

## California Senate Bill 493 and Required Policy Updates

California SB 493 is a law that applies to all higher education institutions in California that receive state funding. This law went into effect on January 1, 2022. While the law echoes many Title IX and Clery Act/VAWA § 304 requirements, it also guarantees students additional civil rights protections, some of which create direct conflict with provisions codified in the 2020 Title IX regulations (34 CFR § 106).

CalArts is actively updating the CalArts Sexual Misconduct Policy (including updating policy title) to align with SB 493 and will be published on the CalArts Website. While this update is in progress, the Institute will interpret its current Policy to comply with the most recent government regulations.

### Key Requirements

SB 493 broadens the federal definition of sexual harassment and includes terms that overlap with and expand upon the definitions required by the Title IX regulations.

### California Sexual Harassment, defined by SB493 as:

- Unwelcome sexual advances, or
- Requests for sexual favors, or
- Other verbal, visual, or physical conduct of a sexual nature,
- Made by someone from in the work or educational setting,
- Under any of the following conditions:
  - Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
  - Submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
  - The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

### California Sexual Violence, defined by SB 493 as:

- Physical sexual acts,
- Perpetrated against a person without the person's affirmative consent.

**California Sexual Battery, defined by SB 493 as:**

- The intentional touching of another person’s intimate parts without consent, or
- Intentionally causing a person to touch the intimate parts of another without consent, or
- Using a person’s own intimate part to intentionally touch another person’s body part without affirmative consent.

**California Sexual Exploitation, defined by SB 493, (the addition of the following elements not included or alternatively defined in the current policy):**

- Sexual voyeurism (the viewing of another person’s sexual activity or intimate parts, in a place where that person would have a reasonable expectation of privacy, without that person’s consent, for the purpose of arousing or gratifying sexual desire)
- Trafficking of another person, defined as the inducement of a person to perform a commercial act, or labor or services, through force, fraud, or coercion
- Distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure

**California SB 493 has specific requirements the Institute must adhere to when addressing these matters and includes the following:**

- SB 493 requires the Institute to respond in situations in which the Institute has actual or constructive notice of possible instances of sexual harassment.
- The Institute is prohibited from allowing mediation to resolve allegations of sexual violence (i.e., sexual assault, dating violence, domestic violence, and stalking), even on a voluntary basis. Mediation is not defined in the law and is subject to interpretation.
- SB 493 expressly prohibits cross-examination of parties and witnesses conducted by the parties or their advisors. This provision directly conflicts with the 2020 Title IX regulations and the Title IX requirements will continue to apply to Title IX sexual harassment unless and until the Title IX regulations are modified to not require cross-examination conducted by the parties’ advisors.
- Responsible employees are defined as an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. Accordingly,
  - The Institute will continue to require all employees to report incidents of Sexual Harassment and Sexual Misconduct to the Title IX Coordinator or their designee with the exception of Confidential Resources ( Counseling, Confidential Resource Advocate and Student Health).
  - Under CalArts previous policy, “Required Reporter” was utilized to describe this requirement. Per CA SB 493, the term “Responsible Employee” will be utilized to define this requirement. Any references to the term “Mandated Reporter” refer to California Child Abuse and Neglect Reporting Act (CANRA), for which CalArts complies.