

SEXUAL HARASSMENT/ DISCRIMINATION

SJECED is committed to maintaining an environment free of sexual harassment and all forms of sexual intimidation and exploitation. All students, staff, and faculty should be aware both that the district is concerned and prepared to take action to prevent and correct such behavior. Individuals who engage in such behavior are subject to discipline. The district is committed to following the provisions of federal and state laws prohibiting sexual harassment or discrimination in employment and educational programs and services, without regard to race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, political beliefs, organizational affiliation, sexual orientation, gender, or age.

Federal Title IX regulations ensure that colleges and universities develop policies, procedures, offer awareness and prevention activities and information as well as referrals and resources to complainants (those who file a complaint).

What is Title IX?

- Title IX -Title IX is a federal law that applies to educational institutions receiving federal financial assistance and prohibits discrimination on the basis of sex in an educational institution's programs or activities, including employment, academic, educational, extracurricular and athletic activities (both on and off campus).
- The protections of Title IX also extend to sexual harassment and sexual assault or violence that impairs or interferes with access to equitable educational and employment opportunities. Title IX is applicable to all members of the campus community, individuals doing business with the campus, those using campus facilities, and those who engage in volunteer activities

Relevant Definitions

Sex Discrimination

Behavior or action that denies or limits a person's ability to benefit from, fully participate in educational programs or activities or employment opportunities because of a person's sex. This includes sexual misconduct, sexual harassment, sexual violence, failure to provide equal opportunity in educational programs and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.

Sexual Misconduct

Sexual misconduct is a broad term that includes but is not limited to sexual harassment, sexual violence, sexual exploitation, stalking (in-person, cell phone, social media, etc.), domestic, relationship and dating violence, and retaliation. Sexual Misconduct includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that

1. is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or to create a hostile or abusive educational environment, or
2. affects explicitly or implicitly an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive environment.

Sexual Exploitation

An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Sexual Exploitation: Includes, but is not limited to:

- invasion of sexual privacy (such as letting one's friends hide in the closet to watch consensual sex);
- non-consensual video or audio-taping of sexual activity;
- engaging in voyeurism - the sexual interest in or practice of spying on people engaged in intimate behaviors, such as undressing, sexual activity, or other actions usually considered to be of a private nature
- knowingly transmitting an Sexually Transmitted Infection (STI) to another student;
- exposing one's genitals in non-consensual circumstances;
- prostituting another student.

Harassment

Forms of Harassment include the following:

- Derogatory posters, notices, or other forms of written materials, such as letters, photographs, or drawings
- Repeated leering or sexually aggressive gestures which the alleged perpetrator knows are unwanted by the person(s) at whom they are directed
- Unwelcome sexual advances (CA Education Code, 212.5, Title IX)
- Requests for sexual favors (CA Education Code, 212.5 Title IX)
- Any behavior, standards, criteria, or methods that limit, segregate, or classify any individual because of gender, sexual orientation, or physical appearance (CA Education Code, 230)
- Barriers that impede accessibility to programs, services, or facilities (CA Education Code, 230)

Consent

To engage in sexual activity must be knowing and voluntary; it must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact; conveying a clear indication of willingness to engage in mutually agreed upon sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Consent may not be inferred from silence, passivity or lack of resistance alone.

- Consent may be withdrawn by either party at any time.
- Consent is active, not passive.

Incapacitation

The inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring.

- When an individual lacks the ability to make informed, rational judgments and cannot consent to sexual activity.
- May result from the use of alcohol and/or drugs. Is a state beyond drunkenness or intoxication.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation requires an assessment of whether a respondent should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

Respondent

Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

- May be individuals, groups, programs, academic or administrative units, or the institution.

Complainant

Student(s) or employee(s) of SJECCD who alleges that she or he has been subjected to discriminatory practices or sexual misconduct. Complainants may be individuals or groups of individuals who have been impacted by discrimination or sexual misconduct.

Third-Party Complainant

A person who brings a complaint on behalf of another member(s) of the campus community who has allegedly been the subject of discrimination or sexual misconduct.

Confidentiality

The District recognizes that confidentiality is important to all parties involved in a sexual harassment/discrimination investigation. To the extent possible, the confidentiality of the complainant, respondent and witnesses shall be protected.

Retaliation is Prohibited

The District shall not tolerate retaliation against any individual for initiation, pursuit or assistance with a complaint of sexual harassment/discrimination. Any individual who retaliates against any District employee and/or student in violation of the policy may be subject to disciplinary action. Any individual who believes that she/he has been a victim of sexual harassment/discrimination may file a complaint under the District's Procedure for Resolution of Discrimination/Harassment Complaints within one year of the alleged unlawful discrimination or within one year of the date on which the complainant knew or should have known of the facts of the sexual harassment/discrimination incident.

How and Where to File a Title IX or Discrimination Complaint

Any individual may file a Title IX or discrimination complaint alone or with the assistance of the Title IX Coordinator via the following link: https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout_id=1 (https://cm.maxient.com/reportingform.php?SanJoseEvergreenCCD&layout_id=1).

Know and Remember Your Title IX Coordinators

- District Office – Lead Coordinator: Beatriz Chaidez, Associate Vice Chancellor, Human Resources at (408) 270-6465;
- San José City College: Roland Montemayor, Vice President, Student Affairs at (408) 288-3146;

- Evergreen Valley College: Adela Esquivel-Swinson, Vice President, Student Affairs at (408) 223-6749.

Title IX Coordinator is responsible for overseeing SJECCD's Title IX compliance efforts and must

- Provide alleged victims with information about policies, resources and services;
- Be available to meet with students who believe that sexual harassment or misconduct has occurred;
- Ensure that complaints are handled through consistent practices and standards;
- Upon receiving notice that potential instances of sexual harassment or misconduct has occurred, either personally investigate the incident or oversee the investigation; and
- Review all complaints to determine whether there are concerns of patterns or systemic violations of Title IX.

Students may also file a complaint of illegal harassment or discrimination with the Office of Civil Rights, United States Department of Education, 1275 Market Street, 14th Floor, San Francisco, CA 94103, at the time of filing a complaint with the campus Title IX officer, during, or after use of the campus sexual harassment or discrimination complaint process, or without using the campus sexual harassment or discrimination complaint process at all. A complaint filed with the Office for Civil Rights must be put in writing no later than 180 days after the occurrence of the possible harassment or discrimination.

Students who experience unlawful discrimination in employment may also file a complaint of unlawful discrimination with:

Equal Employment Opportunity Commission
96 North Third Street, Suite 200
San José, CA 95112

or

Department of Fair Employment and Housing
2570 North First Street, Suite 480
San José, CA 95131

Note: Violations of the Student Code of Conduct other than the sexual harassment or discrimination actions mentioned above under relevant definitions, should be filed with the Director of Student Development and Activities. The student complaint process is described in the next section below.

The District shall notify employees, students and the public of this sexual harassment and sexual discrimination policy and of the procedure for investigation of complaints and is doing so by virtue of the information provided above and on our websites.

Also see AP 3430 titled Prohibition of Harassment, AP 3435 titled Discrimination and Harassment Investigations, and BP/AP 3410 titled Nondiscrimination.