

January 29, 2018

**MEMORANDUM FOR CABRILLO COLLEGE STUDENTS, EMPLOYEES, AND
COMMUNITY MEMBERS**

FROM: THE PRESIDENT’S OFFICE & THE TITLE IX OFFICE AT CABRILLO COLLEGE

SUBJECT: ADMINISTRATIVE PROCEDURES TO ADDRESS GENDER DISCRIMINATION AND SEXUAL MISCONDUCT

I. Purpose and Scope

It is the policy of Cabrillo College (“Cabrillo” or the “College”) to maintain an environment for students, faculty, administrators, staff, and visitors that is free from all forms of discrimination and harassment, including sexual misconduct.¹ Cabrillo prohibits all forms of sexual or gender-based discrimination, harassment, and misconduct, including sexual assault, domestic and dating violence, and stalking. The College also prohibits retaliation against any person who reports, complains about, or otherwise participates in good faith in any matter related to College policies. All of the foregoing conduct shall be referred to as “Prohibited Conduct.”

Cabrillo College strongly encourages all members of our community to take action to maintain a safe, welcoming, and respectful environment. In particular, the College expects all Cabrillo community members to take reasonable steps to prevent or stop Prohibited Conduct and report it to the Title IX Coordinator or Director of Human Resources and Labor Relations. The College strongly supports individuals who choose to take such action and will protect these individuals from retaliation.

This guidance memo is intended to provide information to Cabrillo College students, employees, and community members about what constitutes prohibited conduct, the procedures for reporting gender-based discrimination, and the process for investigating such reports.

Please note, for purposes of this memo the person impacted by alleged prohibited conduct will be referred to as the “Reporting Party” and the person who has allegedly engaged in prohibited conduct will be referred to as the “Responding Party.”

If you have any questions about the information contained in this memo, please contact the Title IX Coordinator/Compliance Officer, Samantha Folb, or the Director of Human Resources and Labor Relations, Angela Hoyt.

¹ See Board Policy 3534 Sexual and Other Assaults on Campus, Board Policy 3430 Prohibition of Harassment, and Board Policy 3410 Nondiscrimination.

1. Non Discrimination Policy

A. Education Programs

The District shall provide access to its services, classes and programs without regard to, national origin, religion, age, gender, gender identity, gender expression, race or ethnicity, color, medical condition, genetic information, ancestry, sexual orientation, marital status, physical or mental disability, pregnancy, or because he/she is perceived to have one or more of the foregoing characteristics, or based on association with a person or group with one or more of these actual or perceived characteristics.

B. Employment

The District shall provide equal employment opportunities to all applicants and employees regardless of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. Persons Covered

Cabrillo's policies apply to all Cabrillo community members including students, faculty, administrators, staff, volunteers, vendors, contractors, visitors, and individuals regularly or temporarily employed, conducting business, studying, visiting, or having any official capacity with the College or on its property. The College strongly encourages reports of prohibited conduct regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Responding Party, the College will take prompt action to provide for the safety and well-being of the Reporting Party and the broader campus community.

3. Locations Covered

Cabrillo's policies apply to all on-campus conduct and some off-campus conduct, described below. The College strongly encourages reports of all prohibited conduct, regardless of location. Even if College policies do not apply to the conduct because of its location, the College will take prompt action to provide for the safety and well-being of the Reporting Party and the broader campus community.

On-Campus Conduct: Cabrillo's policies apply to conduct that occurs on-campus, including conduct which occurs on property owned or controlled by the College.

College Programs: Cabrillo's policies apply to conduct that occurs in the context of College employment or education programs or activities, including, but not limited to, Cabrillo study abroad or internship programs.

Off-Campus Conduct: Cabrillo's policies also apply to conduct that occurs off-campus and has continuing adverse effects on, or creates a hostile environment for, any member of the Cabrillo community on-campus or in any College employment or education program or activity.

II. Prohibited Conduct and Definitions

1. Sex or Gender Based Discrimination

Sex or gender based discrimination refers to the disparate treatment of a person or group because of that person's or group's sex, sexual orientation, gender identity or gender expression.

Gender means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

2. Sex or Gender Based Harassment

"Harassment" is conduct that creates an intimidating, offensive, or hostile working or learning environment or that unreasonably interferes with work or academic performance based on a person's protected status, including sex, sexual orientation, gender identity, or gender expression. All such conduct is unlawful.

"Sexual Harassment" consists of unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature made by someone from, or in, the work or educational setting when:

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, progress, internship, or volunteer activity;
- Submission to, or rejection of, the conduct by the individual is used as a basis of employment or academic decisions affecting the individual;
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile or offensive work or educational environment (as more fully described below); or
- Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the community college.

"Gender-Based Harassment" is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature.

Generally, harassment can be divided into two types of conduct:

1. *Quid Pro Quo Harassment.* Quid pro quo sexual harassment occurs when a person in a position of authority makes educational or employment benefits conditional upon an individual's willingness to engage in or tolerate unwanted sexual conduct.
2. *Hostile Environment.* A hostile environment exists when unwelcome conduct based on a person's gender is sufficiently severe or pervasive so as to alter the conditions of an individual's learning or work environment, unreasonably interfere with an individual's academic or work performance, or create an intimidating, hostile, or abusive learning or work environment. The victim must subjectively perceive the environment as hostile,

and the harassment must be such that a reasonable person of the same gender would perceive the environment as hostile.

Harassing conduct can take many forms. The determination of whether an environment is hostile is based on the totality of the circumstances, including but not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Reporting Party's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression is typically not sufficient to constitute a hostile environment.

Cabrillo College's Commitment to Academic Freedom and Free Speech

This policy is consistent with Cabrillo College's commitment to academic freedom and free speech. This commitment requires that the College protect community members' expression of ideas in their teaching, learning, and research, including advocacy that may be controversial, provocative, or unpopular. This protection extends to the expression of ideas, however controversial, in the classroom and during other campus-related activities.

It must be recognized, however, that this protection has its limits. Cabrillo's Board Policies and Administrative Procedures define those limits, and conduct which is found to be "harassing" is not consistent with the College's commitment to academic freedom and free speech. No member of the College community may escape responsibility for engaging in harassing conduct merely by labeling the conduct as "speech" or other expressive activity.

3. Sexual Misconduct: Forms

The College prohibits the following specific conduct:

- Sexual Assault,
- Dating Violence,
- Domestic Violence, and
- Stalking.

Each of these is explained in detail below. The College recognizes that other Prohibited Conduct not listed above, may refer to behavior which constitutes Sexual Misconduct. In instances where Prohibited Conduct constitutes a violation of more than one College policy, an individual may allege either or all violations of any policy.

A. Sexual Assault

“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 intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

B. Dating Violence

“Dating Violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence. Whether there was such a relationship will be determined based on, among other factors, the Reporting Party’s and Responding Party’s statements, and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the Parties involved in the relationship.

C. Domestic Violence

“Domestic violence” includes felony or misdemeanor crimes of violence committed by:

- A current or former spouse of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse;
- A person similarly situated to a spouse of the victim under California law; or
- Any other person against an adult or youth victim who is protected from that person’s acts under California law.

D. Stalking

“Stalking” occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

A course of conduct consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, or any other communications that are undesired or place another person in fear;
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person;
- Surveillance and other types of observation, whether by physical proximity or electronic means; and
- Gathering of information about a person from family, friends, co-workers, or classmates.

The conduct mentioned above is not required to be sexual in nature to qualify as stalking

4. Affirmative Consent

California law requires students to seek "affirmative consent" from partners at each stage of 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 the person has the affirmative consent of the other(s) to engage in the sexual activity. The following are essential elements of affirmative consent:

Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. **An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.**

Not indefinite: Affirmative consent must be ongoing throughout the activity. **Consent may be withdrawn by any party at any time.** Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

Being intoxicated by drugs or alcohol is no defense to any violation of College policy and does not diminish one’s responsibility to obtain consent.

5. Retaliation

Retaliation includes adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any investigation into reported misconduct.

The College will immediately investigate any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if it is later determined the reported conduct is not a violation of College policies.

III. Confidentiality and Privacy

1. Privacy and Confidentiality: Understanding the Differences

Cabrillo College is committed to protecting the privacy of all individuals involved in the investigation and resolution of Prohibited Conduct. The College will make reasonable efforts to protect the privacy of anyone who reports or participates in an investigation of prohibited conduct. Privacy and confidentiality have distinct meanings with regard to College policies.

A. Privacy

“Privacy” generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who “need to know” in order to assist in the assessment, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

While there are certain limitations on privacy, the College generally will not release the names of the Reporting Party or the Responding Party to the general public without express written consent or absent another exception consistent with the law.

B. Confidentiality

“Confidentiality” generally means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. The licensed health counselors at Student Health Services are the only Cabrillo College employees who can promise confidentiality when a student shares an incident of sexual misconduct.

Responsible Employees and Requests for Confidentiality

All “Responsible Employees” are required to report all actual or suspected sexual misconduct to the Title IX Coordinator immediately.

A “Responsible Employee” includes any employee who:

1. Has the authority to take action to redress the harassment;
2. Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
3. A student could reasonably believe has the authority or responsibility to take action.

This includes all employees with supervisory or leadership responsibilities on campus, including, but not limited to, adjunct and fulltime faculty, coaches, administrators, staff, and student employees.

IV. Reporting

The College strongly encourages all individuals to make a report to the College and to local law enforcement, although neither is required. These reporting options are not mutually exclusive. Both internal and criminal reports may be made simultaneously.

Cabrillo also strongly encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigation and remedial response.

A. Campus Reporting Options

All reports of gender-based harassment, discrimination, and sexual misconduct should be directed to Cabrillo College's Title IX Coordinator. The College's Title IX team is comprised of Samantha Folb, the Title IX Coordinator/Compliance Officer, and Angela Hoyt, the Director of Human Resources and Labor Relations. The Title IX Coordinator/Compliance Officer and Director of Human Resources and Labor Relations can be contacted by telephone, email, or in person during regular office hours:

Samantha Folb, J.D.

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The Title IX Coordinator is a neutral administrator who monitors the College's overall compliance with Title IX, ensures appropriate training and education, and oversees the College's investigation, response, and resolution of reports of gender-based discrimination and harassment. Upon receiving reports of Prohibited Conduct, the Title IX Coordinator ensures that appropriate action is taken to eliminate such conduct, prevent its recurrence, and remedy its effects.

The Title IX Coordinator is available to advise all individuals — including individuals who have experienced misconduct, individuals who are alleged to be responsible for misconduct, and third-parties — on the College's policies and procedures regarding gender-based discrimination and harassment. The Title IX Coordinator reports to the Director of Human Resources & Labor Relations

Individuals may also file a report with the college by submitting a completed “Unlawful Harassment and Discrimination Complaint Form.” A copy of the form and instructions for submission are on the College’s Title IX webpage at and the end of this memo.

B. Emergency and External Reporting Options

A Reporting Party has the right to notify or decline to notify law enforcement. A Reporting Party should contact the Santa Cruz Sherriff’s Department, Cabrillo Division to file a report of sexual misconduct by calling the dispatch number below at any time or visiting the Sheriff’s Department during business hours.

Santa Cruz County Sherriff’s Department, Cabrillo Division

Location: Building number 1185 next to the football field and parking lots "R" and "S"

Phone: Emergency: 9-1-1 or Non - Emergency Dispatch: 831-471-1121

Website: <https://www.cabrillo.edu/services/sheriff/>

V. Investigation Procedure

All complaints regarding gender discrimination and/or sexual misconduct will be promptly, thoroughly, and impartially investigated in the following manner:

1. Intake

The Title IX Coordinator will assist the reporting party with making choices and accessing resources. The Title IX Coordinator shall make an immediate assessment concerning the health and safety of the individual making the report and the campus community, implement temporary remedies immediately necessary (including no contact directives), ensure the Reporting Party has received a written explanation of rights and reporting options (including the right to make reports to the police), and available campus and community resources.

Assuming the reporting party chooses to move forward with a campus resolution, the next step is a preliminary inquiry. All resolutions will be conducted by campus officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

2. Preliminary Inquiry

An initial determination is made about the allegations and whether to move forward to a formal investigation. This decision is made by the Title IX Coordinator and the Director of Human Resources, taking into account the nature of the allegations and the reporting party’s wishes. If the decision is made to move forward, the Title IX Coordinator will oversee an investigation.

3. Investigations

An investigative model is used to resolve allegations. Trained investigators will provide an investigation that is prompt, thorough, reliable, equitable, fair, and impartial. They will interview reporting and responding parties and witnesses, and prepare reports with their findings and sanctioning recommendations. Information about all the steps in the investigative process is available at <http://www.cabrillo.edu/title-ix>

4. Hearings

The hearing panel will have the opportunity to question the investigators during hearings. The panel may accept or reject investigators' recommendations. If the panel rejects the recommendations or decides to issue alternate sanctions, it must do so within the framework of the policy, citing clear evidence to support its decisions. The panel may additionally return the report to investigators for modification.

5. Standard of Evidence

The College uses a preponderance of evidence standard. Decision-makers consider whether, given the available credible evidence, it is more likely than not that a violation occurred.

6. Final Determination

The parties will be informed in writing of the outcome of the resolution, without significant delay between the notifications to each party. This notice will include the procedures for appealing the decision, any change to the results that occurs prior to the time that such results become final, and when results are considered to be final.

7. Appeals

If either party is not satisfied with the results of the administrative determination, he/she may submit a written appeal to the Board of Trustees within 15 days of receiving notice of a final determination. The Board shall review the original complaint, the investigative report, the administrative decision, and the appeal. The Board shall issue a final decision on the matter within 45 days after receiving the appeal. All parties are included in any appeal reconsideration and have equal rights of participation. There is only one level of appeal. All appeals determinations made by the Board of Trustees are final.

VI. Conclusion

This memorandum contains a summary of Cabrillo College's Board Policies and Administrative Procedures regarding harassment, discrimination, and sexual misconduct. To review the full text of the policies and procedures referenced here, please visit Cabrillo College's Title IX Webpage at <http://www.cabrillo.edu/title-ix>. If you have any questions or concerns about any of the information in this memo, please contact the Title IX Coordinator or the Director of Human Resources and Labor Relations.