



GENDER-BASED DISCRIMINATION AND SEXUAL MISCONDUCT POLICY

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GENDER-BASED DISCRIMINATION AND SEXUAL MISCONDUCT POLICY¹

Section 1: Purpose Statement

Santa Clara University upholds a zero tolerance policy for gender-based discrimination and sexual misconduct and does not discriminate on the basis of sex in its educational programs. When an allegation of misconduct is brought to an appropriate administrator's attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. It applies on campus and it may apply off campus if the conduct negatively affects a victim's school experience or the overall working, living and learning environment. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

The University seeks to provide a consistent, caring, and timely response when sexual and gender-based misconduct occurs within the University community. Gender-based discrimination includes sexual harassment, sexual assault (non-consensual sexual contact and non-consensual sexual intercourse), and sexual exploitation. Gender-based discrimination includes violent actions, discrimination, hazing, bullying, domestic violence, dating violence, and stalking when such behaviors are perpetrated because of one's gender. Members of the University community, guests and visitors have the right to be free from sexual and gender-based misconduct and the University prohibits such behavior. Gender-based discrimination and sexual misconduct can occur between people of different sex or gender or of the same sex or gender. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This Policy applies to all Santa Clara University students and its campuses.

The EEO and Title IX Coordinator oversees implementation of the University's policy on equal opportunity, harassment and nondiscrimination. Reports of gender-based discrimination, sexual misconduct and/or retaliation should be made to the EEO and Title Coordinator promptly, but there is no time limitation on the filing of grievances, as long as the accused individual remains subject to the University's jurisdiction. All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports. Reporting is addressed more specifically in Section 9.

This policy was created to:

- increase the safety of the campus community;
- clarify expectations of behavior;
- cultivate a campus environment that both expedites and encourages the prompt reporting of sexual and gender-based misconduct;
- cultivate a climate of community involvement in gender-based discrimination and sexual misconduct prevention;
- ensure the prompt, equitable investigation and resolution of complaints;

¹ This document addresses the University's protocol when a complainant is 18 years and older. If the complainant/alleged victim is 17 years and younger, the reporting and investigation mandates by the University and law enforcement may be different. Many sections of this policy and definitions are modeled after the ATIXA Gender-Based and Sexual Misconduct Model Policy and Model Grievance Process used with permission. 2014. The NCHERM Group, LLC/ATIXA.

- adjudicate cases through the University Judicial System and University grievance procedures;
- facilitate the recovery of a victim by providing prompt and compassionate support services;
- ensure accurate reporting of crime statistics; and
- maintain compliance with Title IX which is federal legislation that protects against sex discrimination, inclusive of sexual harassment and sexual assault, in education programs that receive federal funding, and other related legislation: the Campus Sexual Violence Elimination Act, Campus Sexual Assault Victims' Bill of Rights, Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and the Violence Against Women Act: Campus SaVE Act, and California SB 967.

Section 2: Overview of Policy Expectations with Respect to Sexual Misconduct

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.² Silence--without actions demonstrating permission--cannot be assumed to show consent. Additionally, there is a difference between seduction and coercion. Coercion happens when someone is pressured unreasonably for sex. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex.

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

Section 3: Overview of Policy Expectations with Respect to Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. Because of the potential for exploitation, favoritism, and conflicts of interest, the University prohibits any

² The State of California definition of consent is an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity.

consensual dating, romantic, or sexual relationship between an employee and a student over whom that employee has any instructional, supervisory, advising, or evaluative responsibility. This policy applies to faculty, staff, and student employees. Employees who violate this policy are subject to sanctions for misconduct under the policies of the Faculty Handbook, Staff Policy Manual, or Student Employment Handbook, as appropriate to their employment status. Employees or students with questions about this policy should contact the EEO and Title IX Coordinator or the Department of Human Resources.

Section 4: Gender-Based Discrimination and Sexual Misconduct Offenses Include, But are Not Limited to:

1. SEXUAL HARASSMENT:

Both the Equal Employment Opportunity Commission and the State of California regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Santa Clara University has adopted the following definition of sexual harassment, in order to address the special environment of the academic community, which consists not only of employer and employees, but of students as well.³

Sexual harassment is:

- Unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any Santa Clara University program is encouraged to report it immediately to the University's EEO and Title IX Coordinator. Sexual harassment creates a hostile environment, and may be disciplined when it is:

- Sufficiently severe, persistent/pervasive and objectively offensive that it,
- has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the university's educational, social and/or residential program, and is

³ Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, "Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX," which can be found at <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, as well as the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

- based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation.

2. *SEXUAL MISCONDUCT:*

California State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Santa Clara University has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Santa Clara University considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact, sexual exploitation, and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved.

Violations include:

A. *Non-Consensual Sexual Intercourse*

- any sexual penetration or intercourse (anal, oral or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact, no matter how slight the penetration or contact.

B. *Non-Consensual Sexual Contact:*

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

C. *Sexual Exploitation*

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed);
- taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent);
- prostitution;
- exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals in non-consensual circumstances; and
- sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent.

Section 5: Other Misconduct Offenses, When the Act is Based Upon Sex or Gender

The behaviors listed below are misconduct offenses that fall under this policy if they are based upon gender, which is inclusive of gender identity, gender expression, and sexual orientation. If any of these behaviors are not gender-based, then the Student Conduct Code, Employee Handbook or Faculty Handbook applies, as appropriate, and the matter is processed and adjudicated through the relevant adjudication system or grievance process.

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by the University, which is likely to cause serious bodily injury, psychological harm, or social ostracism, to any former, current, or prospective student.
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
6. Violence between those in an intimate relationship (this includes romantic relationships, dating, domestic and/or relationship violence).⁵ The existence of such a relationship shall be determined based on a consideration of the following factors:
 1. The length of the relationship
 2. The type of relationship
 3. The frequency of interaction between the persons involved in the relationship.

Intimate relationship violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Intimate

⁵ The State of California definition of domestic violence is abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, which is applicable to criminal prosecutions for domestic violence, but may differ from the definition used to address university policy violations.

partner violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

7. Stalking⁶, defined as, a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear of his or her safety or the safety of others.
8. Any other University policy, rule or regulation, when a violation is motivated by the actual or perceived sex or gender identity of the victim may be pursued using this policy.

Section 6: Sexual Misconduct Victims' Rights

In connection with reporting sexual misconduct, including sexual assault, a complainant/victim has these rights:

1. Reporting options with regard to notifying law enforcement authorities, and to be assisted in notifying such authorities if s/he so chooses.
2. The right to decline to speak with local law enforcement, should they be notified.
3. Information about existing on- and off-campus counseling, mental health, medical or other services;
4. Options for, and available assistance in, changing academic, living, transportation, and working situations and other interim measures;
5. The complainant and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice.
6. Both the complainant and the accused shall be simultaneously informed, in writing, of the
 - a. Outcome of any disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;
 - b. Procedures for the accused and the victim to appeal the results of the disciplinary proceeding;
 - c. Any change in the results before they become final;
 - d. When the results become final.

The rights specified in items 1 through 3 are applicable to any victim regardless of whether the accused is a student or employee at Santa Clara University. If the accused is not a student or employee at Santa Clara University, then items 4 and 5 are not applicable because there is no basis for a University disciplinary proceeding or interim measure.

Section 7: Retaliation

Retaliation against an individual alleging discrimination, harassment or a violation of the University's Gender-Based Discrimination and Sexual Misconduct Policy, the party accused, supporting the complainant or person accused, cooperating with an investigation, or participating in a university judicial procedure is a violation of Santa Clara University policy. Retaliation includes, but is not

⁶ The State of California definition of stalking is any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, of his or her immediate family which is applicable to criminal prosecutions for stalking, but may differ from the definition used to address university policy violations.

limited to, intimidation, coercion, harassment, making of threats, and any other adverse educational or employment action. Retaliation should be reported promptly to the EEO and Title IX Coordinator for investigation, and will be handled in accordance with this policy, the Student Conduct Code, and University grievance procedures.

Section 8: Confidentiality, Privacy And Reporting Options

Understand Reporting Options

University officials, depending on their roles at the University, have varying reporting responsibilities and abilities to maintain confidentiality. Some resources can offer you confidentiality, sharing options and advice without any obligation to inform others unless you want them to do so. Other resources are expressly there for you to report crimes to local law enforcement and University policy violations, and they will take action when you report your victimization to them. It is possible for a victim to seek assistance from University officials without starting a formal process that is beyond the victim's control, or goes against her/his desire for privacy. All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports.

If you are the victim of sexual violence, your personal safety is most important. You are encouraged to go to a safe place if you are somewhere you do not feel comfortable. If or when you are comfortable, share what has occurred with someone you trust. Sharing as much specific information as you can remember, along with any physical evidence, with this individual may help in the event that you decide you want to report the incident to University officials and/or the police.

You are encouraged to speak to officials of the institution to make formal reports of incidents (EEO and Title IX coordinator, deans, vice presidents, or other administrators with supervisory responsibilities, campus security, and human resources). The university considers these people to be "responsible employees." Notice to them is official notice to the institution. You have the right and can expect to have incidents of sexual misconduct to be taken seriously by the institution when formally reported, and to have those incidents investigated and properly resolved through administrative procedures. Formal reporting means that only people who need to know will be told, and information will be shared only as necessary with investigators, witnesses, and the accused individual.

To Report Confidentially

If one desires that details of the incident be kept confidential, If you prefer that details of the incident be kept confidential, you should speak with on-campus psychologists and counseling trainees, such as those in Counseling and Psychological Services, or off-campus rape crisis resources who can maintain confidentiality. The on-campus psychologists and counseling trainees in Cowell Counseling and Psychological Services are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak with on- and off- campus members of the clergy, provided the information is shared with them in a context by which clergy can maintain confidentiality. In some instances, there is a statutory duty on the part of clergy to report knowledge of a sexual assault (e.g. when such information is received outside of the context of sacramental confession, though not limited to that context).

To Report Anonymously

The University provides EthicsPoint for persons who want to file a report anonymously with the University. EthicsPoint is an anonymous reporting system for reporting suspicious behavior, misconduct, or situations of concern, including but not limited to, sexual harassment. To do so, go to <http://www.EthicsPoint.com>, click on "File a Report" and enter "Santa Clara University" as the name

of the organization. From there, you can submit a detailed report and maintain your anonymity. The campus official(s) who receives the report will act promptly to appropriately pursue the matter. EthicsPoint includes the capacity for the campus official(s) to communicate with you via email for purposes such as acknowledging the receipt of the report, clarifying information, or relaying, as appropriate, the disposition of the report.

Reporting to Those Who Can Maintain the Privacy of What You Share

You can seek advice from certain individuals who are not required to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. If your personally identifiable information is shared, it will only be shared as necessary with as few people as possible, and all efforts will be made to protect your privacy. These are individuals who the university has not specifically designated as “responsible employees” for purposes of putting the institution on notice and for whom mandatory reporting is required, other than in the stated limited circumstances. These resources include those without supervisory responsibility or remedial authority to address sexual misconduct. University personnel who are not required to report include faculty who do not advise student groups and clerical and support staff on-campus. If you are unsure of someone’s duties and ability to maintain your privacy, ask them before you talk to them. They will be able to tell you, and help you make decisions about who can help you best.

Non-Confidential Reporting Options

Faculty and staff who have significant responsibility for student and campus activities are required to inform Campus Safety Services, Office of Student Life, or the EEO and Title IX Coordinator of allegations of gender-based discrimination and sexual misconduct. University personnel who are required to report include, though are not limited to the Office of Student Life, Residence Life (including Community Facilitators, Assistant Resident Directors, Neighborhood Representatives, and Assistant Area Coordinators), Resident Ministers, Housing, Athletics and Recreation, Center for Student Leadership, Drahmman Center, Disability Resources, Career Center, Campus Ministry, EEO and Title IX Office, and Campus Safety Services.

To Report for Criminal or University Judicial Action

There are two types of reports: a police report and a University report. If you decide to submit either type of a report, you will be asked to give a detailed account of what has occurred. This can be a difficult process and you are encouraged to bring a friend or advocate for support. YWCA advocates can support you with off-campus proceedings and Campus Advocates can assist you with on-campus proceedings. Campus Advocates are trained staff and faculty who volunteer to assist complainants with the University procedures. When these reports are received, only persons who need to know will be told, and information will be shared only as necessary with investigators, the complainant, the respondent, witnesses, campus officials, and with others as lawfully permitted.

1. *Filing a Police Report*

- If you are interested in filing a police report, call 911 for immediate response, or call the police department in the city where the sex crime occurred. If the sex crime occurred in the city of Santa Clara, contact the Santa Clara Police Department, located at 601 El Camino Real or at 408-615-4700. An officer can meet you at your residence or somewhere else on campus such as at the Campus Safety Services office. Part of the investigation, with your permission, may include a medical and forensic exam at Santa Clara Valley Medical Center (see the previous “Physical Health” section for more details). You have a legal right to have a YWCA advocate present during your interviews and interactions with the police department. The YWCA is the recognized advocate provider for Santa Clara County.

2. *Filing a University Report*

- You are encouraged to speak to the EEO and Title IX Coordinator (students and employees), members of the Office of Student Life (students), or with Campus Safety Services (students and employees) to make a report with the University. Notice to them is official notice to the University. You have the right, and can expect to have, reported incidents taken seriously by the University, the right to be treated with respect and dignity by university officials, and to have those incidents investigated and properly resolved through administrative procedures. If you do file a University report, only persons who need to know will be told, and information will be shared only as necessary with investigators, witnesses, the accused individual, and campus officials.
- In cooperation with the Santa Clara Police Department to provide for the safety and welfare of the community, the University notifies the Santa Clara Police Department of reports of sex crimes. The EEO and Title IX Coordinator and/or Campus Safety Services will assist you with this process or will provide the report on your behalf. You may choose to either participate or not participate in a criminal investigation. If you choose not to participate, it is highly unlikely the police will file criminal charges.
- The filing of a complaint with the University is independent of any external investigation or court proceeding, and the University will not necessarily wait for the conclusion of any external investigation or proceeding to commence its own investigation or to take interim steps to ensure the safety and well being of members of the university community.

You can begin the process for filing a report through any of the following departments:

- Call Campus Safety Services at 408-554-4444 to file a report, even if the incident took place off-campus. Campus Safety can also connect you to the appropriate police department to file a report.
- Call the EEO and Title IX Office, to schedule or request an appointment. The EEO and Title IX office is located in room 223 at 500 El Camino Real, Santa Clara, CA 95053. The Title IX Coordinator can be reached at 408-554-4113 and by email at bguthrie@scu.edu. Faculty/staff should report any sexual and gender-based misconduct committed in the context of University employment by another member of the University community to the EEO and Title IX Coordinator.
- Call the Office of Student life to schedule or request a same day appointment. You may simply state that you want to meet with a student life staff member to discuss a “student welfare matter.” The Office of Student Life will introduce you to a Campus Advocate, if you agree to meet with one, who can support you through the campus reporting process, explain the resources available to you, including the University Judicial System, and if applicable, arrange for you to file a report with the EEO and Title IX Coordinator, Campus Safety Services and/or local law enforcement.

If during the reporting process you decide that you want your report to be confidential and for the University to not take any action, the University may still be required to investigate and take reasonable action regarding the allegation. Your request for confidentiality and no action may limit the University’s capacity to investigate and take any additional action. If you insist 1) on confidentiality, or 2) that there is not an investigation, the University reserves the right to undertake an appropriate inquiry, issue a no-contact order, and take interim measures to ensure the safety

of the campus community. If it is determined that confidentiality cannot be maintained, you will be informed.

Your request for confidentiality and no action will be weighed against the following factors:

1. The circumstance of the alleged sexual violence (e.g. was it perpetrated with a weapon, or any threats by the accused person to repeat the sexual violence);
2. Whether there have been other complaints against the same accused; and
3. The risk of the alleged person committing additional acts of sexual violence (e.g. any threats for further sexual violence).
4. Such other circumstances which may pose a threat to individuals or the campus community.

University Personnel Required to Report to Law Enforcement

Licensed medical professionals, such as those in the Student Health Services, are required by California law to notify local law enforcement if they have reason to believe or know that a patient has been sexually assaulted. Staff in Student Health Services who are licensed medical professionals include the medical doctor, physician assistant, nurse practitioners, registered nurses, psychiatrist, nutritionist, and student EMTs (when they are acting in their official capacity). The medical assistants, who function as clerical staff for Student Health Services, are not licensed medical professionals and therefore are not required by law to notify local law enforcement.

Under California law, the staff in Student Health Services, who are mandated to notify local law enforcement of a reported or potential sexual assault, cannot inform anyone else except local law enforcement. The licensed medical professionals in Student Health Services will inform the patient of campus resources and off-campus resources so the patient is aware of the various resources, services, and options that she/he can access. (See “To Report for Statistical Purposes” – the licensed medical professional will inform Campus Safety Services of the incident for statistical purposes, but will not identify the individuals involved.)

To Report for Statistical Purposes

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to Campus Safety Services regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

Mandated federal reporters include faculty and staff members in the Division of Student Life including residence life staff, Campus Safety Services, Athletics and Recreation (coaches, athletic directors), Human Resources, Campus Ministry, local police, student activities staff, advisors to student organizations and any other university official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery geographic location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously. These reports can be made without identifying the victim. Statistical reports can be filed with Campus Safety Services, EEO and Title IX Coordinator, Office of Student Life, or by way of EthicsPoint. Even if one is not required to report a crime, everyone at a minimum is encouraged to report instances of gender-based and sexual misconduct for the purpose of collecting accurate statistics for the university.

Additional Reporting Options:

Reports and inquiries can be made externally to the Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate complaints of unlawful harassment, including sexual violence, in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment and sexual violence by students in educational programs or activities. For more information, contact the nearest office of the EEOC, DFEH or OCR.

Federal Timely Warning Reporting Obligations

In compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. Federal law prohibits the University releasing a victim's name. Consistent with the federal regulations, the University will provide information for community members to make safety decisions in light of the danger. Campus Safety Services is the campus department responsible for issuing timely warnings. Staff in the Office of Student Life, EEO and Title IX office, Campus Safety Services, Athletics and Recreation, Human Resources, Campus Ministry, advisors to student organizations, and any other officials with significant responsibility for student and campus activities are responsible for informing Campus Safety Services of information that may warrant a timely warning.

UNIVERSITY RESPONSE TO GENDER-BASED AND SEXUAL MISCONDUCT

Section 9: University Response to Gender-Based and Sexual Misconduct

As authorized by the Board of Trustees and the University president, the vice provost for student life or designee will adjudicate a charge of sexual and gender-based misconduct under the Student Conduct Code. Sexual or gender based misconduct cases are adjudicated under sections 5, 6, 7, and 11 of the Student Conduct Code in the context of the Gender-Based Discrimination and Sexual Misconduct Policy listed below, or in accordance with Policy 311 involving allegations against a member of the faculty or staff.

Section 5: Disorderly, lewd, indecent, or obscene conduct; excessive or prolonged noise; behavior that interferes with the orderly functioning of the University, or interferes with an individual's pursuit of an education on University-owned or controlled property or during an authorized University class, field trip, seminar, competition or other meeting, or University-related activity.

Section 6: Detention, physical abuse, or conduct that threatens imminent bodily harm or endangers the physical well being of any person, including harm to self.

Section 7: Nonconsensual physical contact of a sexual nature such as sexual misconduct, sexual assault, and rape.

Section 10: Hazing, harassing, threatening, degrading language or actions, including bullying, stalking, or any practice by a group or individual that degrades a student or employee, endangers health, jeopardizes personal safety, or interferes with an employee's duties or with a student class attendance or a person's educational pursuits.

In certain circumstances, other sections of the Student Conduct Code, Staff Handbook, or Faculty Handbook may be applicable.

The University reserves the right to review all student conduct that occurs on and off campus when such behavior is inconsistent with the Student Conduct Code, Staff Handbook, or Faculty Handbook.

After a report is made, the University will provide reasonable protection against further acts of misconduct, harassment, or retaliation as needed, as well as services and resources to allow the continued equal access to an education at Santa Clara University.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of gender-based discrimination and sexual misconduct in order to protect individual rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from warning to expulsion, depending on the severity of the offense. The University will consider the concerns and rights of

both the complainant and the respondent.

The complainant may request, or the University may impose, communication and contact restrictions to prevent further potentially harmful interaction. A complainant may request a change in academic, transportation, working or living situation after a report of sexual misconduct by speaking with the Office of Student Life. Upon request the University will inform the complainant of the options, and will accommodate the request if those changes are reasonably available. In some cases the University may carry out these changes without a request.

The complainant or the respondent may pursue a temporary restraining order. This is a civil proceeding independent of the University. If a court order is issued the University will, to the extent possible, assist the protected person in benefitting from the restrictions imposed by the court, and also to the extent possible will facilitate the restricted person in complying with the order. The court enforces the order through law enforcement. The University does not enforce the order. The University will abide by the court to the degree possible. The University will not serve notice of restraining orders on the behalf of a student.

University Investigation

Gender-based discrimination and sexual misconduct, regardless of whether the misconduct has been reported to a police agency, should also be reported to the University for investigation and resolution through University processes. When the University receives information alleging gender-based discrimination and sexual misconduct, an investigation will be conducted by a professional staff member or independent investigator (herein referred to as “investigator”) who has received annual training in these types of cases. The role of the investigator is to be a neutral fact-finder, and the EEO and Title IX Coordinator oversees the investigation.

Ordinarily, an administrative investigation will include a review of statements obtained from either party, interviews with both parties, interviews with witnesses, as appropriate, and a review of relevant documentary evidence. The complainant and respondent have the same opportunity to present witnesses for the investigator to interview. The investigator has the right to forgo interviewing a witness if the investigator determines that the person does not have information that is relevant to the proceedings. The University does not allow individuals who function as character witnesses to participate in this process.

The completed investigative report will contain summaries of the interviews and any related and relevant evidence including, though not limited to, relevant reports filed by Campus Safety Services, Residence Life, Office of Student Life, and law enforcement.

The investigator will also determine whether there is good cause to grant a hearing. If a hearing is recommended, the investigator will list which sexual and gender-based misconduct or student conduct policies may allegedly have been violated. The hearing officer or the members of the Sexual and Gender-Based Misconduct Board are provided access to a copy of the investigator’s report prior to the hearing.

If the investigator determines that there are no reasonable grounds to believe that a violation occurred, the matter under this policy is closed, but the investigator may refer the complaint to another University office for resolution.

If the evaluation indicates that this policy may have been violated, the investigator will notify the complainant of available options, including informal or formal complaint resolution. *Informal complaint resolution is not used for cases of alleged non-consensual sexual intercourse.*

Advisor of One's Choice or University Support Person

The complainant and the respondent are each entitled to have one advisor present for any meetings about the allegation(s) including the judicial proceedings. The role of the advisor is limited to support and consultation. The advisor is permitted to speak privately with the party being advised. The advisor is not permitted to speak on the behalf of the individual, comment, or ask questions. In addition to this, during the disciplinary proceedings, the advisor is not permitted to question or address any party involved in the proceedings.

Violation of this expectation will result in the advisor being removed from the meeting or judicial proceeding at the discretion of the presiding officer or student conduct administrator. In the interest of conducting this process in an expeditious fashion, meetings will not normally be delayed if an advisor is unavailable.

The EEO and Title IX Coordinator and the Office of Student Life can provide a University Support Person. This person is an employee who can offer emotional support and assist with connecting the student to campus resources throughout this process. This person does not provide legal advice.

Informal Complaint Resolution

After reviewing the investigative report, the complainant may opt for an informal resolution to the case by informing the investigator, the Office of Student Life, or the EEO and Title IX Coordinator. Participation in the informal process does not require face to face interaction between the complainant and respondent. At any time prior to a hearing the respondent may claim responsibility for the alleged sexual and gender-based misconduct. In either situation, the Vice Provost for Student Life & Dean of Students, appropriate administrator, or designee, will propose a resolution and sanctions to the complainant and respondent.

If both the complainant and the respondent agree to the proposed sanctions, then the complaint is resolved without a hearing and without any further rights of appeal by either party.

If either the complainant or the respondent disagrees with the proposed sanctions, then a hearing will take place in order to determine the sanction(s).

Formal Complaint Resolution

For formal complaint resolutions involving an accused student the investigator prepares a report for a hearing officer or the Sexual and Gender-Based Misconduct Board, with or without the cooperation of the complainant, to determine if the student respondent committed a violation. Participation in the informal process does not require face to face interaction between the complainant and respondent.

Each case is evaluated on its own unique circumstances. The hearing officer or Gender-Based Discrimination and Sexual Misconduct Board base their determination of responsibility on all of the relevant information presented at the hearing. Whether consent was given or obtained is a key factor in determining responsibility for a violation of the Gender-Based Discrimination and Sexual Misconduct Policy. The University evaluates whether consent was provided using the following guidelines:

1. Was the complainant informed about the sexual act? Did the complainant understand the Who, What, When, Where, Why, and How with respect to the sexual activity?
2. Was the complainant incapable of providing consent because the person was incapacitated (physically or mentally)? Should it have been reasonably apparent to the

respondent that the complainant was incapacitated? (The use of alcohol or other drug by the accused is not a valid defense to this policy.)

3. Was the complainant coerced? Was permission freely and actively given?
4. Was permission provided by way of mutually understandable words or actions to engage upon the sexual activity in question?

All of these considerations do not need to be present to determine responsibility for a violation by the respondent.

If the information presented at the hearing does not support a determination of responsibility for a violation of the Sexual and Gender Based Misconduct Policy based on the standard of more likely than not (preponderance of evidence), the hearing office or board may still determine responsibility for a related violation of the Student Conduct Code, Staff Handbook or Faculty Handbook, as appropriate. Complainants who have engaged in alcohol or other drug use at the time of the assault will not be subject to disciplinary action for such use.

Sanction Statement

Factors considered when determining a sanction/responsive action may include:

- the nature, severity of, and circumstances surrounding the violation;
- an individual's disciplinary history;
- previous grievances or allegations involving similar conduct;
- another information deemed relevant by the hearing body;
- the need for sanctions/responsive actions to bring an end to the discrimination, harassment or retaliation;
- the need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment or retaliation; and
- the need to remedy the effects of discrimination, harassment or retaliation on the victim and the community.

The range of sanctions for gender-based misconduct covered by this policy are subject to the full range of disciplinary action, inclusive of a warning to expulsion/termination. This range of sanctions is inclusive of a no contact directive, which is an official notice to an individual that he/she is not permitted to have any type of contact with an identified person(s). This includes, but is not limited to, person-to-person contact, contact through a third party, and contact by way of mail, email, telephone, voice mail, text messaging, etc.

- Any student found responsible for violating the policy on Nonconsensual physical contact of a sexual nature such as sexual misconduct [Non-Consensual or Forced Sexual Contact (where no intercourse has occurred)] will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous student conduct code violations.
- Any student found responsible for violating the policy on Nonconsensual physical contact of a sexual nature such as sexual assault or rape (Non-Consensual or Forced Sexual Intercourse) will likely face a recommended sanction ranging from deferred suspension to expulsion, depending on the severity of the incident, and taking into account any previous student conduct code violations.
- Any student found responsible for violating the policy on sexual exploitation or sexual

harassment and/or retaliation will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous student conduct code violations.

- Disciplinary and responsive actions for an employee who has engaged in gender-based discrimination, harassment and sexual misconduct and/or retaliation include warning, required counseling, demotion, suspension with pay, suspension without pay, and termination.

The hearing officer/board reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Section 10: Student Judicial Procedures for Incidents of Alleged Gender-Based Discrimination and Sexual Misconduct

The dean from the Office of Student Life who meets with the complainant will discuss potential options for resolving the complaint. A complainant may request the University initiate student conduct and/or University judicial proceedings against the accused student. The decision to conduct a judicial hearing or take other measures is within the University's discretion. The University investigator, in consultation with the EEO and Title IX Coordinator, will consider all the facts of the case, including a complainant's request, and determine if a hearing is the most appropriate response to resolve the situation.

The complainant and respondent (presuming the respondent was notified of the complaint) will be informed of the decision regarding a hearing request. If a hearing is not held, the reporting party will be provided with an explanation and if applicable an alternate means of resolving the complaint. Whether a hearing is held or alternative means are used to determine responsibility for a violation of the University's Gender Based Discrimination and Sexual Misconduct Policy, the University bases its decision on the preponderance of the evidence. This means that the University weighs the evidence and determines whether it is more likely than not that a violation has occurred.

The investigator prepares a written report of the incident for the hearing officer or Sexual Misconduct Board. In some instances, the University may, in its discretion, choose to initiate a disciplinary complaint on its own. Information obtained through the administrative investigation will be used for consideration in the hearing, with or without the cooperation of the complainant.

In University judicial proceedings, the University never assumes the respondent is in violation of University policy. Campus hearings are conducted to take into account the totality of all evidence available, from all relevant sources.

During the hearing, evidence regarding a respondent's past sexual conduct will ordinarily not be permitted, except in those instances where there was a prior sexual relationship between the complainant, or another person, and the respondent and the testimony may be relevant to the issue of consent. If the respondent is found responsible for the conduct alleged in the complaint, his or her past sexual misconduct, if any, may be considered in determining the appropriate sanction.

For sexual and gender-based misconduct judicial cases the complainant and respondent will:

1. Receive equivalent notice of the hearing process;
2. Be provided the same opportunity to review the investigator's report (Neither party is provided a copy of the report for their own keeping);
3. Have the same opportunity to be present throughout the entire hearing, but not for the hearing officer's or board's deliberations regarding responsibility and sanctioning;
4. Be provided options for reasonable alternative arrangements if he or she does not want to be present in the same room as the complainant or respondent during the hearing;
5. Be entitled to the same opportunity for an advisor or University Support Person⁷ to be present;
6. Have the same opportunity to submit to the hearing officer or the board a written impact statement (See "Impact Statement" in the section below);
7. Be informed in writing of the outcome of the hearing;
8. Have the same opportunity to request an appeal of the hearing outcome.

Impact Statement

In the event the hearing officer/board rules that the respondent is in violation of the Gender-Based Discrimination and Sexual Misconduct Policy and/or the Student Conduct Code, the complainant and respondent are entitled to submit in writing a statement of how this incident has impacted his/her life. This statement may include one's opinion regarding the potential sanction(s) in response to the violation(s).

Appeal Process for Sexual and Gender-Based Misconduct Cases

1. The outcome of the initial judicial hearing is subject to one request for appeal. In cases involving an allegation of gender-based discrimination and sexual misconduct, the complainant and/or the respondent can initiate the request. The party requesting appeal must show error as the original finding and sanction are presumed to have been decided reasonably and appropriately. The ONLY grounds for appeal are as follows:
 - A. The sanctions imposed are substantially disproportionate to the severity of conduct violation.
 - B. A procedural error or substantive omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
 - C. To consider new evidence or information, unknown or unavailable during the hearing or investigation, that could substantially impact the original finding or sanction. A summary of the new evidence and potential impact must be included.
2. The request for appeal form, available in the Office of Student Life, must be completed by the complainant and/or the respondent and returned to the Office of Student Life within five (5) business days of the date on the hearing summary. The request for appeal must include answers to the questions on the form in accordance with the criteria described in No. 1 above.
3. The vice provost for student life, or designee, reviews the request for appeal, along with other pertinent information, to determine the validity of the request for appeal in accordance with the criteria described in Number 1 above. Appeal decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so in accordance with the intent of

⁷ The Office of Student Life can provide a University employee who can offer emotional support and assist with connecting the student to campus resources throughout this process. This person does not provide legal advice.

the Student Handbook.

4. The respondent and complainant must be informed of the decision in writing simultaneously pertaining to the request for appeal within five (5) business days of submitting the request. In exceptional circumstances, the five (5) business days notification requirement may be extended to allow adequate consideration of the request for appeal. If this is the case, the student(s) are notified.
5. If the request for appeal is granted, the case may be referred back to the original judicial officer, the original judicial board, a new judicial officer (who could be the vice provost for student life), or a new judicial board. Appeals are not intended to be full re-hearings of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The vice provost for student life, or designee, may also choose to modify the sanction(s) without granting a second hearing.
6. All appellate hearings are conducted in accordance with the general student rights and other required procedures, including determination of responsibility and sanctioning if appropriate.
7. A request for appeal may only be filed one time by either the respondent or the complainant. If a request for appeal is denied, a second appeal cannot be filed. If a request for appeal is granted, the outcome of any subsequent proceedings may not be appealed by either the respondent or the complainant.
8. All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made to the Vice Provost for Student Life & Dean of Students for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

Time Frames for Gender-Based Discrimination and Sexual Misconduct Cases

The time frames listed here are guides and may be extended because of circumstances. Each case is unique and the process for handling the incident will be impacted by factors such as the complexity of the investigation and situation, the parties' schedules and availability, and the academic calendar. Generally speaking, the University will complete the investigative stage within 30 calendar days of receiving a report. If a judicial hearing or other student conduct processes are used, that will occur within 30 calendar days of the end of the investigation. Parties will be notified of the final outcome within seven calendar days of the hearing or other action, which concludes the complaint process. The University will attempt to provide parties with periodic status updates. In no case will these time frames delay the University from providing services or enacting other measures to assist the reporting party.

In exceptional circumstances, the Vice Provost for Student Life & Dean of Students may suspend the normal structure of the University Student Judicial System, including the Judicial System for Sexual and Gender-Based Misconduct, and establish an appropriate procedure for the particular needs of the pending case.

CAMPUS RESOURCES

Santa Clara University

Campus Ministry
(408) 554-4372
<http://www.scu.edu/cm/>

Campus Safety Services
Emergency Phone: (408) 554-4444
Main Phone Number: (408) 554-4441
<http://university-operations.scu.edu/campus-safety/>

Cowell Center
Student Health Center and Counseling and Psychological Services
(408) 554-4501
<http://www.scu.edu/cshc/>

Human Resources
(408) 554-4392
<http://www.scu.edu/hr/>

Office of EEO and Title IX Coordinator
(408) 554-4113
<http://www.scu.edu/affirmativeaction/>

Office of Student Life
(408) 544-4583
<http://www.scu.edu/studentlife/about/osl.cfm>

Wellness Center
(408) 554-4409
<http://www.scu.edu/wellness/>

Cities of Santa Clara and San Jose Resources

YWCA Rape Crisis Center
Rape Crisis 24-Hour Hotlines: (408) 287-3000 | (650) 493-7273
Domestic Violence Crisis Line: 1 (800) 572-2782
(408) 295-4011
375 South Third Street, San Jose, CA 95112
<http://ywca-sv.org/>

Santa Clara Valley Medical Center
(408) 885-5000
751 S Bascom Ave, San Jose, CA 95128
<http://www.scvmc.org/Pages/home.aspx>

Santa Clara Police Department
(408) 615-4700
601 El Camino Real, Santa Clara, CA 95050
<http://scpd.org/index.aspx?page=9>

Santa Clara University Jesuit School of Theology in Berkeley Campus Resources

All of the previously listed resources at Santa Clara University at the Santa Clara campus are available to Jesuit School of Theology (JST) students. In addition to this, the Assistant Dean of Students is the designated campus resource at the JST campus.

Paul Kircher
JST-SCU Assistant Dean of Students
Office 105, JST
Tel.: 510-549-5029
E-mail: pkircher@jstb.edu

City of Berkeley and Alameda County Resources

Bay Area Women Against Rape (BAWAR) – BAWAR provides 24-hour comprehensive services for survivors of sexual assault and their significant others. In addition to a 24 hour Sexual Assault Crisis Hotline 510-845-7273, the center offers in-person counseling and hospital, police, and courtroom accompaniments.

Medical Services and Sexual Assault Response Team (SART) – Alameda County has two hospitals that provide both forensic exams and medical care:

- Highland Hospital – 1411 East 31st Street, Oakland, CA
- Washington Hospital – 2000 Mowry Ave, Fremont, CA

The other hospitals in the county provide medical care only given they are not designated as forensic exam facilities.

Local Law Enforcement – To file a police report, contact the law enforcement agency in the municipality where the assault happened:

- Berkeley Police Department – 510-981-5900
- Oakland Police Department – 510-777-3333

Other Resources

- City of Berkeley Adult Clinic, 2640 Martin Luther King Jr. Way 510-981-5290.
- City of Berkeley Mobile Crisis Team (MCT) is available every day from 10:30 AM to 11:00 PM at 510-981-5254.
- Men Overcoming Violence, 1385 Mission Street, Suite 300, San Francisco 415-626-6704.

DEFINITIONS AND OTHER TERMINOLOGY

Consent

Consent is clear, knowing and voluntary permission. Consent is active not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by word or action as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
- Consent is invalidated when it is forced, coerced, or nullified by a person's incapacitation.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- In order to give effective consent, one must be of legal age,⁸

Force

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

- Note: There is no requirement that a party resists the sexual advance or request someone to stop. Resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges for the additional assaultive behavior.

Coercion

Coercion is unreasonable pressure for sexual activity such as compelling another person to do something through emotional or physical pressure, threats, or other forms of intimidation. Real or perceived power differentials between individuals also may create an atmosphere of coercion that can significantly impair the ability to consent. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that she/he does not want sex, that she/he wants to stop, or that she/he does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Incapacitation

Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

⁸ In the State of California, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity, even if the minor wanted to engage in the act.

- Incapacitation is a state where someone cannot make rational, reasonable decisions because one lacks the capacity to give knowing consent (e.g., to understand the “Who, What, When, Where, Why and How” of their sexual interaction). Any time sexual activity takes place where the person did not understand any one of these six conditions, incapacity is at issue. An awareness of all six must be present for consent.
- This policy covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or drugs. Possession, use and/or distribution of any controlled substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org>
- Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. If the accused person knew or reasonably should have known that the victim was incapable of providing consent due to the use alcohol or another drug, the accused person is in violation. The accused person’s use of alcohol or other drugs does not diminish his or her responsibility for committing the sexual misconduct.
- Use of alcohol or other drugs will never function a defense for any behavior that violates this policy.

Preponderance of Evidence means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to find that evidence on either side of an issue preponderates, then one’s finding on that issue must be against the party who had that burden of proving it. One must consider all of the evidence bearing upon every issue regardless of who produces it.

Sexual assault is any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to consent either due to age or lack of capacity.

Sexual misconduct is an umbrella term for inappropriate actions that are sexual or are sexual in nature inclusive of sexual harassment, sexual assault (non-consensual sexual contact and, non-consensual sexual intercourse), and sexual exploitation.

Title IX is part of the 1972 Education Act (US) stating that no person can be denied the benefits of a federally funded education program or activity on the basis of their gender outside of defined exceptions within the legislation.

The **Campus Sexual Violence Elimination Act**, or **Campus SaVE Act** increases transparency on campus about incidents of sexual violence, guarantees victims enhanced rights, sets standards for disciplinary proceedings, and requires campus-wide prevention education programs. The Campus SaVE Act amends the Clery Act, which addresses campus sexual assault policies within the Higher Education Act of 1965. President Obama signed SaVE into law on March 7, 2013 as part of the Violence Against Women Act (VAWA) Reauthorization.

The **California SB 967** sexual assault bill signed on September 28, 2014 requires colleges and universities that receive state funds for student financial assistance to adopt policies concerning sexual assault, domestic violence, dating violence, and stalking that include certain elements, including an affirmative consent standard in the determination of whether consent was given by a

complainant. The bill requires these governing boards to adopt certain sexual assault policies and protocols, as specified, and would require the governing boards, to the extent feasible, to enter into memoranda of understanding or other agreements or collaborative partnerships with on-campus and community-based organizations to refer students for assistance or make services available to students. The bill also requires the governing boards to implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking. By requiring community college districts to adopt or modify certain policies and protocols, the bill imposes a state-mandated local program.

FREQUENTLY ASKED QUESTIONS (FAQS)

Here are some of the most commonly asked questions regarding the University's policy and procedures:

- *Does information about a complaint remain private?*

The privacy of all parties to a complaint of gender-based discrimination and sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. In cases of indicating a pattern, predation, threat, weapons or violence, the University will likely be unable to honor a request for confidentiality. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant or the accused individual may lead to conduct action by the University.

In all complaints of gender-based discrimination and sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain University officials are informed of the outcome within the bounds of student privacy. (This includes, though is not limited to, the President of the University, Vice Provost for Student Life & Dean of Students, EEO and Title IX Coordinator, Director of Campus Safety, and General Counsel.) If there is a report of an act of alleged gender-based discrimination or sexual misconduct to a campus security authority and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the University is legally required to notify law enforcement authorities. The University also must statistically report the occurrence of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

- *Will my parents be told?*

Whether you are the complainant or the respondent, the University's primary relationship is to the student and not to the parent. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, or when required to do so by law. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents.

- *Will the accused student know my identity?*

Yes, if you file a complaint and identify the assailant. Sexual misconduct is a serious offense and the accused student has the right to know the identity of the complainant. If there is a hearing, the University can provide reasonable accommodations for the complainant and respondent so they do not come into contact with one another.

- *Do I have to name the perpetrator?*

- No, if you are reporting the misconduct for the purpose of accessing resources, to learn about your options, or for statistical crime and campus reporting purposes, then

you do not have to name the perpetrator.

- Yes, if you want formal disciplinary action to be taken against the alleged perpetrator.
- No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the university's legal obligations depending on what information you share with different university officials). Victims should be aware that not identifying the perpetrator might limit the institution's ability to respond comprehensively.
- *What do I do if I am accused of gender-based discrimination or sexual misconduct?*

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your advisor; anyone may serve as your advisor. You may also contact the Office of Student Life, which can explain the University's procedures for addressing such complaints. You may also want to talk to a confidential counselor at Counseling and Psychological Services or seek other community assistance.

- *What about legal advice?*

Victims of criminal sexual assault need not retain a private attorney to pursue prosecution because representation will be handled by the District Attorney's office. You may want to retain an attorney if you are the accused student or are considering filing a civil action. Any student may retain counsel at his or her own expense if they determine they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the accused and the victim may also use an attorney as their advisor during the campus' investigation and judicial processes.

In the University investigation and judicial process, a student who is represented by legal counsel may have the legal counsel be his/her advisor. The role of the advisor is limited to support and consultation. The advisor is permitted to speak privately with the party being advised. The advisor is not permitted to speak on the behalf of the individual, comment, or ask questions. In addition to this, during the disciplinary proceedings, the advisor is not permitted to question or address any party involved in the proceedings.

- *What about changing residence hall rooms and other interim measures?*

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically University policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused student to move, and believe that you have been the victim of sexual misconduct, you must be willing to file a formal report. No contact orders can be imposed and room changes for the accused can usually be arranged quickly. The accused may be sanctioned to be moved as a result of the judicial process. Other accommodations available to the victim may include:

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.)
- Taking an incomplete in a class;
- Assistance with transferring sections;
- Temporary withdrawal without penalty;
- Assistance with alternative course completion options;

- Other accommodations for safety as necessary.
- *What should I do about preserving evidence of a sexual assault?*

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to Santa Clara Valley Medical Center located at 751 S. Bascom Avenue in San Jose, California (this is the forensic medical facility for Santa Clara County), before washing yourself or your clothing.

At Santa Clara Valley Medical Center, the Forensic Nurse Examiner (a nurse who is specially trained in collecting physical evidence) is usually on call 24 hours a day, 7 days a week (call the Santa Clara Valley Medical Center operator at 408-885-5000 if you first want to speak to the Forensic Nurse Examiner). A victim advocate from the YWCA Rape Crisis Center will be contacted to meet you at the hospital. Law enforcement or Campus Safety Services can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate her or him to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to pursue them.

The hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. The hospital also offers clean, donated clothing if you do not have a change of clothes with you. You can bring a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

- *Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?*

No. The severity of the infraction will determine the nature of the University's response, but whenever possible the University will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the University does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

- *Will the use of drugs or alcohol affect the outcome of a gender-based discrimination and sexual misconduct conduct complaint?*

The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual and gender-based misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to

impose sanctions on the accused without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an accused student.

- *Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?*

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint. Complainants who have engaged in alcohol or other drug use at the time of the misconduct will not be subject to disciplinary action for such use.

- *What should I do if I am uncertain about what happened?*

If you believe that you have experienced sexual and gender-based misconduct, but are unsure of whether it was a violation of the University's policy, you should contact the Office of Student Life or the Office of EEO and Title IX.

Examples of Sexual and Gender-Based Misconduct Behavior

The following scenarios represent possible common acts of sexual misconduct. The scenarios are not inclusive of all possible sexual misconduct acts. Sexual misconduct can occur between people of different genders or of the same gender.

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. Over the course of listening to music and looking at videos on a computer together from 11:00pm to 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.
 - **Bill is responsible for violating the University's policy on nonconsensual physical contact of a sexual nature such as sexual misconduct [Non-Consensual or Forced Sexual Contact (where no intercourse has occurred)]. It is likely that a University hearing officer or board would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.**
- Jiang is a junior at the University. Beth is a sophomore. Jiang comes to Beth's dorm room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth is shocked at how quickly things are progressing. Jiang leads her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her. She wants to tell Jiang to stop, but is unable to do so. Beth barely moves and unresponsive during the intercourse. Is this a sexual misconduct policy violation?

- Jiang would be held responsible in this scenario for nonconsensual physical contact of a sexual nature such as sexual assault or rape (Non-Consensual or Forced Sexual Intercourse). It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**
- Kevin and Amy are at a party. Amy is not sure how much Kevin has been drinking, but she is pretty sure it's a lot. After the party, she walks with Kevin to his room, and Kevin comes on to Amy, initiating sexual activity. Amy asks him if he is really up to this, and Kevin says yes. Clothes go flying, and they end up in Kevin's bed. Suddenly, Kevin runs for the bathroom. When he returns, his face is pale, and Amy thinks he may have thrown up. Kevin gets back into bed, and they begin to have sexual intercourse. Amy is having a good time, though she can't help but notice that Kevin seems pretty groggy and passive, and she thinks Kevin may have even passed out briefly during the sex, but she does not let that stop her. When Amy runs into Kevin the next day, she thanks him for the wild night. Kevin remembers nothing, and decides to make a complaint to the Office of Student Life.

 - This is an example of nonconsensual physical contact of a sexual nature such as sexual assault, and rape violation. Amy should have known that Kevin was incapable of making a rational, reasonable decision about sex. Even if Kevin seemed to consent, Amy was well aware that Kevin had consumed a large amount of alcohol, and Amy thought Kevin was physically ill, and that he passed out during sex. Amy should be held accountable for taking advantage of Kevin in his condition. This is not the level of respectful conduct expected of students.**
- Cameron recently met Chris at a campus event. A few days later Cameron again saw Chris in the campus library. Chris was friendly with Cameron in the library, but was not interested in spending any more time with Cameron or being friends with Cameron. Cameron continues to approach Chris each time they cross paths and often it seems to Chris that Cameron is following or making it a point to show up at places at the same time as when Chris does. This type of behavior escalates to the point that Cameron somehow gets Chris's phone number and sends persistent text messages. Tired of politely ignoring and waiting for Cameron to "get the picture" Chris replies to a text and says to never send another text or communicate in any way. Chris then receives a text from Cameron that suggests a threat. Chris is concerned by this, but tends to think that Cameron "was just upset". Over the course of the following 4 days, Cameron sends several texts each day to Chris asking for the opportunity to meet. Chris ignores the texts. Chris's concern escalates when a week later Cameron appears at Chris's off campus job, which Chris just started the day before. Cameron does not enter the Chris's place of employment but does wait outside. Chris realizes this and leaves the building from the back entrance with a fellow worker who takes Chris home. Later that evening Cameron sends another text message to Chris that implies a threat. Chris is even more fearful now.

 - This is an example of stalking and threatening type of behavior. Cameron's initial**

persistent interactions with Chris were troublesome, but soon became inappropriate when Cameron's behavior made Chris fearful and when Cameron continued to initiate contact with Chris after being told to not do so.

IMPORTANT INFORMATION FOR VICTIMS OF SEXUAL VIOLENCE

If you are a victim of this type of misconduct, and particularly if you are a victim of sexual assault...

Preserve Evidence

Do what you can to preserve any evidence, even if you are not certain you want to file a report with the police department or the University. Preserving evidence now will give you options should you decide to report later. It is best for any physical evidence to be collected within the first 24 hours.

If you can avoid it, do not wash your face or hands, bathe, brush your teeth, drink or eat, douche, or change clothes. If you must change your clothes, place each garment in a separate paper (not plastic) bag.

Access On and Off Campus Counseling Services

You are encouraged to seek out the support of family, friends, and/or a counselor.

We encourage you to make an appointment with Counseling and Psychological Services, located in the Cowell Center at Santa Clara University, 408-554-4501. If you do not want to wait, you can request to see the on-call counselor for the day. Except in cases when students are under the age of 18, Counseling and Psychological Services is not required to report incidents of sexual assault.

The YWCA Rape Crisis Hotline is available as a resource and support for you. The confidential hotline is open 24 hours a day, 7 days a week and can be contacted at 408-287-3000. You do not need to be in crisis in order to contact a counselor from the hot line. Counselors on the hotline are trained to help victims and offer support and information about legal, medical, and mental health resources. The hotline is also available to anyone providing support to a victim of sexual misconduct.

Tend to Your Physical Health

You are encouraged to be examined by medical staff as soon as possible for injuries you may not be able to see and other health implications. You might also want to preserve evidence this way. Medical health care providers are required to report crimes such as sexual assault to the police.

If you are interested in an evidence exam, go to Santa Clara Valley Medical Center located at 751 S. Bascom Avenue in San Jose, CA or contact the Santa Clara Police Department, 408-615-4700. This is the forensic medical facility in the area. It is a specially trained nursing facility. If you want to have an evidence exam conducted, go to the emergency room and tell them you have been sexually assaulted. If you would like, Campus Safety Services can arrange, at no cost, transportation to Santa Clara Valley Medical Center. Campus Safety Services can be contacted at 408-554-4441.

You can have a medical-only (non-evidence) exam to treat cuts, infections, and internal injuries, but no evidentiary documentation will be done with a "medical exam only". It is important to know that you will lose the opportunity to collect evidence at this time. Before making this decision, consider talking to a rape crisis counselor through the YWCA Rape Crisis Hotline at 408-287-3000.

Student Health Services provides pregnancy, STD testing, or baseline HIV testing. Student Health Services does not prescribe emergency contraception and does not collect evidence.

Learn About the Campus Advocate Program and Academic and Living Accommodations

In addition to the Office of EEO and Title IX, the Office of Student Life, located in Benson Center, Room 205, or at 408-554-4583, can assist you by informing you of on- and off-campus resources including the Campus Advocate Program, options for accommodations to academic and living arrangements, and your options through the University Judicial System. The on-campus resources include the Campus Advocate Program. A Campus Advocate is a trained staff or faculty member who is available to support you through the University reporting process. The person you meet with will also inform you of the law enforcement reporting process, and your options regarding filing a criminal complaint. More detailed information about University and local resources are available through the Office of Student Life.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Bystander Intervention

Bystander Intervention is a strategy anyone can implement to prevent various types of personal violence. Very often people make decisions and continue behaviors based upon how others react to them. If you observe someone who you think may initiate a form of violence, such as sexual harassment, sexual assault, or dating violence, then *find a way safe way to intervene* to stop the behavior. Different ways to do this include:

1. Interrupting the interaction and redirecting the conversation or activity,
2. Make others aware of the situation and enlist their involvement in stopping the behavior,
3. Make up a reason that one of the persons (most likely the potential victim) needs to leave, or
4. If you are fearful for your safety if you were to intervene or if you become fearful, get an authority figure.

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act.

1. Make your limits known as early as possible.
2. Tell a sexual aggressor “NO” clearly and firmly.
3. Try to remove yourself from the physical presence of a sexual aggressor.
4. Find someone nearby and ask for help.
5. Be aware that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity. At the same time, it is not your fault if someone takes advantage of you because you are incapacitated due to your use of alcohol or drugs.
6. Take care of your friends and ask that they take care of you.

If you did not do these things that does not mean it is your fault.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of

sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give her/him a chance to clearly relate her/his intentions to you.
2. Understand and respect personal boundaries.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether someone is attracted to you; about how far you can go or about whether she/he is physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension, and communicate better. You may be misreading the situation. The person may not have figured out how far she/he wants to go with you yet. You must respect the timeline for sexual behaviors with which the person is comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if the person chose to become incapacitated.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Do not interpret silence and passivity as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Warning Signs of Abusive Relationships

Consider these types of questions to assist you in assessing if you or someone you know is in an abusive relationship.

1. Do you feel nervous around your partner?
2. Do you have to be careful to control your behavior and to avoid your partner's anger?
3. Do you feel pressured by your partner when it comes to sex?
4. Are you scared of disagreeing with your partner?
5. Does your partner criticize you, or humiliate you in front of other people?
6. Is your partner always checking up on you or questioning you about what you do without your partner?
7. Does your partner repeatedly and wrongly accuse you of seeing or flirting with other people?
8. Does your partner tell you that if you changed, he or she wouldn't treat you like this?
9. Does your partner's jealousy stop you from seeing friends or family?
10. Does your partner make you feel like you are wrong, stupid, crazy, or inadequate?
11. Has your partner ever scared you with violence or threatening behavior?
12. Does your partner say, "I will kill myself if you break up with me" or "I will hurt/kill you if you break up with me"?
13. Does your partner make excuses for abusive behavior? Does your partner say things like, "It's because of alcohol or drugs," or "I can't control my temper," or "I was just joking"?

Positive responses (yes) to some or all of these questions may suggest or mean that you are in an abusive relationship.