



CALIFORNIA STATE UNIVERSITY, BAKERSFIELD SEXUAL ASSAULT EDUCATION AND RESPONSE POLICY AND PROCEDURES

Background

Consistent with state and federal law and California State University policy, California State University, Bakersfield (University or CSUB) is firmly committed to maintaining a learning and working environment that is free from sexual violence. Sexual assault is prohibited by law and CSU policy and is contrary to the educational mission and behavioral expectations of the University. As a matter of policy and practice, sexual assault is regarded by the University as discriminatory behavior that will not be permitted, tolerated or condoned.

Sexual assault can occur between persons of the same status and among persons of the same sex. All members of the campus community including students, faculty, staff, administrators, auxiliary employees, and vendors should be aware that the University will not tolerate sexual violence. Cases concerning individuals not subject to University policy, but who violate state or federal laws will be referred to the appropriate state and federal authorities.

University Policy

The University takes comprehensive action regarding the prevention, detection, and prosecution of sex crimes. All reported instances of sexual violence will be taken seriously. When there is reason to believe that a crime has been committed, the University will pursue criminal charges. Any time a student or employee has engaged in sexual violence, the University will pursue strong disciplinary action, whether a crime has been committed or not. Such incidents will be handled in a manner which provides the greatest protection for the victim, and the campus community. The University is equally committed to coordinating the most comprehensive support system to victims. The University strongly encourages all members of the campus community to report to the University Police Department, or other law enforcement agencies, any incident of sexual assault.

In accordance with the Student Code of Conduct (Section 41301 of Title 5 of the California Code of Regulations) and the CSUB Nondiscrimination and Harassment policy, California State University, Bakersfield does not tolerate sexual misconduct in any form. Sexual misconduct includes sexual assault or battery, sexual harassment, or any other form of inappropriate and/or non-consensual sexual conduct.

This policy applies to all prospective students who have applied to the University, current students, faculty, staff, student assistants, graduate assistants, teaching associates, vendors and volunteers of with California State University, Bakersfield or any of its authorized auxiliary organizations. Any

such person found to commit sexual harassment or sexual assault will be subject to disciplinary action by the University and/or referred for criminal sanctions by the appropriate courts.

For more information on the procedures for filing complaints of discrimination, harassment or retaliation by students and applicants against University employees and third parties, visit: www.calstate.edu/eo/EO-1074.html.

Definitions

Sexual assault (as defined in Section 67385 of the Education Code) is any sexual act in which a person is threatened, coerced or forced to comply against her/his will. At its most basic level, sexual assault therefore refers to any form of nonconsensual sexual activity. Sexual assault includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

Sexual battery (as defined in California Penal Code Section 243.4) includes incidents in which the victim's or person's intimate part is touched without consent of the victim with specific intent to achieve sexual arousal, gratification or sexual abuse.

Rape (as defined in California Penal Code Section 261) is forced sexual intercourse that is perpetrated against the will of a person or when the person is unable to give the consent (i.e., unconscious, asleep, or under the influence of alcohol or drugs) and may involve physical violence, coercion, or the threat of harm to the individual.

Consent

For the purposes of University policy, the responsibility for establishing consent rests upon the person who is initiating the sexual activity. To establish that someone has consented to sexual activity, the person must receive consent stated verbally or receive this communication nonverbally in a way that would nonetheless be seen as consent by reasonable people. Consent cannot be established simply on the basis of a current or previous dating or romantic relationship. In addition, consent may be withdrawn at any time during the sexual act.

Consent consists of words or conduct indicating a freely given and present agreement to perform a particular sex act with the initiator. Consent can only be given or implied by someone who acts freely, voluntarily and with knowledge of the nature of the act involved.

Consent cannot be given if someone:

- is incapacitated by drugs, including alcohol
- is coerced into submission
- is unconscious
- is physically incapacitated
- is mentally incapacitated

Consent cannot be inferred from:

- permission for one particular act or for a series of acts
- a prior sexual, romantic or marital relationship
- an existing sexual, romantic or marital relationship

Consent is defined as positive willingness in act or attitude. The consenting individual must be of legal age and fully informed about the nature of the act. The interaction must be completely voluntary and may be considered against the will of the victim when he or she is incapable of giving consent due to ingestion of alcohol or drugs, regardless of whether the ingestion was voluntary or not. Consent cannot be inferred if the victim is asleep or unconscious, silent or passive, and the sexual act would be considered non-consensual.

Common Myths and Facts

Myth: If you do not struggle, or use physical force to resist an assailant, you have not been sexually assaulted.

Fact: If you are forced to have sex without your consent, you have been assaulted whether or not a struggle was involved.

Myth: You cannot be assaulted against your will.

Fact: Assailants overpower their victim with the threat of violence or with actual violence. In cases of acquaintance rape or incest, an assailant often uses the victim's trust in the assailant to isolate the victim.

Myth: Persons who dress or acts in a provocative manner are asking to be sexually assaulted.

Fact: Many convicted sexual assault assailants are unable to remember what their victims looked like or were wearing. Regardless, dressing or acting in a provocative manner is never a justification for sexual assault.

Myth: It is impossible to sexually assault a man.

Fact: Men fall victim for the same reasons as women. Most sexual assaults that involve a male victim are gang assaults, by other males.

Myth: Sexual assault only occurs in unsafe situations or by strangers.

Fact: Nearly 6 out of 10 sexual assaults occur in a victim's own home or at the home of a relative, neighbor, friend, or someone they know.

Myth: It is not an assault if both people are intoxicated.

Fact: Legally, a person who is a minor, or a person is under the influence of drugs or alcohol, cannot give consent.

Reporting Procedures

Individuals who have experienced or witnessed crimes of sexual violence should seek immediate assistance from the University Police Department (or a municipal or other law enforcement in the jurisdiction where the assault occurred) and/or campus caregivers (Student Health Services and Counseling Center). Victims seeking assistance should be treated with respect and dignity, and their concerns should be responded to in a timely and professional manner.

To ensure a responsive environment to the victim, the University will provide, as described in more detail below, support services such as counseling, case management referral, and academic support to address the personal and academic needs of those surviving sexual violence while these crimes are investigated. The University will minimize the burden on the victim, including with respect to housing, students' academic arrangements, and /or University employment arrangements. To encourage the appropriate and timely reporting of acts of sexual violence, victims who report such incidents will generally not be charged for lesser violations of any campus policies, including alcohol abuse policies or other policies of the campus at the time of the incident. Use of alcohol or drugs never makes the victim at fault for sexual violence.

Victims of sexual violence are encouraged to report the incident to any of the following:

- University Police: (661) 654-2111 or 911 from any CAMPUS phone, Available 24 hours, 7 days per week (or the police agency of jurisdiction)
- Student Health Services: (661) 654-2394
- Campus Counseling Center: (661) 654-3366
- Title IX Coordinator/DHR (Discrimination, Harassment, & Retaliation) Administrator: Ms. Kellie Garcia: (661) 654-3206
- Student Housing and Residence Life: (661) 654-3014
- Alliance Against Family Violence and Sexual Assault: (661) 327-1091 (hotline)
- California Victim/Witness Assistance Center: Kern County: (661) 868-4507
- Office of Student Rights and Responsibilities: (661) 654-2680

A victim is not required to pursue criminal prosecution as a result of reporting a crime to a police agency, although reporting of the sexual assault to the police agency may prevent others from becoming victims. However, if the victim files a report with the University Police Department, the University Police is obligated to take appropriate action. Reporting crimes such as sexual assault to law enforcement within 72 hours of the occurrence will assist with evidence collection, and is an important eligibility criterion for Victim/Witness Assistance Programs. The University Police will investigate the complaint, and refer the case to the District Attorney or other criminal justice authority as appropriate.

Legally mandated procedures for gathering data, record keeping, providing information, reporting, and investigating incidents of sexual violence guide this policy. A report of sexual harassment/sexual assault is forwarded to the CSU Chancellor's Office and the State Department of Justice by the University Police Department for the purpose of federally mandated statistical reporting. Such reporting includes place, date, time, type of incident, and status of those involved. Information about how to report incidents, those appointed to receive complaints, and the options available to victims of sexual violence will be disseminated through various venues across campus including the campus website. Timely reporting to University Police is an important factor in a successful investigation and prosecution of sexual violence cases.

University's Response to Reported Cases of Sexual Violence

Victim Services Delivery System

CSUB's sexual violence response protocols strive to make victim services a priority. For individuals who report an incident of sexual violence to the University police, this process begins with the assignment of a corporal to provide support to the victim during law enforcement investigation. The corporal can provide information and referrals to on-campus resources for short and long term assistance. If a victim chooses not to report the incident to police, other campus resources are available for support. University resources available to victims are the Student Health Services, Counseling Center, University's Title IX Coordinator, and the Office of the Vice President for Student Affairs

Kern Medical Center (KMC) is currently the primary provider for evidentiary exams for sexual assault victims in the Bakersfield area and for the CSUB campus. While the intent of CSUB's Violence Prevention and Education Program (VPEP) Committee is to increase awareness and availability of services to students within the campus community, it is understood that the KMC Sexual Assault Response Team is committed to supporting the Violence Prevention and Education Program initiatives and working with the campus as a referral source for services to students.

Case Management and Coordination

Whenever a complaint of sexual violence is submitted to the University Police, or Student Housing and Residence Life, Office of Student Rights and Responsibilities, the Title IX Coordinator will be immediately notified. Upon receipt of notice of any allegations of sexual misconduct, the University's Title IX Coordinator will promptly schedule a meeting with the victim to provide a general understanding of this policy, to identify resources within the University and community, and to identify forms of support or immediate interventions available to the victim.

Interim measures will be taken to protect the victim from the alleged perpetrator until an investigation has been completed. The victim will be notified of options for avoiding contact with the alleged perpetrator, including changes to the alleged perpetrator or victim's academic or living situations, as appropriate. Interim measures could include a "no-contact" order to refrain from having contact with one another, among other measures as deemed appropriate. The University will take steps and fashion interim remedies to minimize the burden on the victim.

Victims of sexual violence who wish to receive additional case management services will be immediately referred to the Alliance Against Family Violence and Sexual Assault through which an advocate will be assigned to provide appropriate services, support, and referrals as needed. The Alliance Against Family Violence & Sexual Assault case manager will work very closely with the University's Title IX Coordinator to provide prompt and effective services.

Academic Assistance

Academic assistance can include but is not limited to: mediation with professors, department chairs, and/or school deans for extensions of time on course work or tests; assistance with tutoring; and arranging for the victim to re-take a course or withdraw from a class without penalty and without adverse effect on the victim's academic standing. The Title IX Coordinator will work with the victim, and the Office of the Vice President for Student Affairs and the Office of the Vice President for Academic Affairs, as necessary.

The following offices may be involved in the University's response to reported instances of sexual assault:

Office of the Vice President for Student Affairs

The Vice President for Student Affairs, in coordination with the University Public Relations Office, will respond to requests for information from the media, concerned citizens, parents, and the community when students are involved. The Director of Human Resources, in coordination with the University Public Relations Office, will respond to requests when reports of sexual violence/harassment involve University personnel. In all instances, the confidentiality of the victim will be preserved to the extent permitted by applicable law.

Student Health Services, Counseling, and Services for Students with Disabilities

The University's Counseling Center will staff at least one licensed and trained counselor to work with sexual violence victims. The counselors also have the training to work with victims that are from minority and diverse backgrounds and cultures. With the consent of the victim, the Health Services and Counseling Centers will notify the Title IX coordinator and/or University Police and provide appropriate treatment and make appropriate medical and mental health referrals. The Counseling Center will work closely with the Office for Services for Students with Disabilities to provide any accommodations needed for students with disabilities.

Health Services and Counseling Center operating policy offers employee guidelines regarding the reporting of crimes. Some practitioners and counselors in the Health Services and Counseling Center are not required to report crimes under the Clery Act. However, even those practitioners and counselors who are not legally mandated are *strongly encouraged* to make reports to the University Police Department whenever they become aware of violent crimes, including sexual violence on or off-campus. Such off-campus properties may include fraternity and sorority houses, rooms rented for University-related functions, and private off-campus residence halls. When in doubt, suspected crimes should be reported to the University Police Department who will determine whether these events are reportable under the Clery Act and whether they should be referred to criminal justice authorities. These reports do not include names of the victim. The University Police Department will identify the information needed for this report.

University Police Department

As stated, the University Police Department will assign a corporal to investigate crimes of sexual violence allegedly committed by a University student, employee or vendor. This investigation may result in a request to the District Attorney's office for criminal prosecution. The University Police refers the case to the Office of Student Rights and Responsibilities to initiate disciplinary actions when the alleged perpetrator is a student. The University Police Department will also provide sexual assault prevention training to the campus community and maintain statistical information on sexual assaults.

Office of Student Rights and Responsibilities, Student Housing and Residence Life, and Student Organizations

The Director of the Office of Student Rights and Responsibilities has responsibility for administering Student Conduct proceedings against a student assailant (s). The University recognizes its responsibility to all parties involved. Upon receiving a report of sexual violence, the alleged assailant(s) will be contacted by the Office of Student Rights and Responsibilities (if the incident involves a recognized student club or organization, the Office of Student Involvement and Leadership will contact the student organization). All actions taken will be in accordance with CSU Executive Order 1073 (Student Conduct Procedures), Executive Order 1068 (Student Activities), Title 5 (Sections 41301 and 41304) of the California Code of Regulations (Student Discipline) and California State University, Bakersfield policies.

Consistent with the requirement of Assembly Concurrent Resolution 46 (Hayden) and Education Code 67385, victims of sexual violence have the right:

- To have a person of the victim's choice accompany her/him during allowable portions of Student Conduct proceedings
- Not to have the assailant's past sexual history introduced as part of the testimony except for specific purposes described in law, and
- To be notified of the outcome of the Student Conduct proceedings, consistent with limitations imposed by federal law.

Student Conduct Disciplinary Procedures

1. Student Conduct proceedings will adhere to due process and will occur within a reasonable time period, subject to the availability of both the victim and the accused in accordance with Executive Order 1073 (available for review at www.calstate.edu/eo/EO-1073.html). For a complete description of University Student Conduct Hearing Procedures visit the Office of Student Rights and Responsibilities website at www.csub.edu/osrr.

2. Any disciplinary action shall be imposed in accordance with guidelines and sanctions outlined by in Sections 41301 and 41302 of Title 5, California Code of Regulations; and Executive Order 1073.). The University must notify the alleged victim(s) of the final results of a disciplinary proceeding when the victim has made a request in writing for the results of the disciplinary proceeding (34 C.F.R. § 99.39 et seq). The information given to the victim(s) includes the sanctions imposed or if the “charge was not sustained.”

Office of Student Housing and Residence Life

Residence Life Disciplinary Procedures

If either the alleged victim or the alleged assailant resides in the campus housing complex, the Residential Life staff will work with the Title IX coordinator to conduct an initial investigation to determine whether sufficient evidence exists to suspect that an assault or other form of sexual violence may have been committed. Interim measures will be taken to relocate the alleged assailant, or the alleged victim pending the outcome of the investigation if it is deemed in their best interest. The Residence Life disciplinary process occurs independently of University Student Conduct proceedings. Residence Life’s disciplinary outcomes shall be imposed in accordance with the procedures outlined in the “Residence Life Handbook” Section XXI.

Sexual assault (as defined in Section 67385 of the Education Code) is any sexual act in which a person is threatened, coerced or forced to comply against her/his will. At its most basic level, sexual assault therefore refers to any form of nonconsensual sexual activity. Sexual assault includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault. Students, or guests of students, that are identified as persons potentially involved in sexual violence will be subject to investigation, referral to the Office of Student Rights and Responsibilities, cancellation of Housing Contract, and being placed on No Recontract Status, which means the student is ineligible to apply for campus housing in the future for a specified period of time.

Student Organization Sanctions

If the accused is a member of a recognized University student organization, the disciplinary review will be conducted by the Office of Student Involvement and Leadership in accordance with Executive Order 1068 and Runner Source (University Student Clubs and Organizations Manual). Individual members and student organizations may be held responsible for their individual and corporate actions, as per sections 41301 or 41302 of Title 5, California Code of Regulations and Executive Orders 1073 and 1068.

Summary

Conduct which violates sections 41301 or 41302 of Title 5, California Code of Regulations, or other codes of conduct, may also violate provisions of criminal and civil law of the State. In such

cases, the University may proceed with disciplinary action despite the pending outcome of criminal or civil prosecution in court. The application of University disciplinary proceedings occurs independently of legal proceedings that occur in criminal or civil courts.

Sanctions

1. *Individual Student Sanctions.* Any of the sanctions listed below may be applied against students found guilty of sexual violence or complicity in sexual violence. The type and number of sanctions applied will depend on the severity of the offense as well as previous student conduct violations. Possible sanctions include, but are not limited to:
 - i. Expulsion from the University.
 - ii. Suspension for a specified time.
 - iii. Disciplinary probation for a specified time.
 - iv. Community service.
 - v. A student may be suspended immediately for an interim period pending an investigation and hearing whenever the University President determines that such action is required.
 - vi. Psychological counseling and/or assessment off-campus.
 - vii. Revocation of residence hall contract.

A recommendation will be made to the President by the Student Conduct Hearing Officer. The President will inform the student, in writing, of the sanction(s) imposed. A student may be suspended immediately for an interim period pending a hearing whenever the President determines that such action is required to protect the safety of individuals or protect property, and to ensure the maintenance of order. The student suspended shall be afforded an opportunity for a hearing with respect to the immediate suspension, in accordance with the provisions of the University Student Conduct proceedings and Executive Order 1073.

2. *Recognized Student Clubs & Organizations.* Student Clubs and Organizations found to condone, promote, or be involved in prohibited activities may have their University recognition withdrawn, as per Executive Order 1068 and Runner Source (University Student Clubs & Organization Handbook). Other possible sanctions may include:
 - i. Informing the national or regional office of the organization about the activity
 - ii. Prohibiting participation in campus activities, events, and programs
 - iii. Requiring relevant community service and/or participation in sexual assault awareness programs (could be required of all members)
 - iv. Loss of all University privileges (use of equipment, meeting rooms, advertising space, on-campus fund-raising)

A recommended sanction (if any) will be made to the Vice President for Student Affairs, who will inform the student organization, in writing, of the sanction(s) imposed. The Vice President for Student Affairs may suspend or revoke any student organization's recognition by the University, pending a full review.

In instances in which the accused is not a student, staff or faculty member of the University, the University lacks authority to take disciplinary action. In such a case, the victim is strongly encouraged in such cases to report the incident to the appropriate law enforcement agency and seek assistance from the Student Health Services and Counseling Cent

Confidentiality

1. Alleged incidents of sexual violence generate a high degree of concern from the campus community, the local media, parents, and others. Every effort will be made by University officials to maintain confidentiality in responding to inquiries regarding the investigation, the Student Conduct process, and the final outcome of the proceedings, to the extent consistent with the law.
2. Victims will be informed of the need to be identified during Student Conduct proceedings and/or criminal prosecution.
3. Victims who are under the age of 18 will be informed of mandatory reporting requirements (Section 11166 et seq. of the Penal Code).
4. Victims will be informed of the confidential nature of disciplinary outcomes.
5. The victim will be assured of the confidential nature of medical/counseling records and communications, which may be released only upon the patient's written consent or in response to a valid subpoena or court order.
6. Requests from the press for information shall be handled through the University Public Affairs and Communications Office, which shall retain victim confidentiality unless prohibited by law.

For Incidents Involving Faculty and Staff

The Director of Human Resources will appoint a staff member(s) to serve as liaison to employee victims. The liaison will describe appropriate procedures, explain options available to the victim, and make appropriate referrals to campus and community resources. The Director of Human Resources may be contacted at (661) 654-2266.

Employee Discipline Procedures

If the alleged assailant is an employee of the University, the process will be conducted in accordance with established CSU employee disciplinary policies and procedures in the appropriate collective bargaining agreement(s).

Sanctions

Sanctions up to and including dismissal from employment may be imposed on employees, following the utilization of established California State University policies and procedures in applicable collective bargaining agreements.

The Office of Human Resources includes information about sexual harassment and assault in the New Hire packet and during new staff and faculty orientations. The information is also available on the University website. Printed materials include the following content:

- The University’s definition of sexual assault and harassment,
- A statement that such behavior is illegal, unprofessional and will not be tolerated, and
- Procedures for reporting charges of sexual assault and/or sexual harassment.

Educational Plan and Prevention Strategies

The University utilizes proactive programs that have been implemented to educate all University community members on issues, policies, response and service procedures, and resources pertaining to sexual violence, which is coordinated by the Counseling Center faculty and staff.

Brochures on Sexual Assault have been developed to educate the campus community on “What Everyone Should Know about Sexual Assault.” The brochures are accessible in Student Housing and Residence Life, University Police, Student Health Services and Counseling Center, Office of Services for Students with Disabilities, Office of Student Involvement and Leadership, Associated Students Incorporated, Athletic offices, Office of Human Resources, and Office of Student Rights and Responsibilities. The Sexual Assault policy will be available on various department websites as follows:

- Office of the Vice President for Student Affairs: www.csub.edu/studentaffairs
- University Police Department: www.csub.edu/bas/police
- Counseling Center: www.csub.edu/counselingcenter
- Student Housing and Residence Life: www.csub.edu/housing
- Student Health Services: www.csub.edu/HealthCenter
- Office of Student Rights and Responsibilities: www.csub.edu/osrr

The University provides various education and prevention programs. Presentations to CSUB 101 classes (First-year experience program) are made by the Counseling Center staff during the Health and Wellness component of the class. In addition, the Counseling Center offers a Survivors’ Group class for survivors of sexual assault or abuse by providing a safe and comforting atmosphere for students to listen, learn, and have their voices heard. More information about this can be found at: www.csub.edu/counselingcenter/.

The University collaborates with the Alliance Against Family Violence & Sexual Assault (AAFVSA) to promote awareness, education and prevention during Domestic Violence Awareness Month (October) and Sexual Assault Awareness Month (April) activities. The University Police Department also plays a critical role in the education and prevention efforts by offering Rape Aggressions Defense (RAD) courses to the campus community. For more information about the RAD courses, please visit www.csub.edu/BAS/police/rad.shtml.

In addition to new students, training will also be provided to faculty, staff and employees, students who serve as advisors in residence halls, and student athletes and coaches. These educational programs will include a discussion of what constitutes sexual violence and sexual harassment, what someone should do if he or she has been the victim of sexual violence or harassment, the relevant campus and system wide policies and disciplinary procedures, and the consequences of violating these policies.

The University will continue to work cooperatively with AAFVSA to provide comprehensive services for victims and educational opportunities and prevention awareness activities for students, faculty and staff. Services from the AAFVSA include 24-hour hospital accompaniment, case management, criminal justice advocacy, assistance with application, and filing domestic violence restraining orders and civil harassment orders, emergency shelter, and counseling services. AAFVSA also provides Sexual Assault Volunteer training for the community at large.