

# Stanford

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## 1.7.1 SEXUAL HARASSMENT

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Stanford University strives to provide a place of work and study free of discrimination on the basis of sex, which includes sexual harassment, sexual assault, domestic and dating violence, stalking, and other forms of sexual misconduct. Where such sexual misconduct has occurred, the University will act to stop the misconduct, prevent its recurrence, and discipline and/or take other appropriate action against those responsible. This Guide Memo outlines the University's definitions and policies relating to sexual misconduct and in compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), the Clery Act (20 U.S.C. 1092(f)) and its implementing regulations (34 C.F.R. 668.46), California Education Code sections 67380, 67383 and 67386, and the California Fair Employment and Housing Act of 1959 ("FEHA") California Government Code sections 12900 - 12996.<sup>[1]</sup> This policy also applies to violations of University directives or court orders and acts of intimidation or retaliation relating to the aforementioned conduct or allegations of such conduct.

**Authority:**

Approved by the President.

Enforced under the authority of the Provost, Vice Provost for Student Affairs, and the Vice President for Human Resources. In addition, conduct that violates this policy may also be subject to criminal prosecution and civil litigation.

**Applicability:**

All students, faculty, staff, postdoctoral scholars, affiliates and others participating in University programs and activities, on or off-campus, including overseas programs, or providing services to the University are subject to this Policy.

In conjunction with this Guide Memo, Stanford has multiple disciplinary and administrative procedures for making formal determinations of whether a Policy violation has occurred. Which of these procedures will be used to respond to alleged violations of this Policy depends on the circumstances, including the role of the parties within the University, the location of the incident and relationship to University programs or activities, and the severity of the alleged conduct.

## 1. Policy Statement

Stanford University strives to provide a place of work and study free of discrimination on the basis of sex, which includes sexual harassment, sexual assault, domestic and dating violence, stalking, and other forms of sexual misconduct. Where such sexual misconduct has occurred, the University will act to stop the misconduct, prevent its recurrence, and discipline and/or take other appropriate action against those responsible. This Guide Memo outlines the University's definitions and policies relating to sexual misconduct and in compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), the Clery Act (20 U.S.C. 1092(f)) and its implementing regulations (34 C.F.R. 668.46), California Education Code sections 67380, 67383 and 67386, and the California Fair Employment and

Housing Act of 1959 (“FEHA”) California Government Code sections 12900 - 12996.<sup>[1]</sup> This policy also applies to violations of University directives or court orders and acts of intimidation or retaliation relating to the aforementioned conduct or allegations of such conduct.

## 2. Policy Violations

Prohibited Sexual Conduct is the umbrella term that Stanford uses under this Policy to collectively define different types of misconduct relating to sexual harassment, sexual assault, domestic and dating violence, stalking, or exploitation of a sexual nature. Stanford prohibits all forms of Prohibited Sexual Conduct. Stanford is obligated to comply with both state and federal laws with respect to reports of Prohibited Sexual Conduct, when applicable. It is also a violation of this Policy to engage in Retaliation or Intimidation (as those terms are defined below) or to violate a University Directive or Court Order (as those terms are defined below) related to Prohibited Sexual Conduct or allegations of Prohibited Sexual Conduct.

Regardless of the source of the definition (state, federal, or University), it is a violation of this Policy to commit or attempt to commit any of the acts defined below or to knowingly aid or facilitate another person to commit any act of the acts defined below.

### a. Sexual Harassment

Stanford is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental to the University, and this policy is not intended to stifle teaching methods or freedom of expression generally, nor will it be permitted to do so. However, Sexual Harassment is neither legally protected expression nor the proper exercise of academic freedom. It compromises the integrity of the University, its tradition of intellectual freedom and the trust placed in its members.

#### **Title IX Sexual Harassment (applies to all community members)**

Title IX Sexual Harassment involves conduct, on the basis of sex, that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, *AND* objectively offensive that it denies a person equal educational access; *OR*
- An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct.

#### **Employment-Related Sexual Harassment (applies in employment-related matters)**

Employment-Related Sexual Harassment is conduct that is outside the scope or jurisdiction of Title IX and, therefore is addressed under the applicable procedure to this form of harassment, as described in Section 8, below. In addition, Employment-Related Sexual Harassment may be conduct that is part of overall conduct that rises to the level of a Title IX Sexual Harassment matter. In such scenarios, the employee would be charged with Title IX Sexual Harassment and the University will concurrently review the matter for a violation of Employment-Related Sexual Harassment. Where conduct constitutes both Title IX Sexual Harassment and Employment-Related Sexual Harassment, the Employment-Related Sexual Harassment will not serve as a basis for additional discipline.

Employment-Related Sexual Harassment is conduct, on the basis of sex, that involves one or more of the following:

- Unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature constitute Employment-Related Sexual Harassment when:

- It is implicitly or explicitly suggested that submission to or rejection of the conduct will be a factor in employment decisions or evaluations, or permission to participate in a University activity; OR
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or hostile work environment.

Determining what constitutes Employment-Related Sexual Harassment depends on the specific facts and context in which the conduct occurs. Employment-Related Sexual Harassment may take many forms; subtle and indirect or blatant and overt. For example, it may:

- Be conduct toward an individual of the same or different gender, gender expression, gender identity or sexual orientation;
- Occur between peers or between individuals in a hierarchical relationship;
- Be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior or work performance; or
- Consist of repeated actions or may even arise from a single incident if sufficiently egregious.

Whether the unwanted sexual conduct rises to the level of creating an intimidating or hostile environment is determined using both a subjective standard (that is, a person has been offended by the conduct) and an objective standard (that is, a reasonable person under similar circumstances to the Complainant would find the conduct to be sufficiently severe, persistent OR pervasive so as to interfere with the ability to participate in or benefit from the University's services, activities, or opportunities).

### **University Prohibited Sexual Harassment between Students**

For all student-related matters in a non-employment matter, University Prohibited Sexual Harassment between Students is conduct that is outside the scope or jurisdiction of Title IX, and therefore is addressed under the applicable procedure to this form of harassment. In addition, University Prohibited Sexual Harassment between Students may be conduct that is part of overall conduct that rises to the level of a Title IX Sexual Harassment matter. In such scenarios, the student would be charged with Title IX Sexual Harassment, and the University will concurrently review the matter for a violation of University Prohibited Sexual Harassment between Students. Where conduct violates both Title IX Sexual Harassment and University Prohibited Sexual Harassment between Students, the violation of University Prohibited Sexual Harassment between Students will not serve as a basis for additional discipline.

University Prohibited Sexual Harassment between Students is conduct that involves one or more of the following:

- A student in a position of authority in a student organization conditioning the provision of membership, aid, benefit or service on an individual's participation in unwelcome sexual conduct; OR
- Unwelcome sexual advances, and other visual, verbal or physical conduct of a sexual nature when the conduct has the purpose or effect of unreasonably interfering with an individual's academic performance or creating an intimidating or hostile academic or student living environment.

Determining what constitutes University Prohibited Sexual Harassment between Students depends on the specific facts and context in which the conduct occurs. University Prohibited Sexual Harassment between Students may take many forms: subtle and indirect or blatant and overt. For example, it may:

- Be conduct toward an individual of the same or different gender, gender expression, gender identity or sexual orientation;
- Occur between peers or between individuals in a hierarchical relationship;

- Be aimed at coercing an individual to participate in an unwanted sexual relationship or have the effect of causing an individual to change behavior; or
- Consist of repeated actions or may even arise from a single incident if sufficiently egregious.

Whether the unwanted sexual conduct rises to the level of creating an intimidating or hostile environment is determined using both a subjective standard (that is, a person has been offended by the conduct) and an objective standard (that is, a reasonable person under similar circumstances to the Complainant would find the conduct to be sufficiently severe, persistent OR pervasive so as to interfere with the ability to participate in or benefit from the University's services, activities, or opportunities).

## b. Sexual Assault (applies to all community members)

### Consent

The following definitions apply to all acts of Sexual Assault described below:

- **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 or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), e.g., the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual activity, the activity at issue necessarily occurred "against the person's will."
  - The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Affirmative Consent.
  - In evaluating Affirmative Consent, it cannot be a defense that a respondent's belief that the complainant consented to the sexual activity arose under either of the following circumstances:
    - The respondent's belief in Affirmative Consent arose from the intoxication or recklessness of the respondent.
    - The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant gave Affirmative Consent.
- **Incapacitation:** It shall not be a valid excuse that the respondent believed that the complainant Affirmatively Consented to sexual activity if the respondent knew or reasonably should have known that the complainant was Incapacitated. Incapacitation means the complainant was unable to Affirmatively Consent because the complainant was asleep, unconscious, under the influence of drugs, alcohol, or medication, such that the complainant could not understand the fact, nature, or extent of the sexual activity, or was unable to communicate due to a mental or physical condition. Incapacitation is not necessarily the same as legal intoxication.

### Stranger and Nonstranger Sexual Assault

The following definitions apply to all acts of Sexual Assault described below:

For the purposes of this Policy, a **nonstranger** is someone known to the Complainant, whether through a casual meeting or through a longstanding relationship, including a dating or domestic relationship. A **stranger** is someone unknown to the Complainant at the time of the Sexual Assault.

California law requires universities to describe how a school will respond to instances of stranger and non-stranger Sexual Assault: Stanford applies the same policies and sanctions for both stranger and nonstranger Sexual Assault.

## Title IX & University Sexual Assault[2]

Title IX & University Sexual Assault any sexual act[3] directed against a Complainant without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving consent, including because of Incapacitation.

## Title IX Nonforcible Sexual Violations

Title IX Nonforcible Sexual Violations include the following

- **Incest.** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by California law.[4]
- **Statutory Intercourse Violation.** Nonforcible sexual intercourse with a person who is under the statutory age of consent of California. The age of consent in California is 18.[5]

## University Nonforcible Sexual Violations[6]

University Nonforcible Sexual Violations include conduct involving one or more of the following:

- **Inducing Incapacitation.** Intentionally causing or attempting to cause the incapacitation of another person for the purpose of rendering that person vulnerable to non-consensual sexual activity, such as through alcohol or drugs.
- **Recording/Distributing Sexual Activity.**
  - Recording, photographing, transmitting or distributing intimate or sexual images without the knowledge and consent of all parties involved; *OR*
  - Viewing such content with the knowledge that all parties did not consent to the transmission, or viewing such content with reckless disregard to whether all parties consented to the transmission.

## c. Relationship Violence (applies to all community members)

Relationship Violence includes conduct involving one or more of the following:

- **Dating Violence.**[7] Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

- Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating Violence does not include acts covered under the definition of Domestic Violence
- **Domestic Violence.**[8]An act that could be classified as a felony or misdemeanor crime of violence committed:
  - By a current or former spouse or intimate partner of the Complainant;
  - By a person with whom the Complainant shares a child in common;
  - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California;
  - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- **University Relationship Violence.** University Relationship Violence includes verbal or non-verbal communication with the intent to harm another person emotionally, intimidate another person, and/or exert control over another person, of an ongoing and severe nature such that it would cause a reasonable person to experience severe distress, to be fearful for their safety and/or to significantly alter daily routines and activities in order to ensure their safety. University Relationship Violence may occur in a current or former romantic or intimate relationship regardless of the length of the relationship or gender/gender identity of the individuals in the relationship.

#### **d. Stalking (applies to all community members)[9]**

Stalking includes conduct involving the following:

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.
- For the purposes of this definition:
  - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  - Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

#### **e. Violation of a University Directive or Court Order (applies to all community members)**

Violation of a University Directive or Court Order includes the following:

- **Violation of a University Directive.** The failure to comply with a directive issued by the University that restricts the activities of an individual in connection with an allegation or finding of violation under this Policy.
- **Violation of a Court Order.** The failure to comply with any formal order issued by a state or federal court or authorized police officer that restricts a person's access to another Stanford community member, such as an emergency, temporary or permanent restraining order.

#### **f. Retaliation and Intimidation (applies to all community members)**

It is a violation of this Policy to Intimidate or Retaliate against any person making a complaint or responding to a complaint or against any person participating in the investigation of any such allegation under this Policy (including being the Respondent or participating as a Witness). No person may threaten, coerce, or discriminate against any individual for pursuing or exercising any right or privilege secured by this Policy, or because the individual has made a report or complaint, responded to a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing related to this Policy.

- **Retaliation** includes, but is not limited to, adverse action related to employment, academic opportunities, participation in University programs or activities, or similar punitive action. Retaliation can be direct such as changing an employee's work location, pay or schedule, or for students, changing a grade or denying access to a

program, or it can be indirect such as Intimidating, threatening, or harassing an employee or student who has raised a claim or participated as a witness in an investigation.

- **Intimidation** can be a form of Retaliation, and includes any threatening statement or conduct made with the intent to prevent or dissuade any party or witness from reporting or participating in the process.

All parties to a concern and all persons participating in the investigation of a concern are prohibited from engaging in actions intended to Retaliate or Intimidate directly or through support persons.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of an investigation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation.

### 3. Immediate Steps/Emergency Resources/Supportive Measures

If you or someone you know has experienced Prohibited Sexual Conduct, here are some immediate steps to consider:

- If the individual is in immediate danger, or believes there could be an ongoing threat to the individual or the community, please call 911 or 9-911 from a campus phone or use a blue emergency phone tower on campus.
- The individual that experienced the conduct is encouraged to contact the police, although the individual is not required to make a report to the police. For Prohibited Sexual Conduct that occurs on the Stanford campus, individuals can contact the Stanford Department of Public Safety at (650) 723-9633. For an off-campus incident, individuals can call the local police jurisdiction: Palo Alto, (650) 329-2307; Menlo Park, (650) 325-4424. University officials also will assist individuals in contacting local law enforcement authorities, if the individual requests assistance. If the individual believes that there is an ongoing threat to safety from a particular individual, the individual may request an emergency protective restraining order from a California police officer.
- California law also provides that individuals who experience sexual violence are encouraged to preserve evidence and to note the identity and location of Witnesses. Contacting law enforcement to make a report allows for forensic evidence to be collected, including a SART exam if needed, which may be helpful if a decision is made to pursue criminal charges. For more information about how to obtain a SART exam, see: <https://sexualviolencesupport.stanford.edu/> [1].
- Supportive Measures are available with or without filing a complaint and regardless of whether the university has jurisdiction over an alleged incident. Supportive Measures will be different for every matter and will be based on individualized review. Stanford offers confidential counseling to community members, through the Confidential Support Team for students, and through the Faculty/Staff HELP Center for others. Other Supportive Measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Title IX Coordinator/Director of SHARE or Deputy Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator/Director of SHARE or Deputy Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures.

### 4. Reporting Prohibited Sexual Conduct or other Policy Violations

All reports of Prohibited Sexual Conduct or other violations of this Policy should be reported to the **Stanford Title IX Coordinator/Director of SHARE** at Kingscote Gardens, Suite 240, 419 Lagunita Drive, Stanford, CA 94305, [titleix@stanford.edu](mailto:titleix@stanford.edu) [2], (650) 497-4955.

Any person may report violations of this Policy (whether or not the individual reporting is the person alleged to be the victim of the Policy violation), in person, by mail, by telephone, or by email,<sup>[10]</sup> using the contact information listed above. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator/Director of SHARE.

For reports of violations under this Policy, the following information (if known) should be provided to the SHARE Title IX Office:

- Name of Complainant
- Complainant's role within the university (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow, alumni, other [describe])
- Name of Respondent
- Respondent's role within the university (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow)
- Date of the incident
- Location of the incident
- Time of the incident
- Nature of the conduct (that is, provide specific details of the report)
- Date of previous report (if any)
- To whom any previous report was made (if any)

## Duty to Report

Except for University-recognized Confidential Resources (defined below), the following University staff members with knowledge of unreported concerns relating to violations of this Policy are considered Responsible Employees and are required to promptly report such allegations to the Title IX Coordinator/Director of SHARE:

- Faculty;
- Supervisors and Managers;
- Human Resources representatives;
- Principal Investigators/Lab Directors or Coordinators;
- Staff within:
  - University Human Resources and Employee & Labor Relations;
  - Residential Education (including RAs and CAs, acting in their capacities as student staff members);
  - Vice Provost for Student Affairs;
  - Vice Provost for Undergraduate Education;
  - Vice Provost for Graduate Education; and
  - (Except the Ombuds) Institutional Equity and Access; and
- Staff who have responsibility for working with students in the following capacities:
  - Teaching, including lecturers, instructors, and student instructors/teaching assistants/course assistants acting in their teaching capacities);
  - advising;
  - coaching or mentoring;
  - career development or internship/externship programs; or
  - overseas studies/study abroad.



These individuals are required to report the information received to the Title IX Coordinator/Director of SHARE, regardless of whether the person who is the subject of the Policy violation has or has not indicated they will contact the appropriate office.

Separate from the above, notice of a report of Prohibited Sexual Conduct to the following individuals constitutes actual notice triggering the University's obligations under Title IX:

- **Title IX Coordinator/Director of SHARE**
- **Deputy Title IX Coordinator/Director of SHARE**
- **Other Senior Leaders**
  - President
  - Provost
  - Deans of Schools
  - Director of Athletics (DAPER)
  - Vice Presidents
  - Vice Provosts

## External Reports

Certain Prohibited Sexual Conduct may also violate state and federal law. In addition to the internal resources just described, individuals may pursue complaints directly with the government agencies that deal with unlawful harassment and discrimination claims, e.g., the [U.S. Equal Employment Opportunity Commission \(EEOC\) \[3\]](#), the [Office for Civil Rights \(OCR\) of the U.S. Department of Education \[4\]](#), and the [State of California Department of Fair Employment and Housing \(DFEH\) \[5\]](#). Please note that a violation of this policy may exist even where the conduct in question does not violate the law.

## 5. Privacy and Confidentiality

For the purpose of this Policy, Privacy and Confidentiality have distinct meanings.

- **Privacy** means that information related to a complaint will be shared with a limited number of University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are responsible for the University's response to violations of this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), and the privacy of employee records will be protected in accordance with California law and University policy.
- **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources.

The University will make reasonable and appropriate efforts to preserve an individual's Privacy and to protect the Confidentiality of information. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee Confidentiality relating to incidents of Prohibited Sexual Conduct except where those reports are privileged communications to Confidential Resources. Even then, there are exceptions to maintaining

Confidentiality set by law; for example, physicians and nurses who treat any physical injury sustained during a sexual assault are required to report it to law enforcement. Also, physicians, nurses, psychologists, psychiatrists, teachers and social workers must report a sexual assault committed against a person under age 18.<sup>[11]</sup>

Except for Confidential Resources, information shared with other individuals is not legally protected from being disclosed. However, the University takes requests for Privacy and Confidentiality seriously, to the extent it can do so while at the same time fulfilling its responsibility to provide a safe and nondiscriminatory environment for all students and the University community. The University in such circumstances will make sure the Complainant is aware he/she/they are protected from Retaliation.

## Reports to Law Enforcement and Required Notifications

As required by the Clery Act, all disclosures to any University employee of an on-campus or “non-campus property” sexual assault must be reported for statistical purposes only (without personal identifiers) to the Stanford University Department of Public Safety, which has the responsibility for tabulating and annually publishing sexual assault and other crime statistics. To promote public safety, the Department also alerts the campus community to incidents and trends of immediate concern.

When the allegations described could be a crime under California law,<sup>[12]</sup> University staff members designated as Campus Security Authorities [6] are also required by California law to notify the Stanford University Department of Public Safety. Under California law, violent crimes, including sexual assault, and hate crimes must be reported immediately by calling 9-1-1 or 650-329-2413. Campus security Authorities can report other crimes at <https://police.stanford.edu/pdf/CSA-Report-Form.pdf> [7]. (For more information see: <https://police.stanford.edu/pdf/CSA-Flowchart.pdf> [8]).

Except in the event the person who is the subject of the potential criminal act is a minor, the name of this individual should not be released to the Department of Public Safety without the Complainant’s consent.

In California, a police officer is required to ask a victim of sexual assault and domestic violence (specifically section 273.5 Penal Code) if they want their name to remain confidential (Penal Code 293(a)). If a victim elects to have their name remain confidential, the police will not list the victim's name in a crime log or release it to University officials without permission (Penal Code 293(d)). If the District Attorney elects to prosecute a sexual assault, the name of an adult victim may be subject to disclosure.

## Consultation/Confidential Resources

The University makes available Confidential Resources for consultation regarding reports of violations of this Policy or other conduct, whether or not a Policy violation has actually occurred or the person seeking information is a Complainant, a person who believes their own actions may be the subject of criticism (even if unwarranted), or a third party. Often there is a desire that a consultation be confidential or “off the record.” This can usually be achieved when individuals discuss conduct without identifying the other persons involved, and sometimes even without identifying themselves. However, **when a name or details sufficient to identify an individual are provided to a Responsible Employee (defined above), a consultation can no longer be considered “off the record” and then needs to be reported.** Confidential Resources, by contrast, are not required to report to or share any information with the University. Confidential Resources do not disclose information received by them with any other office or person, including the SHARE Title IX office, and therefore meeting with a Confidential Resource will never lead to a University response or Investigation. However, Confidentiality does not extend to reasonable belief that a minor (under age 18) has been harmed or is at risk of being harmed, which by law must be reported to law enforcement or child protective services. <sup>[13]</sup> Similarly, if a client, or a close relation of the client, makes a specific threat of planning to kill or seriously harm another person to a Confidential counselor, this also requires a report to law enforcement. In

addition, the University cannot guarantee that conversations with the Ombuds or a dean at the Office for Religious Life at Memorial Church might not be subject to disclosure in legal proceedings or pursuant to other legal process. Communications with attorneys, medical doctors, and mental health care providers, on the other hand, may be privileged under law.

The University's Confidential Resources and Confidential community resources can be found at <https://titleix.stanford.edu/confidential-counseling-university-resources> [9].

## 6. Required Prevention Education/Training Programs

### For Faculty, Staff and Postdoctoral Scholars

In compliance with California Government Code Section 12950.1, all supervisors (including faculty) who are employed by Stanford are required to participate in a minimum 2-hour sexual harassment training at least every two years. Other topics covered by this program include illegal discrimination, abusive behavior in the workplace, forms of sexual violence, how to be an active "upstander," supervisor's responsibility to report and how to appropriately respond to reports of Prohibited Sexual Conduct within the student and staff communities.

Further, Stanford requires non-supervisory employees to participate in a minimum 1-hour sexual harassment prevention training at least every two years. All new employees who are not faculty and who do not supervise other workers will be provided Harassment Prevention Training for Non-Supervisory Employees generally within six months of hire. Temporary and casual employees will generally be provided training within 30 calendar days of the date of hire. Participants will learn how to recognize sexual misconduct in the workplace and about campus resources. Other topics covered by this program include illegal discrimination, abusive behavior in the workplace, forms of sexual violence, how to be an active "upstander," and how to report and appropriately respond to reports of sexual violence or harassment within the student and staff communities.

Failure to complete assigned prevention education programming/training may result in corrective action.

### For Students

Stanford requires all incoming students, graduates and undergraduates, to complete prevention education programming prior to enrolling at Stanford, generally through an assigned online course. Additionally, undergraduates are expected to participate in additional programming on campus, or virtually. The university or departments may require additional programming for students, such as student athletes, or students participating in Greek life. Failure to complete assigned prevention education programming can result in an enrollment hold.

Student staff and student teaching assistants are required to complete additional training in order to fulfill their student staff or teaching responsibilities. Failure to complete the training can result in termination from the role.

## 7. Sanctions

Violations under this Policy are extremely serious and decision-makers are expected to impose appropriate discipline, University interventions, or remedial or corrective actions for each matter up to and including discharge (for faculty, staff, or other employees), expulsion (for students), removal from campus, and/or other appropriate sanctions or actions. Depending on the circumstances, Respondents may be removed from University programs, placed on administrative leave, and/or removed from campus pending the finding of responsibility for a violation of this Policy.

## 8. Procedures for Policy Violations

The University has several procedures available to resolve allegations of violations of this Policy. In general, the University will investigate or otherwise respond to reports of violations of this Policy in circumstances in which either:

- Both the Respondent and the Complainant are subject to this Policy and there is a connection between the allegations and University programs or activities; OR
- The Respondent is subject to this Policy and investigation and response are necessary for the proper functioning of the University, including the safety of members of the University community or preservation of a respectful and safe climate at the University.

Which procedure the University will use to investigate and resolve a violation of this Policy depends on the circumstances of the report, including the respective roles of the Complainant and Respondent at the University, the location of the alleged Policy violation and relationship to University programs or activities, and the severity of the alleged conduct. More information about available procedures can be found at <https://titleix.stanford.edu/investigationgrievance-administrative-policy-and-procedures> [10].

Procedures specific to Employment-Related Sexual Harassment are as follows:

### Procedures for Employment-Related Sexual Harassment

#### University Intervention

Depending on the circumstances and taking into account a Complainant's request for Confidentiality, a University Intervention in the workplace or academic setting may be attempted. The Intervention may be led by Human Resources professionals, Title IX staff members, the Ombuds, other faculty or staff, or sometimes an outside party unrelated to the University. An Intervention is an action to address a concern without a formal investigation. This process is appropriate when the allegation, if true, would not rise to the level of a Policy violation, but the conduct is nonetheless objectionable. Examples of this conduct could include inappropriate jokes and comments. This process is also appropriate when the Complainant does not want the University to conduct a full investigation and the University considers an intervention an appropriate step to address the concerns. The goal is to address the reported behavior to the extent possible while honoring the wishes of the Complainant.

In addition, in the event the person who is the subject of the Policy violation decides not to submit a complaint, the University, consistent with its obligations under California and federal law, reserves the discretion to take prompt, remedial action upon the receipt of notice of a potential Policy violation to cause any harassing behavior to stop.

#### Investigations

If significant facts are contested, a prompt investigation may be undertaken. The investigation will be conducted by impartial and trained personnel in a way that respects, to the reasonable extent possible bearing in mind the safety of the campus community, the privacy of all of the persons involved. In appropriate cases, internal or external professional investigators may be asked to conduct or assist in the investigation. In making a finding, the investigator will use the "Preponderance of the Evidence" standard: is it more likely than not that the reported allegations are true. The University will strive to complete investigations as expeditiously as possible. The results of the investigation may be used in the third party intervention process or in a grievance or disciplinary action.

#### Disciplinary Procedures, Grievances and/or Appeals

In appropriate cases, disciplinary procedures may be initiated. The applicable disciplinary procedure depends on the status of the individual whose conduct is in question (the Respondent).

Depending upon the nature of the remedial or corrective action imposed, the Respondent may be able to appeal or grieve the disciplinary result. The applicable appeal/grievance procedure depends on the circumstances and the position of the Respondent. Generally, the process consists of the individual's submission of a complaint, a fact-finding process or investigation by a University representative, followed by a decision and, in some cases, the possibility of one or more appeals, usually to Stanford administrative officers at higher levels.

### **Indemnification and Costs**

The question sometimes arises as to whether the University will defend and indemnify a Stanford employee accused of sexual harassment. California law provides, in part, "An employer shall indemnify [its] employee for all that the employee necessarily expends or loses in direct consequence of the discharge of his/her duties as such..." The issue of indemnification depends on the facts and circumstances of each situation. Individuals who violate this policy, however, should be aware that they and/or their schools, institutes, or other units may be required to pay or contribute to any judgments, costs and expenses incurred as a result of behavior that is wrongful and/or contrary to the discharge of the employee's duties. In general, see Administrative Guide Memo 2.4.6 [11].

### **Recordkeeping**

The SHARE Title IX Office will track reports of Employment-Related Sexual Harassment for statistical purposes and report at least annually concerning their number, nature and disposition to the University President through the Provost. University decision-makers have a responsibility to keep the SHARE Title IX Office informed about the outcome of cases.

The SHARE Title IX Office may keep confidential records of reports of Employment-Related Sexual Harassment and the actions taken in response to those reports and use them for purposes such as to identify individuals or departments likely to benefit from training so that training priorities can be established.

### **Policy Footnotes**

[1] This Policy is also designed to comply with the Violence Against Women Act ("VAWA") (42 U.S.C. 13925) and its implementing regulations (24 C.F.R. 5.2001) if reauthorized.

[2] Section 106.30(a) of the Title IX regulations provides that "sexual assault" for purposes of Title IX is defined in 20 U.S.C. 1092(f)(6)(A)(v), which in turn provides that "[t]he term 'sexual assault' means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation." The definitions for forcible and nonforcible sex offenses are derived from the FBI's Summary Reporting System and/or National Incident-Based Reporting System. On August 13, 2020, OCR provided guidance that a university may use definitions from either system, so long as the university includes in its definition of sexual assault all forcible and nonforcible sex offenses described by the FBI—regardless of whether the FBI system uses the label forcible or nonforcible or requires force as an element. Consistent with this guidance, Stanford has elected to use the definitions from each system that provide the most flexibility and that do not use the requirement of force as an element. Stanford has also made slight, non-substantive modifications to the FBI definitions for clarity and consistency with defined terms used within this Policy, such as "Complainant," "Affirmative Consent," and "Incapacitation."

[3] The following sexual acts covered by this definition are required to be included by federal regulations and are derived from the FBI's Summary Reporting System and National Incident-Based Reporting System User Manual definitions:

- **Rape.** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant.
- **Sodomy.** Oral or anal sexual intercourse with another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without the Affirmative Consent of the Complainant, including in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.

[4] This definition is derived from the FBI's National Incident-Based Reporting System User Manual.

[5] This definition is derived from the FBI's National Incident-Based Reporting System User Manual. See also [footnote 11](#) for information regarding reporting requirements for this Policy violation.

[6] Note that it is possible that some instances of University Nonforcible Sexual Violations might also rise to the level of Title IX Sexual Harassment, such as secretly recording and broadly posting an individual engaged in sexual activity.

[7] Section 106.30(a) of the Title IX regulations provides that "dating violence" for purposes of Title IX is defined in 34 U.S.C. 12291(a)(10). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Policy.

[8] Section 106.30(a) of the Title IX regulations provides that "domestic violence" for purposes of Title IX is defined in 34 U.S.C. 12291(a)(8). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Policy.

[9] Section 106.30(a) of the Title IX regulations provides that "stalking" for purposes of Title IX is defined in 34 U.S.C. 12291(a)(30). This definition is derived from that section, with non-substantive modifications for clarity and consistency with this Policy.

[10] Consistent with FEHA, the University does not require a complaint of Prohibited Sexual Conduct to be in writing, but the University's ability to respond to a complaint that is not in writing may be limited, as provided in the Title IX Procedure.

[11] University staff members with a duty to report are required to report instances of Statutory Rape under this Policy to the Title IX Coordinator/Director of SHARE only as consistent with California Penal Code sections 11165.1, 11165.9, and 261.5(d), which provide that sexual intercourse between an adult and a minor are only required to be reported when one person is 21 years of age or older and the other person is under 16 years of age.

[12] Questions about whether conduct could be a crime should be directed to the SHARE Title IX Office or Department of Public Safety.

[13] Individuals who meet the definition of a mandated reporter under California Penal Code sections 11165.7, 11166, and 11167, must report those incidents of child abuse and neglect as directed by the applicable statute. A person under the age of 18 years of age is a minor subject to these provisions. In addition, physicians and nurses who treat any physical injury sustained during sexual violence are required to report such cases to law enforcement. See also footnote 11 .

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#### **Links**

- [1] <https://sexualviolencesupport.stanford.edu/>
- [2] <mailto:titleix@stanford.edu>
- [3] <http://www.eeoc.gov/>
- [4] <http://www2.ed.gov/about/offices/list/ocr/index.html>
- [5] <http://www.dfeh.ca.gov/>
- [6] <https://police.stanford.edu/security-report.html>
- [7] <https://police.stanford.edu/pdf/CSA-Report-Form.pdf>
- [8] <https://police.stanford.edu/pdf/CSA-Flowchart.pdf>
- [9] <https://titleix.stanford.edu/confidential-counseling-university-resources>
- [10] <https://titleix.stanford.edu/investigationgrievance-administrative-policy-and-procedures>
- [11] <https://adminguide.stanford.edu/chapter-2/subchapter-4/policy-2-4-6>