

## Information for the Accused (or Respondent)

If you are a student at Ohlone Community College, and you have been accused of sexual harassment, sexual assault, stalking, dating or domestic violence, or other gender-based harassment in the college setting, it is important that you read the following information. Although not intended to be a comprehensive explanation of your options and rights, this information may be useful to you.

Sexual harassment, sexual violence and other gender-based harassment occurring in the college setting implicates a federal law called Title IX of the Higher Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities and which triggers certain responsibilities on the part of the college. Ohlone College has a Title IX Coordinator and response team that can assist you. Key contacts for additional information include Ms. Shairon Zingsheim (Associate Vice President of Human Resources) and Dr. Minh-Hoa Ta (Vice President of Student Services).

Ohlone College is committed to maintaining a positive learning, working and living environment. Ohlone prohibits sexual assault, domestic violence, dating violence, and stalking (“sexual violence”). The college will not tolerate acts of sexual harassment or sexual violence or related retaliation against or by any employee or student. When sexual harassment or sexual violence has occurred and is brought to the attention of a responsible administrator, steps will be taken to end the harassment or violence, prevent its reoccurrence, and address its effects. Staff or faculty who are informed of any crime or threat of harm must report that information to one of the following college officials:

- Associate Vice President of Human Resources - Title IX Coordinator
- Vice President of Student Services
- Student Health Center
- Campus Police

Within the college’s processes, the person making the allegations is referred to as the *Complainant or Victim or Accuser*. The person who the allegations have been made against is referred to as the *Respondent or Accused*. A complainant who wishes to report sexual harassment, sexual violence or other gender-based harassment may report their complaint directly to any of the following campus offices:

- Associate Vice President of Human Resources - Title IX Coordinator
- Vice President of Student Services
- Student Health Center
- Campus Police

A complainant may also report directly to law enforcement.

If a report is initially made with Campus Police or the Student Health Center, authorized personnel in those departments may refer cases to the Title IX Coordinator, but only with the victim’s consent. A complainant may pursue both the campus process through the Title IX Coordinator or Vice President of Student Services and the criminal process simultaneously. In addition, students may file a Title IX complaint with the Office for Civil Rights of the U.S. Department of Education.

The Title IX Coordinator (Associate Vice President of Human Resources) and the Vice President of Student Services have authority to address complaints of sexual harassment and sexual violence in a non-criminal context. This campus process is completely separate from the police and courts. Within Ohlone College, the identity of the respondent determines which of the two offices handles

the case. When the respondent is a student at the time of the incident, the Vice President of Student Services provides a student conduct process for investigating those cases whether they occur on or off campus. For cases where the respondent is an employee, those cases are handled by the Associate Vice President of Human Resources, who is also a member of the Title IX Investigative Team. When the respondent is both a student and an employee, the two offices may work together to investigate and determine appropriate corrective action for the case. If you are uncertain about which office to contact you may call either office. When the respondent is neither a student nor employee at Ohlone College, the college may be able to assist you with counseling and other support services — contact the Student Health Center for these services.

The Title IX Coordinator will review the allegations and determine an appropriate course of action. Some cases can be handled informally and outside of the formal investigative process, although the college will not mediate cases of sexual violence even on a voluntary basis. For cases that result in an investigation, those investigations are conducted by individuals who have received specialized training in those types of investigations and annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. All investigations will be conducted in a prompt, fair, thorough and impartial manner.

When the college becomes aware of sexual, dating, or domestic violence, the college may have an obligation to proceed with an investigation, regardless of a complainant's wishes, in order to ensure campus safety, and issue appropriate corrective action to promote responsibility.

In the college's process, the complainant and respondent will not be permitted to directly question each other and are not required to be present together at any point. Both a complainant and a respondent have the right to identify witnesses and provide other information relevant to the investigation. The college will decide the case based on a preponderance of the evidence standard (whether or not it is more likely than not that the conduct occurred). The College may, at its discretion, direct trained professionals to conduct an investigation.

In most cases, the college will not wait until a criminal case is resolved before proceeding with the college's process. In addition, if a college official has a reasonable belief that a reportable crime has been committed, she or he may be obligated to report that to law enforcement if police have not already been notified. In cases where a police investigation has been conducted or is being conducted, law enforcement may be able to provide some information to the Title IX Coordinator with the victim's consent.

The college's fact-finding investigation may be delayed for a short period of time upon a request from law enforcement, but will be resumed as soon as possible. Most sexual violence or sexual harassment investigations conducted through the Title IX Office take up to 60 days to be resolved, depending on the complexity of the case and the number of parties and witnesses involved. The college will keep a complainant advised as to the status of the case as the complainant desires and as is reasonable. The complainant and respondent will be simultaneously informed in writing of the outcome of the case, appeal rights, any change to the result before the result is final, and when the result becomes final.

The college will take interim steps to protect a complainant and respondent while the case is pending. Depending on the case and the complainant's wishes, these steps may include class moves to avoid having classes together, ordering a respondent to not have contact with the complainant, excluding from parts of campus, or providing an escort to accompany the complainant on campus. Any adjustments made will be designed to minimize the burden on the complainant's educational experience. Some of these actions may also be remedies in those cases resulting in a finding of a policy violation.

If disciplinary action is initiated, the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. For proceedings alleging violation of a federal law, the preponderance of the evidence standard is used. If a violation is established, appropriate corrective action or discipline will be issued which may include but is not limited to: verbal or written warning, reprimand, disciplinary probation for a student, suspension, expulsion for a student, or termination for an employee.

Because the school's primary concern is student safety, minor alcohol and drug violations by a complainant may be handled informally. If a complainant is underage and reports a sexual assault incident where alcohol and drugs were used, the complainant will not get in trouble. The use of alcohol or other drugs never makes the victim at fault for sexual violence. An individual accused of sexual misconduct does not avoid or mitigate responsibility because s/he was under the influence of alcohol or other drugs.

Ohlone College 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 are informed that the victim and witnesses are informed that any incident that the victim or a witness believes to be retaliation should be reported immediately to the Title IX Coordinator.

Attached are the District's Board Policy and Administrative Procedures, BP and AP 3540 for more information, or you can view these policies on the Ohlone College website.

College employees must refer reports of sexual harassment, sexual violence, or other gender-based harassment to the Title IX Office. The only exception to the obligation to report applies to employees working in the Student Health Center who provide confidential counseling services.

## **BP 3540 Sexual and Other Assaults on Campus - Board Policies, Chapter 3 General Institution**

Reference: **Education Code Section 67382, 67385; 20 U.S.C § 1092(f); 34 C.F.R. § 668.46(b)(11)**

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Any sexual assault or physical abuse, including, but not limited to, rape, as defined by California law, whether committed by an employee, student, or member of the public, that occurs on District property, is a violation of District policies and procedures, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. Students, faculty, and staff who may be victims of sexual and other assaults shall be treated with dignity and provided comprehensive assistance. The President/ Superintendent shall establish administrative procedures that ensure that students, faculty, and staff who are victims of sexual and other assaults receive appropriate information and treatment, and that educational information about preventing sexual violence is provided and publicized as required by law.

The procedures for sexual assaults shall meet the criteria contained in EC 67385, 67385.7 and 34 C.F.R. § 668.46.

See Administrative Procedure #3540.

## **AP 3540 Sexual Assaults on Campus (or Campus Events)**

Administrative Procedures, Chapter 3 General Institution

→ References: **Education Code Sections 67385, 67385.7 and 67386; 20 U.S. Code Section 1092(f); 34 Code of Federal Regulations Section 668.46(b)(11)**

Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, is a violation of District policies and regulations, and is subject to all applicable punishment, including criminal procedures and employee or student discipline procedures. (See also AP 5500 titled Standards of Student Conduct.)

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

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

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

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

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

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

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

These written procedures and protocols are designed to ensure victims of domestic violence, dating violence, sexual assault, or stalking receive treatment and information. (For physical assaults/violence, see also AP 3500, 3510, and 3515.)

All students, faculty members or staff members who allege they are the victims of domestic violence, dating violence, sexual assault or stalking on District property shall be provided with information regarding options and assistance available to them. Information shall be available from Campus Police Services, which shall maintain the identity and other information about alleged sexual assault victims as confidential unless and until the Chief of Campus Police Services is authorized to release such information.

The Chief of Campus Police Services shall provide all alleged victims of domestic violence, dating violence, sexual assault or stalking with the following:

- A copy of the District's policy and procedure regarding domestic violence, dating violence, sexual assault or stalking;
- A list of personnel on campus who should be notified and procedures for such notification, if the alleged victim consents. Those that would be notified would be: President/Superintendent, Vice President of Student Services, and the Mental Health Counselor.
- Information about the importance of preserving evidence and the identification and location of witnesses;
- A description of available services, and the persons on campus available to provide those services if requested. Services and those responsible for provided or arranging them include:
  - transportation to a hospital, if necessary; (Campus Police Services)
  - counseling by the Student Health Center, or referral to a counseling center and/or Employee Assistance Program (EAP); (Student Health Center)
  - a list of other available campus resources or appropriate off-campus resources. (Campus Police Services)
- The victim's option to:
  - notify proper law enforcement authorities, including on-campus and local police;
  - be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
  - decline to notify such authorities;
  - the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, or similar lawful orders issued by a court;
  - Information about how the district will protect the confidentiality of victims; and
  - Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- A description of each of the following procedures:
  - criminal prosecution;
  - civil prosecution (i.e., lawsuit);
  - District disciplinary procedures, both student and employee;
  - modification of class schedules;
  - tutoring, if necessary.

The Mental Health Counselor should be available to provide assistance to District law enforcement unit employees regarding how to respond appropriately to reports of sexual violence.

The District will investigate all complaints alleging sexual assault under the procedures for sexual harassment investigations described in AP 3435, regardless of whether a complaint is filed with local law enforcement. All alleged victims of domestic violence, dating violence, sexual assault, or stalking on District property shall be kept informed, through Campus Police Services, of any ongoing investigation. Information shall include the status of any student or employee disciplinary proceedings or appeal; alleged victims of domestic violence, dating violence, sexual assault, or stalking are required to maintain any such information in confidence, unless the alleged assailant has waived rights to confidentiality.

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

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

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

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

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

The District shall maintain the identity of any alleged victim or witness of domestic violence, dating violence, sexual assault, or stalking on District property, as defined above, in confidence unless the alleged victim or witness specifically waives that right to confidentiality. All inquiries from reporters or other media representatives about alleged domestic violence, dating violence, sexual assaults, or stalking on District property shall be referred to the District's Public Information Office, which shall work with Campus Police Services to assure that all confidentiality rights are maintained.

Additionally, the Annual Security Report will include a statement regarding the District's programs to prevent sexual assault, domestic violence, dating violence, and stalking and procedures that should be followed after an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence (preponderance of evidence) that will be used during any district proceeding arising from such a report. The statement must include the following:

- A description of educational programs to promote the awareness of rape, acquaintance rape, other forcible and non-forcible sex offenses, domestic violence,

- dating violence, or stalking;
- Procedures to follow if a domestic violence, dating violence, sex offense, or stalking occurs, including who should be contacted, the importance of preserving evidence to prove a criminal offense, and to whom the alleged offense should be reported;
- Responses to stranger and non-stranger sexual assault;
- The preliminary victim interview, including the development of a victim interview protocol, and a comprehensive follow-up victim interview, as appropriate;
- Contacting and interviewing the accused;
- Seeking the identification and location of witnesses;
- Information on a student's right to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that campus personnel will assist the student in notifying these authorities, if the student so requests, and the right to decline to notify these authorities;
- Written information and notification for students about existing on- and off-campus counseling, mental health, victim advocacy, legal assistance or other services for victims and contact information;
- Participation of victim advocates and other supporting people;
- Investigating allegations that alcohol or drugs were involved in the incident;
- The role of the institutional staff supervision;
- A comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases;
- Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;
- Procedures for campus disciplinary action in cases of an alleged domestic violence, dating violence, sexual assault, or stalking including a clear statement that:
  - Such proceedings shall provide a prompt, fair, and impartial resolution;
  - Such proceedings shall be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
  - The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
  - Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding resulting from an alleged domestic violence, dating violence, sexual assault or stalking, the procedures for the accused and victim to appeal the results of the disciplinary proceeding, of any changes to the results that occur prior to the time that such results become final, and when such results become final. Compliance with this paragraph does not violate the Family Educational Rights and Privacy Act. For the purposes of this paragraph, the outcome of a disciplinary proceeding means the final determination with respect to the alleged domestic violence, dating violence, sex offense, or stalking and any sanction that is imposed against the accused.
- A description of the sanctions the campus may impose following a final determination by a campus disciplinary proceeding regarding rape, date rape, or other forcible or non-forcible sex offenses, domestic violence, dating violence, or stalking.

## Education and Prevention Information

Campus Police Services shall:



- Provide, as part of each campus' established on-campus orientation program, comprehensive prevention and outreach education and information about domestic violence, dating violence, sexual assault, or stalking. The information shall be developed in collaboration with campus-based and community-based victim advocacy organizations, and shall include the District's sexual assault policy and prevention strategies including empowerment programming for victim prevention, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction.
- Outreach programs shall be provided to make students aware of the institution's policy including posting sexual violence prevention and education information on the campus website, [www.ohlone.edu](http://www.ohlone.edu) regarding domestic violence, dating violence, sexual assault and stalking.
- Outreach programs 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.

*Adopted:* January 2010

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