

San José State University
Title IX Office
Sexual Misconduct Reported Incidents for Fiscal Year 2015-2016¹

Providing an environment free from sexual misconduct is of the highest priority for San José State University (SJSU). Sexual misconduct includes stalking and dating and domestic violence, all of which are not tolerated at SJSU. Preventing and remedying sexual misconduct is a campus wide responsibility, led by the University's Title IX Office in the Office of Diversity, Equity & Inclusion. The Title IX office oversees the implementation and enforcement of the appropriate policy requirements. Specifically, the Title IX Office ensures compliance with California State University Executive Orders 1095, 1096, 1097 and 1098. These Executive Orders provide extensive guidance on prevention measures, education and training, investigation procedures and institutional requirements with respect to sexual misconduct.

Starting this Fall 2016, Executive Order 1095 requires the California State Universities to publish reports on sexual misconduct incidents annually for the prior fiscal year without disclosing any information that would reveal the identities of the individuals involved. Sexual harassment is excluded from the reporting requirement because the focus is on sexual violence on campus. In the interest of transparency for the SJSU campus community, this report goes above and beyond the requirements for sexual misconduct set forth in Executive Order 1095. The following data and explanations comprehensively address sexual misconduct incidents, which include the following: sexual misconduct (sexual assault, sexual battery, rape and acquaintance rape), stalking, and dating and domestic violence. Please see the Appendix for definitions of these prohibited types of conduct.

Proactive prevention measures, education and training are implemented in order to promote compliance with the University's sexual misconduct policies. Education is the best tool to combat sexual violence. SJSU utilizes various effective approaches to educate students, faculty and staff, including mandatory training and a wide array of awareness programs. In addition, the University acts promptly when it learns of potential sexual misconduct involving students, faculty or staff. The Title IX Office immediately provides help for the victim, offering comprehensive resources for emotional, mental and physical support, as well as protective orders. The Title IX Office takes appropriate action to address any reported incident, which may include an investigation, interim measures or administrative actions. Interim measures for students might include No Contact Orders, academic accommodations, changes to University Housing and/or Interim Suspension of the Respondent (accused); for faculty and staff, such measures might include No Contact Orders, suspension of the Respondent (accused) and/or changes to work schedule.

The Title IX Office is responsible for responding promptly and effectively to reports of sexual violence in accordance with the requirements of the Executive Orders. The University takes sexual misconduct extremely seriously and expects any incidents to be reported to the Title IX Office. Faculty and staff (i.e., all employees) are made aware during their mandatory yearly training that they have a duty to report potential sexual

¹ The data included is based on the date the report was received, not the date of the incident reported. Included in the data below are reports received between July 1, 2015 and June 30, 2016.

misconduct incidents to the Title IX Office.² Specifically, employees are expected to elevate concerns to the Title IX Office immediately so steps can be taken to determine whether the alleged conduct may constitute prohibited conduct, stop the alleged conduct, investigate if appropriate, and remedy the effects of the conduct. Regardless of whether the Title IX Office determines that the reported conduct is within the scope of the Executive Orders or whether the matter is addressed with or without an investigation, reports require a coordinated response including but not limited to conducting an initial inquiry, providing advocacy services and support, referring to and following the appropriate administrative process, and providing relief and resolution.

In many instances, the Title IX Office is responsible for conducting formal investigations of sexual misconduct matters. It is important to note at the outset that in every case in which reports were resolved without investigation in the matters described below, it was due to the Complainant (victim/survivor) not wishing to move forward and not cooperating, which made it impossible for the Title IX Office to effectively investigate the matter. San José State University respects a Complainant's right to not participate in an investigation. Various University offices and entities, including the Title IX Office, immediately provide resources to Complainant upon receiving a report of sexual misconduct irrespective of whether the individual wishes to proceed with an investigation.

Following is San José State University's reported data on sexual misconduct incidents for reports received during Fiscal Year 2015-2016 (July 1, 2015 and June 30, 2016), without disclosing any information that would reveal the identities of the parties involved. The data below has been cross-referenced with the applicable data in the SJSU University Police Department's Annual Security Report & Fire Safety Report, which covers the calendar year, not the Fiscal Year.³

² Reports of sexual misconduct by staff and faculty have started increasing from July 1, 2015 and June 30, 2016 to the next fiscal year. As the Title IX Office continues its outreach and education efforts regarding employees' duty to report, such reporting will likely rise. The Title IX Office is committed to increase reporting from employees, as well as students' self-reporting of sexual misconduct incidents.

³ In October of each year, SJSU University Police Departments publishes this report in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. The report contains important safety information, SJSU policies, and crime statistics for the previous three years. For the most recent report (for years 2013-2015), please see http://www.sjsu.edu/police/docs/asr/annual_safety_report_2016.pdf.

Overall

The total number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received. ⁴	40
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which a Student is the Respondent.	23
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which an Employee is the Respondent.	0
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which a Third Party ⁵ is the Respondent.	10
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which a Student is the Complainant.	38
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports received in which a Third Party is the Complainant.	2
Number of sexual misconduct, dating or domestic violence, and stalking reports pending at the end of the period.	3

Types of Cases

The number of Sexual Misconduct/Sexual Battery cases reported.	10
The number of Sexual Misconduct/Rape cases reported.	9
The number of Stalking cases reported.	7
The number of Dating and Domestic Violence cases reported.	16
TOTAL (includes 2 reported cases with Dating Violence and Stalking complaints)	42

⁴ No Sexual Misconduct, Dating and Domestic Violence, and Stalking reports were received involving employees during the covered period. All received reports involved students as Complainants, Respondents or both parties. In addition, 2 reported cases involved both Dating Violence and Stalking complaints.

⁵ Third-party refers to a Respondent known by the Complainant who was not affiliated with the campus.

Investigations

The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports that were investigated. ⁶	5
<p>The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking investigations in which the Respondent was held responsible, including a description of the final sanction. Specifically:</p> <ol style="list-style-type: none"> 1) Dating violence with Student Complainant and Student Respondent. Sanction of expulsion. 2) Sexual Misconduct/Sexual Battery with Student Complainant and Student Respondent. Sanction of one-year suspension, one-year ban from campus, mandated counseling required to re-enroll, no enrollment for two years and future disciplinary probation. 3) Sexual Misconduct/Sexual Battery with Student Complainant and Student Respondent. Sanction of five-year suspension, one-year ban from campus, mandated sexual assault program required to re-enroll. 4) Dating violence with Third Party Complainant and Student Respondent. Sanction of removal from University housing and from club/sport/program. 	4
<p>The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking investigations in which the evidence was found insufficient to hold the Respondent responsible.</p> <ul style="list-style-type: none"> • Sexual Misconduct/Rape with Student Complainant and Student Respondent. Insufficient evidence for finding a violation, Student Complainant did not wish to cooperate. Administrative Hold placed on Student Respondent with required conditions for re-enrollment. 	1
The number of Sexual Misconduct, Dating and Domestic Violence, and Stalking reports resolved without investigation, including a description of the resolution and/or reason for no investigation. ⁷	35

⁶ No Informal or Early Resolutions were implemented. All of the investigations described in the data are Formal Investigations.

⁷ It is important to reiterate that in every case in which reports were resolved without investigation (i.e., all 35 cases), it was due to the Complainant (victim/survivor) not wishing to move forward and not cooperating, which made it impossible for the Title IX Office to effectively investigate the matter. In each of these cases, SJSU offered support resources to the Complainant.

Matters for Which Formal Investigations Were Not Initiated

	Type of Complaint	Description	University Response or Outcome
1	Sexual Misconduct/Rape	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
2	Stalking	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
3	Sexual Misconduct/Rape	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
4	Sexual Misconduct/Rape	Student Complainant, Third Party Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
5	Sexual Misconduct/Rape	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
6	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
7	Sexual Misconduct/Sexual Battery	Student Complainant, Unknown Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
8	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
9	Stalking	Student Complainant, Unknown Respondent	Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.
10	Dating Violence	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant’s participation, or against Complainant’s wishes.

11	Dating Violence	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
12	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
13	Dating Violence	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
14	Dating Violence Stalking	Student Complainant, Third Party Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
15	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed.
16	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
17	Dating Violence	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
18	Sexual Misconduct/Sexual Battery	Student Complainant, Third Party Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed.
19	Dating Violence Stalking	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
20	Stalking	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
21	Sexual Misconduct/Rape	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.

22	Dating Violence	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
23	Dating Violence	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
24	Dating Violence	Student Complainant and Cross-Respondent, Student Respondent and Cross-Complainant	Resources provided to both parties and provided options for pursuing the matter. Insufficient information to proceed without either Complainant's participation, or against either Complainant's wishes.
25	Dating Violence	Third Party Complainant, Student Respondent	Resources provided to Respondent. Insufficient information to proceed without Respondent's participation.
26	Stalking	Student Complainant, Unknown Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed.
27	Dating Violence	Student Complainant, Student Respondent	Resources provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
28	Dating Violence	Student Complainant, Third Party Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
29	Sexual Misconduct/Sexual Battery	Student Complainant, Student Respondents	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
30	Dating Violence	Student Complainant and Cross-Respondent, Student Respondent and Cross-Complainant	Resources provided to both parties and provided options for pursuing the matter. Insufficient information to proceed without either Complainant's participation, or against either Complainant's wishes.
31	Stalking	Student Complainant, Unknown Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.

32	Sexual Misconduct/Rape	Student Complainant, Unknown Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed.
33	Sexual Misconduct/Rape	Student Complainant, Third-Party Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
34	Dating Violence	Student Complainant, Student Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed without Complainant's participation, or against Complainant's wishes.
35	Sexual Misconduct/Rape	Student Complainant, Unknown Respondent	Resources and accommodations provided to Complainant and provided options for pursuing the matter. Insufficient information to proceed.

Please direct any questions regarding this report to the San José State University Title IX Office at (408) 924-7290 or titleix@sjsu.edu.

Appendix

The California State University (CSU) is required to adopt and publish complaint procedures that provide for prompt and equitable resolution of complaints regarding sexual misconduct, stalking, and dating and domestic violence. Executive Orders 1096 and 1097 set forth the CSU's policies and definitions of these types of prohibited conduct.

- Executive Order 1096, revised October 5, 2016, entitled “Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Employees and Third Parties and *Procedure* for Addressing Such Complaints by Employees and Third Parties” is the appropriate systemwide procedure for all complaints made by Employees and Third Parties against the CSU, another CSU Employee, a CSU Student or a Third Party.
- Executive Order 1096: http://notalone.sjsu.edu/policy_information/EO%201096.pdf
- Executive Order 1097, revised October 5, 2016, entitled “Systemwide *Policy* Prohibiting Discrimination, Harassment, Retaliation, Sexual Misconduct, Dating and Domestic Violence, and Stalking Against Students and Systemwide *Procedure* for Addressing Such Complaints by Students” is the appropriate systemwide procedure for all complaints made by CSU Students against the CSU, a CSU Employee, another CSU Student, or a Third Party.
- Executive Order 1097: http://notalone.sjsu.edu/policy_information/EO%201097.pdf

Executive Orders 1096 and 1097 include identical definitions for sexual misconduct (sexual assault, sexual battery, rape and acquaintance rape), stalking, and dating and domestic violence, described below:

Dating Violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.⁸ This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self, or another. Abuse does not include non-physical, emotional distress or injury.

Domestic Violence is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the Respondent has a child; someone with whom the Respondent has or had a dating or engagement relationship; or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate, or sexual relationship. Factors that may determine whether persons are cohabiting include, but are not limited to: (1) sexual relations between the Parties while sharing the same living quarters; (2) sharing of income or expenses; (3) joint use or ownership of property; (4) whether the Parties hold themselves out as spouses; (5) the continuity of the relationship; and, (6) the length of the relationship. For purposes of this definition, “abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable

⁸ See Cal. Penal Code § 13700 (b).

apprehension of imminent serious bodily injury to self, or another.⁹ Abuse does not include non-physical, emotional distress or injury.

Sexual Misconduct: All sexual activity between members of the CSU community must be based on Affirmative Consent. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity is Sexual Misconduct, whether or not the conduct violates any civil or criminal law.

Sexual activity includes, but is not limited to, kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex. It also includes any unwelcome physical sexual acts, such as unwelcome sexual touching, Sexual Assault, Sexual Battery, Rape, and Dating Violence. When based on Gender, Domestic Violence or Stalking also constitute Sexual Misconduct. Sexual Misconduct may include using physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person's incapacitation (including voluntary intoxication) to engage in sexual activity. Men as well as women can be victims of these forms of Sexual Misconduct. Sexual activity with a minor is never consensual when the Complainant is under 18 years old, because the minor is considered incapable of giving legal consent due to age.

- 1. Sexual Assault** is a form of Sexual Misconduct and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's Gender or sex.¹⁰
- 2. Sexual Battery** is a form of Sexual Misconduct and is any willful and unlawful use of force or violence upon the person of another because of that person's Gender or sex as well as touching an intimate part of another person against that person's will and for the purpose of sexual arousal, gratification, or abuse.¹¹
- 3. Rape** is a form of Sexual Misconduct and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress. Any sexual penetration, however slight, is sufficient to constitute Rape. Sexual acts including intercourse are considered non-consensual when a person is incapable of giving consent because the person is incapacitated from alcohol and/or drugs, is under 18 years old, or if a mental disorder or developmental or physical Disability renders a person incapable of giving consent. The Respondent's relationship to the person (such as family member, spouse, friend, acquaintance or stranger) is irrelevant. (See complete definition of Affirmative Consent above.)
- 4. Acquaintance Rape** is a form of Sexual Misconduct committed by an individual known to the victim. This includes a person the victim may have just met; i.e., at a party, introduced through a friend, or on a social networking website. (See above for definition of Rape.)

Stalking means engaging in a repeated Course of Conduct directed at a specific person that would cause a Reasonable Person to fear for the safety of self or others' safety or to suffer Substantial Emotional Distress. For purposes of this definition:

- 1. 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,

⁹ See Cal. Penal Code § 13700(b) and Cal. Family Code § 6211.

¹⁰ See Cal. Penal Code § 240.

¹¹ See Cal. Penal Code § 242.

monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;

2. **Reasonable Person** means a reasonable person under similar circumstances and with the same Protected Status(es) as the Complainant;
3. **Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.