

**MEMORANDUM OF UNDERSTANDING (MOU) FOR INFORMATION
SHARING BETWEEN THE SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT, SKYLINE COLLEGE, DEPARTMENT OF PUBLIC SAFETY AND
THE CITY OF SAN BRUNO POLICE DEPARTMENT**

I. PARTIES

This Memorandum of Understanding (MOU) is between the San Mateo County Community College District, Skyline College, Department of Public Safety (referred to herein as the “District” or “DPS”) and the City of San Bruno Police Department (“SBPD”), individually referred to as “Party,” or “each Party,” and together referred to as “the Parties” or “Parties.”

The Parties agree to each identify a central point of contact for the other with respect to this MOU as follows:

- District: Mike Celeste, Director of Public Safety; and/or, Rob Dean, Skyline College Chief of Public Safety
- SBPD: Ed Barberini, Chief of Police; and/or, Geoff Caldwell, Police Commander

Unless otherwise agreed to, all information sharing between the Parties described in this MOU will flow between these points of contact. The Parties agree to share a contact list with their point of contact for implementation of this MOU, and to notify the Parties of any changes to their points of contact as soon as practicable.

II. PURPOSE

The purpose of this MOU is to meet the statutory requirements established by AB 1433 (Gatto, 2014), specified in the California Education Code (Ed. Code, § 67383, subd. (a) and Ed. Code, § 67381), and requiring covered institutions to adopt and implement written policies and procedures to ensure that reports of Part 1 violent crimes, hate crimes, or sexual assaults are immediately, or as soon as practicably possible, disclosed to local law enforcement.

It is further the purpose of this MOU to promote collaboration between the Parties to enhance the reporting, investigation, and appropriate response to sexual assault and other covered crimes.

Finally, it is the purpose of this MOU to promote compliance with all state and federal laws that provide specific requirements related to these issues, as outlined in California Education Code sections 67380, 67381 (the Kristin Smart Campus Safety Act of 1998) and 67383; SB 967 (de León, 2014), specified in California Education Code section 67386; the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”); and Title IX of the Higher Education Amendments of 1972 (“Title IX”); as well as the California Penal Code and applicable state laws related to health and confidentiality/privacy.

III. STATEMENT OF PRINCIPLES

The Parties agree to the following set of principles:

- (A) Improving Communication, Coordination, and Collaboration: The Parties agree to enhance communication, coordination, and collaboration to remedy sexual assault and violence and hate crimes, and protect the victim's confidential information.
- (B) Campus and Community Safety: The Parties will receive training to assist in the recognition that any allegation regarding sexual misconduct requires sensitive treatment and also directly impacts the real and perceived safety of all members of a campus community.
- (C) Upholding Civil Rights, Civil Liberties, and Victims' Rights: The Parties agree to comply with state and federal laws in a manner that protects individuals' civil rights and liberties, while prosecuting crimes and championing justice for survivors. The Parties explicitly recognize the distinctions between criminal law and civil law in the handling of sexual assault and violence that arise under both state and federal statutory frameworks.
- (D) Centering the Victim's Needs in Responses to Sexual Assault: The Parties agree to institute specialized, trauma-informed responses developed in consultation with campus and community-based victim advocates and delineated in this agreement.
- (E) Ensuring Accountability & Auditing: In an effort to promote greater transparency, the Parties have, or will implement a means to monitor, record, and accurately maintain all reports of Part 1 violent crimes, hate crimes, and sexual assaults, their outcomes, and processes, while maintaining confidentiality where the law provides.
- (F) Specialized Training and Knowledge: The Parties agree that sexual assault and hate crimes require specialized, trauma-informed training for the Parties and other potential first responders.
- (G) Respecting the Unique Needs of Undocumented Individuals: Parties should strive to promote policies and practices that address the unique needs of undocumented individuals, including implementing culturally and linguistically appropriate campus and law enforcement services.

IV. DEFINITIONS

Affirmative Consent: Affirmative, conscious, and voluntary agreement to engage in sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. 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 consent. (Ed. Code, § 67386, subd. (a)(1).)

Campus Security Authorities (CSAs): A CSA is defined as: (1) an institution’s campus police or campus security department, (2) an individual who has responsibility for campus security, (3) an individual specified in an institution’s statement of campus security policy to receive reports of criminal offenses, or (4) an institution’s official who has significant responsibility for student and campus activities (*e.g.*, student housing, discipline). (34 C.F.R. § 668.46(a); see also Ed. Code, § 67383, subd. (a) (incorporating the federal law definition of CSAs).)

Clergy Member and Pastoral Counselor: For state evidentiary code purposes, a clergy member “means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.” Evid. Code, § 1030. Communications made in confidence with a clergy member may be privileged under the “clergy-penitent privilege” described in Evidence Code sections 1032-1034. A person who meets this statutory definition may also meet the definition of a pastoral counselor for purposes of Title IX and Clery Act, which dictate various campus officials’ obligations to report sexual assault to campus authorities. A pastoral counselor is defined as a person who is associated with a religious order or denomination, is recognized by that religious order or denominations as someone who provides confidential counseling, and is functioning within the scope of that recognition. 34 C.F.R. §§ 668.46(a). In this context, a pastor or priest who is functioning as an athletic director or as a student advocate would not be exempt from the reporting obligations under Clery and Title IX. (See U.S. Dept. of Education, Handbook for Campus Safety and Security Reporting (February 2011) pp. 77–78; U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) pp. 22–23 n. 26.)

Concurrent Jurisdiction: Statutory jurisdiction for performance of peace officer functions. For example, if campus property is located within a municipality, the city police department has concurrent jurisdiction with the campus public safety department and Sheriff’s Office.

Confidential Resources: Confidential resources are counselors, advocates, and other staff such as ombudspersons, explicitly designated as such by the campus. Confidential resources may not meet the definitions of professional or pastoral counselor, but nonetheless provide assistance to victims of sexual assault and may not be protected by legal privilege. They may work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers (including front desk staff and students). Conversations with confidential resources do not trigger a Campus Title IX investigation. (See U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) E-3.)

First Responder: The law enforcement agency that will respond to 911 calls and other emergency calls and notify the law enforcement agency with operational responsibility. The First Responder may make the initial report for further investigation when the circumstances do not require the immediate involvement of the law enforcement agency with operational responsibility. When appropriate, the First Responder will be responsible for documenting the agency’s involvement in conducting investigations or enforcing the law.

Hate Crime: A criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) Disability; (2) Gender; (3) Nationality; (4) Race or ethnicity; (5) Religion; (6) Sexual orientation; (7) Association with a person or group with one or more of these actual or perceived characteristics. (Penal Code, §§ 422.55, 422.6.)

Holder of the Privilege: The holder of the Sexual Assault Counselor or Psychotherapist privilege is: (a) The victim/patient when such person has no guardian or conservator; (b) A guardian or conservator of the victim/patient when the victim/patient has a guardian or conservator; or (c) The personal representative of the victim/patient if the victim/patient is dead. (Evid. Code §§ 1013, 1035.6.) The holder of the Clergy-Penitent Privilege can be either the penitent or the clergy member. (Evid. Code, §§ 1033, 1034.) Only the holder of the privilege can give voluntary, informed, and time-limited consent to the disclosure of privileged communications.

Implicit Bias: An implicit bias is a positive or negative mental attitude towards a person, thing, or group that a person holds at an unconscious level. In contrast, an explicit bias is an attitude that a person is consciously aware of having.

Medical Evidentiary Examination: To "perform a medical evidentiary examination" means to evaluate, collect, preserve, and document evidence, interpret findings, and document examination results. (Penal Code, § 13823.93, subd. (a)(2).)

Operational Responsibility: A term referring to the law enforcement agency with responsibility for preventing crime; preserving peace and order; enforcing laws and ordinances; receiving citizens' arrests; evaluating persons who may be subject to Welfare and Institutions Code section 5150; investigating and collecting evidence; investigating reportable traffic accidents; reporting and accounting criminal offenses; and providing such other police services as the statutes and standard operating procedures of the respective departments may require.

Part 1 Violent Crime: As defined by the Federal Bureau of Investigation's Uniform Crime Reporting Program, offenses including "criminal homicide, forcible rape, aggravated assault, [and] robbery." (U.S. Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Reporting Handbook (2004) pp. 150, 152.)

Pastoral Counselor: See definition of Clergy Member.

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Privilege: A victim of a sexual assault has a privilege to refuse to disclose a confidential communication between the victim and a Sexual Assault Counselor, Psychotherapist, or Clergy Member. For communications with a Sexual Assault Counselor, Psychotherapist or Clergy Member, the privilege may be claimed by any of the following: (a) The holder of the privilege; (b) A person who is authorized to claim the privilege by the holder of the privilege; or (c) The person who was the Sexual Assault Counselor or Psychotherapist at the time of the confidential communication. (Evid. Code, §§ 1014, 1035.8, 1036.) A privilege applies to prevent disclosure of confidential information not only in state judicial proceedings, but in “all proceedings of any nature in which testimony can be compelled by law.” (Evid. Code, § 910 & Comment.) This includes “any action, hearing, investigation, inquest, or inquiry” conducted by administrative agencies, hearing officers, arbitrators, legislative bodies, or “any other person authorized by law.” (*Id.* at § 901.)

Psychotherapist and Professional Counselor: For state evidentiary code purposes, a psychotherapist generally means a licensed psychologist, psychiatrist, clinical social worker, professional clinical counselor, psychiatric-mental health nurse, family or marriage therapist, or a credentialed school psychologist. (Evid. Code, § 1010, subds. (a)–(e), (n) (providing specific definitions).) It also may include a trainee, psychological assistant or intern, associate clinical social worker, family therapist intern, or clinical counselor intern or trainee, provided that he or she is supervised by certain licensed practitioners. (Evid. Code, § 1010, subds. (f), (g), (o), (p).) Communications made in confidence with a Psychotherapist may be privileged under Evidence Code section 1014. A person who meets this statutory definition may also meet the definition of a Professional Counselor for purposes of Title IX and Clery Act, which dictate various campus officials’ obligations to report sexual assault to campus authorities. A Professional Counselor is defined as a person whose official responsibilities include providing mental health counseling to members of the institution’s community and who is functioning within the scope of his or her license or certification. (34 C.F.R. § 668.46(a).) This definition applies even to Professional Counselors who are not employees of the institution, but are under contract to provide counseling at the institution. This also includes an individual who is not yet licensed or certified as a counselor, but is acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a licensed or certified counselor. (See Title IX and Clery Act; see also U.S. Dept. of Education, Handbook for Campus Safety and Security Reporting (February 2011) pp. 77–78; U.S. Dept. of Education, Questions and Answers on Title IX and Sexual Violence (April 2014) pp. 22–23 n. 26, <https://www.notalone.gov/assets/ferpa-clerychart.pdf>.)

Rape Crisis Counseling Center (RCC): A center commonly known as a rape crisis center that provides, among other services: crisis intervention; follow-up and in-person counseling services; accompaniment and advocacy services; and information and referrals to victims and the general public. (See generally Penal Code, § 13837.)

Responsible Employee: Any employee who (1) has authority to redress sexual violence, (2) has been given the duty to report sexual violence or other covered misconduct, or (3) a student could reasonably believe has this authority or duty. (U.S. Dept. of Education, Office for Civil Rights, Revised Sexual Harassment Guidance (January 2001) p. 13.) Reportable incidents of sexual violence known by a Responsible Employee must be disclosed to [Campus's] Title IX Coordinator with all relevant information, including personally identifiable information about the victim, the accused, or other witnesses. (See U.S. Dept. of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 2014) D-3.)

Sexual Assault: Includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or the threat of any of these. See, e.g., Ed. Code, § 67380 *et seq.*; see also Penal Code, §§ 243.4 (sexual battery), 261 (rape).

Sexual Assault Counselor: A Sexual Assault Counselor is a certified counselor who is authorized under the California Evidence Code to assert the privilege against disclosing any confidential communications between a victim and the counselor. Section 1035 of the Evidence Code defines a Sexual Assault Counselor as a person engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is to give advice or assistance to sexual assault victims, who has completed training by a rape crisis counseling center (as defined in Penal Code section 13837), and who meets either of the following: (1) is a psychotherapist, has a master's degree in counseling, or one year of counseling experience with six months of rape crisis experience; or (2) has 40 hours of training and is supervised by a qualified counselor. (Evid. Code, § 1035.2.) It also includes a person employed to counsel or assist sexual assault victims by a public or nonprofit agency that provides assistance to victims and witnesses of crimes (as specified by Penal Code section 13835.2), and who: (1) is a psychotherapist, has a master's degree in counseling or a related field, or has one year of counseling experience, at least six months of which is in rape assault counseling; or (2) has the minimum training for sexual assault counseling set for victim-witness services organizations, and is supervised by a qualified counselor. (Evid. Code, § 1035.2, subd. (b).)

Sexual Assault Forensic Examination (SAFE Examination): A SAFE exam is an exam, commonly referred to as a rape kit, conducted at a qualified health facility to collect forensic evidence from a sexual assault victim that can be used to identify the perpetrator of that crime as well as other crimes to the extent the perpetrator is a repeat offender. (See, e.g., Penal Code, §§ 13823.5, 13823.7.) California protocol for SAFE exams is available at: http://www.calema.ca.gov/PublicSafetyandVictimServices/Documents/Forms%202013/Medical%20Forms/2-923-2-950_Protocol.pdf. Additional information about SAFE exams and victims' rights are available at: <http://www.calema.ca.gov/PublicSafetyandVictimServices/Pages/Medical-Forms.aspx>.

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Trauma-Informed: Trauma-informed services are not specifically designed to treat symptoms or syndromes related to sexual violence, but they are informed about and sensitive to trauma-related issues present in survivors. A trauma-informed organization—whether a hospital, community mental health agency, rape crisis center, or dual/multi-service advocacy agency—is one which all components have been reconsidered and evaluated in light of a basic understanding of the role violence and exposure to trauma plays in the lives of survivors. (Harris & Fallot, 2001.) A trauma-informed approach also integrates an understanding of a survivor’s history and the entire context of his or her experience. The attributes of the community to which the survivor belongs also can influence how a survivor is affected by trauma. The individual, the event, and the environmental factors can shape a survivor’s reaction to trauma and the healing process. In practice, trauma-informed services involve striving to be culturally competent and to understand survivors within their familial, social, and community contexts and life experiences. (Proffitt, 2010, p. 3; See National Sexual Violence Resource Center, Building Cultures of Care: A Guide for Sexual Assault Services Programs (2013), <http://www.nsvrc.org/publications/nsvrc-publications-guides/building-cultures-care-guide-sexual-assault-services-programs>.) Additional information about trauma-informed practices is available from the National Substance Abuse and Mental Health Services Administration (SAMHSA) at: <http://www.samhsa.gov/nctic/trauma-interventions>.

Undocumented Individual: An undocumented individual is a foreign-national who (1) entered the United States unlawfully, without the proper authorization and documents; or (2) entered the United States legally as a nonimmigrant but has since violated the terms of his or her status and remained in the United States without authorization.

Victim: As used in the MOU, someone who is observed to or who states that a Part 1 violent crime, hate crime, or sexual assault has been committed against him or her. Parties may elect to also or instead use the term Survivor.

Victim Advocate: A Sexual Assault Counselor, as defined in section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with section 13835) of Chapter 4 of Title 6 of Part 4. (Penal Code, § 679.04, subd. (a).)

Victim Support Person: Under California law, a victim of sexual assault has the right to have a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. (Penal Code, § 679.04, subd. (a).)

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Victims of Crime Fund: This refers to the state Victim-Witness Assistance Fund created by Penal Code section 13835.7. The fund is held in the state treasury and dispensed by “the Office of Emergency Services exclusively for the purposes specified in [sections 13835 to 13835.10 of the Penal Code], any other purpose that supports victims, and for the support of the centers specified in section 13837.” (Penal Code, § 13835.7.)

Victim-Witness Assistance Program: Any public or private nonprofit agency that provides assistance to victims and witnesses of crimes and meets the requirements set out by Penal Code section 13835.2. This includes: (1) providing comprehensive services to victims and witnesses of all types of crime; (2) recognition by the county board of supervisors as the major provider of comprehensive services to victims and witnesses in the county; (3) selection by the board of supervisors as the agency to receive funds pursuant to this article; (4) assistance to victims of crime in the preparation, verification, and presentation of their claims to the California Victim Compensation and Government Claims Board; and (5) cooperation with the California Victim Compensation and Government Claims Board in verifying the data required for these claims. (Penal Code, § 13835.2, subd. (a).)

V. JURISDICTION FOR LAW ENFORCEMENT SERVICES

- (A) Maps: The Parties agree to share patrol and sector maps as needed to clarify jurisdictional boundaries. Such maps will depict all buildings and properties that are owned or controlled by District at Skyline College, as well as all buildings and properties that are owned or controlled by recognized student and alumni organizations. All maps will be reviewed and updated on an annual basis or when a significant change is made to District property at Skyline College or local law enforcement reporting sectors. All modified maps will be shared with all Parties to this MOU. In addition, all maps will indicate any federal or tribal lands that are included in the jurisdictional boundaries, and if any such lands are present, all maps and action plans will be shared with those federal and tribal authorities.
- (B) Campus Security Authorities, Operational Responsibility & First Responders: DPS is the campus security authority and department who has responsibility for campus security, may receive reports of criminal offenses, and is the institution’s designated department with significant responsibility for student and campus activities. SBPD has operational responsibility for any crimes, including Part 1 violent crimes, hate crimes, and sexual assault, occurring on District’s Skyline College campus. SBPD has operational responsibility for any crimes, including Part 1 violent crimes, hate crimes, and sexual assaults, which occur within the municipality in which SBPD serves as the Police Department.

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It is noted that the San Mateo County Sheriff's Office has concurrent jurisdiction over District's Skyline College property and facilities, as well as municipalities within the County in which the San Mateo County Sheriff's Office has jurisdictional authority and operational responsibilities.

SBPD will act as the first responder to incidents, and have responsibility for the investigation of crimes and reporting to those authorized by law of Part I violent crimes, hate crimes, and sexual assault, occurring on District's Skyline College, as well as any campus owned, operated and/or occupied facilities.

The San Mateo County Sheriff's Office may act as a first responder to incidents, and have responsibility for the investigation of crimes and reporting to DPS of Part I violent crimes, hate crimes, and sexual assault, occurring at all locations within San Mateo County Sheriff's Office jurisdictional boundaries.

If incidents occur that involve police action from DPS and SBPD and/or the San Mateo County Sheriff's Office, law enforcement supervisors from each department will confer and decide which will have primary responsibility for investigating and reporting the incident based on the location of the incident.

- (C) Collaboration: The Parties recognize that regardless of which law enforcement agency ultimately has operational responsibility in responding to a sexual assault, hate crime or other Part 1 violent crime, other Parties may be the first responder to the report of the crime. Thus, each of the Parties has a responsibility to act in a manner that facilitates an effective law enforcement and institutional response, as well as appropriate treatment of the individual reporting the sexual assault or other violent crime. This includes ensuring the appropriate preservation of evidence and coordination with law enforcement to maintain chain of custody and authorize forensic sexual assault examinations.
- (D) Disputes Over Responsibility: If a dispute arises between the Parties regarding administrative, geographic or operational responsibility, and it cannot be resolved by referring to this MOU, the Party with jurisdictional responsibility for the incident will retain investigative responsibility. Other Parties will provide cooperation and resources in support of the investigation or resolution of the incident. The Party with responsibility for the incident will reasonably accommodate any requests from other Parties to conduct a parallel or joint response and/or criminal investigation.

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VI. REPORTING OBLIGATIONS:

The Parties agree to the following procedures through which each Party will transmit reports it receives to the other Parties. These reports shall comply with the confidentiality requirements described in Section VII below, and shall not identify the victim or the alleged assailant unless the victim has consented to being identified.

(A) DPS Reports to SBPD: Pursuant to California Education Code sections 67380(a)(6)(A) and 67383(a), DPS will report immediately, or as soon as practicably possible, to SBPD all reports received by a Campus Security Authority of any Part 1 violent crime, sexual assault, or hate crime, committed on or off campus. This includes reports victims make directly to Campus Security Authorities as well as reports victims make to other Skyline College employees that are then conveyed to District's Skyline College security authorities. Such reports will include, where authorized:

- The name and characteristics of the victim;
- The name and characteristics of the perpetrator if known;
- Description of the incident, including location and date and time; and
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency.

All such notifications to SBPD will be documented in DPS records.

(B) SBPD Reports to DPS: Pursuant to the Clery Act, DPS must report aggregate data concerning certain enumerated crimes. To enable DPS to fulfill this requirement, SBPD shall provide statistics on at least an annual basis to DPS on all crimes listed in 20 U.S.C. § 1092(f)(1)(F) for which SBPD acted as a first responder or had operational responsibility.

SBPD will promptly notify DPS when students or employees are identified as the victims or suspects of any Part 1 violent crime, sexual assault, or hate crime that occurs within SBPD's jurisdiction, and/or when SBPD acts as first responder to an incident. Such reports will include, where authorized:

- The name and characteristics of the victim;
- The name and characteristics of the perpetrator if known;
- Description of the incident, including location and date and time; and
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency.

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All such notifications to DPS will be documented in SBPD incident reports. SBPD will promptly notify DPS if it has referred the incident to the San Mateo County District Attorney's Office for charges to be filed, and of any charging decisions made by the San Mateo County District Attorney's Office.

- (C) Clery Warnings: The Clery Act requires DPS to issue timely warnings for Clery crimes on- and off-campus that pose a serious threat to students and employees and emergency notifications for a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on campus.

To facilitate the issuance of Clery Act-required timely warnings and emergency notifications, the Parties agree to coordinate the sharing of information as described above. The Parties acknowledge that DPS need not obtain the approval of an outside law enforcement agency to issue any warnings/notifications, nor is DPS required to seek preclearance of the content of any warning/notification. However, DPS will inform SBPD about such warnings as soon as practicable through the points of contact listed in this MOU.

VII. CONFIDENTIALITY & PRIVILEGE REQUIREMENTS

The Parties will comply with applicable law and guidance regarding anonymous and confidential reporting of sexual violence, including when, how, and what information can or must be disclosed to local law enforcement officials or designated DPS officials.

- (A) Communications Between Parties: The Parties agree that if a victim requests confidentiality regarding a reportable incident, the Parties will take all reasonable steps to comply with the victim's request or inform the victim when the Parties cannot ensure confidentiality. A Party will not disclose the name of the victim to other Parties unless the victim provides written consent to being identified after being informed of his or her right to have identifying information withheld.

Prior to obtaining consent from the victim to share personally identifying information, Parties will inform the victim of sexual assault that notification to DPS- including the confidential resources described in subsection B below - likely will also result in notice to the campus Title IX coordinator, but that notification to confidential resources will not result in disclosure of personally identifiable information to the Title IX coordinator. Parties will also inform the victim that he or she can agree to engage with local law enforcement and participate in the investigation and prosecution using a pseudonym (*i.e.*, Jane or John Doe) instead of his or her true name. In that case, DPS may disclose the name of the alleged perpetrator to law enforcement (if known) while protecting the identity of the victim from public disclosure.

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(B) Privileged & Confidential Resources for Victims: The Parties acknowledge that communications between victims and Sexual Assault Counselors, Psychotherapists, or Clergy Members are privileged communications. The privilege covers all confidential communications with the Counselors or Psychotherapists, and those who work or volunteer in their offices when the communications are reasonably necessary for the accomplishment of the purpose for which the counselor was consulted. Such counselors generally are under no obligation to report incidents of sexual violence, unless the victim is a minor, and can generally claim the privilege in a criminal proceeding.

The Parties further acknowledge that communications between campus-designated “confidential resources” and victims are generally protected from disclosure of personally identifying information except in limited circumstances, including potentially in a criminal proceeding unless they qualify as privileged.

Finally, the Parties acknowledge that communications between victims and any Responsible Employees on Skyline College who are NOT designated “confidential resources” are not confidential and are subject to the reporting requirements described in Section VI above (in addition to other requirements under state and federal law).

The Parties agree to develop materials to share with each other, with victims, and with the campus community listing appropriate points of contact on- and off-campus within the above three categories, and including information about the levels of confidentiality and privilege applicable to resources in each category.

VIII. COMMUNICATION AND COORDINATION

(A) General: The Parties will meet regularly – at least once per quarter – to:

- Share data and analysis about current trends and patterns in sexual assaults both on and off campus; and,
- Share additional relevant crime data in furtherance of crime prevention goals.

SBPD understands that once DPS becomes aware of an incident of sexual assault, it has obligations to take prompt and appropriate action to investigate, independent of any investigation by SBPD. DPS understands that SBPD may initiate an investigation and prosecution of an incident of sexual assault independent of any campus administrative proceeding.

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(B) Immediate Aftermath of an Incident - Victim Response & Evidence Collection / Preservation:

1. *SAFE Exams and Evidence Collection/Preservation:*

The Parties agree that in the immediate aftermath of a sexual assault, a victim should be directed to, and receive assistance (including transportation where appropriate) to access services, including referrals to counseling, a health examination and with the victim's consent, a Sexual Assault Forensic Examination (SAFE Examination), at no cost to the victim and irrespective of whether the victim engages with law enforcement. If a victim does engage with law enforcement and is transported to a hospital for a medical evidentiary or physical examination, the Parties acknowledge the law enforcement officer or agency must notify an Rape Crisis Center (RCC) immediately.

The Parties agree that under all circumstances in which the victim consents to a medical examination and a SAFE Examination, SBPD will provide transportation to the local medical facility where SAFE Examinations are conducted. If the victim declines SBPD transportation or if the victim reports to the medical facility, SBPD will respond to the medical facility and will contact the local RCC to respond to the medical facility as well. With the consent of the victim, the medical facility can contact the local RCC to respond to the medical facility to provide support to and advocacy for the victim. SBPD will pay for the SAFE exam, and the Parties agree that SBPD will not directly or indirectly pressure the victim to report the offense.

The Parties agree to ensure the timely and proper collection of evidence, including that from the crime scene or from a SAFE exam, when the victim has made a report to a law enforcement Party and collection of evidence will not violate a victim's request for confidentiality. The victim can be encouraged to report in order to permit the Party with operational responsibility to make a timely seizure of evidence even if the victim later chooses not to proceed with criminal charges. The Party with operational responsibility also agrees to collect, properly package, and maintain evidence by booking it into the property room of the Party to preserve the chain of custody and to take appropriate steps to preserve fragile or biological evidence or other evidence at risk of destruction.

When a SAFE exam is completed, SBPD will collect the SAFE Examination Kit, submit it to the appropriate crime lab for analysis pursuant to California law, and ensure the proper handling, proper custody and proper control of all collected evidence, with particular attention paid to collecting evidence regarding drug-facilitated assaults.

2. *Victim Communication and Interviews:*

Consistent with trauma-informed interview and investigatory practices, Parties will develop materials to inform the victim of his or her rights and options in both the short- and long-term, provide access to any necessary health or safety resources, and encourage the victim to engage with District personnel, SBPD and privileged counseling services.

In no circumstances will District directly or indirectly discourage (or, alternatively, require) the victim from making a Title IX or criminal complaint.

Similarly, in no circumstances will SBPD directly or indirectly discourage (or, alternatively, require) the victim from pursuing criminal charges or campus disciplinary action.

(C) Victim Services:

The Parties agree, with the victim's consent, to coordinate referrals for support services for sexual assault victims that are made available by municipal and other governmental agencies including, SBPD, the San Mateo County Sheriff's Office, District, the San Mateo County District Attorney's Office, and Qualified Community Based Organizations and Rape Crisis Counseling Centers. The Parties agree to have and share policies setting out their respective responsibilities related to victim support from the time of the report through resolution of the investigation, including prosecution or disciplinary proceedings, as applicable.

The Parties agree to notify the local Victim-Witness Assistance Program of the sexual assault when a police report is generated. The Victim-Witness Assistance professionals can support the victim during any criminal or campus disciplinary proceeding, including providing the appropriate referrals and resources, and can assist the victim with financial resources through the Victims of Crime Fund.

(D) Sexual Assault Response Team (SART):

The Parties agree to support and participate in the existing interdisciplinary Sexual Assault Response Team (SART) within their jurisdictions or support the development of a SART that includes District representatives, the Title IX Coordinator or designee, advocates, counselors, medical providers (ideally to include a Sexual Assault Forensic Examiner or a Sexual Assault Nurse Examiner), law enforcement support, and other competencies that may be needed to adequately deliver essential support services.

The Parties agree to be part of the SART's system-wide review and discussion of the community's response to sexual assault. The Parties also agree to publicize information about SART resources to the campus community and to train SART members on all applicable confidentiality and victim privacy safeguards.

(E) Coordination During Ongoing Investigation:

The Parties will regularly confer on the status of an active investigation to ensure District's compliance with federal requirements while maintaining the integrity of an active SBPD criminal investigation.

The Parties agree, as soon as is practicable and as allowable by federal and state law, to share relevant documentation and other information created and/or maintained during District or SBPD investigations (such as records of interviews and physical evidence gathered) when a victim of sexual assault and/or an alleged suspect are students or employees of District.

Where possible and appropriate, District and SBPD agree to conduct joint victim and witness interviews to avoid the need for duplicative interviews.

District will disclose to SBPD when it has initiated a disciplinary proceeding against the alleged perpetrator, to the extent allowable by state and federal law. District will disclose the final results of a disciplinary proceeding to the Parties if it determines that: 1) a student is an alleged perpetrator of a crime of violence or non-forcible sex offense; and 2) with respect to the allegation made against him or her, the student has committed a violation of the institution's rules or policies. In these circumstances, the disclosure may be made with or without the consent of the victim, and regardless of whether the victim pursues criminal charges.

SBPD will share with District the result of a criminal investigation, whether any charges have been filed, and the outcome of any criminal proceeding, as soon as is practicable and as allowable by federal and state law.

IX. SEXUAL ASSAULT PREVENTION AND TRAINING

(A) Training Offered by SBPD and District

District agrees to offer training to SBPD regarding:

- The federal and state requirements regarding sexual assault prevention and response with which they must comply, including the Clery Act, Title IX, Title IV, the Safe Streets Act, Section 14141, FERPA, and other confidentiality and privacy statutes and policies; and
- The differing status of conduct offenses as defined and investigated by District as compared to similar criminal offenses.

SBPD agrees to offer training and technical assistance to District security personnel and any personnel involved in a campus disciplinary investigation or proceeding regarding:

- SBPD-based resources, reporting options for victims, the investigation process used in criminal cases, and the accommodations that SBPD can provide or arrange for sexual assault victims.
- Investigative methods and best practices relating to evidence collection and preservation, victim and suspect interviewing, witness interviewing and preparation, review of sexual assault response and investigations to detect and address indications of explicit or implicit bias, and other matters as requested.

The Parties acknowledge that Qualified CBO or RCC may offer training and technical assistance to District and SBPD involved in campus disciplinary investigation or proceeding regarding:

- Services for survivors in the community.
- Overview of survivors' rights.
- Dynamics and trauma associated with sexual assault from a trauma-informed lens.
- Strategies and practices in the prevention of sexual assault and shifting social norms that perpetuate sexual violence.
- Compliance with California Education Code section 67386.

SBPD agrees to provide its officers and command-level staff with trauma-informed sexual assault training. Training provided by SBPD will be Peace Officer Standards and Training ("POST") certified or provided by a trauma and sexual assault expert.

The Parties agree that training should occur regularly, on at least an annual basis, and be reinforced at management meetings, roll calls, and other gatherings periodically.

The Parties agree to collect data regarding the number and types of trainings provided pursuant to this section, to conduct regular evaluation of these trainings, and to include such evaluation in their data collection and management reviews to look for trends and areas that will need to be revised in future trainings.

- (B) Campus Community Training and Collaboration: SBPD agrees to collaborate with District to provide outreach and training for the campus community about the awareness, prevention, intervention, investigation, and response to sexual assaults and other crimes of violence and to work with community-based resources and experts, including victim advocates, to provide these programs.

X. ACCOUNTABILITY

The Parties agree to collect data, including a baseline number of reports of Part 1 violent crimes, hate crimes, and sexual assault from the year prior to entering into the MOU, comparison of baseline numbers to current numbers of cases reported, and for each individual case:

- Whether the Parties met the MOU requirements and if not, why;
- Whether the case was successfully prosecuted and if not prosecuted, identification of the reason why the case was not pursued; and
- Feedback from the victim of his or her view of the process.

The Parties agree to collect data regarding the number and types of training each Party provides each year, to conduct regular evaluations of the efficacy of those trainings, and to include such evaluation in their data collection and management reviews to look for trends and areas that will need to be revised in future trainings. The Parties agree to determine common definitions to ensure a valid comparison of data collected.

Data collection related to the Parties' actions according to this MOU will be reviewed directly between the Parties on at least an annual basis and, for sexual assault data, through the SART on a quarterly basis. Parties will evaluate changes in the number of reports each year and discuss whether any increases or decreases in reporting are due to changes in actual crime levels or changes in levels of reporting. Performance improvement areas, including strategies to increase levels of reporting and decrease instances of crime, will be identified through review of the data and the responsible party will develop action steps to improve those areas.

Each Party representative responsible for implementation of this MOU will meet at least annually to discuss and evaluate effectiveness of the MOU to determine areas for improvement and discuss appropriate next steps.

XI. MISCELLANEOUS

This MOU is effective upon signature by each Party.

This MOU may be terminated upon 30 days' notice by any Party. This MOU may be amended or terminated by mutual agreement of the Parties. An amendment or termination should be done in writing.

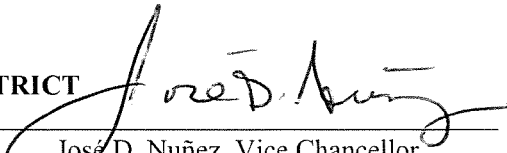
This MOU may be executed in counterparts.

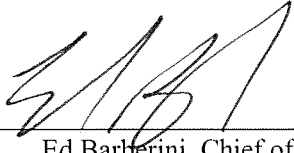
Each Party agrees that any cost(s) incurred and associated with this MOU will be covered by the Party incurring such cost(s).

Each Party agrees to act in good faith to observe the terms of this MOU; however, nothing in this MOU is intended to require any unlawful or unauthorized act by any Party. Nothing in this MOU shall be interpreted to limit or restrict each of the Parties' legal, jurisdictional, or other rights or obligations with respect to the subject matter of this MOU.

No provision of this MOU shall form the basis of a cause of action at law or equity by any Party against any other Party, nor shall any provision of this MOU form the basis of a cause of action at law or equity by any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

DISTRICT
By: 
José D. Nuñez, Vice Chancellor
San Mateo Community College District

SBPD
By: 
Ed Barberini, Chief of Police
San Bruno Police Department

Date: 8-5-14

Date: 7/30/15