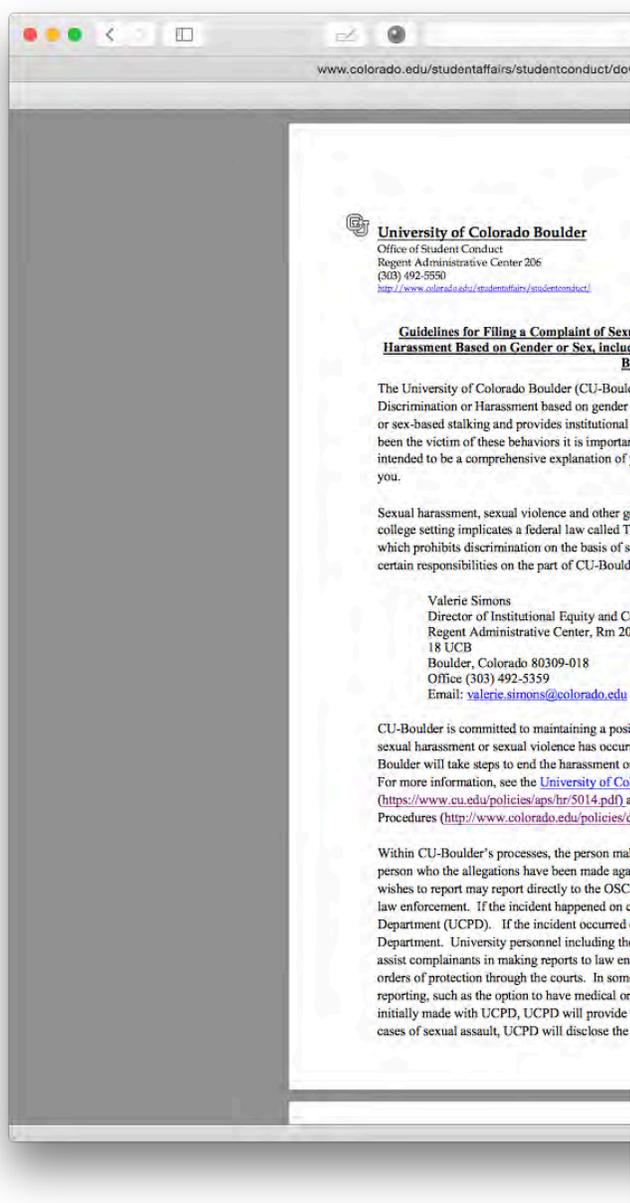
[http://  
www.colorado.edu/  
institutionalequity/](http://www.colorado.edu/institutionalequity/)

# CAMPUS DISCIPLINARY PROCEEDINGS

## EXPLAIN WHAT CONDUCT VIOLATES

### TITLE IX

A good campus website gives examples of types of conduct that violate Title IX.



### EXAMPLE

#### University of Colorado, Boulder:

**“An instructor suggests that a higher grade might be given to a student if the student submits to sexual advances; a supervisor implicitly or explicitly threatens termination if a subordinate refuses the supervisor’s sexual advances; a student repeatedly follows an instructor around campus and sends sexually explicit messages to the instructor’s voicemail or email; a student or employee touches you in an unwelcome, sexual manner without your consent; a student or employee repeatedly makes unwelcome comments about your body in person, on the phone, or in any other way; a student or employee records you engaged in sexual activity without your consent; students in a residence hall repeatedly draw sexually explicit graffiti on the whiteboard on your door; a student or employee exposes their sexual organs to you without your consent and in an unwelcome manner.”**

[http://www.colorado.edu/studentaffairs/studentconduct/downloads/GuidelinesforFilingaComplaintofSexualAssault\(7-14\).pdf](http://www.colorado.edu/studentaffairs/studentconduct/downloads/GuidelinesforFilingaComplaintofSexualAssault(7-14).pdf)

# CAMPUS DISCIPLINARY PROCEEDINGS

## ALTERNATIVE DISPUTE RESOLUTION/MEDIATION

Alternative dispute resolution/mediation proceedings are other forms of remedy that include having a mediator decide the outcome of a case without the protections and reporting requirements of a campus disciplinary proceeding. These alternative forms are not appropriate in sexual assault cases.

### EXAMPLE

The campus web page on judicial conduct/disciplinary proceedings should state its policy does not allow alternative dispute resolution/mediation outside the hearing process in sexual assault and Title IX cases:

**“Some cases can be handled informally and outside of the formal investigative process, but [Campus] will not mediate cases of sexual violence even on a voluntary basis”.**

# COORDINATED RESPONSE AND REVIEW OF CAMPUS POLICY

**The campus, campus police department (or security force), and local law enforcement are legally required to coordinate responses and keep each other informed, regardless of which agency has primary operational responsibility to investigate an incident of sexual violence or other specified crimes, as required under Title IX and the Clery Act.<sup>82</sup>**

Campuses should have a multi-disciplinary committee that meets monthly to review incidents, recommend changes, analyze data, identify trends, and establish protocols. The committee should include a campus representative, the Title IX and Clery coordinator(s), and a representative from each of the following groups: students, faculty, staff, coaches, campus police department or security, and campus administration. The Title IX coordinator should be high enough in the administrative hierarchy that he or she is heard at the highest level.

Inter-campus consortiums are encouraged. Campuses should share promising educational and training materials.

## EXAMPLE

The North Carolina Coalition Against Sexual Assault developed a consortium with state universities and North Carolina community colleges.

<http://www.nccasa.org/projects/campus-consortium/campus-consortium-documents>



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<sup>82</sup> See [Attachment 2, Model MOU, Attorney General of California](#).

Campuses should also share information on adjudicated sexual offenders, to the extent permitted under state and federal law. FERPA precludes sharing student records with other campuses, but students who apply to a new campus must submit transcripts to the school to which they are applying. Although, even if the transcript indicates suspension or expulsion, it may not specify the reason for the disciplinary action.

The FERPA limits on re-disclosure of information do not apply to information that institutions are required to disclose under the Clery Act.<sup>83</sup> Institutions may not require a complainant to abide by a nondisclosure agreement, in writing, or otherwise, that would prevent the re-disclosure of this information in any Title IX complaint that involves a Clery Act offense, such as sexual violence.

Title IX compliance reviews must be done periodically. In order to identify patterns or systemic problems related to sexual violence, campuses are required to collect aggregate data about sexual violence incidents from non-professional counselors or representatives in their on-campus sexual assault centers, victim advocacy offices, women's centers, and health centers.

The Title IX coordinator is responsible for conducting periodic assessments of student activities and campus climate surveys to ensure the school is free of sexual harassment and violence.<sup>84</sup> Note that any such surveys must be carefully formulated by experts, contain clear definitions about what constitutes sexual assault, and should be designed so they do not re-victimize survivors. The process of development of such surveys should be transparent.

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<sup>83</sup> 34 C.F.R. §99.33(c).

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<sup>84</sup> See [Attachment 1, Title IX](#).

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

California and federal laws<sup>85</sup> now require institutions of higher learning, including California community colleges, California State University, the University of California, and independent postsecondary institutions to provide comprehensive prevention and outreach programs for students and staff. California law further requires that outreach programming be included as part of every incoming student's orientation and shall include, at a minimum, a process for contacting and informing students, campus organizations, athletic programs, and student groups about

- **The campus sexual assault policy**
- **The affirmative consent standard**
- **Rights and responsibilities of students**

The campuses must provide training on how campus officials, law enforcement and staff should respond to sexual assault and other crimes on campus, including how to deliver trauma-informed services to survivors. Campuses

should partner with rape crisis centers and other community-based organizations in California to:

- **Understand the federal and state requirements regarding sexual assault prevention and response**
- **Learn the dynamics and elements of sexual assault, domestic violence, dating violence and stalking<sup>86</sup>**
- **Understand available resources, including (1) law enforcement procedures, investigations, and reporting options for victims, and (2) campus and community-based options for survivors, including available services**
- **Develop mandatory prevention education programs, including bystander intervention, for students<sup>87</sup>**

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<sup>85</sup> Cal. Educ. Code § 67386(b); and see **Attachment 1** regarding federal and state requirements regarding mandated campus training about sexual assault prevention and response, including Clery, Title IX, Title IV, the Safe Streets Act, Section 14141, FERPA. Title IX recommends that all schools implement prevention education and may want to include these in their orientation programs for new students, faculty and staff, resident advisors and student athletes and coaches. The Clery Act (including the SaVE Act amendments effective July 1, 2015) requires schools to offer prevention education on awareness, bystander intervention, primary prevention, and risk reduction. (See Violence Against Women Act, Federal Register, Vol. 79, No. 202, Oct. 20, 2014/Rules and Regulations 62788.)

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<sup>86</sup> This includes education about: (1) Common facts and myths about the causes of sexual violence (see <http://www.usc.edu/dept/education/vawc/sexual-assault/myth-vs-fact.pdf>); (2) information about dating violence, rape, sexual assault, domestic violence, and stalking crimes, including how to file disciplinary complaints with the institution of higher education and how to file criminal charges with campus or local law enforcement officials; (3) how to locate and contact campus and community resources for students or staff who are victims of sexual violence; (4) methods of encouraging peer support for victims and the imposition of sanctions on offenders; and (5) consequences under the campus disciplinary system (student conduct code), criminal laws, and possible civil consequences of committing acts of sexual and other types of covered violence. These concepts are discussed at: [http://www.acha.org/sexualviolence/docs/ACHA\\_PSV\\_toolkit.pdf](http://www.acha.org/sexualviolence/docs/ACHA_PSV_toolkit.pdf); <http://oregonsatf.org/wp-content/uploads/2012/05/preventing-violence-promoting-safety-highered.pdf>.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

Campus law enforcement, officials and staff should learn:

- **Differences between standards used in the criminal justice system versus campus disciplinary proceedings and adjudications**
- **Trauma-informed and survivor-centered investigative methods and best practices relating to evidence collection and preservation, victim and suspect interviewing, and witness interviewing and preparation<sup>88</sup>**

- **How to review sexual assault response policies and investigation protocols to detect and address indications of explicit or implicit bias**

## PREVENTION AND OUTREACH: HOW AND WHEN

→ All California campuses, which receive state financial aid for students, must now provide education for students and staff about sexual assault, dating/domestic violence and stalking when they are new to the campus, and such efforts should be ongoing and layered in order to be effective. Additionally, there must also be at least annual training for administrators and staff on campus disciplinary boards, administrators who handle appeals in disciplinary cases, campus police, and all other faculty and staff.<sup>89</sup>

Federal law requires that a report be made to the campus' Title IX officer whenever a student reports a covered offense, including sexual assault, to a faculty or staff member. Faculty and staff with significant responsibility for student and campus activities are "**campus security authorities**" under federal law.<sup>90</sup> Thus, all faculty and staff should be trained to immediately inform

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<sup>87</sup> Ed. Code § 67386(d), provides that the campus shall "implement comprehensive prevention and outreach programs addressing sexual violence, domestic violence, dating violence, and stalking. A comprehensive prevention program shall include a range of prevention strategies, including, but not limited to, empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs shall be provided to make students aware of the institution's policy on sexual assault, domestic violence, dating violence, and stalking. At a minimum, an outreach program shall include a process for contacting and informing the student body, campus organizations, athletic programs, and student groups about the institution's overall sexual assault policy, the practical implications of an affirmative consent standard, and the rights and responsibilities of students under the policy.

Ed. Code, § 67386(e) states: "Outreach programming shall be included as part of every incoming student's orientation."

<sup>88</sup> Resources for information on trauma-informed methodology and technical assistance on trauma-informed provision of services:

- <http://www.samhsa.gov/nctic>
- <http://traumainformedcareproject.org/>
- [http://wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/resources\\_publications/special\\_editions/Trauma-Informed-Advocacy.pdf](http://wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/resources_publications/special_editions/Trauma-Informed-Advocacy.pdf)

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<sup>89</sup> See **Attachment 1**.

<sup>90</sup> 34 C.F.R. § 668.46(a); see also Cal. Educ. Code § 67380 (incorporating the federal law definition of Campus Security Authorities).

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

a student about the option for confidential and privileged communication with a RCC sexual assault counselor prior to listening to a disclosure. This requires sensitivity and training about trauma-informed responses. The faculty or staff member must be able to explain that any disclosure made to them is subject to reporting to the campus, although the names and identifying details can be omitted from that report on request. They must know how to get the student to a RCC sexual assault counselor if the student expresses the desire to disclose to someone who holds the state evidentiary privilege against re-disclosing any information without permission. If the student chooses to continue with a disclosure to the faculty or staff member, that member must know who to report to (for example, know who is designated the Title IX officer) and that the law requires respecting a student's wish to remain anonymous.

Many campuses already require prevention education for students, but not all require that the training be in-person. Research shows that in-person training is more effective than web-based courses: **“One of the key elements of the learning process is the dynamic relationship shared between a student and fellow students and between a student and the teacher. Face-to-face learning fosters these relationships; such dynamism may be minimized or lost when training is undertaken on a distance or virtual**

## EXAMPLE

San Jose State University requires in-person training on sexual assault prevention for all campus athletes and requires in-person bystander intervention training for members of Greek organizations and resident advisors. All students must complete an online prevention course.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

**format.”**<sup>91</sup> Even an hour of prevention training that is interactive would be better than an online course of twice that length.

Even if a large university believes it cannot require in-person prevention education for all students and staff for fiscal reasons, **higher risk populations** should be required to complete in-person training.

Timing is a critical issue. The **"red zone"** is the first two months of school (until Thanksgiving) for a first-time student at a four-year college. Some studies show that this is when more sexual assaults of college and university students occur than any other time during the school year.<sup>92</sup> This is due to several reasons, including:

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<sup>91</sup> See, e.g., Banna, "Face-to-Face Training Is Still the Better Choice Over Digital Lessons," <https://www.td.org/Publications/Magazines/TD/TD-Archive/2014/09/Webex-Face-to-Face-Training-Is-Still-the-Better-Choice>: "Richness of information and memorable experiences are deduced through behavior and body language, including one's mannerisms, gestures, tone, language, and volume of voice. Face-to-face communication allows the entire experience to not only be heard but also seen and felt. Face-to-face training also adds a personal element to a workshop as opposed to computer-based education. Responses, connections, and reactions are prevalent during in-person training. Distance education may adversely affect the quality of the training given because there are barriers to achieving the full extent of teacher-student interaction, thus making some learning objectives impossible to acquire."

<sup>92</sup> [https://well.wvu.edu/articles/the\\_red\\_zone](https://well.wvu.edu/articles/the_red_zone); <https://cms.bsu.edu/-/media/WWW/DepartmentalContent/HealthEd/RED%20ZONE.pdf>;

- **Students meeting new people, trying to fit in, and participating in new activities for the first time**
- **Students experiencing less parental supervision and increased independence, which may lead to experimentation with drinking or drugs**
- **Student adjustment to new city or environment**

However, other studies show an increased risk during winter term or the start of the second year, especially if that is when students take part in sorority and fraternity rush.<sup>93</sup>

Ensuring that students participate in prevention training the first two weeks of school should be a high priority for the campus. Requiring the training during summer orientation (for those four-year colleges which offer it) is not as good of an option because it may be too soon. On the other hand, for those schools that offer training sessions for parents while their students attend summer orientation, this would be an excellent opportunity to enlist parents' help by teaching them about the dynamics of sexual assault and prevention strategies.

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<sup>93</sup> <http://www.npr.org/sections/healthshots/2014/09/08/345630985/the-risk-of-campus-rape-may-be-higher-at-different-times-of-the-year>.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

Some campuses require students to provide proof of completion of the required sexual assault prevention curriculum in order to complete registration for classes. Campuses should have a system to ensure accountability and completion of the required curriculum. Other schools require students to sign a statement or attest that they have read the school's policy on sexual assault.<sup>94</sup> This seems to be less effective as a prevention/education measure than the approach outlined below:

Some institutions of higher education require students to participate in annual training and offer classes year round, as many community colleges have students starting classes at times other than the fall semester. Even traditional four-year colleges have students who start classes the second semester and faculty or staff who start campus employment at any time during the year. Classes on prevention education should be offered at the start of each semester or quarter and required for first-time students.

## EXAMPLE

San Jose State University requires all first-time students to complete an online module on understanding sexual assault as well as a pre-class survey. A hold is placed on registration for the next quarter if these have not been completed.

[www.sjsu.edu/wellness](http://www.sjsu.edu/wellness)



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<sup>94</sup> VDDay & SAFER, *Making the Grade? Findings From the Campus Accountability Project on Sexual Assault Policies* (2012) at p. 16.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

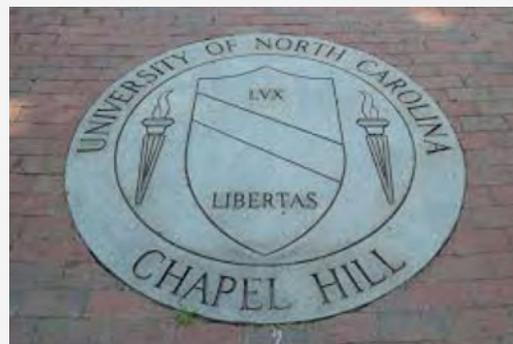
Some campuses have more resources than others. Campuses in the same geographic area, both public and private, can form alliances to share resources and pool efforts at trainings. In many areas, campuses already collaborate with community-based resources, including rape crisis centers that employ RCC sexual assault counselors.

## PREVENTION AND OUTREACH FOR STUDENTS AND STAFF – WHAT KIND OF TRAINING AND RESOURCES CAN WE USE?

There are many effective ways to get the message across to students, faculty and staff about sexual assault awareness and prevention. While California law now mandates that campuses require an in-person or web-enabled class on sexual assault prevention as part of an incoming student's orientation<sup>95</sup> there are additional ways campuses can keep the issue, and solutions, in the spotlight.

### EXAMPLE

UNC at Chapel Hill joined with the state university and community college systems in North Carolina to share information and resources on sexual assault prevention. California community colleges, the California State University, and University of California should do the same.



<sup>95</sup> Cal. Ed. Code, § 67386(c)

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## MULTI-MEDIA APPROACH

A one-hour annual training will not offer enough time to bring the message home, especially when it comes to changing an engrained cultural message inculcated long before students arrived on a college campus. Schools are using many ways of repeating the message through social media and other methods.<sup>96</sup>

An app called "**I'm Here for You**" was developed by Loyola University, Chicago, to connect students and staff to gender-based violence resources.<sup>97</sup> Loyola also created stickers that faculty and staff, who have completed the training about sexual and gender-based violence, can display to let students know they are available to talk about these issues or to refer them to appropriate resources.<sup>98</sup>

## EXAMPLE

Campuses can place the sexual assault resource center's contact information on the back of every student ID card; hand out business cards with "**what to do if you've been sexually assaulted**" at school events; conduct regular e-mail and social media campaigns about options and resources; put bar codes around campus that can be scanned with cell phones to learn about resources and policies; build apps with sexual assault awareness pop-ups and resources.

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<sup>96</sup> These ideas, and others, were generated by the Student Summit sponsored by CALCASA in 2014: see <http://www.calcasa.org/wp-content/uploads/2010/12/CALCASA-Student-Summit-National-Web.pdf>

<sup>97</sup> <https://itunes.apple.com/us/app/here-for-you/id739824451?mt=8>

<sup>98</sup> <http://www.luc.edu/ccrt/resources/oncampus>

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

Some campuses have developed their own sexual assault videos to be used in trainings; these are intended to begin helpful discussions among participants.

To view a training module on using media and technology in creating curricula around sexual and domestic violence, go to:

<http://www.preventconnect.org/2012/09/using-media-and-technology-in-sexual-and-domestic-violence-prevention-efforts/>.

## BYSTANDER INTERVENTION TRAINING

Bystander intervention<sup>99</sup> is a common form of prevention education that may help change attitudes that tolerate sexual violence. It may also make the subject relevant to people who otherwise feel that they are not impacted by the problem of sexual violence. It offers people a way to feel involved in the discussion even if they cannot view themselves as either a victim or a perpetrator. Some campuses pay third party vendors for the use of already-

## EXAMPLES

### University of Santa Clara:

The University of Santa Clara has a video called “Can’t Thread A Moving Needle” which is used in its prevention curriculum, generated from an original play performed on campus.

<http://www.scu.edu/studentlife/resources/ctmn>

### UC Santa Cruz:

The University of California at Santa Cruz funded a student-run production of skits illustrating effective and ineffective instances of bystander intervention, what victim blaming looks like and its impact on survivors, and how to access campus resources for sexual assault.

### Cal Poly San Luis Obispo:

Cal Poly San Luis Obispo has a video called “The Truth Is...” featuring students discussing campus sexual assault.

<https://vimeo.com/43208568>

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<sup>99</sup> Summaries of this approach can be found at <https://notalone.gov/assets/bystanderfsummary.pdf>.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

developed curriculum.<sup>100</sup> While there is no empirical evidence yet that bystander intervention programs reduce sexual assault, these programs are viewed as risk reduction programs, required by the Campus SaVE Act.<sup>101</sup>

## EMPOWERMENT-BASED PROGRAMMING FOR VICTIM PREVENTION

Empowerment-based programming prevents victimization through strengthening protective factors and mitigating risk factors.<sup>102</sup> Programming such as empowerment self-defense classes, sisterhood groups, and advocacy programs develop and strengthen an individual's self-confidence, connectedness to peers and supportive persons, and sense of boundaries.<sup>103</sup> These improve not only an individual's sense of self and their ability to follow their instincts and speak out, but promotes healing, resiliency, and prevention through shifting norms that have

normalized sexual violence and blamed victims for their own victimization.

Empowerment-based victim prevention does not place the responsibility of prevention of sexual violence on the potential victims and should not be considered an excuse for sexual violence (for example, **“if she had gone to the self-defense class she could have prevented the assault”**). The inclusion of providing potential victims with skills via empowerment-based programming (for example, self-defense) is part of a comprehensive approach and should be offered in addition to social norms change, bystander efforts, and other prevention strategies to best support healthy relationships and prevent sexual violence, domestic/dating violence and stalking.

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<sup>100</sup> For example, Mentors in Violence Prevention (MVP) offers bystander intervention programming, (although it has not been evaluated in a peer-reviewed academic publication.) The bystander intervention approach is discussed at [www.notalone.gov/assets/bystander-summary.pdf](http://www.notalone.gov/assets/bystander-summary.pdf) and PreventConnect <http://wiki.preventconnect.org/Bystander+Intervention>; and at [http://cola.unh.edu/prevention-innovations/bringingf\\_bystander%C2%AE](http://cola.unh.edu/prevention-innovations/bringingf_bystander%C2%AE))

<sup>101</sup> VAWA, 79 Fed. Reg., no. 202, Rules and Regs. 62788 (10f 20f 14).

<sup>102</sup> CDC Sexual Assault Protective and Risk Factors <http://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

<sup>103</sup> Reflections on the National Sexual Assault Conference: Feminist empowerment based models of self-defense, (Sept. 17, 2013) <http://www.calcasa.org/2013/09/reflections-national-sexual-assault-conference-feminist-empowerment-based-models-self-defense/>.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## TRAINING RELEVANT TO THE MILIEU OF THE CAMPUS

Classes that are relevant to a particular campus and contain references to familiar places on or near campus add to the effectiveness of training materials. While online modules can be purchased, these are not tailored to the individual campus, its culture and problems and can be expensive. Prevention education should

be relevant to historically marginalized groups and responsive to campus climate surveys that address particular attitudes and problems on individual campuses. Campuses should bear in mind that California law requires education and outreach programs to address not only sexual assault but also dating violence, domestic violence, and stalking.



# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## GENDER EQUITY

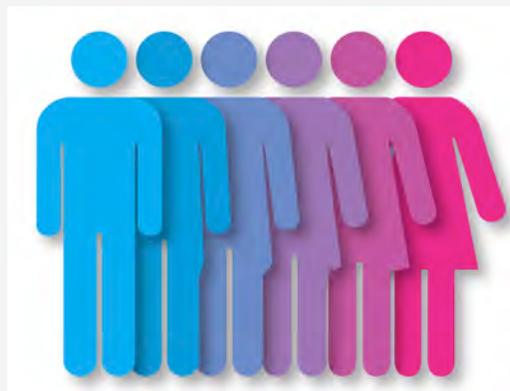
Campuses should include education on relationship dynamics in order to offer a gender-equity component to the discussion. Discussion about how social constructs of gender may create conditions for sexual violence/abuse focuses participants on the root causes of the issue. Conversely, an emphasis on prevention, by avoiding certain situations (for example, “**don’t drink too much**”, “**don’t go out alone**”), can be construed as victim-blaming and missing the point—which is that sexual violence is the fault of the perpetrator, not the survivor.

## EXAMPLE

The Know Your IX website offers resources on gender equity, as does the Sexual Violence Prevention Service at the University of Kansas.

<http://knowyourix.org>

<http://emilytaylorcenter.ku.edu/sexual-violence-prevention>



# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## ALCOHOL ABUSE AND SEXUAL VIOLENCE, DV, DATING VIOLENCE AND STALKING PREVENTION EDUCATION

Most campuses already offer education on alcohol abuse prevention.<sup>104</sup> Alcohol is well known to be a commonly used tool to facilitate sexual assault. Since the root cause of sexual violence is not alcohol use, education about sexual violence and alcohol abuse should be integrated to avoid excusing violent behavior and perpetuating victim blaming. Restricting alcohol on campus or in residence halls may be associated with decreased sexual violence victimization, depending on the availability of alcohol in the community surrounding the campus.<sup>105</sup>

### EXAMPLE

Students in alcohol abuse trainings should be told about the campus' amnesty policy for violations of the student code of conduct involving underage drinking. Students should know they can report a sexual assault and/or access support without fear of consequences for a violation of the student code of conduct. It is important that students provide complete information when they report as a student can lose credibility in legal and campus proceedings if they leave out or change circumstances of their assault in their testimony, including drug or alcohol use.

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<sup>104</sup> See Lippy, C. & DeGue, S., *Exploring Alcohol Policy Approaches to Prevent Sexual Violence Perpetration*, Trauma, Violence and Abuse, advance online publication at

<http://tva.sagepub.com/content/early/2014/11/14/1524838014557291.full.pdf?ijkey=esODpAJa%20YlcfazO&keytype=finite>

<sup>105</sup> Lippy, C. & DeGue, S. *Exploring Alcohol Policy Approaches to Prevent Sexual Violence Perpetration*, Trauma, Violence and Abuse (2014), Advance, online publication. Retrieved from

<http://tva.sagepub.com/content/early/2014/11/14/1524838014557291.full.pdf?ijkey=esODpAJaYlcfazO&keytype=finite>

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## MANDATORY TRAINING ON TRAUMA

California law now requires campuses to train campus police, campus security authorities and administrators about how to use a trauma-informed approach.<sup>106</sup> This training should be provided to campus law enforcement and security, campus disciplinary adjudication boards, and incorporated in training for faculty, staff, and advocates. Victims identify police and prosecutors as the face of the justice system, more than any other professionals. Their collective response to a report of sexual violence may have more impact on a survivor's recovery from trauma and view of the system's ability to help than any other professionals'.<sup>107</sup>

Sexual violence is often part of a larger problem that can be missed if those dealing with a report do not ask or recognize the signs that domestic violence or human trafficking are involved. Professionals and first responders must now, under California law, be trained to ask questions about current facts and relevant history without re-traumatizing the survivor.

## EXAMPLE

San Jose State University's campus representative, who has had clinical training about trauma, facilitates an annual, one-hour training for hearing officers and clinicians on campus about trauma, including the neurobiology of trauma, impacts of interviewing style, fractured memory, and the freeze response ("tonic immobility").

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<sup>106</sup> "A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases" is now required. (Ed. Code, § 67386(b) (12).)

<sup>107</sup> Kristiansson, *supra* n. 11, at p. 3.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

## EDUCATION ABOUT AFFIRMATIVE CONSENT

California now requires that outreach programming be included as part of every incoming student's orientation and must include, at a minimum, a process for contacting and informing students, campus organizations, athletic programs, and student groups about:

- **The campus sexual assault policy**
- **The affirmative consent standard**
- **Rights and responsibilities of students**<sup>108</sup>

The California model on affirmative consent may differ from other states' laws about affirmative consent, and the standard is different for campus disciplinary proceedings than it is in the California criminal justice system. Every campus should ensure that its training for all students, faculty, staff, law enforcement, campus administrators and hearing boards incorporates the elements of the new California law.<sup>109</sup>

## PEER AND CAMPUS-BASED PREVENTION EDUCATION

Components of a good prevention program include using a variety of methods (not just one class) to bring awareness to the issue, such as: the use of multiple teaching methods, repeated exposure to the ideas, evidence-based teaching, training on healthy relationships, and in-person and/or web based classes and media messages that are tailored to the particular audience,

### EXAMPLE

Peer Education training is offered each semester at UC Merced, along with bystander prevention education ("Step In, Step Up: How to Intervene as a Peer"). Students must participate in prevention education at the beginning of their first year at the campus, but the university CARE program offers ongoing programs, events and class announcements beyond freshman orientation, utilizing social media, which reaches 2/3 of the student body every year.

<http://prevent-violence.ucmerced.edu/violence-prevention-programs>

<sup>108</sup> Cal. Ed. Code, § 67386(c).

<sup>109</sup> For a detailed explanation of the new California standard of affirmative consent, see [Attachment 1](#).

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

taught by well-trained staff.<sup>110</sup> Student involvement in peer education can be especially effective.

Campus-based groups and constituencies can extend the campus' own resources to aid in training and education of students. Outreach to the Greek system, athletic organizations, women's resource centers, health, and LGBTQ and multicultural resources centers can expand the number of trainings used on campus and go beyond a mandatory minimum. Cooperation between official campus resource centers and these groups not only helps spread the message but reaches higher risk groups to create change within a community.

## COMMUNITY-BASED GROUPS AND CAMPUS PARTNERSHIPS

Community-based groups should partner with campuses to educate the campus community about sexual violence, domestic and dating violence, and stalking behaviors.<sup>111</sup> California rape crisis centers train sexual assault counselors who hold an evidentiary privilege in judicial proceedings in California courts. RCCs have a wealth of resources and knowledge to aid

### EXAMPLES

#### **Emory University:**

Emory University has a Fraternity and Sorority Sexual Assault Prevention Initiative.

[http://studenthealth.emory.edu/hp/respect\\_program/greek%20\\_life.html](http://studenthealth.emory.edu/hp/respect_program/greek%20_life.html)

#### **University of Wisconsin:**

The University of Wisconsin offers a social work class called "Greek Men for Violence Prevention."

<http://socwork.wisc.edu/files/Fall%202012%20-%20Schroepfer%20-%20SW672-002.pdf>

#### **University of Michigan:**

The University of Michigan created a program for coaches and athletes. Hear the podcast about it, and what other campuses can do, at:

<http://www.preventconnect.org/2015/04/sexual-violence-prevention-in-college-athletics-the-university-of-michigan-example/>

<sup>110</sup> Nation, M., et al., *What works in prevention: Principles of effective prevention programs* (2003).

<sup>111</sup> See *Creating Change Together: A Guide for Rape Crisis Centers Partnering with Colleges & Universities*, Ohio Alliance to End Sexual Violence (2014), <http://www.oaesv.org/wp-content/uploads/2014/09/Creating-Change-Together-Final-8.28.14.pdf>; *California Campus Blueprint to Address Sexual Assault*, California Coalition Against Sexual Assault (2004), [http://www.calcasa.org/wp-content/uploads/2012/06/OESf\\_2004f\\_CAF\\_Campus\\_Blueprint.pdf](http://www.calcasa.org/wp-content/uploads/2012/06/OESf_2004f_CAF_Campus_Blueprint.pdf).

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

campuses in the effort to educate students, administrators, faculty and staff about sexual violence and are on the cutting-edge of new developments in the prevention of sexual violence. California law requires campuses to provide written notification to the survivor about the availability of, and contact information for, on- and off-campus resources and services.<sup>112</sup>

Counties have Sexual Assault Response Teams (SART) that are trained to deal with immediate response to reports of sexual violence. Under the new California law, campuses must partner with community-based groups such as RCCs and SARTs, as well as with local law enforcement agencies, to provide a coordinated response to the ongoing problem of sexual violence, domestic violence, dating violence and stalking.

## PREVENTION AND OUTREACH FOR STUDENTS AND STAFF – CLIMATE SURVEYS AND PREVENTION

Federal law requires schools to examine attitudes and behaviors in order to measure the extent of the sexual assault problem at a particular campus. However, not all surveys are based on science and best practices.<sup>113</sup>

You know you have a campus climate that may be conducive to a culture of rape when a main

street near the campus is lined with signs in front of fraternity houses on the day freshmen can check into the dorms fall semester that say, **“Thanks for Bringing Us Your Daughters.”** Other signs that a culture supportive of rape has developed are subtler. Because survivors of acquaintance rape and alcohol-facilitated rape rarely report, climate surveys are essential to determine the extent of a problem on a particular campus. These surveys are confidential or anonymous and, when regularly used, can demonstrate changes to campus culture over time.

Successful use of prevention education may mean an increase in the number of sexual assaults which are reported and which the campus in turn must report pursuant to the Clery Act. Thus, the success of a campus' prevention programs must be measured over a period of years, not months.

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<sup>112</sup> See [Attachment 1](#).

<sup>113</sup> For information on *how* to plan and conduct a climate survey, see <https://www.notalone.gov/assets/ovw-climate-survey.pdf>.

# DEVELOPING CAMPUS RESOURCES FOR EDUCATION, PREVENTION AND INTERVENTION

Campus climate surveys should address the effectiveness of campus training modalities. For example, the campus can evaluate effectiveness of an online program by assessing desirable outcomes among male college student participants.<sup>114</sup>

Finally, awareness raising campaigns can positively impact the campus climate. Campaigns that spread knowledge about and shift social norms that have silenced awareness of sexual assault, domestic violence, and stalking should be part of a campus' prevention effort.<sup>115</sup>



<sup>114</sup> See Salazar, L, et al., *A web-based sexual violence bystander intervention for male college students: Randomized control trial*, 16 J. of Medical Internet Research, no. 9 [advance online publication].

<sup>115</sup> See [www.denimdayinfo.org](http://www.denimdayinfo.org); [www.nomore.org](http://www.nomore.org).

## EXAMPLES

### **San Jose State University:**

Students at San Jose State University must complete a pre-class survey about attitudes and behaviors before the online training. A post-class survey pops up on the student's computer 45 days later that asks about changes in attitudes and behaviors, which they must complete as part of the required sexual assault prevention training. This is an example of measuring the impact of prevention education in a meaningful way.

### **Fresno City College:**

An instructor at Fresno City College held a sexual assault survey event with students in her Sociology of Rape classes at a central campus location to obtain demographic information about sexual assault on campus.

<http://www.therampageonline.com/video/2015/04/28/fcc-instructor-holds-sexual-assault-and-rape-survey-on-campus-2/>

# CONCLUSION

The Guidelines presented here consider best practices for the development of survivor-centered, trauma-informed, and comprehensive policies and protocols to enable campus compliance with state and federal law to best serve the needs of diverse student populations.

We recognize there is no “**one size fits all**” approach – colleges and universities must consider their unique campus system and culture in order to develop programs that holistically address sexual violence in their campus community. Examples of projects and programs from across the country are included for reference only; we do not endorse any of these campus programs, but recognize their leadership and innovation.

Survivors' voices, needs, concerns and decisions drive our collective work to end sexual violence. By intentionally coordinating the work of rape crisis centers with educational institutions, law enforcement, and other partners, we have an opportunity to support survivors in their healing, access to justice, and right to safety.

# ATTACHMENTS

Throughout the Guidelines, three Attachments were referenced. Digital copies are available for your review.

## ATTACHMENT 1



### **State and Federal Laws Governing Mandatory Campus Sexual Assault Protocols and Procedures**

<http://www.calcasa.org/wp-content/uploads/2015/06/Attachment-1-Campus-Sexual-Assault-Laws-.pdf>

## ATTACHMENT 3



### **Sexual Assault Survivors' Legal Rights**

<http://www.calcasa.org/wp-content/uploads/2015/06/Attachment-3-Victims-Rights.pdf>

## ATTACHMENT 2



### **California Attorney General Model Memorandum of Understanding (MOU) to Address Campus Sexual Assault**

<http://www.calcasa.org/wp-content/uploads/2015/06/Attachment-2-AG-Guidance-and-Model-MOU.pdf>



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