

Title IX,
Campus Violence Elimination Act (SaVE Act)
&
Violence Against Women Act (VAWA)



California Community College Chief Student
Services Administrators Association

Costa Mesa

March 12, 2015

Introduction



Gayle Sakowski, Chief Attorney, San Francisco Office for Civil Rights

Dr. Gregory Peterson, Vice President, Student Services
Long Beach City College

Dr. Kristin Clark, Vice President, Student Services
Orange Coast College

Sarah Tyson, California Community College Chancellor's Office, Dean of Dean CalWORKs, Campus Safety, CARE, Child Development/Early Childhood Education, EOPS, FKCE

Overview



- ❧ Basic Principles of Title IX
- ❧ Dear Colleague Letter
- ❧ Compliance Issues
- ❧ Basic Principles & Definitions
- ❧ Violence Against Women Act (VAWA)
- ❧ Best Practices
- ❧ Next Steps
- ❧ Q&A

Title IX



Gayle Sakowski

*Chief Attorney, San Francisco Office for Civil
Rights*

Basic Principles & Definitions



Dr. Gregory Peterson
Vice President, Student Services Long Beach City College

Dr. Kristin Clark
Vice President, Student Services Orange Coast College

Limitations



- ❧ We are not experts
- ❧ We are merely sharing information and best practices that we have gathered from trainings and several external sources
- ❧ We are merely sharing lessons-learned in our quest for compliance and developing an inclusive campus community
- ❧ Slides are intentionally packed with content to ensure validity

The Campus Sexual Violence Elimination Act

(Regulation for all institutions receiving federal assistance)



Transparency

- ❧ Campus SaVE Act requires that incidents of domestic violence, dating violence, sexual assault, and stalking be disclosed in annual campus crime statistic reports. Additionally, students or employees reporting victimization will be provided with their written rights to:
 - ❧ *Be assisted by campus authorities if reporting a crime to law enforcement*
 - ❧ *Change academic, living, transportation, or working situations to avoid a hostile environment*
 - ❧ *Obtain or enforce a no contact directive or restraining order*
 - ❧ *Have a clear description of their institution's disciplinary process and know the range of possible sanctions*
 - ❧ *Receive contact information about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community*

The Campus Sexual Violence Elimination Act

(Regulation for all institutions receiving federal assistance)



Accountability

- ❧ Campus SaVE Act clarifies minimum standards for institutional disciplinary procedures covering domestic violence, dating violence, sexual assault, and stalking to ensure that:
 - ❧ *Proceedings shall provide a prompt, fair, and impartial investigation and resolution and are conducted by officials receiving annual training on domestic violence, sexual assault, and stalking*
 - ❧ *Both parties may have others present during an institutional disciplinary proceeding and any related meeting, including an advisor of their choice*
 - ❧ *Both parties will receive written outcomes of all disciplinary*

The Campus Sexual Violence Elimination Act

(Regulation for all institutions receiving federal assistance under)



Education

- ❧ Campus SaVE Act instructs colleges and universities to provide programming for students and employees addressing the issues of domestic violence, dating violence, sexual assault and stalking. Education programs shall include:
 - ❧ *Primary prevention and awareness programs for all incoming students and new employees*
 - ❧ *Safe and positive options for bystander intervention*
 - ❧ *Information on risk reduction to recognize warning signs of abusive behavior*
 - ❧ *Ongoing prevention and awareness programs for students and faculty*

The Campus Sexual Violence Elimination Act

(Regulation for all institutions receiving federal assistance)



Collaboration

- ☞ Campus SaVE Act establishes collaboration between the U.S. Departments of Justice, Education, and Health and Human Services to collect and disseminate best practices for preventing and responding to domestic violence, dating violence, sexual assault, and stalking.



Clery Act

(Jeanne Clery Disclosure of Campus Security Policy and
Campus Crime Statistics Act (20 USC § 1092(f))



- ☞ **“Requires colleges and universities across the United States to disclose information about crime on and around their campuses.”**
- ☞ The Clery Act is a federal law enforced by the United States Department of Education. The law was amended in 1992 to add a requirement that schools **afford the victims of campus sexual assault certain basic rights**, and was amended again in 1998 to expand the reporting requirements. Subsequent amendments in 2000 and 2008 added **provisions dealing with registered sex offender notification** and campus emergency response. The 2008 amendments also added a provision to **protect crime victims, "whistleblowers", and others from retaliation.**

Higher Education Act of 1965 (Victim's Advocate)

(20 U.S.C. 1011 et seq.)



- ❧ ...is amended by adding at the end the following: "SEC. 124. Independent Advocate for Campus Sexual Assault
- ❧ ...will be known as or cited as the "Survivor Outreach and Support Campus Act" or the "SOS Campus Act".
- ❧ ...will require all institutions of higher education that receives Federal financial aid assistance shall designate an independent advocate for campus sexual assault prevention and response
- ❧ ...referred to as the "Advocate"



Definitions



Dr. Gregory Peterson
Long Beach City College

Broad Definition

(Source: ATIXA/NCHERM)



- ☞ **Sexual Misconduct is unwelcome, gender-based verbal or physical conduct that is, sufficiently severe, persistent, or pervasive that it, unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the college's educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.**
- ☞ Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying

Definitions

(Source: ATIXA/NCHERM)



Complainant

☞ “Complainant” means the person(s) reporting alleged violations of this Student Code of Conduct.

Respondent

☞ “Respondent” means the person(s) who are alleged to have violated the Student Code of Conduct.

Definitions

(Source: ATIXA/NCHERM)



Sexual Contact Includes:

- ☞ Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.



Definitions

(Source: ATIXA/NCHERM)



Non-Consensual Sexual Intercourse

- Non-Consensual Sexual Intercourse is any sexual intercourse however slight, with any object, by a man or woman upon a man or a woman that is without consent and/or by force. Intercourse includes: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Hostile Environment

- A hostile environment may arise when unwelcome conduct of a sexual or gender-based nature affects a student's ability to participate in or benefit from an education program or activity, or creates an intimidating, threatening or abusive educational and/or living environment. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, create a hostile environment.

Definitions

(Source: ATIXA/NCHERM)



Retaliation

- Any act of reprisal is a violation of policy. 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.



Definitions

(Source: ATIXA/NCHERM)



Sexual Exploitation

- ☞ Occurs when a student 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. Examples of sexual exploitation include, but are not limited to:
 - ☞ •Invasion of sexual privacy;
 - ☞ •prostituting another student;
 - ☞ •non-consensual video or audio-taping of sexual activity;
 - ☞ •going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
 - ☞ •engaging in voyeurism;
 - ☞ •knowingly transmitting an STI or HIV to another student;
 - ☞ •Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
 - ☞ •Sexually-based stalking and/or bullying may also be forms of sexual exploitation

Stalking

- ☞ A course of conduct directed at a specific person that would cause a reasonable person to feel fear or suffer substantial emotional distress. Stalking involves repeated and continued harassment against the expressed wishes of another individual, which causes the targeted individual to feel emotional distress, including fear or apprehension. Stalking behaviors may include: pursuing or following; unwanted communication or contact – including face-to-face, telephone calls, voice messages, electronic messages, web-based messages, text messages, unwanted gifts, etc.; trespassing; and surveillance or other types of observation

Definitions

(Source: ATIXA/NCHERM)



Domestic Violence

- ☞ The 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. This includes any 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.

Dating Violence

- ☞ The use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards a person who is or has been in 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.

Consent

(Source: ATIXA/NCHERM)



☞ NCHERM/ATIXA identifies “consent” as not just a factual concept, but also as “effective consent”; thus, any consent that is not freely and actively given, that is a result of force, threats, intimidation, or coercion is NOT “effective consent”.

- ☞ In order to give “effective consent” you must be:
 - ☞ - of legal age;
 - ☞ - capable of controlling your physical actions; and
 - ☞ - capable of making rational, reasonable decisions
- ☞ Passivity/Silence is not consent
- ☞ The burden of obtaining consent should be on the party seeking to initiate sexual activity. For example, the party seeking to initiate the sexual activity should be able to articulate the communication that indicated an affirmative consent, either verbally or by voluntary acts, unmistakable (mutually understandable) in their meaning.

Definitions

(Source: ATIXA/NCHERM)



Force (4 Types)

- ☞ Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Elements of force also includes physical force, 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.”)



Definitions

(Source: ATIXA/NCHERM)



(a) Physical Force

☞ Physical force is the classic construct, equated with violence or the use of a weapon. No matter how slight, any intentional physical impact upon another, use of physical restraint or the presence of a weapon constitutes the use of force.

(b) Threats

- ☞ Any threat that causes someone to do something they would not have done absent the threat is enough to prove forcible compulsion. For example, if I threaten you with a negative consequence and that threat causes you to acquiesce in sexual activity, forcible compulsion is present, and sexual misconduct has occurred.
- ☞ - If you don't have sex with me, I will harm someone close to you
- ☞ - If you don't have sex with me, I will tell people you raped me
- ☞ - If you do not have sex with me, I will spread a rumor you are gay
- ☞ - If you don't sleep with me, I will fail you

Definitions

(Source: ATIXA/NCHERM)



(c) Intimidation

- ☞ Intimidation is defined as an implied threat, whereas threats are clear and overt. It is a situation where someone uses their power or authority to influence someone else.

(d) Coercion

- ☞ Coercion is unreasonable pressure for sexual activity. 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 they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- ☞ •Cases will be investigated regardless of whether the accuser resisted the sexual advance or request, but 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.
- ☞ •In order to give effective consent, one must be of legal age (18 years or older).
- ☞ •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.

Current Legislation & Next Steps



Sarah Tyson

*California Community College Chancellor's Office, Dean of Dean
CalWORKs, Campus Safety, CARE, Child Development/Early
Childhood Education, EOPS, FKCE*

Letter From Senator Barbara Boxer



- ✧ Wrote Chancellor Brice Harris in May 2014 :“Given the alarming prevalence of sexual violence on our college campuses, I am writing to inquire about California Community Colleges’ efforts to address this disturbing epidemic.”
- ✧ Senator Boxer wanted a description of the following:
 - ✧ Campus climate surveys conducted by the University;
 - ✧ Sustained and comprehensive prevention programs and strategies;
 - ✧ Whether campuses employ trained confidential victim’s advocates
 - ✧ Training programs for school officials;
 - ✧ Assistance provided to victims, including partnerships with rape crisis or domestic violence centers;
 - ✧ Protocols for alerting and engaging local law enforcement, including Memoranda of Understanding with local law enforcement;
 - ✧ How campuses conduct sexual assault investigations;
 - ✧ Campus adjudication processes for sexual assault under disciplinary codes.

Responses from the California Community Colleges Chancellor's Office



- ❧ Released a survey in July 2014 to assess colleges' readiness to comply with the Campus SaVE Act to inform response to Senator Boxer
- ❧ Sarah Tyson presented to the California State Assembly Select Committee on Campus Climate in August 2014
- ❧ Considering convening a Task Force to:
 - ❧ Review the campus climate survey requirements and either develop or endorse a model campus climate survey
 - ❧ Compile resources and potentially develop a manual of best practices around campus safety and campus climate; and
 - ❧ Help the Chancellor's Office determine what other steps we can take at the system-wide level to further assist colleges in fostering and maintaining healthy campus climates.

Violence Against Women Reauthorization Act of 2013 (VAWA) Regulations



- ❧ Final regulations released by the US Department of Education in October 2014 (regulations effective July 2015)
 - ❧ Link to regulations: <https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>
- ❧ The regulations requires institutions (among other provisions):
 - ❧ To maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking
 - ❧ To provide to incoming students and new employees and describe in their annual security reports primary prevention and awareness programs
 - ❧ To provide, and describe in their annual security reports, ongoing prevention and awareness campaigns for students and employees
 - ❧ To describe each type of disciplinary proceeding used by the institution;
 - ❧ To list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking
 - ❧ To provide for a prompt, fair, and impartial disciplinary proceeding to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking

California Senate Bill 967
(De León, 2014)
Affirmative “Yes” rather than the absence of a “No”



- ☞ Requires educational institutions to adopt comprehensive policies and disciplinary procedures concerning sexual assault, domestic violence, dating violence, and stalking
- ☞ The institution’s policy governing its campus disciplinary process must use an *affirmative consent standard* to determine whether a sexual assault complainant consented to the alleged conduct.
- ☞ Defines “Affirmative consent” as an affirmative, conscious, and voluntary agreement to engage in sexual activity.
- ☞ All California postsecondary institutions receiving state funds for student financial assistance, as defined above, must now adopt such an affirmative consent standard in campus disciplinary proceedings.
- ☞ Per SB 967, it is not a valid excuse that the accused believed the complainant consented if: (A) the accused’s belief arose from his or her own intoxication or recklessness, or (B) the accused did not take reasonable steps to ascertain whether the complainant affirmatively consented.
- ☞ Per SB 967, it will not be a valid excuse that the accused believed the complainant affirmatively consented where the accused knew or reasonably should have known that the complainant was unable to consent because he or she was: (A) asleep or unconscious, (B) incapacitated due to drugs/alcohol/medication, or (C) unable to communicate due to a mental or physical condition.
- ☞ Requires institutions to enter into agreements or collaborative partnerships with existing on-campus and community-based organizations to (1) refer students and (2) make health, counseling, advocacy, and legal services available to student victims and perpetrators.
- ☞ Institutions must also implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence, and stalking.

Proposed California Legislation Regarding Campus Sexual Violence



- ☞ Senate Bill 186 (Jackson)- Enables the governing board of a community college district to remove, suspend, or expel a student for conduct that occurs on the community college district property.
- ☞ Senate Bill 665 (Block)- Spot bill that would require California's public institutions of higher education to use existing resources to implement a rape and sexual assault education program for students and staff.
- ☞ Senate Bill 691 (Morrell) require California's public institutions of higher education to make available college codes of conduct to prospective students before enrollment, develop a method to test students' knowledge of it, and set a standard for a prospective student to demonstrate proficient knowledge of it before beginning classes.

California Assembly Bill 1433

(Gatto, 2014)

Reporting of Sexual and Hate Violence



- ☞ Requires campus security authorities to disclose to local law enforcement any report of a Part 1 violent crime, hate crime, or sexual assault, whether committed on- or off-campus.
- ☞ Defines the “local law enforcement agency” as the city or county law enforcement agency with operational responsibilities for police services in the community in which the campus is located, and with which the institution has a written agreement

Proposed California Legislation Regarding Campus Sexual Violence (Continued)



- Assembly Bill 969 (Williams)- Enables community colleges, CSUs, and UCs to remove, suspend, or expel students whose conduct threatens the safety of students and the public. Requires students seeking admission to a community college to disclose if they had been previously suspended from a community college in California for rape, sexual assault, or sexual battery.
- Assembly Bill 1365 (Baker)- The bill would appropriate an unspecified amount from the General Funds to the public segments of higher education to fund rape and sexual assault programs.
- Assembly Bill 1466 (Baker)- This spot bill would make non substantive changes to the Affirmative “Yes” rather than the absence of a “No” law.

Proposed California Legislation Regarding Campus Sexual Violence (Continued)



- ❧ Assembly Bill 340 (Weber)- States the intent of the Legislature to require the BOG, California Community Colleges and the Trustees of the California State University; and to encourage the Regents of the University of California to generate a biennial report on campus climate for the Governor, Attorney General, and the appropriate policy committees of the legislature.
- ❧ Assembly Bill 636 (Medina)- Would allow colleges to disclose the name of an alleged assailant of a violent crime to the local law enforcement agency even if the victim does not consent to be identified if certain conditions are met.
- ❧ Assembly Bill 913 (Santiago)- Requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions to adopt rules requiring their respective campuses to enter into written agreements with local law enforcement clarify operational responsibilities for investigating sexual assaults and hate crimes.
- ❧ Assembly Bill 967 (Williams)- Requires that colleges adopt and carry out a uniform process for disciplinary proceedings relating to any claims of sexual assault and requires annual reporting by governing boards on sexual assault cases.
- ❧ Assembly Bill 968 (Williams)- Requires that student transcripts indicate when a student is ineligible to reenroll due to suspension or expulsion on the student's transcript for the period of time the student is ineligible to reenroll.

Future Activities



- ❧ Continued collaboration between the Chancellor's Office and the State Legislature on proposed legislation.
- ❧ Policy committee hearings on proposed state legislation.
- ❧ Likely that proposed state legislation will be amended.
- ❧ The Attorney General will release additional guidance suggesting ways in which law enforcement and campus personnel can comply with these requirements and collaborate to facilitate justice for victims and accountability for perpetrators.
- ❧ The Chancellor's Office may form a task force to Help the Chancellor's Office determine what other steps we can take at the system wide level to further assist colleges in fostering and maintaining healthy campus climates.

References & Sources



- ❧ ATIXA (Association for Title IX Administrators)
- ❧ NCHERM (National Center for Higher Education Risk Management)
- ❧ Columbia University
- ❧ University of California, Irvine
- ❧ University of California, Los Angeles
- ❧ University of San Francisco
- ❧ Orange Coast College



Federal & California State Laws



- ☞ Title VII (Employment Law and Compliance Overseen by Human Resources)
- ☞ Title IX (OCR Creates Guidelines and Provides Oversight)
- ☞ Clery Act (Reporting; Campus Sexual Assault Complainant/Respondent Bill of Rights)
- ☞ Violence Against Women Reauthorization Act (VAWA)
 - ☞ (Amendment to the Clery Act)
- ☞ Campus Sexual Violence Elimination (SaVE) Act (Amendment to the Clery Act and Complements Title IX)
- ☞ California Education Code, Title 5 (Handling Complaints of Unlawful Discrimination)
- ☞ College District BP/ AP (Should reflect the law and college culture)
- ☞ California State Senate Bill 967 (Affirmative “Yes” rather than the absence of a “No”)
- ☞ California State Assembly Bill 1433 (Reporting of Sexual and Hate Violence)
- ☞ Family Educational Rights & Privacy Act (FERPA or The Buckley Amendment)
- ☞ And in Process...Survivor Outreach and Support Campus Act or SOS Campus Act (Required Victim’s Advocates at each Campus)

THANK YOU!

