

Sexual Misconduct on Campus

San Francisco Community
College District

Frequently Asked Questions

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What is sexual misconduct?

Sexual misconduct includes a range of behaviors such as:

Sexual assault (which includes rape and any kind of nonconsensual sexual contact), sexual harassment, intimate partner violence, stalking, voyeurism, and any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing a person, such as intimidation or bullying.

Part I: Sexual Assault FAQ's

What is sexual assault?

Sexual assault is a sexual act attempted or committed without consent, including:

- Inappropriate touching
- Threats of sexual violence
- Vaginal, anal, or oral penetration
- Sexual intercourse that you say “No” to
- Rape or attempted rape
- Child molestation

Sexual assault may occur when you are prevented from saying “No” due to drugs or alcohol. Whether the perpetrator is a stranger or acquaintance does not matter, and being high does not lessen the perpetrator’s responsibility for the crime. If you’re not sure whether or not you were sexually assaulted, a counselor can discuss with you about the incident in a confidential setting.

What is consent?

Someone can’t have sex with you unless they have your **CONSENT**. Consent is an “explicitly communicated, reversible, mutual agreement in which both people are capable of making a decision.” Silence is not consent. “No” is not consent. Having sex with someone who reasonably believes that there is a threat of force is rape.

What is incapacitation?

Incapacitation is defined as where person is mentally or physically unable to make or act on considered decisions to engage in sexual activity. Engaging in sexual activity with a person that one knows -- or reasonably should know -- to be incapacitated constitutes sexual misconduct. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging consent. Thus, it is urged that consent be sought in verbal form.

Who is a survivor/victim?

A victim/survivor is defined as a student, faculty, staff, administrator, visitor, or invitee of City College of San Francisco who believes herself/himself to have been a victim of sexual misconduct and/or other physical abuse or violence, and who engages the City College of San Francisco sexual misconduct complaint procedure. If the alleged perpetrator of sexual misconduct is a faculty or staff member at CCSF, the victim/survivor will have the option of initiating a complaint, which would be filed with the District Title IX Coordinator at (415) 452-5053.

Is sexual assault common at City College of San Francisco?

No. Sexual assaults occur infrequently at City College of San Francisco, but everyone should be alert to their existence. In California, 7,828 forcible rapes were reported in 2012.¹ Only 28% of

¹ Attorney General’s Crime in California Report, 2012

all sexual assaults, however, are ever reported to law enforcement.² 18% of all women have been raped at some time in their lives.³

Who commits sexual assault?

While anyone can be a rapist, most sexual assaults involve a man acting against a woman's wishes. People who commit sexual assault are usually acquainted with their victims. Drugs or alcohol is often involved.

I'm a guy, and I'm not a rapist. Why do I need to know about sexual assault?

Sexual assault affects everyone. Men are raped as well. While the statistics for women are more significant than those for men, sexual assault is not strictly a women's issue. Assuming you have women in your life – mother, sister, daughter, wife, friend, or grandmother – knowledge of the crime helps ascertain that it does not happen to a loved one, or that you do not unknowingly contribute to an atmosphere or situation in which the crime may occur (e.g. you are a member of a fraternity where people are given substances in parties). It is important that you recognize how sexual assault affects a person, and what you can do to help in his or her recovery process.

What can I do if I have been raped?

1. Go to a safe place. This is not the time to be alone. At the very least, you need emotional support. If you're on the Ocean campus during operating hours, you can go to Student Health Services (on the corner of Phelan and Judson), the Office of the Dean of Student Affairs & Wellness (Conlan 106), the SFCCD Police Department (Cloud 119), the Title IX Coordinator's Office (Bungalow 213), or any counseling or administrator's office.
2. If there's no one to go to, call someone, no matter how late it is. If you're on campus do any of the following:
 - pick up a yellow emergency phone
 - press #1 at any campus pay phone
 - push the "CCSF Police" button at any CCSF desk telephone
 - or call (415) 239-3200 with your cell phone
3. Get medical attention. As soon as possible, go to a hospital or Student Health Services. You need to be examined and treated for injuries. Treatment for HIV prevention must begin within 72 hours, but the sooner the better. You may want to take steps to prevent pregnancy as soon as possible. At the very least, you need to get tested and maybe treated for various sexually transmitted infections.
4. Report to the police. Evidence collected soon after the assault will be valuable if you decide to report. (Even if you don't report, you can still provide medical evidence to a hospital). If you haven't already, don't shower or clean yourself first. If you change, place your clothes in a paper bag. **Reporting a sexual assault doesn't commit you to filing charges.** Reporting does make filing charges easier at a later date though. When you make your report, you can take someone with you. You can go the next day, but the sooner the better.
5. Consider whether or not you want to file charges. The process of filing charges can be a long and difficult one. You must decide for yourself based on your own circumstances. Before you decide, you can speak with the police about what will happen. If you need more support,

² Bureau Justice Statistics

³ U.S. Department of Justice

organizations such as the Bay Area Women Against Rape (BAWAR) are available to help you consider the pros and cons.

How do I seek medical attention and/or provide physical evidence?

Confidential and sensitive care, examination, and treatment are available 24 hours a day at San Francisco Rape Treatment Center at San Francisco General Hospital, the designated evidence collection site for sexual assaults that occur in San Francisco. An important part of the criminal investigation is the collection of physical evidence. A survivor should go to the hospital as soon as possible after the incident (without showering, or changing, although she (he) should bring a change of clothes, if possible).

Although the Student Health Services is not an evidence collection site, the professional staff will make arrangements for you to go to San Francisco General Hospital, where the Sexual Assault Nurse Examiners (SANE) will collect and preserve specimens as evidence for court proceeding should you want to press charges in the future.

Do I have to report a sexual assault?

You have the right to decide. Only one out of ten people ever reports her/his sexual assault. Survivors may feel ashamed or think that the pain will go away. They may not be sure if what happened was really sexual assault or may believe they are responsible in some way. The decision to report is totally up to you. For many survivors, having their number counted, at least, is an important step in regaining the power they lost. There are many options to explore; the most important thing is to choose the part that is most comfortable and productive towards your recovery.⁴

Can I seek support services without reporting?

You have the right to decide. When you seek support services, you are reporting. But a survivor may report an assault and use support services without pursuing criminal or college disciplinary action. Reporting an incident of sexual assault is a difficult yet important decision. Making a report may help with recovery and prevent the offender from assaulting someone else. You can choose to talk with a counselor or psychologist in a confidential setting. CCSF Project SURVIVE has trained professionals available to discuss the incident of sexual assault, help you decide which reporting options are best, and make referrals to the appropriate support services. It is okay to report without filing a complaint.

Student Health Services has professional mental health counselors available to provide support services in a confidential setting, and you will not be required to report or pursue action when you go to the center. If you do choose to report or pursue action, the counselor can assist you and help you stay informed through the process.

San Francisco General Hospital has Sexual Assault Nurse Examiners (SANE) available to provide you (or conduct) a physical exam, STD testing and preventive treatment and to talk with you regarding any concerns you may have about what happened to your body. While valuable forensic evidence can be gathered in a physical exam, having an exam does not commit you to report or file any charges.

What community resources are available if I'm sexually assaulted?

San Francisco Police Department, National Rape Crisis Hotline/Nationwide RAINN, San Francisco Trauma Recovery and Rape Treatment Center at San Francisco General Hospital,

⁴ Smith College sexual assault procedure

UCSF Center for Gender Equity Sexual Relationship Program, the S.A.F.E. Place at San Francisco State University, San Francisco Women Against Rape and Bay Area Women against Rape in Oakland.

How do I report a sexual assault?

Go to Student Health Services (HC100), the Office of Dean of Student Affairs & Wellness (E106), or SFCCD Police (C109). Or, call the San Francisco Trauma Recovery and Rape Treatment Center (415) 821-3222, the San Francisco Women Against Rape crisis line (415) 647-7273, or the Bay Area Women Against Rape crisis line (510) 845-7273.

What will happen if I decide to report the sexual assault to the police?

A uniformed officer will arrive and insure your safety. The officer, with your permission, will escort you to the CCSF Student Health Services or San Francisco General Hospital, depending on the nature of your injuries. The responding officer will ask you for a description of the assailant(s) and other information to keep you safe and for a possible apprehension.

In conducting a thorough investigation, the San Francisco Police Department will assign an officer who has received specialized training in investigating sexual assaults. The officer will ask you many questions and go over the details of the crime. This is necessary because a survivor frequently recalls additional information and details during subsequent interviews. The procedure is not intended to embarrass or intimate the survivor. The officer will suggest that a counselor and a medical staff be present to reduce the number of times a survivor retells the incident. The officer will let you decide whether you want the assistance of an advocate through the medical examination, evidence collection, and filing of a police report. Reporting an incident of sexual assault does not commit you to going to court and prosecuting. **Decisions about prosecution are made later.** Filing report preserves evidence and documents the incident to protect your rights.

What are my rights as a survivor of sexual assault?

You have the right to...

- Be treated with respect, dignity, courtesy and without prejudice
- Receive emotional and psychological support services and advocacy
- Receive private and confidential medical examination and treatment
- Be informed and ask questions regarding examinations and treatment given
- The strictest possible confidentiality in incident and medical records⁵
- Have the assistance of campus personnel in obtaining and securing evidence
- Receive current information on campus and community resources
- Be informed of the options available through the college and legal systems
- Be considered as credible as a person reporting any other crime
- Be given the choice to prosecute or not to prosecute
- Be asked only those questions which are relevant to law enforcement investigation or medical treatment
- Be informed of the status and outcome of any student or employee disciplinary proceedings or appeal
- Have feasible class schedule adjustments (without academic or financial penalty) as necessary to minimize the potential contact with the alleged assailant or those associated with the alleged assailant.

⁵ See "Is confidentiality absolute?"

How does City College handle report of a sexual assault?

SFCCD Police Department, the Office of Student Affairs & Wellness, Student Health Services, and the SF Police Department will collaborate to assist you. In the report, your anonymity and confidentiality will be honored to the extent permitted by California law and District policy.

How will confidentiality of my identity be maintained?

In the report of a sexual assault, extremely sensitive information is gathered. To maintain your confidentiality, California law allows you the option of reporting as “Jane Doe,” or “John Doe.” Your name and other identifying information will not be shared unless you give prior written permission or unless California or federal law authorizes someone to receive such information.

Is confidentiality absolute?

No. In instances where you or another person’s safety is in imminent danger, confidentiality is waived. For example, in addition to notifying San Francisco Police Department, City College may need to alert other employees or students about an issue in specific geographic area if the perpetrator has not been identified and/or remains at large. In such an instance, notification about the time, place and circumstances will be made, but you will not be identified. There are several other exceptions to confidentiality which the Dean of Student Affairs & Wellness or the Director of Student Health Services will explain in more details.

What are the College Judiciary Procedures for sexual assault?

You have the option of filing a code of conduct complaint through the Office of Student Affairs & Wellness. If you disclose the identity of the perpetrator(s) during a complaint, the staff may be obligated to proceed with judiciary procedures. Visit the office to ask questions about the procedures, but do not mention the name of the perpetrator until you are sure that you’re prepared to move forward with the process. It is a good idea to bring an advocate with you to visit the Office of Student Affairs & Wellness. The resources listed below have advocates available.

College officials, including the deans, directors, and area coordinators, will notify SFCCD Police Department if they receive a report of a sexual assault. The report will not reveal your name without your permission. However, City College must comply with federal law in providing statistical information for the community.

What are other considerations if I decide to pursue disciplinary action?

Many survivors become frustrated because everyone is telling them what to do or, conversely, everyone seems unwilling to give an opinion. Only you can decide what to do. Taking action against your perpetrator is a step that takes a great deal of courage. Although the decision to proceed has to be made by you, this does not mean that you have to go through the decision-making process alone. In case of sexual assault there are numerous options for you as a survivor to explore if you decide to take disciplinary action. There are resources on campus and in the San Francisco Bay Area to assist survivors. It is important for you to investigate your alternatives carefully. When deciding which path to follow, consider the following: What outcome is desired? What do you as a survivor of a crime want to see happen next? While it is important to recognize the difficulty of presenting and proving these cases, it is also imperative that you examine all your options and rights.

What might I expect to experience after a sexual assault?

After a trauma such as sexual assault, your response may depend on many factors. These include whether or not the assault was particularly violent and caused physical injuries, whether or not you were acquainted with your assailant, and the level of support and care you received after the assault, including from police officers and hospital workers. Most likely, you would experience

what is called an Acute Stress Response in the first several weeks following an incident. Symptoms may include a sense of dissociation, which involves a sense of emotional detachment or numbing, all of which make it difficult to experience pleasure in activities you once found enjoyable. You may have great difficulty in concentration, experiencing the world as rather “unreal” and not being able to complete your usual daily activities. You feel “thrown off balance”. You also may experience fear and helplessness—sometimes to an intense degree. Some individuals find themselves reliving the assault experience (called flashbacks), through recurrent dreams, images, memories, and illusions. You may find yourself avoiding situations which arouse memories of the attack, such as certain activities, places, and people. You may have trouble with your pattern of sleep, feeling easily aroused or startled and experiencing heightened irritability or restlessness. You may find yourself becoming hyper-aware of your surroundings and who and what is going on around you. It may feel hard to ask for help and support, even to the extent of asking family members for assistance. After four weeks, if these symptoms do not diminish, you may be considered to be suffering from Post Traumatic Stress Disorder. It is essential that you allow yourself to receive as much help and support as possible in the weeks following the assault, so that you can quickly put your fear behind you and begin to live and feel normally again.

What are effective ways of approaching rape recovery?

It is extremely important to allow yourself to take advantage of all the assistance offered by the Justice System, Women’s associations, and groups, family members, friends, counseling groups, medical and psychological treatments, etc. Many excellent techniques for treating stress disorder have evolved in recent years. It is essential that you treat yourself with kindness and respect; blaming yourself and feeling guilty and shame are not appropriate responses when you are the victim of a crime. Do not let ANYONE make you feel that you have somehow done something wrong.

What should I do if a friend or acquaintance has been raped or sexually assaulted?

Your friend should report the crime. San Francisco has an excellent Rape Treatment Center at San Francisco General Hospital, which provides 24 hour crisis counseling and medical services for rape victims. Other resources include San Francisco Women Against Rape and Bay Area Women Against Rape in Oakland. The San Francisco Women’s Centers, Women, INC, and the San Francisco Domestic Violence Consortium. Your friend can also call the Victim Resource Line at 1 800 842-8467. The San Francisco Police Department has an excellent group of officers who are trained in dealing sensitively with victims of sexual assault. Your friend may also be eligible for a State-run agency called Victims’ Assistance Program, which will assign a counselor, help with medical or psychological treatment, and provide funds for reimbursement for time lost from work caused by the assault.

What can I say to someone who has been sexually assaulted?

Sometimes simply listening with compassion is the best response. Ask the individual what she or he may need most from you. Determine ways in which she (he) may still feel physically unsafe. Encourage the person to take advantage of all support services available through the College, the City, and the State. They may find relief in participating in a support group. Encourage the survivor to report the crime. Reporting the incident will help them gain useful knowledge. Your encouragement could make a great deal of difference. Please urge the individual to be a “friend to herself (himself)” rather than “re-victimize herself (himself)” with guilt and shame. If you detect that there is a sense of guilt or self-blame, please urge the victim/survivor to treat herself (himself) with compassion.

What are rape drugs?

A rape drug is any substance that renders you incapable of stating “NO” or asserting yourself when unwanted sexual advances are made. Some of these substances include alcohol, marijuana, ecstasy, sleeping pills, but more commonly illegal drugs such as Rohypnal (roofies, rope, R2 etc), Gamma Hydroxy Butyrate (GHB) or Ketamine Hydrochloride. These substances, especially “roofies,” GHB, and Ketamine, cause temporary blackouts, especially when given in conjunction with alcohol. The victim is rendered unconscious, and may subsequently suffer from amnesia concerning the assault. These drugs are dangerous, and it is a felony to give them to an unaware victim.

What are suggested rape prevention strategies?

Know your new acquaintance or date. Be cautious with respect to alcohol. Remember that when you say “No,” it means just that – NO. It is a crime to have sex without your consent, whether or not you have said “No.” Unwanted sex is rape. Let your friends and family know where you will be when you go on date. Avoid areas or situations in which it may be difficult or impossible for you to escape or defend yourself. Take a class which teaches self-defense methods. Reported incidents are included in an annual report concerning crime reporting-related matters, as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistic Acts.

What are the red flag behaviors of a perpetrator of a sexual assault?

Be aware of behaviors that may be warning signs. Watch out for people who:

- Don’t listen to you, ignore what you say, talk over you or pretend not to hear you
- Ignore your personal space boundaries
- Push you to drink beyond your tolerance level or wait to make a sexual advance until you are extremely intoxicated
- Use hostile, possessive, or derogatory language about you
- Do what they want regardless of what you want
- Try to make you feel guilty, or accuse you of being “uptight” if you resist their sexual overtures
- Act excessively jealous or possessive
- Have wrong or unrealistic ideas about women
- Drink heavily

Part II: Other Sexual Misconduct

What is sexual misconduct?

Sexual misconduct includes a range of behaviors such as:

Sexual assault (which includes rape and any kind of nonconsensual sexual contact), sexual harassment, intimate partner violence (dating violence), stalking, voyeurism, and any other conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening, intimidating, or coercing a person, such as intimidation or bullying.

What is domestic violence?

Domestic violence is a “felony or misdemeanor crime of violence” committed by:

- A current or former spouse or intimate partner 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 or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies [under VAWA], or

- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.”

What is dating violence?

Dating violence is defined as “violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors;
 - the length of the relationship;
 - the type of relationship, and
 - the frequency of interaction between the persons involved in the relationship.”

What is stalking?

Stalking is defined as:

Engaging in a course of conduct directed at a specific person, involving repeated (two or more) instances of visual, physical proximity, nonconsensual communication, or verbal, written or implied threats (or a combination thereof), that would cause a person to:

- fear for his/her safety or the safety of others, or
- suffer substantial emotional distress.

Stalking behaviors also may include persistent patterns of leaving or sending the victim unwanted items or gifts that may range from seemingly romantic to bizarre, following or “lying in wait” for the victim, damaging or threatening to damage the victim’s property, defaming the victim’s character, or harassing the victim via the Internet by posting personal information or spreading rumors about the victim.

Whether a relationship is deemed “domestic,” “intimate” or a “dating” relationship will depend upon the facts and circumstances presented in a complaint of misconduct or other proceeding.

What is sexual exploitation?

Sexual exploitation refers to taking the advantage of sexuality and attractiveness of a person to make a personal gain or profit. It is the abuse of a position of vulnerability, differential power, or trust for sexual purposes.

What is intimidation?

Intimidation refers to acts with the intent to frighten into submission, compliance or acquiescence.

What is retaliation?

Retaliation refers to punishment of an individual by the District for engaging in a legally protected activity such as making a complaint of harassment, sexual assault, etc., or participating in an investigation of such a complaint. Retaliation can include any negative educational or employment action, such as discipline, lower grades, differential treatment, demotion, discipline, firing, salary reduction, or job or shift reassignment.

What should I do if I experience sexual misconduct or other violence?

If you are in immediate danger, call 911 or 239-3200, use a yellow emergency callbox, and press the “CCSF Police” button on any campus desk telephone or “#1 on any campus pay telephone. Go to a safe place.

A City College of San Francisco employee or student reporting a recent incident of sexual misconduct should first and foremost, seek medical attention. Medical attention is vital for detecting and treating a range of medical concerns, including sexually transmitted diseases, pregnancy, and injuries. It is also important to seek psychological support. Student Health Services has on-campus, licensed mental health professionals available, as well as information regarding on-campus and community resources for a victim/survivor of sexual misconduct.

In addition, an employee is advised to speak to her/his supervisor; a student is advised to speak to the Dean of Student Affairs & Wellness. Both students and employees should consider contacting the San Francisco Community College District Police Department for reporting or other options as appropriate, including filing a formal complaint with the Title 5/EEO/ADA/Title IX Compliance Office. In the event a formal complaint is not filed, the Title IX Coordinator shall be kept informed of the status of a report of sexual misconduct.

Part III: Sexual Harassment

What is sexual harassment?

Sexual harassment is defined as unlawful discrimination:

In the form 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 workplace or in the educational setting, under any of the following conditions:

- (1) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress;
- (2) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual;
- (3) 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;
- (4) 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 educational institution.

What are the two forms of sexual harassment?

Quid Pro Quo ("this for that") is where a supervisor, manager or other superior employee conditions an employment benefit or continuing employment on another employee's acquiescence to the unwelcome sexual behavior. In the educational setting, when an instructor, administrator or other college employee conditions an academic/educational benefit or continuing education on a student's acquiescence to the unwelcome sexual behavior.

Hostile environment sexual harassment does not require a specific employment or educational benefit(s) be lost or gained. Hostile work environment sexual harassment exists if conduct of an offensive sexual nature has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive environment. Hostile educational environment sexual harassment exists if conduct of an offensive sexual nature has the purpose or effect of unreasonably interfering with a student's educational performance or creating an intimidating, hostile or offensive environment.

The conduct must be "unwelcome"; "pervasive" or "severe"; and "offensive" to a reasonable person of the same gender.

Examples of behaviors which may create either a hostile work or educational environment include, but are not limited to: unwanted sexual advances, verbal sexual advances or propositions; offering employment benefits in exchange for sexual favors; verbal abuse of a sexual nature; graphic verbal commentary about an individual's body; use of sexually degrading words to describe an individual; suggestive or obscene letters, notes or invitations; verbal conduct such as making or using derogatory comments, epithets, slurs, or telling sexually explicit jokes; comments about a person's body or dress; making or threatening retaliation after a negative response to sexual advances; and visual conduct such as leering, making sexual gestures, and/or displaying sexually suggestive objects or pictures, cartoons, calendars or posters.

Was the conduct welcome?

Whether conduct is unwelcome is a fact-based inquiry and requires the answers to some or all of the following questions:

- Who initiated the sexual conduct?
- How did the complainant respond or regard the conduct?
- Did the complainant tell the harasser or another person of his/her discomfort and that the conduct was unwelcome? Did the complainant write a letter, or write in a diary or journal about the incident?
- Did the complainant engage in conduct which suggested that the "harasser's" conduct was welcome?
- Was submission to the conduct explicitly or implicitly made a term or condition of the victim's employment, academic status or progress?
- Was the submission to, or rejection of, the conduct by the victim used as a basis of employment or academic decisions affecting the complainant?

Was the Conduct Severe or Pervasive?

In order to establish a claim for hostile environment, the complainant must allege conduct which a reasonable person of the same gender as complainant considers sufficiently severe or pervasive. The required showing of severity or seriousness of conduct varies inversely with the pervasiveness or frequency of the conduct. *Ellison v. Brady*, 924 F.2d 872 (9th Cir.1991).

Where is Sexual Harassment Found in the Law?

Sexual harassment violates both state and federal law.

1. State Law:

Sexual harassment in the educational and/or work environment is prohibited by California Education Code, sections 221.5, 66271.7, and 72011, as well as Government Code Section 12940 et. seq. The California Education Code prohibits the sexual harassment of all persons in the educational setting, including students. Specifically, Education Code, sections 221.5, 66271.7, and 72011 prohibit sex discrimination in community college districts and Education Code sections 231.5 and 66281.5 prohibit sexual harassment in the educational environment.

The California Fair Employment and Housing Act ("FEHA") and Government Code, section 12940 prohibits the following conduct: For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment or any other person, because of race, religious creed, color, national origin, ancestry...sex or age, to harass an employee or applicant. Harassment of an employee or applicant by an employee other than an agent or supervisor shall be unlawful if the entity knows or should have known of this conduct and fails to take immediate appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

2. Federal Law:

Sexual harassment violates Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Title VII of the Federal Civil Rights Act of 1964: Title VII governs harassment in the work place. Sexual harassment is regarded as a form of unequal treatment based on one's sex and is prohibited.

Title IX: Title IX prohibits the sexual harassment of students. Title IX of the Education Amendments of 1972 is a federal statute prohibiting discrimination on the basis of sex, including sexual harassment in all education programs that receive federal funding. Title IX states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

When May the District Be Found Liable?

1. Student to Student Harassment:

Schools and colleges are liable under Title IX if its students sexually harass other students when the following factors are present: (1) the school knows or should have known of the harassment; and (2) the school fails to take immediate and appropriate corrective action. *Oona R.S. v. McCaffrey*, 118 S.Ct. 1989 (1998).

2. Employee to Student Harassment:

A school district or community college district will be liable for sexual harassment of a student by an employee if (1) an appropriate official had actual knowledge of the harassment; (2) the official had authority to take corrective action to remedy the discrimination; and (3) the official acted with deliberate indifference in his or her failure to respond to the discrimination *Gebser v. Lago Vista*, 118 S.Ct. 1989 (1998).

3. Supervisor to Employee:

Under state law, an employer is generally strictly liable for the harassing conduct of its agents and supervisors. Strict liability has until recently been applied in *quid pro quo* cases and not hostile work environment cases. In 1998, strict liability was extended to hostile work environment claims involving supervisors.

Under Federal law, an employer is subject to vicarious liability for an actionable hostile environment created by a supervisor with immediate or successively higher authority over the employee or *quid pro quo* harassment.

Under circumstances where there is no tangible employment action or significant change in employment status, the employer may still be vicariously liable, but has an affirmative defense available. The affirmative defense is based on two elements: (1) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and (2) the plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities or to avoid harm otherwise. *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998).

4. Employee to Employee Liability for the Acts of Co-Workers:

The Equal Employment Opportunity Commission (EEOC), and most courts, hold that an employer will be liable for co-worker harassment if the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

5. Liability for the Acts of Third Parties:

The EEOC and federal case law make it clear that an employer may be held liable for the acts of its customers, clients, or personnel of other businesses with which the employer has an official relationship. Third party harassment involves hostile work environment claims. The employer can be held liable when the employer (1) knew or should have known of the harassment and (2) failed to take immediate and appropriate corrective action. The most important factor in determining employer liability is the degree of control the employer has over the third party.

For example, in *Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848 (1st Cir.1998), the court held that where the employer encourages its account manager employee to respond as a "woman" to a high level executive customer who was sexually harassing her, the employer had acquiesced in the harassment and therefore was liable for third party sexual harassment. An example of a limited control situation is where a corporate client's employee harasses a package delivery person.

How Does a Complainant Prove Sexual Harassment Occurred?

The plaintiff must establish:

- She/he belongs to a protected group;
- She/he was subject to unwelcome sexual harassment;
- The harassment complained of was based upon gender;
- The harassment complained of affected a term, condition or privilege of employment/education;
- Employer responsibility.

What is the Duty to Investigate?

The U.S. Equal Employment Opportunity Commission requires that an employer investigate allegations of sexual harassment:

“When an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly.”

The California Department of Fair Employment and Housing requires that:

“The Employer's policy should include provisions to ...fully and effectively investigate. It must be immediate, thorough, objective and complete. All those with information on the matter should be interviewed.”

What is the Duty to Prevent and Remediate?

Once an employer knows or should have known of harassment, the remedial obligation begins, *Steiner v. Showboat Operating Company*, 25 F.3d 1459 (9th Cir. 1994). The obligation does not necessarily end when the harasser's conduct stops. Not only must the remedy utilized be reasonably calculated to end the harassment and be disciplinary in nature, but it must also offer more than a short-term solution or result. *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).

The Courts have devised a two prong test: (1) the reasonableness of an employer's remedy will depend on its ability to stop harassment by the person who engaged in harassment; and (2) the remedy must discourage other employees from unlawful conduct.

1. What is an effective prevention program?
 - a. The employer has an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented;
 - b. There is regular in-servicing and training of all staff;
 - c. A procedure is in place for resolving sexual harassment complaints;
 - d. The procedure protects confidentiality to the degree feasible; and
 - e. An anti-retaliation policy is in place.

2. Educational institutions are required to have a written policy on sexual harassment. (Education Code, section 231.5 and 66281.5.)

Part IV: Bystander Intervention

What is bystander intervention?

Bystander intervention is the act of feeling empowered and equipped with the knowledge and skills to effectively assist in the prevention of sexual or other violence. Bystander intervention does not have to jeopardize the safety of the bystander.

What is the “bystander effect?”

The “bystander effect,” or bystander apathy, is a social psychological phenomenon that refers to cases in which individuals do not offer any means of help to a victim when other people are present. The bystander is defined by inaction, complacency and passive participation. The probability of help is inversely related to the number of bystanders. In other words, the greater the number of bystanders, the less likely it is that any one of them will help.

How can intervening as a bystander stop a sexual assault or other violence?

Bystander intervention can play a significant role in a comprehensive approach to sexual violence prevention. It differs from previous approaches in three key ways:

1. Bystander intervention discourages victim blaming and makes sexual violence a community problem, rather than an individual problem.
2. Bystander intervention can play a significant role in a comprehensive approach to sexual violence prevention. When bystanders are approached as allies in ending sexual violence, rather than as potential perpetrators or victims, they are less likely to become defensive.
3. Bystander intervention plays a role in helping to change social and community norms about sexual assault and other violence.

How can one be an effective bystander and help someone needing assistance?

Don’t put yourself in unnecessary danger. Here are some questions to ask before taking action:

1. Am I aware there is a problem or a risky situation?
2. Do I recognize that someone needs help?
3. Do I see others and myself as part of the solution?
4. If I do see myself as part of the solution, so how can I keep myself safe?
5. What are my available options to help the situation? Are there others I may call upon for help?

Once you decide to help, here are five steps to be an effective bystander:⁶

⁶ From Latane, B., & Darley, J. M. (1970), “The unresponsive bystander: Why doesn’t he help?”, New York: Appleton Century Crofts.

1. Watch for signs that an act of sexual violence may occur or is occurring.
2. Identify that the potential victim is at risk and that intervention is appropriate.
3. Decide whether or not to take responsibility to intervene.
4. Decide the most appropriate and safest way to intervene.
5. Implement the decision to intervene safely to diffuse the situation.