Nondiscrimination Policy and Complaint Procedures

Protected Status: Disability

The California State University does not discriminate on the basis of disability (physical and mental) – as this term is defined in CSU Executive Order 1097 – in its programs and activities, including admission and access. Federal and state laws, including sections 504 and 508 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, prohibit such discrimination. Luoluo Hong, Vice President for Student Affairs & Enrollment Management, has been designated to coordinate the efforts of San Francisco State University to comply with all applicable federal and state laws prohibiting discrimination on these bases. Inquiries concerning compliance may be presented to this person at the Student Services Building, Suite 403 or by phone (415) 338-7313. The California State University is committed to providing equal opportunities to all CSU students in all campus programs, including intercollegiate athletics. CSU Executive Order 1097 Revised October 5, 2016 (www.calstate.edu/EO/EO-1097-rev-10-5-16.pdf) (or any successor policy) is the systemwide procedure for all complaints of discrimination, harassment or retaliation made by students against the CSU, a CSU employee, other CSU students or a third party.

As a matter of federal and state law and California State University policy, the following types of conduct are prohibited:

Sex Discrimination or Gender Discrimination

Sex Discrimination or Gender Discrimination means an adverse action taken against a student by the CSU, a CSU employee, or another student because of gender or sex (including sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking).

Sexual Harassment

Sexual Harassment, a form of Sex Discrimination, is unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes, but is not limited to, sexual advances, requests for sexual favors, and any other conduct of a sexual nature where:

1. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a complainant's status or progress, or access to benefits and services, honors, programs, or activities available at or through the university; or
2. The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the complainant, and is in fact considered by the complainant, as limiting his or her ability to participate in or benefit from the services, activities or opportunities offered by the university; or
3. The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the complainant, and is in fact considered by the complainant, as creating an intimidating, hostile or offensive environment.

Sexual harassment could include being forced to engage in unwanted sexual contact as a condition of membership in a student organization; being subjected to video exploitation or a campaign of sexually explicit graffiti; or frequently being exposed to unwanted images of a sexual nature in a classroom that are unrelated to the coursework.

Sexual harassment also includes acts of verbal, non-verbal or physical aggression, intimidation or hostility based on gender or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

Executive Order 1097 covers unwelcome conduct of a sexual nature. While romantic, sexual, intimate, personal or social relationships between members of the university community may begin as consensual, they may evolve into situations that lead to sexual harassment or sexual misconduct, including dating or domestic violence, or stalking, subject to this policy.

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of harassment based on Gender.
Sexual Misconduct

Sexual Misconduct: All sexual activity between members of the university community must be based on affirmative consent. Engaging in any sexual activity without first obtaining affirmative consent to the specific activity is sexual misconduct, whether or not the conduct violates any civil or criminal law. Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, and dating violence. When based on gender, domestic violence or stalking also constitute sexual misconduct. Sexual misconduct may include using physical force, violence, threat or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Men as well as women can be victims of these forms of sexual misconduct. Sexual activity with a minor is never consensual when the complainant is under 18 years old, because the minor is considered incapable of giving legal consent due to age.

Sexual Assault

Sexual Assault is a form of Sexual Misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's Gender or sex.

Sexual Battery

Sexual Battery is a form of Sexual Misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's Gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.

Rape

Rape is a form of Sexual Misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical disability renders the person incapable of giving consent. The Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant.

Acquaintance Rape

Acquaintance Rape is a form of sexual misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website.

Affirmative Consent

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that Affirmative Consent has been obtained from the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent. Affirmative consent must be voluntary and given without coercion, force, threats or intimidation.

• The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of Affirmative Consent. A request for someone to use a condom or birth control does not, in and of itself, constitute Affirmative Consent.
• Affirmative Consent can be withdrawn or revoked. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion. There must always be mutual and affirmative consent to engage in sexual activity. Consent must be ongoing throughout a sexual activity and can be revoked at any time, including after penetration. Once consent is withdrawn or revoked, the sexual activity must stop immediately.
• Affirmative Consent cannot be given by a person who is incapacitated. A person is unable to consent when asleep, unconscious or is incapacitated due to the influence of drugs, alcohol, or medication so that the person could not understand the fact, nature or extent of the sexual activity. A person is incapacitated if the person lacks the physical and/or mental ability to make informed, rational decisions.
• Whether an intoxicated person (as a result of using alcohol or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person's own intoxication or incapacitation from drugs or alcohol does not diminish that person's responsibility to obtain Affirmative Consent before engaging in sexual activity.
• A person with a medical or mental disability may also lack the capacity to give consent.
• Sexual activity with a minor (a person under 18 years old) is not consensual, because a minor is considered incapable of giving legal consent due to age.
• It shall not be a valid excuse that a person affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the person was unable to consent to the sexual activity under any of the following circumstances:
  • The person was asleep or unconscious;
  • The person was incapacitated due to the influence of drugs, alcohol, or medication, so that the person could not understand the fact, nature or extent of the sexual activity;
  • The person was unable to communicate due to a mental or physical condition.
• It shall not be a valid excuse that the Respondent believed that the person consented to the sexual activity under either of the following circumstances:
  • The Respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent;
  • The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the person affirmatively consented.

Consensual Relationships

Consensual Relationships: Consensual relationship means a sexual or romantic relationship between two persons who voluntarily enter into such a relationship. While sexual and/or romantic relationships between members of the university community may begin as consensual, they may evolve into situations that lead to discrimination, harassment, retaliation, sexual misconduct, dating or domestic violence or stalking.
• A university employee shall not enter into a consensual relationship with a student or employee over whom that employee exercises direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extra curricular authority. In the event such a relationship already exists, the university shall develop a procedure to reassess such authority to avoid violations of this policy.
• This prohibition does not limit the right of an employee to make a recommendation on the personnel matters concerning a family or household member where the right to make recommendations on such personnel matters is explicitly provided for in the applicable collective bargaining agreement or MPP/confidential personnel plan.

Domestic Violence
Domestic Violence is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the respondent has a child, someone with whom the Respondent has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

1. sexual relations between the parties while sharing the same living quarters,
2. sharing of income or expenses,
3. joint use or ownership of property,
4. whether the parties hold themselves out as spouses,
5. the continuity of the relationship, and
6. the length of the relationship.

For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. Abuse does not include non-physical, emotional distress or injury.

Dating Violence
Dating Violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self or another. Abuse does not include non-physical, emotional distress or injury.

Stalking
Stalking means engaging in a repeated course of conduct directed at a specific person that would cause a reasonable person to fear for the safety of self or others’ safety or to suffer substantial emotional distress. For purposes of this definition:

• Course of Conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;

• Reasonable Person means a reasonable person under similar circumstances and with the same protected status(es) as the complainant;
• Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
• See further information in San Francisco State University sexual violence prevention and education statement, Title IX Notice of Nondiscrimination (which includes facts and myths about sexual violence), and Victim’s Rights and Options Notice, at http://titleix.sfsu.edu/content/rape-and-sexual-assault.

Whom to Contact If You Have Complaints, Questions, and Concerns

Title IX requires the university to designate a Title IX Coordinator to monitor and oversee overall Title IX compliance. The campus Title IX Coordinator is available to explain and discuss the right to file a criminal complaint (for example, in cases of sexual misconduct); the university's complaint process, including the investigation process; how confidentiality is handled; available resources, both on and off campus; and other related matters. If you are in the midst of an emergency, please call the police immediately by dialing 9-1-1.

Campus Title IX Coordinator
Luoluo Hong
Vice President for Student Affairs & Enrollment Management
Student Services Building Suite 403
Email: vpsaem@sfsu.edu
Phone: (415) 338-7313
Hours: Mon-Fri, 8am-5pm

University Police
San Francisco State University, Police Department
100 North State Drive
Email: upd@sfsu.edu
General Business Phone: (415) 338-7200

U.S. Department of Education, Office for Civil Rights (OCR):
Main Office: (800) 421-3481, or
California Office: (415) 486-5555, or
TDD (800) 877-8339, or
Email Main Office: ocr@ed.gov, or
Email California Office: ocr.sanfrancisco@ed.gov

If you wish to fill out a complaint form online with the OCR, you may do so at www2.ed.gov/about/offices/list/ocr/complaintintro.html (https://www2.ed.gov/about/offices/list/ocr/complaintintro.html).

Title IX requires the university to adopt and publish complaint procedures that provide for prompt and equitable resolution of gender discrimination complaints, including sexual harassment and misconduct, as well as provide training, education and preventive measures related to sex discrimination. CSU Executive Order 1097 Revised (http://www.calstate.edu/EO/EO-1097-rev-3-29-19.pdf) (or any successor policy) is the systemwide procedure for all complaints of discrimination, harassment or retaliation made by students against the CSU, a CSU employee, other CSU students or a third party.
Duty to Report

Except as provided below under confidentiality and sexual misconduct, dating violence, domestic violence, and stalking, any university employee who knows or has reason to know of allegations or acts that violate university policy shall promptly inform the Title IX Coordinator. These employees are required to disclose all information including the names of the parties, even where the person has requested anonymity. The Title IX Coordinator will determine whether confidentiality is appropriate given the circumstances of each such incident. (See confidential reporting options outlined below.)

Regardless of whether an alleged victim of gender discrimination ultimately files a complaint, if the campus knows or has reason to know about possible sexual discrimination, harassment or misconduct, it must review the matter to determine if an investigation is warranted. The campus must then take appropriate steps to eliminate any gender discrimination/harassment/misconduct, prevent its recurrence, and remedy its effects.

Safety of the Campus Community is Primary

The university’s primary concern is the safety of its campus community members. The use of alcohol or drugs never makes the victim at fault for gender discrimination, harassment or misconduct; therefore, victims should not be deterred from reporting incidents of sexual misconduct out of a concern that they might be disciplined for related violations of drug, alcohol or other university policies. Except in extreme circumstances, victims of sexual misconduct shall not be subject to discipline for related violations of the Student Conduct Code.

Information Regarding Campus, Criminal and Civil Consequences of Committing Acts of Sexual Violence

Individuals alleged to have committed sexual misconduct may face criminal prosecution by law enforcement and may incur penalties as a result of civil litigation. In addition, employees and students may face discipline at the university, up to and including suspension or expulsion. Employees may face sanctions up to and including dismissal from employment, pursuant to established CSU policies and provisions of applicable collective bargaining unit agreements.

Students who are charged by the university with gender discrimination, harassment or misconduct will be subject to discipline, pursuant to the California State University Student Conduct Procedures (see Executive Order 1098 at http://www.calstate.edu/EO/EO-1098-rev-3-29-19.pdf or any successor executive order) and will be subject to appropriate sanctions.

Confidentiality and Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking

The university encourages victims of sexual misconduct, dating violence, domestic violence or stalking to talk to someone about what happened – so they can get the support they need, and so the university can respond appropriately.

Privileged and Confidential Communications

Physicians, Psychotherapists, Professional Licensed Counselors, Licensed Clinical Social Workers, and Clergy

Physicians, psychotherapists, professional, licensed counselors, licensed clinical social workers, and clergy who work or volunteer on or off campus, acting solely in those roles or capacities as part of their employment, and who provide medical or mental health treatment or counseling (and those who act under their supervision, including all individuals who work or volunteer in their centers and offices) may not report any information about an incident of sexual misconduct to anyone else at the university, including the Title IX Coordinator, without the victim’s consent. A victim can seek assistance and support from physicians, psychotherapists, professional, licensed counselors, licensed clinical social workers and clergy without triggering a university investigation that could reveal the victim’s identity or the fact of the victim’s disclosure. However, see limited exceptions below regarding when health care practitioners must report to local law enforcement agencies. Health care practitioners should explain these limited exceptions to victims, if applicable.

Sexual Assault and Domestic Violence Counselors and Advocates

Sexual assault and domestic violence counselors and advocates who work or volunteer on or off campus in sexual assault centers, victim advocacy offices, women’s centers and health centers (including those who act in that role under their supervision, along with non-professional counselors or advocates who work or volunteer in sexual assault centers, victim advocacy offices, women’s centers, gender equity centers, or health centers), may talk to a victim without revealing any information about the victim and the incident of sexual misconduct to anyone else at the university, including the Title IX Coordinator, without the victim’s consent. A victim can seek assistance and support from these counselors and advocates without triggering a university investigation that could reveal his/her identity or that a victim disclosed an incident to them. However, see limited exceptions below regarding when sexual assault and domestic violence counselors and advocates must report to local law enforcement agencies. Counselors and advocates should explain these limited exceptions to victims, if applicable.

The university will be unable to conduct an investigation into a particular incident or pursue disciplinary action against a perpetrator if a victim chooses to (1) speak only to a physician, professional licensed counselor, licensed clinical social worker, clergy member, sexual assault counselor, domestic violence counselor or advocate; and (2) maintain complete confidentiality. Even so, these individuals will assist victims in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise victims regarding their right to file a Title IX complaint with the university and a separate complaint with local or university police. If a victim insists on confidentiality, such professionals, counselors, and advocates will likely not be able to assist the victim with: university academic support or accommodations; changes to university-based living or working schedules; or adjustments to course schedules. A victim who at first requests confidentiality may later decide to file a complaint with the university or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide victims with that assistance if requested by the victim. These counselors and advocates will also explain that Title IX includes
protections against retaliation and that the university will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong, responsive action if retaliation occurs.

Exceptions:
Under California law, any health practitioner employed in a health facility, clinic, physician’s office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a physical condition to a patient/victim who he or she knows or reasonably suspects is suffering from (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury inflicted upon a victim where the injury is the result of assaultive or abusive conduct (including sexual misconduct, domestic violence, and dating violence). This exception does not apply to sexual assault and domestic violence counselors and advocates. Health care practitioners should explain this limited exception to victims, if applicable.

Additionally, under California law, all professionals described above (physicians, psychotherapists, professional counselors, licensed clinical social workers, clergy, and sexual assault and domestic violence counselors and advocates) are mandatory child abuse and neglect reporters, and are required to report incidents involving victims under 18 years of age to local law enforcement. These professionals will explain this limited exception to victims, if applicable.

Finally, some or all of these professionals may also have reporting obligations under California law to: (1) local law enforcement in cases involving threats of immediate or imminent harm to self or others where disclosure of the information is necessary to prevent the threatened danger; or (2) to the court if compelled by court order or subpoena in a criminal proceeding related to the sexual misconduct, dating or domestic violence, or stalking incident. If applicable, these professionals will explain this limited exception to victims.

Reporting to University or Local Police
If a victim reports to local or university police about sexual misconduct crimes, the police are required to notify victims that their names will become a matter of public record unless confidentiality is requested. If victims requests that their identity be kept confidential, their name will not become a matter of public record, and the police will not report their identity to anyone else at the university, including the Title IX Coordinator. University police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal the Title IX Coordinator victims’ names/identities or compromise their own criminal investigation.

The university is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. However, while the university will report the type of incident in the annual crime statistics report known as the Annual Security Report, victim names/identities will not be revealed.

Reporting to the Title IX Coordinator and Other University Employees
Most university employees have a duty to report incidents of sexual misconduct when they are on notice of it. When a victim tells the Title IX Coordinator or another university employee about an incident of sexual misconduct, the victim has the right to expect the university to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. In all cases, the university strongly encourages victims to report incidents of sexual misconduct directly to the campus Title IX Coordinator. As detailed above, in the “Privileged and Confidential Communications” section of this policy, all university employees except physicians, licensed professional counselors, licensed clinical social workers, sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any incidents of sexual misconduct of which they become aware. The university will need to determine what happened — and will need to know the names of the victim(s) and the perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the incident.

To the extent possible, information reported to the Title IX Coordinator or other university employees will be shared only with individuals responsible for handling the university’s response to the incident. The university will protect the privacy of individuals involved in a sexual misconduct violence incident except as otherwise required by law or university policy. A report of sexual misconduct may result in the gathering of extremely sensitive information about individuals in the campus community. While such information is considered confidential, university policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual misconduct. In such cases, efforts will be made to redact the records, as appropriate, to protect the victim’s identity and privacy and the privacy of other involved individuals. Except as detailed in the section on “Privileged and Confidential Communications” above, no university employee, including the Title IX Coordinator, should disclose the victim’s identity to the police without the victim’s consent or unless the victim has also reported the incident to the police.

If a victim requests of the Title IX Coordinator or another university employee that his/her identity remain completely confidential, the Title IX Coordinator will explain that the university cannot always honor that request or guarantee complete confidentiality. If a victim wishes to remain confidential or request that no investigation be conducted or disciplinary action taken, the university must weigh that request against the university’s obligation to provide a safe, non-discriminatory environment for all students, employees, and third parties, including the victim. Under those circumstances, the Title IX Coordinator will determine whether the victim’s request for complete confidentiality and/or no investigation can be honored under the facts and circumstances of the particular case, including whether the university has a legal obligation to report the incident, conduct an investigation or take other appropriate steps. Without information about a victim’s identity, the university’s ability to meaningfully investigate the incident and pursue disciplinary action against the perpetrator may be severely limited. See Executive Order 1095 (or any successor executive order) for further details around confidential reporting, and other related matters (http://www.calstate.edu/EO-EO-1095-rev-6-23-15.pdf).

Additional Resources
San Francisco State University sexual misconduct violence prevention and education statement, which includes facts and myths about sexual misconduct violence, at http://titleix.sfsu.edu/content/rape-and-sexual-assault.

U.S. Department of Education, regional office
Office for Civil Rights
50 United Nations Plaza
San Francisco, CA 94102
Phone: (415) 486-5555
TDD (877) 521-2172

U.S. Department of Education, national office
Office for Civil Rights
Phone: (800) 872-5327

California Coalition Against Sexual Assault
1215 K. Street, Suite 1850
Sacramento, CA 95814
Phone: (916) 446-2520
Website: http://calcasa.org/

Know your rights about Title IX:
• http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.html
• Domestic and Family Violence, Office of Justice Programs, United States Department of Justice: https://ovc.ncjrs.gov/topic.aspx?topicid=27
• National Institute of Justice: Intimate Partner Violence, Office of Justice Programs, United States Department of Justice: http://www.nij.gov/topics/crime/intimate-partner-violence/Pages/welcome.aspx
• Office of Violence against Women, United States Department of Justice: http://www.justice.gov/ovw
• Centers for Disease Control and Prevention: Intimate Partner Violence: http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/index.html
• Defending Childhood, United States Department of Justice: http://www.justice.gov/archives/defendingchildhood

Local Community Resource Information
• SF State & Local Community Resource Information (http://titleix.sfsu.edu/resources)