



**A RESOURCE GUIDE FOR STUDENTS ON SEXUAL  
MISCONDUCT: CAMPUS POLICIES, PROCEDURES AND VICTIM  
SERVICES**

## IF YOU HAVE EXPERIENCED SEXUAL MISCONDUCT

1. Go to a safe location as soon as you are able.
  2. Seek immediate medical attention if you are injured, or believe you may have been exposed to an STI/ STD or potential pregnancy.
    - a. Sexual Assault Response Team  
Santa Clara Valley Medical Center  
751 Bascom Ave. Building H1, San Jose, CA 95128  
(408) 885-6466
    - b. YWCA Rape Crisis Center\*  
375 S. Third Street, San Jose, CA 95112  
24hour- hotline: (800)572-2782 or (650)493-7273
  3. Contact any of the following for immediate assistance:
    - a. Title IX Coordinator at EVC: Adela Esquivel-Swinson, Vice President of Student Affairs SC-205 at (408)223-6749 or  
Title IX Coordinator at SJCC: Lucha Ortega, Interim Vice President of Student Affairs SC-201C at (408) 288-3729  
Regular business hours: Monday through Friday 8:00am-5:00pm
    - b. Campus Police: (408) 270-6468 Monday- Saturday 7:00am-11:00pm
    - c. Campus Case Manger/ Victim Advocate  
EVC: Kari Uy SC-121A, (408)531-6120  
SJCC: \_\_\_\_\_
    - d. Campus Health Services\*  
EVC: (408)270-6480 in SC-124  
SJCC: (408) 288-3724 on SC-109
    - e. Rape Crisis Centers  
YWCA Rape Crisis Center\*  
375 S. Third Street, San Jose, CA 95112  
Hours: Monday-Fridays 9:00am-5:00pm  
24hour- hotline: (800)572-2782 or (650)493-7273  
or  
Community Solutions\*  
24 hour Sexual Assault Crisis Line: (877)363-7238  
5671 Santa Teresa Blvd. #202 &203, San Jose, CA 95123  
Monday-Friday 8:30am-5:00pm
    - f. Domestic Violence Shelter/ Agency  
Next Door Solutions to Domestic Violence\*  
234 E. Gish Road, San Jose, CA 95112  
(408)501-7550  
24 hour hotline: (408)279-2962
- \* denotes that this resource is confidential.
4. If you are off-campus and experiencing an emergency situation, you can and should call local police by dialing 911 or (408)277-8911. You may also call the San Jose non-emergency line at (408)277-8900.
  5. It is important to preserve physical evidence that may include tissue and fluid samples, evidence of violence, sheets, towels, clothing, etc. You should avoid washing, bathing, urinating, etc. until after being examined at the hospital, if possible. Because evidence of a sexual assault can deteriorate quickly, you may want to seek a medical exam as soon as possible. Evidence collection should be completed with 120 hours of an assault, but fluids, hair samples, and DNA can sometimes be collected for a long time thereafter. Even if you have washed, evidence can often still be obtained. After 120 hours, it may still be helpful to have medical attention, even if you are not trying to obtain evidence of an assault. Sexual assault nurse examiners (SANE) are trained in the collection of forensic evidence, and can check for injuries and exposure to sexually transmitted diseases. If you are still wearing any clothes worn during the assault, wear them to the hospital, but bring a change of clothes, as the hospital will keep the clothes you are wearing as evidence. If you have changed clothes, bring the ones you were wearing during the assault to the hospital in a clean paper bag (not plastic) or wrapped in a clean sheet. Leave sheets/ towels at the scene of the assault. Police will collect them. Typically, police will be called to the

hospital to take custody of the rape kit, but it is up to you whether you wish to speak with them or file a criminal complaint.

6. You choose how to proceed. You have options, and are encouraged to contact the Title IX Coordinator on your campus to discuss your options: 1) Do nothing until you are ready; 2) Pursue resolution by the college; and/or 3) initiate criminal proceedings; and/or 4) initiate a civil proceeding against the perpetrator. You may pursue whatever combination of options is best for you. If you wish to have an incident investigated and resolved by the college, students should contact the Title IX Coordinator and Vice Presidents of Student Affairs on their campus. Employees should contact the District Title IX Coordinator and Vice Chancellor of Human Resources. The District policies and procedures will be explained. Those who wish the incident to be handled criminally should contact Campus Police or local police where the assault occurred. A campus official is available to accompany students in making such reports, if desired. Contact your campus Vice President of Student Affairs for more information.

***To make informed choices, all parties should be aware of confidentiality and privacy issues, as well as institutional mandatory reporting requirements***

## **CONFIDENTIAL REPORTING**

If reporting students wish that details of an incident be kept confidential, they should speak with campus mental health counselors and/or health service providers. Campus counselors are available to help on an emergency basis. Their service is free of charge. Off-campus clergy, chaplains, and off-campus rape crisis center staff can maintain confidentiality. Local resources such as crisis centers are also confidential and have no duty to report your information to the College.

## **MANDATED REPORTING**

All College employees who are not designated above as confidential, are mandated reporters for all the details of which they are aware about an incident. They share this information with the Title IX coordinator. Giving a mandated reporter notice of an incident constitutes official notice to the institution. Incidents of sexual misconduct will be taken seriously when official notice is given to the institution. Such incidents of sexual misconduct will be investigated and resolved in a prompt and equitable manner under the College's resolution procedures, which are discussed in a later section of this brochure p. 4.

You may request confidentiality and/or that the Title IX coordinator provide you with remedies and resources without initiating a formal resolution process. The coordinator will weigh requests for confidentiality against the institutional need to address and remedy discrimination under Title IX. Generally, the College will be able to respect your wishes, unless it believes there is a threat to the community based on the use of weapons, violence, pattern, predation, or threatening conduct by the person being accused.

In cases where your request for confidentiality is granted, the College will offer you available resources, supports, and remedies. You are not obligated to pursue formal resolution in order to access the resources that are available. If the College decides that it is obligated to pursue a formal resolution based on the notice you have given, you are not obligated to participate in the resolution process. However, the ability of the College to enforce its policies or provide some remedies may be limited as a result of your decision not to participate.

## **! INCIDENTS INVOLVING MINORS**

Please be aware that institutional duties with respect to minors (those under the age of 18) require reporting sexual misconduct incidents to state agencies and/or local law enforcement. As a result, confidentiality cannot be granted in sexual misconduct incidents involving minors.

## **POLICY**

Sexual misconduct, including sexual harassment, sexual violence, sexual exploitation, intimate partner violence, and stalking are violations of College's Student Conduct Code and the District's sexual misconduct policy. A number of federal laws and regulations, including Title IX, the Violence Against Women Act, and the Clery Act mandate how institutions respond to such allegations. Many types of sexual misconduct also constitute violations of California law.

Members of the campus community, guests, and visitors have a right to be free from sexual misconduct. All members of the community must conduct themselves in a way that does not infringe upon the rights of others. The College's sexual misconduct policy is intended to define expectations for appropriate conduct and outline resolution processes to address conduct that does not meet these expectations. When individuals accused of sexual misconduct are found to be in violation of the policy, the College will impose serious sanctions, as noted on the next page.

All members of the campus community, guests, and visitors are protected by this policy regardless of their sexual orientation or gender identity. The College has jurisdiction over all acts of sexual misconduct involving members of the campus community, no matter where they occur, whether on- or off-campus. For more details on this policy, please visit <http://www.boarddocs.com/ca/sjeccd/Board.nsf/Public#>

Additional information about campus crime, state laws, and disclosures related to sexual misconduct can be found online in the campus Annual Security Report. Access it here: <http://www.sjeccd.edu/district-services/district-police/the-jeanne-clery-act>

## **PROCEDURES**

**The District's procedures can be located at:**

**<http://www.boarddocs.com/ca/sjeccd/Board.nsf/Public#tab-meetings>**

Any community member may file a report regarding a Title IX incident online at:

[https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout\\_id=1](https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout_id=1)

### **Intake**

A College official will assist the reporting party with making choices and accessing resources. Assuming the reporting party chooses to move forward with a campus resolution, the next step is a preliminary inquiry.

### **Preliminary Inquiry**

An initial determination is made about the allegations and whether to move them forward to a formal investigation. This decision is made by the Title IX Coordinator, taking into account the nature of the allegations and the reporting party's wishes. IF the decision is made to move forward, the coordinator refers the allegations to an investigator.

### **Investigations**

An investigative model is used to resolve allegations. A trained investigator will provide an investigation that is prompt, though, reliable, equitable, fair and impartial. The investigator will interview the reporting and responding parties and witnesses and prepare reports with their findings.

### **Standard of Evidence**

The College uses a preponderance of evidence standard. Decision makers consider whether, given the available credible evidence, it is more likely than not that a violation occurred.

### **Final Determination**

The parties will be informed in writing of the outcome of the resolution, without significant delay between the notifications to each party. This notice will include the procedure for the appeal process.

# SEXUAL MISCONDUCT VIOLATIONS

*The following are the definitions of conduct prohibited by the sexual misconduct policy.*

## SEXUAL HARASSMENT

Sexual harassment is:

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

## HOSTILE ENVIRONMENT

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it: unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the institution's educational [and/or employment, social, and/or residential program.

*Sanctions range from warning through expulsion/termination.*

## NON-CONSENSUAL SEXUAL CONTACT

Non-consensual sexual contact is:

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

*Sanctions range from warning through expulsion/termination.*

## NON-CONSENSUAL SEXUAL INTERCOURSE

Non-consensual sexual intercourse is:

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

*Sanctions typically result in suspension or expulsion/termination.*

## SEXUAL EXPLOITATION

- Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and
- that behavior does not otherwise constitute

one of other sexual misconduct offenses.

*Sanctions range from warning through expulsion/termination.*

## INTIMATE PARTNER VIOLENCE

Intimate partner violence is:

- violence or emotional and/or psychological abuse between those in an intimate relationship toward each other;

*Sanctions range from warning through expulsion/termination.*

## STALKING

Stalking 1:

- a course of conduct,
- directed at a specific person,
- on the basis of actual or perceived membership in a protected class,
- that is unwelcome, and,
- would cause a reasonable person to feel fear.

*Sanctions range from warning through expulsion/termination.*

Stalking 2:

- repetitive and menacing
- pursuit, following, harassing, and/or interfering with the peace and/or safety of another.

*Sanctions typically result in suspension or expulsion/termination.*

## RETALIATION

Retaliation is:

- any adverse action,
- taken against a person participating in a protected activity,
- because of that person's participation in that protected activity  
— subject to limitations imposed by the First Amendment and/or academic freedom.

*Sanctions range from warning through expulsion/termination.*

## AFFIRMATIVE CONSENT

***Knowing, voluntary, and clear permission, through word or action, to engage in mutually agreed upon sexual activity or contact.***

Since different people may experience the same interactions differently, each party is responsible for making sure that partners have provided ongoing, clear, affirmative consent in any sexual activity or contact.

A person may withdraw consent at **any time** during sexual activity or contact through words or action. If that happens, the other partner must immediately cease the activity or contact. Pressuring another person into sexual activity can constitute coercion, which is also considered to be sexual misconduct.

Silence or the absence of resistance alone does not constitute consent. A individual is **not** required to resist or say “no” for an offense to be proven.

Consent to some forms of sexual activity (e.g. kissing, fondling, etc.) should not be construed as consent for other kinds of sexual activities (e.g., oral sex or intercourse).

Being or having been in a dating relationship with the other party does not mean that consent for sexual activity exists.

Previous consent to sexual activity does not imply consent to sexual activity in the future.

To legally give consent in California, individuals must be at least 18 years old.

## FORCE

Force is defined as direct or indirect use of physical violence and/or imposing physically on someone to gain sexual access. Force, unless part of mutually-consented to kink, is a clear demonstration of a lack of consent.

## INCAPACITATION

Incapacitation is defined as a state in which individuals are unable to make rational, reasonable decisions because they lack the capacity to understand the “who, what, when, where, why, or how” of a situation or interaction. Individuals cannot give sexual consent if they can’t understand what is happening, or if they are disoriented, helpless, asleep, or unconscious for any reason. That applies even if it is because they voluntarily consumed alcohol or drugs. Unless consent is “knowing,” it is not valid. Those engaging in sexual activity who know or should have known that the other party is incapacitated are engaging in sexual misconduct. The possession, use, distribution, and/or administration of any incapacitating substances is prohibited.

The fact that a responding party was intoxicated, and thus did not realize the reporting party was incapacitated, does **not** excuse sexual misconduct.

## Remedies

The College may take whatever steps are deemed necessary to appropriately respond to allegations of sexual misconduct, protect students’ rights, and keep members of the campus community safe from further harm.

Measures include, but are not limited to:

- ➞ Issuing interim suspensions pending final resolution.
- ➞ Reporting incidents to police and/or prosecutors.
- ➞ Referring to counseling and/or health services and/or Employee Assistance Program.
- ➞ Implementing a no contact order or contact limitations between the parties.
- ➞ Altering class schedules.
- ➞ Altering work arrangements for employees.
- ➞ Providing campus escorts.
- ➞ Offering adjustments to academic deadlines, course schedules, or etc.

These measures are available regardless of whether a reporting party seeks formal resolution or makes a crime report.

# **YOUR RIGHTS**

The College strives to provide members of the campus community with fair and equitable resolution processes that include both formal and informal options.

## **Reporting**

- Reporting parties have the right to notify law enforcement of incidents and to receive assistance from campus personnel in doing so.
- Reporting parties may decline to report to law enforcement if they so wish.
- Reporting parties have the right to have their allegations investigated and resolved internally by the College.
- Reporting parties have the right to file a report externally with the Office of Civil Rights. (Please see SJECCD Administrative Procedure 3435)
- Reporting parties may make an anonymous report through the online complaint process at:

San Jose City College:

<http://www.sjcc.edu/current-students/student-affairs/student-code-of-conduct>

Evergreen Community College:

<http://www.evc.edu/home/complaint-reporting-forms>

Please be aware that the College may not be able to proceed with an investigation and/or any penalties to the responding party due to due right procedures when anonymous reports are made.

## **FAIRNESS**

- All members of the campus community have the right to have reported incidents addressed according to the published District administrative procedures.
- All reporting and responding parties have equal opportunities to have a support person of their choosing throughout the resolution process. This person can be an advisor, advocate, attorney, family member, friend, faculty or staff member. However, this person may not be directly involved with the proceeding/ administrative investigation in another role, such as another reporting party, responding party, witness, or individual directly involved in the resolution process.
- All parties have the right to written notice of the outcome of sexual misconduct resolution proceedings.
- Reporting parties and witnesses will receive amnesty for minor infractions (e.g., alcohol and drug violations) that are secondary to incidents of sexual misconduct.
- Reporting parties, and their supporters, and witnesses have a right to be free from retaliation.

## **SUPPORT**

- Students have a right to be notified of their ability to access campus counseling and health services.
- Students and employees have a right to be notified of on- and off-campus supportive services.
- All parties involved in sexual misconduct allegations will receive the information and assistance needed to effectively participate in all proceedings.
- Reporting parties have the right to seek orders of protection, no-contact orders, restraining orders or similar lawful orders issued by criminal or civil courts, and may seek the help of Campus Police in requesting and/or enforcing these orders.

# RISK REDUCTION

## RISK REDUCTION FOR INTIMATE PARTNER VIOLENCE, STALKING, SEXUAL HARASSMENT & SEXUAL VIOLENCE

While victim-blaming is never appropriate and the District fully recognizes that only those who commit sexual misconduct are responsible for their actions, the District provides the suggestions that follow to help individuals reduce their risk of being victimized and their risk of committing acts of sexual misconduct.

### REDUCING THE RISK OF VICTIMIZATION

- √ Make any limits/ boundaries you may have known as early as possible.
- √ Clearly and firmly articulate consent or lack of consent.
- √ Remove yourself, if possible, from an aggressor's physical presence.
- √ Reach out for help, either from someone who is physically nearby or by calling someone. People around you may be waiting for a signal that you need help.
- √ Take affirmative responsibility for your alcohol and/or drug consumption. Alcohol and drugs can increase your vulnerability to sexual victimization.
- √ Look out for your friends, and ask them to look out for you. Respect them, and ask them to respect you, but be willing to challenge each other about high-risk choices.

### REDUCING THE RISK OF BEING ACCUSED OF SEXUAL MISCONDUCT

- √ Show your potential respect if you are in a position of initiating sexual behavior.
- √ If a potential partner says "no," accept it and don't push. If you want a "yes," ask for it, and don't proceed without clear permission.
- √ Clearly communicate your intentions to your potential sexual partners, and give them the chance to share their intentions and/or boundaries with you.
- √ Respect personal boundaries. If you are unsure what's OK in any interaction, ask.
- √ Avoid ambiguity. Don't make assumptions about consent, about whether someone is attracted to you, how far you can go with that person, or if the individual is physically and mentally able to consent. If you have questions or are unclear, you don't have consent.
- √ Don't take advantage of the fact that someone may be under the influence of drugs or alcohol, even if that person chose to become that way. Others' loss of control does not put you in control.
- √ Be on the lookout for mixed messages. That should be a clear indication to stop and talk about what your partner wants or doesn't want to happen. That person may be undecided about how far to go with you, or you may have missed a previous signal.
- √ Respect the timeline for sexual behaviors with which others are comfortable, and understand that they are entitled to change their minds.
- √ Recognize that even if you don't think you are intimidating in any way, your potential partner may be intimidated by or fearful of you, perhaps because of your sex, physical size, or a position of power or authority you may hold.
- √ Do not assume that someone's silence or passivity is an indication of consent. Pay attention to verbal and non-verbal signals to avoid misreading intentions.
- √ Understand that consent to one type of sexual behavior does not automatically grant consent to other types of sexual behaviors. If you are unsure, stop and ask.
- √ Understand that exerting power and control over another through sex is unacceptable conduct.

### RELATIONSHIP RIGHTS

- Right to live free from violence & abuse
- Right to feel safe and respected
- Right to say NO
- Right to privacy, online and offline
- Right to do things you enjoy
- Right to end a relationship



# KEY CONTACTS

## District Office Title IX Coordinator

Beatriz Chaidez, Vice-Chancellor of Human Resources  
40 S. Market St. 212, San Jose, CA 95113  
(408) 223-6704 [beatriz.chaidez@sjeccd.edu](mailto:beatriz.chaidez@sjeccd.edu)

## Evergreen Valley College Title IX Coordinator

Adela Esquivel-Swinson, Vice-President of Student Affairs  
3095 Yerba Buena Road, SC-205A, San Jose, CA 95135  
(408)223-6749 [adela.swinson@evc.edu](mailto:adela.swinson@evc.edu)

## Evergreen Valley College Deputy Title IX Coordinator

Raniyah Johnson, Director of Student Development & Activities  
3095 Yerba Buena Road, Gullo-205, San Jose, CA 95135  
(408)223-6768 [raniyah.johnson@evc.edu](mailto:raniyah.johnson@evc.edu)

## San Jose City College Title IX Coordinator

Lucha Ortega, Interim Vice-President of Student Affairs  
2100 Moorpark Ave., SC-201C San Jose, CA 95128  
(408) 288-3729 [lucha.ortega@sjcc.edu](mailto:lucha.ortega@sjcc.edu)

## San Jose City College Deputy Title IX Coordinator

Blake Balajadia, Director of Student Development & Activities  
2100 Moorpark Ave., SC-115K, San Jose, CA 95128  
(408) 288-3160 [blake.balajadia@sjcc.edu](mailto:blake.balajadia@sjcc.edu)

## OBSTACLES TO SEEKING HELP

Shame, embarrassment, fear, believing abuse is normal, low self-esteem, lack of money, nowhere else to go, pregnancy/parenting, distrust in police, language barriers/immigration status, social/peer pressure, and cultural/religious reasons.

## NOTICE OF NONDISCRIMINATION

The District is committed to equal opportunity in educational programs, employment, and all access to institutional programs and activities.

The District, and each individual who represents the District, shall provide access to its services, classes, and programs without regard to national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or military and veteran status, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

The District Chancellor shall establish administrative procedures that ensure all members of the college community can present complaints regarding alleged violations of this policy and have their complaints heard in accordance with the Title 5 regulations and those of other agencies that administer state and federal laws regarding nondiscrimination.

No District funds shall ever be used for membership, or for any participation involving financial payment or contribution on behalf of the District or any individual employed by or associated with it, to any private organization whose membership practices are discriminatory on the basis of national origin, religion, age, gender, gender identity, gender expression, race, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or military and veteran status, or because he/she is perceived to have one or more of the foregoing characteristics, or because of his/her association with a person or group with one or more of these actual or perceived characteristics.

