

The California State University:

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April 2, 2019

Dear Campus Community,

I am writing to inform you of a change in the way San Jose State University will be processing student complaints of sexual assault and other forms of sexual misconduct allegedly committed by other students. In January, a California court--whose pronouncements are binding on all universities in the state--ruled that when a student is accused of sexual misconduct and faces suspension or expulsion, and the credibility of the parties or witnesses is central to the case, the accused student (the respondent) has a right to a live hearing at which the complaining student (the complainant) is subject to questioning, either by the respondent, the respondent's advisor or a hearing officer. This ruling has necessitated a change in the California State University (and SJSU) procedures governing complaints accusing students of sexual misconduct. CSU has chosen the hearing officer model rather than direct questioning by the respondent or the respondent's advisor.

For the last several years prior to the court ruling, such complaints have been resolved through an SJSU investigation process in which the investigator makes factual findings and a determination about whether the respondent violated policy, and the respondent, if found to have violated policy, has a right to a hearing concerning what sanctions should be issued. Both the determination and the sanctions issued are subject to appeal to the Chancellor's Office. This process is described in more detail in the California State University (CSU) Executive Orders 1097 and 1098 (revised March 29, 2019).

In compliance with the court ruling, the CSU has devised *revised policy* for all CSU campuses which applies only to cases that meet the following three criteria:

- Student (respondent) is accused of "Sexual Misconduct" as defined by Executive Orders (EOs) 1096/1097 (Revised March 29, 2019);
- Student accused of "Sexual Misconduct" faces possible suspension or expulsion; and
- The credibility of the accuser (complainant) or other witnesses is central to a determination of whether the accused student engaged in "Sexual Misconduct"

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In cases that meet all three of these criteria, the complainant and the respondent have a right to a hearing conducted by a Hearing Officer, who will make factual findings and a determination about whether the respondent violated university policy. In pending SJSU cases fitting these criteria, the parties have been informed of the changes. Cases of sexual harassment, dating and domestic violence, stalking, pregnancy status discrimination, and gender-based discrimination as those terms are defined in the CSU Executive Orders **will not be** affected by this interim policy change and therefore will not require a hearing, unless the complaints also allege sexual misconduct. These complaints will proceed as required by Executive Orders 1096 and 1097 (revised March 29, 2019).

These changes do not affect SJSU's commitment to the safety and well-being of our students, faculty, and staff, which are of utmost importance. The Title IX office continues to intake, review, and process all complaints involving sex and gender discrimination and harassment, including sexual misconduct, sexual harassment, dating and domestic violence, and stalking, in accordance with Executive Orders 1096 and 1097 (Revised March 29, 2019). The Title IX Office, Survivor Advocate, and Respondent Consultant will continue to provide accommodations and support for survivors and for those who are accused.

We are working diligently to provide support and to be sensitive to the rights of all parties whose cases will be governed by the interim policy. The Office of Diversity, Equity, and Inclusion and Title IX Office will host the following information sessions that are open to all members of the SJSU community:

- Tuesday, April 9, 2 to 3 p.m., Diaz Compean Student Union Room 2A
- Wednesday, April 17, 10:30 a.m. to 11:30 a.m., Student Union Room 2B

In the meantime, you may find answers to some of your questions in this [FAQ document](#) and in the newly issued Executive Orders [1096](#), [1097](#), and [1098](#). If you have additional questions or need counsel, please feel free to email me at kathleen.wonglau@sjsu.edu or contact my office at 408-924-8168. In addition, Title IX Coordinator Tracey Tsugawa can also be reached via email at tracey.tsugawa@sjsu.edu or by phone at 408-924-7289.

Sincerely,
Kathleen Wong(Lau)
Chief Diversity Officer