



**AR 3122 Sexual Misconduct**

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## SUMMARY

This Administrative Regulation outlines the regulations and procedures of the District in connection with Board Policy 3122–Sexual Misconduct. This Board policy prohibits sexual misconduct in any of the District’s educational programs and activities, as well as its workplaces and employment programs.

This Regulation applies in all aspects of the District’s educational programs and activities, including but not limited to, classroom conditions, campus conditions, grades, academic standing, scholarships, recommendations, student employment, disciplinary action, extracurricular activities, campus activities, athletic activities, and field trips.

This Regulation also applies in the District’s workplaces and employment programs, including but not limited, the terms and conditions of employment, or related to recruitment, consideration, or selection for employment.

Employees who violate BP 3122 and/or this Regulation may be subject to disciplinary action up to and including dismissal in accordance with all applicable laws, District policies and regulations, and collective bargaining agreements. Students who violate BP 3122 and/or this Regulation may be subject to disciplinary measures up to and including expulsion in accordance with all applicable laws and District policies and regulations.

## SECTION I—DEFINITIONS

**College:** Any program or facility of Santa Monica College or the District.

**College Disciplinary Officer/College Disciplinarian:** Means the District official(s) designated by the superintendent/president, or designee, to administer the sanctions under Administrative Regulation 4410 concerning sexual misconduct by a student.

**Complainant:** A person(s) alleging that they are the victim of sexual misconduct by another person subject to the District’s policy on sexual misconduct. The District shall also be considered a complainant if the District elects to investigate reports of potential violation(s) of the District’s policy on sexual misconduct. Any person(s), other than the alleged victim (complainant), who reports possible violation(s) of the District’s policy on sexual misconduct, shall be identified as a reporter, as defined herein.

**Consent:** The District uses 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. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

If coercion, intimidation, threats and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. A person also cannot give consent if the person is under the legal age required to give consent to the sexual situation or the person has a disability so that the person cannot understand the fact, nature or extent of the sexual situation. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

In evaluating a charge of sexual misconduct, it shall not be a valid excuse to alleged lack of affirmative consent that the accused believed that the victim consented to the sexual activity under the following circumstances: (1) the accused’s belief in affirmative consent arose from the intoxication or recklessness of the accused; (2) the accused did not take reasonable steps, in the circumstances known to the accused



at the time, to ascertain whether the victim affirmatively consented; (3) the accused knew or reasonably should have known that the victim was unable to consent because the victim was asleep or unconscious; (4) the accused knew or reasonably should have known that the victim was unable to consent because the victim was incapacitated due to the influence of drugs, alcohol, or medication, so that the victim could not understand the fact, nature, or extent of the sexual activity; (5) the accused knew or reasonably should have known that the victim was unable to consent because the victim was unable to communicate due to a mental or physical condition.

**Dating Violence:** Is the use of physical violence, coercion, threats, intimidation, isolation, or stalking on another while in a dating relationship, or a social relationship of romantic or sexually intimate nature. Such violence includes other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a dating relationship, or a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating violence can be a single act or a pattern of behavior in relationships.

**District:** Refers to the Santa Monica Community College District.

**District Community:** Means any employee, contractor, student, member of the public, or invitee present on District property, or on property being used by the District. For purposes of this definition, a student is deemed a member of the District community while enrolled in, or in the process of applying for, enrollment as a student at the College.

**District Human Resources Representative:** The District's Vice President of Human Resources, or designee, assigned to work with the Title IX Coordinator in the investigation of sexual misconduct cases where an employee is accused of sexual misconduct.

**Domestic Violence:** Use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual, or economic abuse directed towards (a) a current or former spouse or intimate partner; (b) a person with whom one shares a child; or (c) anyone who is protected from the respondent's acts under the domestic or family violence laws of California, including Family Code Section 6250 et seq., and any applicable federal law, including the Violence Against Women Act of 1994 (VAWA), as amended. This can include behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

**Gender-based Harassment:** Unwelcome conduct of a nonsexual nature based on a person's actual or perceived gender, including conduct based on gender identity, gender expression, or nonconformity with gender stereotypes.

**Hostile Environment:** Exists when unwelcome conduct of a sexual or gender-based type is sufficiently serious and/or pervasive to deny or limit a person's ability to fully participate in or benefit from the District's programs or activities. A hostile environment can be created by anyone involved in a District program or activity (e.g., administrators, faculty members, staff, students, or campus visitors). In determining whether conduct has created a hostile environment, the District considers the conduct in question from both objective and subjective perspectives. The District will base findings on a variety of factors, including the severity, persistence, or pervasiveness of the conduct. The more severe the conduct, the less need there is to show a repetitive series of incidents to find a hostile environment. Likewise, a series of incidents may be sufficient even if the conduct is not particularly severe.

**Not Responsible:** Means, based on the applicable evidence collected during the investigation, it is more likely than not that the persons did not commit a violation of BP/AR 3122.

**Party/Parties:** Means either the complainant or the respondent, involved in the alleged violation of Board Policy 3122 or Administrative Regulation 3122. The term parties means both the complainant and the respondent collectively.



**Reporter:** Any person(s), other than the complainant, who reports potential violation(s) of the District's policy on sexual misconduct.

**Respondent:** A person alleged to have violated the District's policy on sexual misconduct.

**Responsible:** Means, based on the applicable evidence collected during the investigation, that it is more likely than not that the person committed one or more violation(s) of Board Policy 3122 or Administrative Regulation 3122.

**Retaliation:** Any act of reprisal against a person who is involved in an allegation of sexual misconduct including but not limited to the complainant, the respondent, witnesses, investigators, and adjudicators. Examples of actions that might be retaliation against a complainant, witness, or other participant in the complaint process include: (a) singling the person out for harsher treatment; (b) lowering a grade or evaluation; (c) failing to hire, failing to promote, withholding pay increase, demotion, or discharge; (d) providing negative information about the person in order to interfere with his or her prospects for employment, admission, or academic program.

**Sanctions:** Those disciplinary measures available to the College upon the finding of the respondent's responsibility for violation(s) of the Student Code of Conduct or of this administrative regulation. Any sanctions on an employee will be imposed in accordance with established disciplinary procedures.

**Sex:** For purposes of this administrative regulation, sex may refer to gender designation as male or female gender or based on a perceived association with a particular gender/s; or to a physical act of a sexual nature, depending upon the context in which the term is used in this procedure.

**Sexual Assault:** Actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to: (1) intentional touching of another person's body in a sexual nature without that person's consent; (2) unwanted kissing; (3) other intentional sexual contact with another person without that person's consent; (4) coercing, forcing, or attempting to coerce or force a person to touch another person's body in a sexual nature without that person's consent; (5) rape, which is penetration, no matter how slight, of the vagina, or anus of a person by any body part of another person, or by an object, or the mouth of a person, or by a sex organ of another person, without the other person's consent; or (6) any other sex crime made a felony by the California Penal Code.

**Sexual Exploitation:** Occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without the other person's consent. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Recording, photographing, transmitting, viewing, or distributing intimate or sexual images without the knowledge and consent of all parties involved;
- Distributing images (e.g. video, photograph) or audio of another person's sexual activity, images of another's body for sexual purposes, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
- Viewing or distributing images of an individual's sexual activity, body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent to have the image shared, or advance consent to view such an image, and for the purposes of arousing or gratifying sexual desire.

**Sexual Harassment:** Unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other verbal or nonverbal conduct of a sexual nature,



including rape, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.

**Sexual Misconduct:** Comprises a broad range of unwelcome behaviors focused on sex and/or gender that may or may not be sexual in nature. Any intercourse or other intentional sexual touching or activity without the other person's consent is sexual assault, and is a form of sexual misconduct under this Regulation. Sexual misconduct encompasses sexual harassment, sexual assault, sexual exploitation, or gender-based harassment, which is a form of harassment based on gender identity, gender expression, or non-conformity with gender stereotypes. Sexual misconduct may also encompass acts of a sexual nature, including acts of sexual stalking, domestic violence, and dating violence, intimidation, or retaliation following an incident where alleged sexual misconduct has occurred.

Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity, and can occur between people of the same or different sex or gender.

**Stalking:** Stalking behavior in which a person repeatedly engages in a course of conduct directed at another person and makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her family; where the threat is reasonably determined to create substantial emotional distress, torment, create fear, or to terrorize the person.

**Sexual Stalking:** Course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress due to another's sexual interest or gender interest. Sexual stalking involves repeated and continued harassment of a sexual or gender-based nature, against the expressed consent of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Such sexual stalking behaviors may include: pursuing or following; unwanted communication or contact—including face-to-face encounters, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation.

**Student:** Means any person who has applied for admission, who is or has been enrolled, or who has expressed their intent to enroll for any program within the District for the period in which the misconduct occurred.

**Title IX Coordinator:** The person designated by the Superintendent/President to be responsible for oversight and implementation of Title IX. The District will publicize the identity of the District's Title IX Coordinator to the entire District community. The Title IX Coordinator is responsible for overseeing the District's compliance with Title IX and all other related and applicable Federal and California laws regarding sex discrimination, stalking, and relationship violence about students or employees. Such other Federal and California laws include, without limitation, VAWA, the SaVE Act, the Clery Act, Education Code Section 67386, and applicable sections of Title 5 of the California Code of Regulations.

**Title IX Deputy:** The Title IX Coordinator's designated person(s) responsible for assisting in the oversight and implementation of Title IX compliance.

**IX Investigator:** The Title IX Coordinator's designated person(s) responsible for the investigation of complaints of sexual misconduct.

**Unwelcome Sexual Conduct:** Conduct of a sexual or gender-based nature, which is not solicited, invited, or consented to. Such conduct would be deemed unwelcome if the person receiving it did not request or invite it, and considered the conduct to be undesired, or offensive. Such conduct may take various forms, including name-calling, graphic or written statements (including the use of cell phones or the Internet), hazing, bullying, offensive, or other conduct that may be physically or psychologically threatening, harmful, or humiliating. Unwelcome sexual conduct does not have to include intent to harm, or directed at a specific target, or involve repeated incidents. Unwelcome sexual conduct can involve persons of the same or opposite sex. Participation in the conduct or the other party's failure to complain does not mean that the conduct was welcome.